

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into by and between the CITY OF FLAGSTAFF, Arizona, an Arizona municipal corporation (the "Lessor"), and ROUTE 66 ENTERPRISES, INC., an Arizona corporation (the "Lessee"), this 14th day of October, 2014.

### R E C I T A L S

- A. Lessor owns the 144 square foot space located within the Airport Terminal Building, more particularly described in *Exhibit "A"* attached hereto and incorporated herein by this reference (the "Premises").
- B. Lessor issued an Invitation for Bids dated August 19, 2014 (the "IFB") with respect to its desire to lease the Premises. Lessee submitted a response to the IFB and Lessee was selected by Lessor as the successful respondent. In connection therewith, Lessor and Lessee are entering into this Lease for the purpose of affecting a lease of the Premises by Lessor to Lessee and otherwise setting forth the rights, duties and obligations of the parties with respect to the Premises.

NOW THEREFORE, in consideration of the foregoing and of the rents, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, for themselves, and their respective successors and assigns, do hereby covenant and agree as follows:

### A G R E E M E N T

- 1. **EXHIBITS**. Attached to and forming a part of this Lease are the following Exhibits, which, for the purpose of identification, have been initialed by the parties to this Lease:

EXHIBIT "A"                      Legal description of the Premises subject to this Lease

EXHIBIT "B"                      FAA Airport Sponsor Assurances 3/2014

- 2. **DEFINED TERMS**. As used in this Lease the following terms have the following meanings:

**"Building Improvements"** means the existing building improvements located on the Premises, together with all renovations, improvements and betterments made thereto by Lessee from time to time.

**"Environmental Laws, Rules, and Regulations"** means and includes those federal, state, county, or local requirements pertaining to protection of human health and the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §9601, *et seq.*; the Resource Conservation and Recovery Act, as amended ("RCRA"), including Subtitle I thereof, 42 U.S.C. §6901, *et seq.*; and A.R.S. Title 49, including the Water Quality Assurance Revolving Fund ("WQARF") provisions thereof, A.R.S. §49-281, *et seq.*

**"Hazardous Materials"** means and includes those substances regulated pursuant to Environmental Laws, Rules and Regulations, including, but not limited to, "hazardous substances" as defined under Section 101 of CERCLA, 42 U.S.C. §9601(14); "hazardous waste" and "solid waste" as defined under Section 1004 of RCRA, 42 U.S.C. §9603; and petroleum and its constituents.

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**"Improvements"** means all improvements existing and constructed by Lessee from time to time on the Premises.

**"Laws"** means all applicable present and future federal, state, municipal, governmental agency or quasi-governmental agency statutes, charters, laws, codes, rules, rulings, ordinances, orders, programs, guidelines and/or regulations.

**"Lease"** means this Lease Agreement, as the same may be modified or amended from time to time.

**"Lessee"** means Lessee described in the introductory paragraph of this Lease, or any assignee of Lessee's rights and interests under this Lease which is approved by Lessor pursuant to *Section 6* below.

**"Lessor"** means the City of Flagstaff, Arizona, and its successors and assigns.

**"Premises"** means and refers to that approximate 144 square foot space located within the Airport Terminal Building, together with all existing improvements thereon, as more fully set forth in the legal description attached to this Lease.

### 3. **GENERAL TERMS OF LEASE OF PREMISES.**

3.1. **Lease of Premises; Condition of Premises.** Subject to the terms and conditions set forth in this Lease, including, without limitation, Lessee's payment of Rental as provided herein and the performance by Lessee of all of its other duties and obligations to be performed by Lessee hereunder, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises described herein. Lessee's rights under this Lease are subject to and restricted by the provisions of any covenants, conditions, restrictions and easements, and all other matters of record which affect the Premises. Lessee acknowledges that it has examined the Premises, is familiar with the physical condition and uses that may be made of the Premises, and is leasing the same in its "as is," "where is" condition existing on the date of this Lease. Lessor has not made and does not make any representation or warranty whatsoever with respect to the Premises or otherwise with respect to this Lease, except to the extent otherwise expressly set forth in this Lease. Except as otherwise provided herein, Lessee assumes all risks resulting from any defects (patent or latent) in the Premises or from any failure of the same to comply with any applicable laws, rules, regulations or requirements.

- 3.2. **Term; Option to Extend Term; Holding Over.** Unless previously terminated pursuant to any applicable provision of this Lease, the term of this Lease (the "Term") shall be three (3) year(s), commencing upon the date that sole and exclusive possession of the Premises is delivered by Lessor to Lessee (the "Commencement Date"). Each twelve (12) month period occurring during the Term of this Lease, beginning with the first such 12 month period commencing upon the Commencement Date, is hereinafter defined as a "Lease Year." So long as Lessee is not then in default under this Lease, Lessee shall have the right to elect to extend the Term of this Lease for up to two (2) consecutive five (5) year extension terms (each, an "Extension Term"), by providing written notice to Lessor that Lessee desires to extend the Term of this Lease, which notice shall be provided by that date that is the later of: (a) one hundred eighty (180) days prior to the expiration of the then-current Term or Extension Term, as applicable, or (b) sixty (60) days after receipt of written notice from Lessor that the Term or Extension Term, as applicable, has expired or is about to expire. All terms and conditions of this Lease shall remain in full force and effect and shall define the legal relationship between Lessor and Lessee during each Extension Term, including, without limitation, with respect to the payment of Rental.

If Lessee remains on the Premises after the expiration of the initial Term of this Lease, or any Extension Term, as applicable, then Lessee shall become, at Lessor's election, a lessee on a month-to-month basis at a Rental (calculated on a monthly rather than annual basis) equal to two hundred percent (200%) of the Rental applicable to the last month of the most recently expired Term or Extension Term, as applicable. Such Rental shall be payable by Lessee in advance on the first day of such holdover period and on the first day of each month thereafter until Lessee vacates the Premises. Any such holdover tenancy shall be subject to all of the provisions of this Lease.

