



## NOTICE OF PUBLIC MEETING

Monday, April 22, 2019  
CITY COUNCIL CHAMBERS  
680 Park Avenue  
Idaho Falls, ID 83402  
3:00 p.m.

*The public is invited to attend. This meeting may be cancelled or recessed to a later time in accordance with law. If you need communication aids or services or other physical accommodations to participate or access this meeting or program of the City of Idaho Falls, you may contact City Clerk Kathy Hampton at 612-8414 or the ADA Coordinator Lisa Farris at 612-8323 as soon as possible and they will accommodate your needs.*

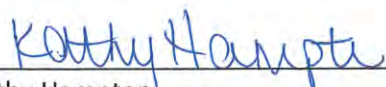
### **SPECIAL MEETING (Council Work Session)**

*Times listed in parentheses are only estimates.*

#### Call to Order and Roll Call

- |                                 |   |
|---------------------------------|---|
| Municipal Services:             | -Quarterly Finance Presentation (45)  |
| Mayor:                          | -Acceptance and/or Receipt of Minutes<br>-Calendars, Announcements and Reports (10)   |
| Council:                        | -Liaison Reports and Concerns (10)<br>-Discussion of Targhee Regional Public Transportation Authority (TRPTA) Status and Funding (30)                             |
| Human Resources:                | -City Employee Wages and Benefits Discussion, Part 1 (30)   |
| Airport:                        | -Leasing Policy Review (40)   |
| Community Development Services: | -Community Development Block Grant (CDBG): Consolidated Annual Performance and Evaluation Report (CAPER) Process Review (5)<br>-Annexation Principles Review (20) |
| Office of the Mayor:            | -Economic Development Incentive Program Overview (15)   |

DATED this 19<sup>th</sup> day of April, 2019

  
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Kathy Hampton  
City Clerk

**Approved**

**Idaho Falls Sister City Youth Meeting-Minutes  
April 3, 2019**

**Attendees:**

Kylie Eaton	Carolina Jensen	Jorge Paron
Aurora Mahoney	Alazandre Jensen	Nathan Peck
Anna St. Michel	Abby Gallegos	Nicholas Cebull
Whitney St. Michel	Aidan Gallegos	Melinda Cebull
Charlotte Combs	Jo Gallegos	Stephanie VanAusdeln
Laura Combs	Sam Hawker	Rebecca Smith
Heather Medema	Lori Kidwell	Kendra Peck
Charlie Medema	Gabe Padron	Aaron Doyle
Abel Doyle	Kaia Sperl	David Eaton

Katie Eaton		
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**Approval of minutes:**

March 11, 2019 meeting minutes was motioned by Lori Kidwell and seconded by Kendra Peck.

**Reminder:**

Idaho Falls Sister City Youth will meet April 15, May 1 and May 15, 2019 at 7:00 in the library.

**Treasurer Report:**

The Treasurer's Report was given by Lori. March shows \$4,118.90 and increase of \$1,215.00..

**Friendship Garden Clean up**

Judy Seydel contacted David Eaton and asked for a date the Youth group could help with clean-up and the application of linseed oil to the bamboo posts. The group agreed to May 4, at 3:00 pm weather permitting.

**Bylaws:**

The group agreed to wait until the next meeting to approve the Bylaws. Bylaws will be emailed to the group and voted on next meeting.

**Cultural Event:**

Janet Youngblood's Taiko Drumming group will be one of many groups performing at Idaho State University on April 13, 2019 beginning at 5:30 PM. Dinner is included in the price-\$7.00 for students and \$9.00 for adults for tickets ordered before the event. Please contact David Eaton or Katie Eaton if you wish to order tickets from Janet Youngblood. Cost of tickets at the door the day of the event will be slightly higher in cost.

**Fundraisers:**

**Garage Sale** is scheduled for May 18, 2019. Kendra volunteered to have her garage be used for storage of items for garage sale as well as for the garage sale.

The **Cherry Blossom Festival** is scheduled at the Snow Eagle April 25. Janet Youngblood's Tokoi Drumming students agreed to perform at the Snow Eagle at 5:30 PM.

Jorge Padron agreed to contact Mr. Clarke Kido to get Koi fish banner and hang it up for the Cherry Blossom event.

Lori Kidwell sent a sign up sheet around to ask for volunteers to sit at the ticket table during the Cherry Blossom Festival at Snow Eagle. Lori also asked if students would send her pictures of Cherry Blossoms.

Lori sent a paper around for student wanting to take tickets for presale. She asked each person to help her track tickets by writing the range of numbers on the tickets (beginning number and ending number). She stated that each purchased ticket have the name and phone number of the person you are selling the ticket to. Every ticket entry needs to be placed in the appropriate box (corresponding to the basket/prize of interest) before the drawing which will take place at around 8:30 pm at Snow Eagle. Lori passed out a form to each student so they can keep track of customers wishes for the basket they desire. She stated that winning ticket will be delivered by the person who sold the ticket unless of course the winner is present at the drawing. Points are awarded based on money turned in from ticket sales (1 point for each \$80).

