

RESIDENTIAL THROUGH THE FENCE AIRPORT
ENTRANCE AND UTILIZATION AGREEMENT

This Agreement is entered into as of _____ (“Effective Date”) by and between Bonner County, Idaho (“County”) and _____ (“Licensee”).

RECITALS

- A. County is the owner and operator of Sandpoint Airport (“Airport”) located on property as more particularly described in Exhibit “A” attached hereto and made a part hereof by this reference (the “Airport Property”);
- B. Licensee is an owner of private land abutting the Airport Property, as described in Exhibit “B” hereto (“Private Land”); and
- C. Licensee desires that private aircraft enter the Airport Property from the Private Land at the location depicted on Exhibit “C” hereto (“Point of Entrance”);
- D. Licensee presently has an _____ authorizing access onto the Airport, which access is or shall be subject to certain conditions as set forth in Section 4 of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and upon the terms and subject to the conditions set forth herein, the parties agree as follows:

AGREEMENT

1. Entrance and Utilization of Airport Property. County hereby grants to Licensee the right to enter and utilize Airport Property for Licensee's private aircraft, exclusively at the Point of Entrance and over the easement area designated on Exhibit C.

2. Term. The term of this Agreement shall be _____ (____) years from the "Effective Date," or so long as Licensee is not in breach of any of the provisions of this Agreement (in which case the procedures set forth in Section 15 below are applicable) whichever comes first.

3. Infrastructure. Licensee shall be responsible for the cost of installing and maintaining all infrastructure required for through the fence utilization including, but not limited to, taxiways and gates, in a manner compliant with all federal, state and local regulations, current and/or future. In addition, Licensee shall provide and maintain any fencing not already existing along the private land as depicted in the most recent approved airport planning documents (Airport Master Plan, Airport Layout Plan) which fencing shall meet the same federal specifications for wildlife fencing as that fencing which is federally funded. Licensee shall ensure that the Gate(s) remains closed at all times, except when its aircraft is passing through it. Licensee shall also provide any and all additional infrastructure requested by Bonner County in accordance with then-currently applicable (1) County and Airport Board ordinances, regulations, and policies adopted from time to time; (2) Federal Aviation Administration ("FAA") requirements, and shall be subject to County approval, which approval shall not be unreasonably withheld.

4. Conditions and Restrictions. Licensee's right hereunder to enter and utilize the Airport Property is subject to the following conditions:

a. Licensee shall at all times comply with all applicable present and future:

(i) Rules, regulations, guidance and contractual obligations assumed by the Airport and other requirements of the FAA or any successor federal regulatory agency, or any other applicable regulatory rules and regulations of any other federal agency;

(ii) Laws of the State of Idaho and of the United States of America, including, without limitation, statutes, rules, regulations, ordinances and codes;

(iii) County and City laws, rules, regulations, ordinances, and codes;
and

(iv) Airport Master Plans and Airport Layout Plans approved by FAA.

b. All Licensee's plans, designs and specifications for infrastructure, required access, required fencing and other security measures shall be subject to the prior review and approval by the Bonner County Board of Commissioners ("Board"), and Licensee shall also obtain and submit to the Board all approvals which may be required by the FAA from time to time;

c. Any taxiway constructed by Licensee to enable it to access the hard surface portion of the Airport runway pursuant to its easement shall be constructed at its own expense and in accordance with the design standards as set forth by Federal Aviation Administration specifications, rules and regulations in effect at the time of the construction;

d. All covenants and conditions shall extend to and be obligatory upon the heirs, beneficiaries, successors and assigns of the parties to the easement;

e. Licensee shall be responsible for assuring that traffic and activities relating to construction of infrastructure and other entrance, utilization and security construction do not interfere with the normal day to day operations of the Airport, do not create a safety hazard, and do not result in unreasonable wear and tear on improved areas of the Airport Property.

5. Through the Fence Agreement Airport Maintenance Fee. Bonner County Code (“B.C.C.”) Title 5, Chapter 4¹, as now existing or as the same may be adopted, supplemented, amended, or revised is incorporated by reference. Licensee shall pay to the County an initial fee and a yearly fee in accordance with B.C.C. § 5-410.

6. Adjustment of Fees. The initial fee may be adjusted from time to time pursuant to B.C.C. § 5-410(h). The yearly fee may be adjusted from time to time pursuant to B.C.C. § 5-410(g).

7. Exclusive Residential Use. Licensee shall maintain the Private Land for residential, noncommercial use during the term of this Agreement and any extensions thereto.