- 3.3. **Certain Representations of Lessor.** Lessor represents and covenants that:

- 3.3.1. Lessor has full municipal power and authority to enter into this Lease, and the execution, delivery, and consummation of this Lease by Lessor have been duly authorized by all necessary municipal action;
- 3.3.2. Lessor has received no notice as of the date of this Lease asserting any noncompliance in any material respect by Lessor with applicable statutes, rules and regulations of the United States of America, the State of Arizona, Lessor, or of any other state or municipality or agency having jurisdiction over and with respect to the transactions contemplated in and by this Lease, and Lessor is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated in and by this Lease; and
- 3.3.3. To the best of Lessor's knowledge, the use and operation of the Premises in accordance with this Lease complies with all applicable laws, rules or regulations applicable to the Premises.

- 3.4. **Certain Representations of Lessee.** Lessee represents and covenants that:

- 3.4.1. Lessee is a corporation duly organized, validly existing, and registered to transact business in the State of Arizona and in good standing under the laws of the State of Arizona, and has full power and authority to enter into this Lease, and the execution, delivery, and consummation of this Lease by Lessee have been duly authorized by all necessary company action;

- 3.4.2. The execution, delivery and consummation of this Lease by Lessee is not prohibited by and does not conflict with any other agreements or instruments to which Lessee is a party or is otherwise subject;
- 3.4.3. Lessee has received no notice as of the date of this Lease asserting any noncompliance in any material respect by Lessee with applicable statutes, rules and regulations of the United States of America, the State of Arizona, Lessor or of any other state or municipality or agency having jurisdiction over and with respect to the transactions contemplated in and by this Lease, and Lessee is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated in and by this Lease;
- 3.4.4. There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or pursuant to any other debtor relief laws contemplated by Lessee or filed by Lessee or, to the best of Lessee's actual knowledge, pending in any current judicial or administrative proceeding against Lessee;
- 3.4.5. Except as otherwise set forth in this Lease, Lessee acknowledges that any information of any type which Lessee has received or may receive from Lessor or any agent of Lessor is furnished on the express condition that Lessee shall make an independent verification of the accurateness of such information, and that all such information is being furnished without any representation or warranty whatsoever. Lessee agrees that it will not attempt to assert any liability against the Lessor for furnishing such information, except to the extent caused by the Lessor's willful or intentional misconduct.
- 3.5. **Possession of the Premises.** Upon the execution of this Lease, Lessor has delivered to Lessee possession of the Premises, and Lessee has taken possession thereof.
- 3.6. **No Merger.** The parties recognize and agree that there shall be no merger of the leasehold estate created by this Lease with the fee interest in the Premises by reason of the fact that one person or party may at the same time hold such leasehold estate created by this Lease and such fee interest.
- 3.7. **Rental.**
- 3.7.1. **Rental.** Lessee shall pay to Lessor annual rent ("Rental") for each Lease Year during the Term of this Lease, as may be extended, in the applicable amounts as herein set forth. The annual rent amount is \$7,212.00 (\$601.00 per month).
- 3.7.2. **Payment of Rental.** Rental for each Lease Year during the Term of this Lease shall be paid annually in advance on or before the first day of each such Lease Year at the following address:

City of Flagstaff  
Attention: Finance Director  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

3.7.3. **No Set-Off.** Except to the extent otherwise expressly set forth in this Lease, Lessee shall pay the Rental and other charges payable to Lessor hereunder without set-off, prior notice or demand or abatement whatsoever.

3.8. **Payment of Public Charges.** Lessee shall pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all real and personal property, public assessments (including, without limitation, assessments, franchises, excises, licenses, and permit fees) and other public charges (all such taxes, public assessments and other public charges being hereinafter referred to as "Public Charges") levied, assessed or imposed by any public authority against the Premises.

3.9. **Title Insurance Premium.** Lessee shall pay the premium for any leasehold title insurance policy acquired by Lessee.

4. **LAND USE AND OPERATING COVENANTS.**

4.1 **Use.** Lessee shall use the Premises for the operation of a retail shop/car service and for no other purpose.

4.2 **Lessee's Management and Operating Covenant.** Lessee shall, at Lessee's sole cost and expense, keep, maintain and repair the Premise in a good, safe and sanitary order, condition and repair.

4.3 **Compliance with Laws.** Lessee, at its expense, shall comply with all applicable rules, regulations, ordinances, orders, codes, laws and requirements of all municipal, county, state, federal and other applicable governmental authorities, the Board of Fire Underwriters, and other organizations that establish insurance rates pertaining to the Premises, including, without limitation, the installation of fire extinguishers, alarm systems, sprinkler systems or automatic dry chemical extinguishing systems. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether or not Lessor is a party thereto, that Lessee has violated any such rule, regulation, ordinance, order, code, law or requirement, shall be conclusive of that fact as between Lessor and Lessee. Lessee warrants that it has investigated and is satisfied that the use of the Premises as permitted by this Lease and Lessee's proposed manner of operation will comply with all applicable laws, statutes, ordinances, codes, rules and regulations of governmental and/or private entities having jurisdiction over the Premises, including, without limitation, all zoning laws regulating the use and enjoyment of the Premises. Lessee hereby waives any defense of its obligations hereunder based upon the legal doctrines of frustration of purpose or impossibility or other defenses based upon Lessee's inability to use the Premises for the purposes for which the Premises were leased.

5. **RESTRICTION ON TRANSFERS OF LESSEE'S RIGHTS AND INTERESTS.** Lessee shall not, without the Lessor's prior written consent, effect any Transfer. If Lessee desires Lessor's consent to a Transfer, Lessee shall submit to Lessor:

(a) The proposed assignment or other transfer agreement (executed by Lessee and the Transferee), which shall not commence or take effect prior to thirty (30) days after receipt by

Lessor of Lessee's submission of all information required to be submitted by Lessee to Lessor hereunder;

- (b) The proposed use of the Premises by such Transferee, if such use would be different than the use permitted pursuant to **Section 4.1** of this Lease; and
- (c) Any other information or item Lessor may reasonably request, including, without limitation, sufficient information to enable Lessor to determine the acceptability of the financial responsibility (as measured by such factors as audit and net worth and credit rating), development experience, character and business reputation of the proposed Transferee.

Lessor, within thirty (30) days after receipt of all such information, by written notice to Lessee, shall either approve or deny the Transfer as Lessor deems advisable. In the event that Lessor approves the Transfer, Lessee shall effect such Transfer in writing and include specific language indicating that both Transferee and Transferor shall be obligated under all terms and conditions of this Lease Agreement and that all rights and obligations under this Lease Agreement shall survive the Transfer.

## 6. **DEFAULTS AND REMEDIES.**

6.1 **Events of Lessee's Default.** Each of the following events is hereby defined as an "Event of Lessee's Default":

- 6.1.1 Failure of Lessee to pay any Rental or any other payments of money as herein provided or required within seven (7) days after the same shall become due and payable and the continuance of such failure for a period of seven (7) days after notice thereof in writing from Lessor to Lessee; or
- 6.1.2 Failure of Lessee to perform any of the other covenants, conditions and agreements of this Lease which are to be performed by Lessee, and the continuance of such failure for a period of sixty (60) days after notice thereof in writing from Lessor to Lessee (which notice shall specify the respects in which Lessor contends that Lessee has failed to perform any such covenants, conditions and agreements), unless such default cannot be cured within sixty (60) days with reasonable diligence, and Lessee within said sixty (60) day period shall have commenced and thereafter shall have continued diligently to prosecute all actions necessary to cure such default.
- 6.1.3 The abandonment by Lessee of its conduct of business on the Premises. Lessee shall be deemed to have abandoned the Premises if the Rental is due and payable beyond the time provided for in this Lease.

In the event that any installment of Rental is not paid to Lessor within seven (7) days following the date the same becomes due and payable, Lessee covenants and agrees to pay to Lessor: (a) a late fee in an amount equal to five percent (5%) of the amount of the installment of Rental not paid, **plus** (b) interest on the amount thereof at the Default Rate from the date such installment became due and payable to the date of payment thereof.

6.2 **Lessor's Remedies.** In the event of the occurrence of an Event of Lessee's Default, Lessor shall have the right to exercise any one or more of the following rights and remedies:

- 6.2.1 To terminate this Lease effective immediately upon delivery of notice to Lessee and Lessee shall immediately surrender possession of the Premises upon receipt of such notice. Notwithstanding such termination, Lessee shall remain liable for damages in

an amount equal to all rent and other sums that would have become payable by Lessee under this Lease during the balance of the Term if this Lease had not been terminated, less the net proceeds, if any, of any reletting of the Premises subsequent to such termination, after deducting all of Lessor's expenses incurred in connection with such reletting. Lessor shall have the right to receive such damages from Lessee on the dates that such rent and other sums would have become payable under the Lease had the Lease not been terminated. Alternatively, Lessor shall have the right to recover from Lessee (i) the worth at the time of award (defined below) of the unpaid rent which accrued at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rent loss that Lessee proves could reasonably have been avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term, had the Lease not been terminated, after the time of award exceeds the amount of such rent loss that Lessee proves could reasonably be avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result from such failure. The "worth at the time of award" of the amounts referred to in **Subsections (i) and (ii)** shall be computed by accruing Default Interest on the unpaid amounts and with respect to **Subsection (iii)** shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award;

- 6.2.2 To immediately reenter and remove all persons and property from the Premises, without liability for damages sustained by reason of such reentry and removal. Such property may be stored in a public warehouse or elsewhere at Lessee's expense. If Lessor elects to reenter or take possession pursuant to legal proceedings or any notice provided by law, Lessor shall have the right to terminate this Lease, or without terminating this Lease, to relet the Premises or any part thereof for such term (which may be for a term in excess of the applicable Term) and upon such conditions as Lessor, in its sole discretion, may deem advisable (which may include concessions of free rent, alterations or repairs). If Lessor elects to relet the Premises, the rents received thereafter shall be applied first to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; second, to the payment of any costs of such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, employees expenses, alteration, remodeling and repair costs and expenses of preparing for such reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Lessor and applied to payment of future rent as the same becomes due. If the rent to be received from such reletting will be less than the total of all rental and other payments that Lessee would have been obligated to make during the balance of the Term, Lessee shall immediately pay any such deficiency in full to Lessor. No such reentry or taking possession of the Premises and/or Improvements by Lessor shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Lessee or unless termination is decreed by a court. Notwithstanding any such reletting without termination, Lessor may, at any time thereafter, elect to terminate this Lease for such previous breach, upon delivery of notice to Lessee.

Lessor's rights and remedies pursuant to this Section shall be in addition to any other remedies it may have at law or in equity (including, but not limited to, specific performance and consequential damages), or elsewhere in this Lease.