8. Third Parties. Licensee shall not have the right to grant or sell the right to enter or utilize the Airport Property through its Private Land to other parties from other parcels of land during the term of this Agreement and any extensions thereof.

¹ This is a proposed ordinance not yet adopted by Bonner County.

9. Aircraft Refueling. Licensee shall not allow fuel sales on the Private Land during the term of this Agreement and any extensions thereto. Aircraft refueling is permitted for Licensee's aircraft only.

10. Insurance. At all times during the term of this Agreement, including any extensions thereof, Licensee shall procure and maintain insurance against any claims for injuries to persons or damages to property which may arise from, or on connection with, the performance of this Agreement by Licensee, its agents, representatives, employees, contractors or subcontractors.

a. Coverage. Coverage shall be at least as broad as:

(1) Commercial General Liability ("CGL"): Insurance Services Office Form CG00 01, including products and completed operations, with limits of no less than five hundred thousand dollars (\$500,000) per occurrence, and five hundred thousand dollars (\$500,000) aggregate for bodily injury, personal injury, and property damage;

(2) Automobile Liability: Insurance Services Office Form CA0001 Covering Code 1 (any auto) with limits no less than five hundred thousand dollars (\$500,000) per accident for bodily injury and property damage;

(3) Worker's Compensation Insurance as required by the State of Idaho, with statutory limits, and Employer's Liability Insurance with a limit of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.

b. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL and automobile liability.

(2) For any claims related to Licensee's ingress or egress between the Airport Property and the Private Land, Licensee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of Licensee's insurance and shall not contribute with it.

(3) If reasonably available, each insurance policy required by this clause shall provide that coverage shall not be cancelled, except with prior written notice to County.

c. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best Rating of no less than A-:VII, unless otherwise acceptable to the County in its sole discretion.

d. Waiver of Subrogation. Licensee hereby agrees to waive rights of subrogation which any insurer or contractor may acquire from Licensee by virtue of the payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by Licensee, its employees, agents, contractors, and/or subcontractors.

e. Verification of Coverage. Licensee shall furnish the County with original certificates and the mandatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Licensee's obligation to provide them. County reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

f. Subcontractors. Licensee shall require and verify that all contractors and/or subcontractors maintain insurance meeting all the requirements stated herein.

g. Special Risks or Circumstances. County reserves the right to modify these requirements, including limits, in commercially reasonable ways, based on the nature of the risk, prior experience, insurer, coverage or other circumstances.

h. All Risk Insurance in Connection with Construction. Before commencement of an construction or demolition on or related to the access granted hereunder, Licensee shall procure and shall maintain in force until the completion of the work "all risk" insurance in a form reasonably satisfactory to County, covering all risks of physical loss or damage to any property in an amount of not less than five hundred thousand dollars (\$500,000).

i. Public Liability Insurance. Comprehensive broad form general public liability and aviation liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the entrance rights granted hereunder, or Licensee's utilization of the Airport, with personal injury, death and property damage combined

single limit liability of not less than five hundred thousand dollars (\$500,000) for each accident or occurrence.

j. General Provisions. The insurance coverage required by the foregoing provisions may be provided by means of one or more blanket policies issued to Licensee (and naming County as an additional insured), which includes such coverage or greater coverage. In the event Licensee shall default in its obligation to procure or maintain any insurance required hereunder, then without limitation on County's other rights or remedies hereunder, County may at its option, but shall not be required to, procure or maintain such insurance and pay any or all premiums thereon or other costs or expenses in connection therewith, in which event all costs and expenses to County in connection with such insurance, including, but not limited to such premiums, shall be payable to County by Licensee immediately upon County's incurring the same. The amount of coverage required in Sections 10.a. and 10.b. shall be increased by a percentage which is equal to the percentage change in the Consumer Price Index during the immediately preceding term of the Agreement.

11. Late Charges. Licensee agrees to pay late charges pursuant to B.C.C. § 4-410(j).
12. Indemnification. Licensee shall indemnify, defend, save and hold harmless the County and its officers, officials, agents and employees ("Indemnitees") from and against any

and all allegations, demands, proceedings, suits, claims, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused or alleged to be caused, in whole or in part by the negligent or intentional actions, errors or omissions by Licensee or any of its owners, officers, directors, agents, employees, contractors or subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, undertaken in the exercise of Licensee's rights under this Agreement. This indemnity includes any claim or amount arising out of or recovered under the worker's compensation law, or arising out of the failure of such to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitees shall, in all instances, except to the extent claims arise from the negligent or willful acts or omissions of the Indemnitees, be indemnified by Licensee from and against any and all such claims. It is agreed that Licensee will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

13. No Assignment. Neither this Agreement nor any right granted herein shall be assignable or otherwise transferrable in whole or in part, without the consent of the County, which consent shall not be unreasonably withheld. Only the County may grant entrance or utilization of the airfield which must be consistent with FAA or Transportation Security Administration requirements.