- 6.3 **Event of Lessor's Default.** The failure of Lessor to perform any of the covenants, conditions and agreements of this Lease which are to be performed by Lessor and the continuance of such failure for a period of sixty (60) days after notice thereof in writing from Lessee to Lessor (which notice shall specify the respects in which Lessee contends that Lessor has failed to perform any of such covenants, conditions and agreements), shall constitute an "Event of Lessor's Default" unless such default cannot be cured within sixty (60) days and Lessor within such sixty (60)-day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such default.
- 6.4 **Lessee's Remedies.** If an Event of Lessor's Default shall occur, Lessee, to the fullest extent permitted by law, shall have, in addition to any other remedies it may have in law or in equity (including, but not limited to, specific performance) or elsewhere in this Lease, the right to terminate this Lease and all of its obligations hereunder by giving notice of such election to Lessor, whereupon this Lease shall terminate as of the date of such notice and Lessee shall quit and surrender the Premises to Lessor. No officer, official, employee, agent or representative of Lessor, including, without limitation, any City Council member, shall be liable to the Lessee or any Sublessee or successor-in-interest in the event of a default or breach by Lessor under this Lease.
- 6.5 **Obligations, Rights and Remedies Cumulative.** The rights and remedies of Lessor and Lessee, whether provided by law or by this Lease, shall be cumulative, and the exercise by either Lessor or Lessee of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by any party to this Lease.
- 6.6 **Self-help.** If an Event of Lessee's Default or an Event of Lessor's Default shall occur and be continuing then, in addition to any other remedies at law or in equity or as otherwise provided in this Lease, the non-defaulting party may cure or prosecute the curing of such default and all reasonable expense incurred in connection therewith shall promptly be paid by the defaulting party to the party effecting such cure. Except to the extent such amounts may be reduced to judgment, nothing herein shall be construed as creating a debt of Lessor and any amounts due and payable by Lessor pursuant to this Section shall be an obligation only to the extent they are payable out of the budget for the then-current fiscal year. The term "Default Rate" means a rate of interest equal to eighteen percent (18%) per annum.

## 7. **PROTECTION AGAINST MECHANICS' LIENS AND OTHER CLAIMS.**

### 7.1 **Discharge of Mechanic's, Laborer's or Materialman's Liens.**

- 7.1.1 If, in connection with any work done or claimed to have been done by or on behalf of Lessee or in connection with any materials supplied to Lessee any mechanic's, laborer's or materialman's lien shall be filed against the Premises or any part thereof, Lessee shall promptly (and in any event within thirty (30) days following notice from the other party demanding such discharge) cause the same to be discharged of record, by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, or insured over to the satisfaction of Lessor. If Lessee shall fail to cause such lien to be discharged within such thirty (30) day notice period, then, in addition to any other right or remedy, Lessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bonding. Any amount so paid by Lessor, with all costs and expenses (including, but not limited to, attorneys' fees) incurred by Lessor in connection

therewith, together with interest thereon at the Default Rate from the date of Lessor making such payment, shall be paid by Lessee to Lessor on demand.

- 7.1.2 Lessor shall not be liable for any work performed respecting Renovation or any subsequent Alterations, related facilities or any portion thereof by or for Lessee or any Sublessee or for any materials furnished at the Premises, related facilities or any portion thereof to or for Lessee.

Lessee agrees to hold Lessor free and harmless, and to indemnify Lessor against all claims, liabilities, costs and expenses, for labor and materials in connection with all construction, repairs or alterations made by or through Lessee, and the cost of defending against such claims, including reasonable attorneys' fees.

The foregoing provisions of this Section shall be applicable to construction, repairs or alterations to the Premises at all times during the Term, as may be extended.

## 8. **WAIVER, INDEMNITY AND INSURANCE.**

- 8.1 **Assumption and Waiver.** Lessee assumes all risk of, and waives all claims against Lessor arising from damage, loss or theft of property or injury to persons in, upon or about the Premises from any cause, except for loss or damage caused by the gross negligence or intentional acts of Lessor or its agents or employees. The foregoing waiver includes, without limitation, the following risks against which Lessee should maintain adequate insurance to protect Lessee's equipment and other personal property: (a) all-risk casualty loss insurance with respect to all Improvements constructed by Lessee on the Premises, (b) any defect in or failure of plumbing, heating or air-conditioning equipment, electric wiring, water pipes, stairs, railings or walks; (c) the disrepair of any equipment; (d) the bursting, leaking or running of any tank, washstand, water closet, drain or any pipe or tank in, upon or about the Premises; (e) the backup of any sewer pipe or down spout; (f) the escape of steam or hot water; (g) water, snow or ice; (h) the falling of any fixture, plaster or stucco; (i) broken glass; and (j) any unauthorized or criminal entry of third parties within the Premises.

- 8.2 **Indemnification.** Lessee agrees to indemnify, defend, save and hold harmless Lessor, and its officers, officials, council members, citizens, agents, employees and volunteers (hereinafter referred to as "Indemnatee") for, from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage caused, in whole or in part, by the negligent, reckless, or intentional acts, errors, omissions, or mistakes of Lessee or any of Lessee's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Lessee 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Lessee for, from and against any and all Claims. It is agreed that Lessee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. The foregoing indemnity by Lessee shall extend, but not be limited, to:

- (a) Construction by or through Lessee of Improvements or any other work or thing done in, on or about the Premises or any part thereof;
- (b) Any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises and Improvements, areas adjacent thereto or improvements thereon by or through Lessee, or any nuisance made or suffered thereon or any failure by Lessee to keep the Premises or any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof in a safe condition;
- (c) Any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises, areas adjacent thereto or improvements thereon or any part thereof or in, on or about any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof;
- (d) Any lien or claim which may be alleged to have arisen against or on the Premises or any part thereof or any of the assets of, or funds appropriated to, Lessor or any liability which may be asserted against Lessor with respect thereto;
- (e) Any acts of Lessee or any of its or their respective agents, contractors, servants, employees, licensees or invitees;
- (f) Any failure on the part of Lessee to pay rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Lessor of any remedy provided in this Lease with respect thereto;
- (g) Any failure on the part of Lessee to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Improvements or any part thereof, on Lessee's part to be kept, observed or performed;
- (h) Any tax which Lessee is obligated to pay or cause to be paid, including any tax attributable to the execution, delivery or recording of this Lease.

The foregoing provisions shall survive the expiration or earlier termination of this Lease to the extent the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.

Lessee will hold all goods, materials, furniture, fixtures, equipment, and machinery and other property whatsoever on the Premises at the sole risk of Lessee, and, to the extent set forth above, save Lessor harmless from any loss or damage thereto by any cause whatsoever.

The obligations of Lessee under this **Section 8.2** shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

If any claim, action or proceeding is made or brought against Lessor by reason of any event, specified or unspecified, which is the subject of Lessee's foregoing indemnity, then, upon demand by Lessor, Lessee, at its sole cost and expense, shall resist or defend such claim,

action or proceeding in Lessor's name. Notwithstanding the foregoing, Lessor may engage its own attorneys to defend it or to assist in its defense and Lessee shall pay the reasonable fees and disbursements of such attorneys.

8.3 **Insurance.** Lessee shall procure and maintain for the duration of the Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by Lessee, Lessee's agents, representatives, employees or contractors and commercial property insurance. The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained herein. Lessor does not represent or warrant that the minimum limits set forth herein are sufficient to protect Lessee from liabilities that might arise out of this Lease, and Lessee is free to purchase such additional insurance as Lessee may determine is necessary.

8.3.1 **Minimum Scope and Limits of Insurance.** Lessee shall provide coverage at least as broad and with limits not less than those stated below.

(a) **Commercial General Liability - Occurrence Form**

*(Form CG 0001, ed. 10/93 or any replacement thereof)*

General Aggregate -- \$2,000,000

Personal and Advertising Injury -- \$1,000,000

Each Occurrence -- \$1,000,000

Fire Damage (any one fire) -- \$50,000

Medical Expense (any one person) -- Optional

(b) **Automobile Liability**

Any Automobile or Owned, Hired and Nonowned Vehicles *(Form CA 0001, ed. 12/93 or any replacement thereof)*

Combined Single Limit Per Accident for Bodily Injury and ***Property*** Damage -- \$1,000,000

(c) **Workers' Compensation and Employer's Liability**

Workers' Compensation -- Statutory

Employer's Liability: Each Accident -- \$500,000

Disease - Each Employee -- \$500,000

Disease - Policy Limit -- \$500,000

(d) **Commercial Property Insurance**

Building -- Replacement Cost

Loss of Rents -- Per Lease

(Broad Form, 90% coinsurance -- to be placed in force upon completion of building prior to occupancy)

8.3.2 **Self-Insured Retention/Deductibles.** Any self-insured retentions and deductibles must be declared to and approved by Lessor.

8.3.3 **Other Insurance Requirements.** The policies shall contain, or be endorsed to contain, the following provisions:

(a) **Commercial General Liability and Automobile Liability Coverages.**

- (i) Lessor, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of Lessee, including products and completed operations of Lessee; and automobiles owned, leased, hired or borrowed by Lessee.
  - (ii) Lessee's insurance shall contain broad form contractual liability coverage.
  - (iii) Lessor, its officers, officials, agents, employees and volunteers shall be named as additional insureds to the full limits of liability purchased by Lessee even if those limits of liability are in excess of those required by this Lease.
  - (iv) Lessee's insurance coverage shall be primary insurance with respect to Lessor, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by Lessor, its officers, officials, agents, employees or volunteers, shall be in excess to the coverage of Lessee's insurance and shall not contribute to it.
  - (v) Lessee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - (vi) Coverage provided by Lessee shall not be limited to the liability assumed under the indemnification provisions of this Lease.
  - (vii) The policies shall contain a waiver of subrogation against Lessor, its officers, officials, agents, employees and volunteers for losses arising from Lessee's operations, occupancy and use of the Premises subject to this Lease.
- (b) Workers' Compensation and Employee's Liability Coverage. The insurer agrees to waive all rights of subrogation against Lessor, its officials, officers, agents, employees and volunteers for losses arising from Lessee's operations, occupancy and use of the Premises subject to this Lease.
- 8.3.4 **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Lessor. Such notice shall be sent directly to the Lessor's Manager as provided in *this Lease*
- 8.3.5 **Acceptability of Insurers.** Lessee shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-: VII. Lessor does not represent or warrant that the above required minimum insurer rating is sufficient to provide Lessee from potential insurer insolvency.
- 8.3.6 **Verification of Coverage.** Lessee shall furnish Lessor with certificates of insurance (*ACORD form*) as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

8.4 **Policy Review and Adjustment.** Such policies of insurance shall be subject to review and adjustment on the fifth (5<sup>th</sup>) anniversary of the effective date of this Lease and on each subsequent fifth (5<sup>th</sup>) anniversary during the term hereof in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.

8.5 **Failure to Maintain Insurance.** If Lessee fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Lessor shall have the right, at Lessor's election, and upon five (5) days' notice to Lessee, to procure and maintain such insurance. Any premiums paid by Lessor hereunder shall be due and payable by Lessee to Lessor on the first day of the month following the date on which the premiums were paid. Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

9. **DISPUTE RESOLUTION.**

9.1 **Litigation and Attorneys' Fees.** Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Lease must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the parties in connection with this Lease, the prevailing party in the action will be entitled to its costs including reasonable attorneys' fees and court costs from the nonprevailing party.

10. **NOTICES.**

10.1 **Notices.** Many notices or demands required to be given, pursuant to the terms of this Contract, may be given to the other Party in writing, delivered in person, sent by facsimile transmission, emailed, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph. However, notices of termination, notices of default and any notice regarding warranties shall be sent via registered or certified mail, return receipt requested at the address set forth below ***and*** to legal counsel for the party to whom the notice is being given.

If to Lessor:                      City of Flagstaff  
   City Manager  
   211 West Aspen Avenue  
   Flagstaff, Arizona 86001

or to such other address or addresses as Lessor shall from time to time and at any time designate by notice to Lessee.