14. Non-Responsibility of County for Airport Closures. County shall not be responsible for temporary or permanent Airport closures or the inability to operate specific

aircraft at any time. Notwithstanding the foregoing, and without in any way imposing upon County a financial obligation other than as may be approved by County from time to time as part of its budget, County shall use good faith efforts to keep the Airport open and generally accessible to the flying public and Licensee and to enter into agreements with Fixed-Based Operators (“FBO”) and others to assist in meeting such objectives.

15. Remedy Upon Breach. Should either party hereto breach any of its obligations hereunder and fail to cure such default within thirty (30) days after written notice of the breach given by the other party, then such other party may terminate this Agreement and pursue such other remedies as may be available at law. Termination of the Agreement because of breach by the Licensee shall not entitle Licensee to a refund of any portion of prior fees paid, such amount having been determined by the parties to be reasonable liquidated damages to be retained by the County.

16. General Provisions. The parties hereto agree to the following general provisions:

a. Further Documentation. The parties hereto agree to execute any and all documents advisable and/or necessary to effectuate the terms and intent of this Agreement.

b. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

c. Severability. If any provisions of this Agreement as applied to either party or to any circumstance shall be adjudged by a court to be void and unenforceable, the same shall in no way affect any other provisions of this Agreement, the application of said provisions in any other circumstances, or the validity or enforceability of the Agreement as a whole.

d. Modification. This Agreement shall not be modified by either party or by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by all parties.

e. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement as of the Effective Date.

f. Time is of the Essence. Time is of the essence for the performance of each and every obligation contained in this Agreement.

g. Attorney's Fees. In the event any action is brought to enforce or interpret any of the terms and provisions of this Agreement, the "prevailing party" in such action shall be entitled to recover, as an element of costs of suit, and not as damages, reasonable costs and expenses, including, but not limited to, taxable costs and reasonable attorney's fees. The "prevailing party" shall be the party entitled to recover its costs of suit, regardless of whether such suit proceeds to final judgment. A party not entitled to recover its costs shall not be entitled to recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for the purposes of determining if a party is entitled to recover costs or attorney's fees.

h. Construction. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement, and in accordance with the laws of the State of Idaho. Jurisdiction shall be in the County.

i. Merger. All negotiations are merged into this Agreement. This Agreement constitutes the entire understanding of the parties concerning the subject of this Agreement. This Agreement shall constitute a binding obligation between the parties and shall be applicable beyond the term of this Agreement.

j. Costs and Expenses of Agreement. Each of the parties shall pay all costs and expenses incurred or to be incurred by it in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

k. Headings. The headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

l. Incorporation of Recitals. The recitals are hereby incorporated in this Agreement by this reference.

m. Authority to Execute. The individuals executing this Agreement on behalf of Licensee hereby represent and warrant that they are duly authorized to do so on behalf of Licensee, and that all corporate, partnership, trust or other entity requirements have been fully complied with including such resolutions, voting or agreements as may be required to enter into this Agreement and to make this Agreement a binding obligation of such entity.

n. Electronic and Facsimile Copies. Electronically transmitted and facsimile executed copies of this Agreement shall be deemed original copies. Any party may rely upon the electronically transmitted or facsimile copy of the original executed Agreement which may be executed in counterparts. The parties agree to exchange fully executed original copies by mail

within five days after signing, provided that said exchange or the failure to exchange originals shall in no way be construed as voiding or negating use of the facsimile copies as originals.

o. Notices. All notices permitted or required under this Agreement shall be in writing addressed to the person at the address specified below, or at an address changed in this manner, by personal service, or as an alternative to personal service, by mailing the same by registered or certified mail, postage prepaid and return receipt requested. All notices shall be deemed effective upon receipt. If notice is sent by mail, the same shall be deemed delivered and received on the date of receipt or refusal indicated on the return receipt. Any notice provided for herein may also be sent by any reputable overnight courier so long as written confirmation of delivery of such notice is obtained by the sender. In such event, notice shall be deemed to be received on the date of receipt pursuant to the delivery confirmation.

County:

Licensee:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BONNER COUNTY, IDAHO

By:

Its:

By:

Its:

DRAFT