If to Lessee:                      Route 66 Enterprises, Inc.  
   Brian Cox, Owner  
   200 S. Leroux Street, Suite 202  
   Flagstaff, Arizona 86001

11. **GENERAL PROVISIONS.**

- 11.1 **Amendment.** This Lease may be amended at any time by written amendment executed by both parties, which written amendment shall be recorded in the official records of Coconino County, Arizona, within ten (10) days following any such amendment.
- 11.2 **Authorization.** The parties to this Lease represent and warrant that the persons executing this Lease on their behalves have full authority to bind the respective parties.
- 11.3 **Captions.** The captions used herein are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions hereof.
- 11.4 **City Manager's Power to Consent.** Lessor hereby authorizes and empowers the City Manager to consent to any and all requests of Lessee requiring consent of Lessor hereunder without further action of the City Council of the City of Flagstaff except for any actions requiring the approval of the City Council of the City of Flagstaff as a matter of law.
- 11.5 **Conflicts of Interest.** Each member, official, representative, or employee of Lessor shall at all times be bound by all applicable laws respecting conflicts of interest, and, to the extent prohibited by such applicable laws, none of the same shall have any personal interest, direct or indirect, in this Lease, nor, to the extent prohibited by such applicable laws, shall any such member, official, representative or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official, representative or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any default or breach by Lessor for any amount which may become due to Lessee or its successor, or on any obligations under the terms of this Lease. A.R.S. §38-511 provides political subdivisions a right to cancel contracts under certain circumstances. Lessor and Lessee acknowledge that the provisions of A.R.S. § 38-511, which are incorporated herein by reference, may create a situation where Lessor may have a right to cancel this Lease pursuant to the rights given Lessor under A.R.S. §38-511. Lessee agrees not to knowingly take any action which would create any right of cancellation pursuant to the provisions of A.R.S. §38-511, to the extent they may be applicable to this Lease or any amendment to this Lease.
- 11.6 **Construction of Lease.** This Lease has been arrived at by negotiation between Lessor and Lessee and has been reviewed by their respective counsel. As such, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease. Further, the language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning.
- 11.7 **Counterparts.** This Lease may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.
- 11.8 **Effective Date of Lease.** This Lease shall be effective upon the execution of the parties hereto, and upon expiration of thirty (30) days following approval hereof by the City Council of the City of Flagstaff; provided, however, that in the event this Lease is delayed in its effect by judicial challenge, or by referendum or injunction, the effective date of this Lease shall be delayed until resolution or termination of such judicial challenge, referendum or injunction. In the event of

judicial challenge, referendum or injunction resulting in delay in the effect of the Lease which extends for a period of more than one hundred eighty (180) days following its approval by the City Council of the City of Flagstaff, then this Lease shall be terminable by Lessee upon written notice to Lessor in accordance with this Lease at any time within an additional one hundred eighty (180) days. Upon termination, this Lease shall be of no further force or effect, and neither party shall have any further obligation hereunder. Any delay relative to the effective date of this Lease by judicial challenge, referendum or injunction filed by parties acting independently of and not under the control of Lessor shall not be deemed a default hereunder by Lessor.

11.9 **Entire Agreement.** This Lease, and all the Exhibits attached hereto, and together with such other agreements and instruments pertaining to the Premises as are referenced herein, contains the entire agreement of the parties with respect to the matters addressed herein, and no representations or agreements, oral or otherwise, between the parties not embodied herein, attached hereto or hereinabove referenced shall be of any force and effect. Any additions or amendments to this Lease subsequent hereto shall be of no force and effect unless in writing and signed by the parties hereto.

11.10 **Estoppel Certificates.** Lessor and Lessee shall at any time and from time to time, within thirty (30) days after written request by the other, execute, acknowledge and deliver to the party which has requested the same a certificate stating:

- (a) That this Lease is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, this Lease is in full force and effect as modified, identifying such modification agreement, and if this Lease is not in force and effect, the certificate shall so state;
- (b) That this Lease as modified represents the entire agreement between the parties as to this leasing, or, if it does not, the certificate shall so state;
- (c) The dates on which the term of this Lease commenced and will terminate;
- (d) That all conditions under this Lease to be performed by Lessor or Lessee, as the case may be, have been satisfied and, as of the date of such certificate, there are no existing defenses or offsets, which Lessor or Lessee, as the case may be, has against the enforcement of this Lease by the other party, or, if such conditions have not been satisfied or if there are any defenses or offsets, the certificate shall so state; and
- (e) That the Rental due and payable for the year in which such certificate is delivered has been paid in full, or, if it has not been paid, the certificate shall so state.

The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same.

11.11 **Exhibits.** All exhibits attached hereto are incorporated herein by reference as though fully set forth herein.

11.12 **Expense of Obligations.** Where this Lease imposes obligations or responsibilities upon any party hereto, such obligations and responsibilities shall be performed at the expense of such party responsible therefore and without cost to or assessment against the property of any other party, except where otherwise specifically provided.

- 11.13 **Further Acts.** Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Lease. Without limiting the generality of the foregoing, Lessor shall cooperate in good faith and process promptly any request and applications for permit approvals or other necessary approvals relating to the development of the Premises by Lessee and its successors.
- 11.14 **Gender and Number.** In this Lease (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural include one another.
- 11.15 **Governing Law.** This Lease shall be governed by and construed under the laws of the State of Arizona. This Lease shall be deemed made and entered into in Coconino County.
- 11.16 **Modification.** No modification of this Lease shall be deemed effective unless in writing and signed by the parties hereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing, executed by the party against whom enforcement of the waiver is sought.
- 11.17 **Negation of Partnership.** The parties specifically acknowledge that the Premises will be developed as private property, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Lease. None of the terms or provisions of this Lease shall be deemed to create a partnership between or among the parties nor shall it cause them to be considered joint venturers or members of any joint enterprise.
- 11.18 **No Third-Party Beneficiaries.** Lessor and Lessee acknowledge and agree that the terms, provisions and conditions hereof are for the sole benefit of, and may be enforceable solely by, Lessor and Lessee, and none of such terms, provisions, conditions, and obligations are for the benefit of or may be enforced by any third party.
- 11.19 **Quiet Possession.** Lessor agrees that Lessee, upon observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept and performed, shall lawfully and quietly hold, occupy and enjoy the Premises during the term in accordance with and subject to the terms of this Lease.
- 11.20 **Real Estate Commissions.** Each of the parties represents and warrants unto the other that there are no commissions, charges or other compensation due any broker, agent or finder with respect to this Lease or the negotiations thereof, and each of the parties covenants and agrees with the other that if any party hereto utilizes an agent, broker, or finder, the party so using an agent, broker or finder or incurring such commissions, charges, fees or similar expenses will pay, hold harmless and indemnify the other from and against all claims, costs, expenses or liability (including, without limitation, the cost of reasonable counsel fees in connection therewith) for any such compensation, commissions, charges, or other compensation claimed by any such broker, agent or finder.
- 11.21 **Recitals.** The Recitals set forth at the beginning of this Lease are acknowledged by the parties to be true and correct and incorporated herein by this reference.
- 11.22 **Rights Cumulative.** All rights, powers and privileges conferred herein upon the parties shall be cumulative but not restrictive of those given by law.

- 11.23 **Severability**. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Lease shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Lease shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.
- 11.24 **Successors and Assigns**. Subject to the limitations on Lessee's rights to Transfer its interests under this Lease, all of the covenants and conditions set forth herein shall inure to the benefit of and shall be binding upon the successors in interest of each of the parties hereto. Upon any Transfer of Lessor's interest in this Lease, and the assumption by the Transferee of Lessor's obligations under this Lease, Lessor shall be entirely relieved of all liability for Lessor's obligations under this Lease accruing thereafter, and the Transferee shall be deemed without any further agreement between the parties or their successors-in-interest to have assumed all of Lessor's obligations accruing after such conveyance.
- 11.25 **Time of the Essence**. For purposes of enforcing the provisions of this Lease, time is of the essence.
- 11.26 **Unavoidable Delay**. Each party hereto shall be excused from performing any of its obligations or undertakings provided in this Lease (except any of its obligations to pay any sums of money under the applicable provisions hereof) for so long as the performance of such obligation is prevented or delayed by any cause which is beyond the control of such party, including, but not limited to, such of the following as may be beyond the control of such party: Act of God; fire; earthquake; flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; malicious mischief; inability to procure because of general shortage or rationing or regulation of labor, equipment, facilities, sources of energy (including, without limitation, electricity, gas, gasoline or steam), materials or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military or naval authorities; bankruptcy proceedings; litigation involving a party or others relating to zoning, subdivisions, or other governmental action or inaction pertaining to the Premises or Building Improvements or any portion thereof; inability to obtain government permits or approvals; or any other cause, whether similar or dissimilar to the foregoing, not within the control of such party; provided, however, that no party shall be entitled to relief under this *Section* by reason of any event unless such party shall have given the other party notice of such event and the nature of such event within a reasonable time and in any event no later than thirty (30) days following such party's knowledge of the occurrence of such event. Any delay or cause excusing performance pursuant to the terms of this *Section* is referred to herein as an "Unavoidable Delay."
- 11.27 **Waiver**. No waiver by either party of a breach of any of the terms, covenants or conditions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. One or more waivers of any covenant, term or condition of this Lease by any party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by any party to or of any act by any other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.
- 11.28 **Net Lease**. It is the intention of the parties hereto that, except as otherwise provided in this Lease, this Lease shall be a net lease, and that Lessor shall receive the rents herein reserved and all sums which shall or may become payable hereunder by Lessee free from all taxes,

charges and expenses of every kind or sort whatsoever, and that Lessee shall and will and hereby expressly agrees to pay all such sums which, except for the execution and delivery of this Lease, would have been chargeable against the Premises and payable by Lessor.

12. **SALE OF PREMISES.** Lessor hereby agrees that, in the event that Lessor intends to offer the Premises for sale, Lessor shall provide written notice to Lessee at least sixty (60) days prior to Lessor publicly advertising the Premises for sale.
13. **FEDERAL GRANT ASSURANCES.** Lessee acknowledges and agrees that this Lease shall be subject to all Federal requirements set forth in the document entitled "Airport Sponsor Assurances 3/2014", which is attached and incorporated within this Lease as "Exhibit B".

***SIGNATURE PAGES FOLLOW***



**"LESSEE"**

\_\_\_\_\_, an Arizona corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF COCONINO    )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged her/himself to be \_\_\_\_\_ of \_\_\_\_\_, an Arizona corporation:

\_\_\_\_\_ whom I know personally;  
\_\_\_\_\_ whose identity was proven to me on the oath of \_\_\_\_\_, a credible witness by me duly sworn;  
\_\_\_\_\_ whose identity I verified on the basis of his/her \_\_\_\_\_,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL: \_\_\_\_\_  
Notary Public

EXHIBIT A

CITY OF FLAGSTAFF PURCHASING DIVISION  
211 WEST ASPEN AVENUE  
FLAGSTAFF, ARIZONA 86001

INVITATION FOR BIDS No. 2014-85  
BUYER: Amy Hagin  
PH: (928) 213-2276 FX: (928) 213-2209

**BID FORM**

**Monthly Lease Rate:**

Six Hundred One Dollars per month.  
(Written in words)

\$ 601 per MONTH  
(Written as a dollar amount)

Proposed Improvements:

New Paint, Install a service counter and Shelving  
for MERCHANDISING

Estimated Value of Proposed Improvements

\$2500.00

**Lease Term:**

lease term of 3 years, with Option for 2 more  
5 year Extensions.

## OFFER AND CONTRACT AWARD

Submit the original of this form to the City.

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### OFFER

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TO THE CITY OF FLAGSTAFF:

The undersigned Lessee hereby offers and agrees to lease City Property at 6200 S. Pulliam Drive, Flagstaff, AZ 86001, subject to all of the terms, conditions, specifications and amendments in the Lease Agreement. Lessee also certifies by signing and submitting this Offer that the Lessee has the legal authority to enter into a Lease Agreement with the City.

For clarification of this Offer, contact:

Name: BRIAN COX

Phone: 928-707-2886

Fax No.: 928-774-2501

Route 66 Enterprises INC.  
Company Name

Brian Cox  
Signature of Person Authorized to Sign Offer

200 S. Leroux St Ste. 202  
Address

BRIAN COX  
Printed Name

Flagstaff AZ 86001  
City State Zip

Director  
Title

Date: 8/15/2014

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### ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Flagstaff Use Only)

Your offer is hereby accepted.

The Bidder is now bound to lease the space at the property at 6200 S. Pulliam Drive, Flagstaff, AZ 86001, subject to the terms, conditions, and specifications set forth in the Lease Agreement

This contract shall henceforth be referred to as Contract No. 2014-85.

Awarded this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
City Manager



**CITY OF FLAGSTAFF**  
**Addendum Number One**  
**Existing City Owned Airport Terminal Space for Lease**  
**IFB NUMBER 2014-85**

Please be advised that this Addendum is to provide answers to any questions that any prospective Bidder asked, and any changes and/or clarifications regarding IFB No. 2014-85.

**QUESTION AND ANSWER:**

1. What utilities are included as paid by the City of Flagstaff (City)?  
*The City will provide electricity to the space. The cost of the electricity usage will be a pass-thru on the lease amount approved for award. Phone and data will not be included in the utilities paid by the City.*
2. What type of signage will be allowed?  
*Signage on the entry door into the space will be allowed. Any signage on exterior walls (other than the entry door into the space) or floor space outside of the leased space as described in the IFB will not be allowed.*
3. Will a folding floor sign be allowed?  
*No.*
4. Will there be designated parking spot(s) as part of this lease?  
*No, this IFB is only for the terminal space as indicated in the bid document.*
5. What are the hours of operation at the Airport?  
*The Terminal hours are from 7:00 AM to 9:00 PM seven (7) days a week.*
6. Can any advertising exist on the exterior of the space?  
*No. Advertising/signage can only be placed on the entry door into the space.*

**CLARIFICATIONS AND/OR CHANGES TO THE IFB:**

1. Per the Lease Term on page 7, utilities will be paid through the lease fee. Due to City's firewall, phone system and other confidential data, the only utilities not included will be phone and data/internet. Phone and data/internet will need to be provided and paid by the Lessee. Please see revised page 7 of the IFB.
2. Per the Lease Term on page 7, the Lessee is responsible for all tenant improvements. Any tenant improvements must be approved by City of Flagstaff staff prior to execution. Please see attached revised page 7 of the IFB.

The balance of the IFB package shall remain the same. All proposers are to acknowledge receipt of this addendum by signing and submitting along with their proposal response.

Route 66 Enterprises Inc.  
Name of Firm

Bm Cox  
Authorized Signature

8/15/14  
Date

CITY OF FLAGSTAFF PURCHASING DIVISION  
211 WEST ASPEN AVENUE  
FLAGSTAFF, ARIZONA 86001

INVITATION FOR BIDS No. 2014-85  
BUYER: Amy Hagin  
PH: (928) 213-2276 FX: (928) 213-2209

**Lease Term:**

The minimum lease term will be not less than one (1) year. The Lessee is responsible for all fees, tenant improvements (*must be approved by City staff*), and maintenance. Utilities, *with the exception of phone and data/internet* will be paid through the lease fee. The City will conduct annual inspections to verify compliance with the maintenance requirements outlined in the lease agreement (**Attachment A**).

**Building Location and Description:**

Location: Interior of the Flagstaff Airport, inside Terminal, First Floor, Flagstaff, Arizona  
Approximate Square footage: 144 SF (9' x 16')

Please see attached photos.

**Property Visit/Showing:**

Property visit and showing will be allowed between the hours of **10:30 AM and 12:00 PM on Friday, August 8<sup>th</sup>, 2014**. To RSVP and schedule a time, please contact Amy Hagin at (928) 213-2276 or [ahagin@flagstaffaz.gov](mailto:ahagin@flagstaffaz.gov)

**Where to Obtain:**

Bid documents can be obtained from the Purchasing Office by one of the following methods:

1. Via email (Adobe Acrobat format) by emailing Amy Hagin [ahagin@flagstaffaz.gov](mailto:ahagin@flagstaffaz.gov)
2. Via internet by accessing the City of Flagstaff website at [www.flagstaffaz.gov/bids.asp](http://www.flagstaffaz.gov/bids.asp)
3. In person by coming to the Purchasing Office located at City Hall, 211 West Aspen Avenue, Flagstaff, Arizona.
4. By telephone, and requesting a bid packet be mailed to you.

**Where to Submit:**

Bids shall be submitted in a sealed envelope to:

Attn: Amy Hagin, Sr. Procurement Specialist  
City of Flagstaff—Purchasing Division  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

RE: **LEASE OF CITY OWNED AIRPORT TERMINAL SPACE LEASE IFB 2014-85**



**FAA  
Airports**

## **ASSURANCES**

### **Airport Sponsors**

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#### **A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

#### **B. Duration and Applicability.**

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

### 3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

## C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

### 1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

#### **Federal Legislation**

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- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.<sup>1 2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.<sup>1</sup>
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

### **Executive Orders**

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- a. Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 - Environmental Justice

### **Federal Regulations**

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- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].<sup>4, 5, 6</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.<sup>1 2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

### **Specific Assurances**

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Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

### **Footnotes to Assurance C.1.**

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<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

<sup>4</sup> On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

<sup>5</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

<sup>6</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

**2. Responsibility and Authority of the Sponsor.**

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

**3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

**4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

**5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

**6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

**8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

**19. Operation and Maintenance.**

- a. 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. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
  - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

#### **20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

#### **21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

#### **22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
  - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
  - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
  - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
  - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
  - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
  - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

### **24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
  - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
  - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

## **26. Reports and Inspections.**

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing
  - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
  - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
  - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### **30. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
  - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### **31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

**32. Engineering and Design Services.**

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

**33. Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

**34. Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated \_\_\_\_\_ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

**35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

**36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

**37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

**38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

### **39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
  - 1) Describes the requests;
  - 2) Provides an explanation as to why the requests could not be accommodated; and
  - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.