Ticket pricing is 1 ticket for \$1, 6 tickets for \$5, or a wingspan (nominally 40 tickets) for \$20. The wingspan is a really good deal, so you may find you need a lot of tickets to earn as many points as you can.

At the next meeting the adults will finalize plans for the Cherry Blossom.

**Koi Pond:**

Discussion on planning will be at the next meeting.

**Student Exchange:**

Discussion on planning will be at the next meeting. Kendra and Whitney will meet with all students to create plans for the summer student exchange. The meeting with students will be in a room separate from the adults.

**Banner:**

Students are asked to create a design for a banner and bring it with next to the next meeting. Abby Gallegos, Aurora Mahoney, and Sam Hawker were interested in sending ideas to Jorge Padron.

Some suggestions for the banner included:

- Idaho Falls Sister City Youth Group
- Community Cultural Experience
- Idaho Falls/Tokai Mura
- Open to area youth ages 12 to 18
- Web address

## **Student Activities**

### **Newsletter:**

The newsletter is nearly complete. Two students need to submit their paragraphs to Kendra before it can be finalized and on the webpage.

### **Logo:**

Students are asked to create a design for a logo and bring it to the next meeting.

### **T-shirt Design:**

Students are asked to create a design for a logo and bring it to the next meeting.

### **Game:**

Students were divided into two teams and challenged each other on Japanese alphabet sound/letter correspondence, words and phrases.

Rebecca Smith motioned to that the meeting be adjourned and seconded by Charlie Medema.

**MEMORANDUM**

**TO:** Honorable Mayor and City Council

**FROM:** Rick Cloutier, CM, Airport Director

**DATE:** 4/19/2019

**SUBJECT:** Airport Lease Changes (Information Only)

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Attached for your information is changes to the airport leasing program. These changes are necessary to bring the airport in compliance with FAA guidelines and allow the airport to control development, land and hangar usage and increase airport revenue.

The City Attorney has reviewed master lease.

Respectfully submitted,



Rick Cloutier  
Airport Director

Enc:  
IDA current leasing issues  
Excerpts from FAA compliance handbook  
FAQ's on use of hangars  
Article-Reversion Clauses Revisited  
Draft airport lease

C: City Clerk

## Airport Leasing:

Proposal for land lease changes to provide a path to growth of aviation activities at IDA.

Hangar land leases are undervalued and do not reflect current market values. Revenue is not sufficient to cover actual costs of services provided to hangar owners.

Many current leases do not meet FAA Requirements.

- FAA requires airport maintain control of airport land and be able to change land use as needed to meet future airport needs.
- Leases cannot be in perpetuity.(50+ years is considered transfer of ownership)
- Hangar owners should not expect permanent tenancy.

Existing hangar inventory may not be meeting the needs of the General Aviation community.

- There are privately owned hangars that are not being used for aircraft storage.
- Although there are a lot of corporate-class aircraft based at IDA, we have an even larger number of corporate-size hangars, resulting in many hangars being underutilized for aircraft storage.
- There are very few modern, small box hangars and T-hangars designed to hold a single aircraft.
- The majority of small hangars are over 50 years old. Many are in unserviceable condition.

Commercial operators need some level of certainty in long term ownership of improvements.

- Financing providers will require certainty of ownership if building is to be used as collateral.
- Aviation business owners require certainty to develop a long-range business plan.
- Aviation business owners rely on locally based aircraft owners, many of whom are also hangar owners, as their customer base.

FAA guidelines require that leases provide

- Provide adequate revenue to ensure the airport is a viable, self-sustaining enterprise.
- Provide adequate control of airport land parcels to satisfy FAA requirements.
- Ensure commercial operators can establish long-term business plans that allow them to provide quality, affordable aviation services.
- Ensure suitable hangar facilities are available to meet needs of aircraft owners.
- Ensure that hangars are used for aeronautical use only.

## Proposed Plan

- Establish land lease rates that are in line with market rates and sufficient to cover services provided by airport.
- Allow for land lease renewal for commercial operators.
- Renewals would require compliance with the following conditions.

1. Independent inspection process to determine that improvements continue to meet standards expected for new construction including
  - i. Improvements meet all applicable building codes and safety standards.
  - ii. Mechanical fixtures are updated to modern standards and operate in as new condition. (especially main door but also things like restrooms)
  - iii. Infrastructure appearance is maintained in a modern, as new condition. (Cleanliness, paint, landscaping, landside pavement, etc.)
2. Commercial operator is providing value to airport, in terms of revenue generation, commensurate with the improvements and size of parcel covered in land lease.
3. Hangar use meets FAA policy on hangar use and non-aviation use is incidental and insignificant.
4. In compliance with FAA guidelines privately owned hangars would be subject to reversion at the end of the initial lease plus renewal options. (20 years plus 5 and plus 5)

Benefits:

- I. Allows airport to charge rates commensurate to current fair market values and gives long term stability to airport revenue.
- II. Allows for commercial operations to establish long range business plans.
- III. Encourages commercial operators to continue to make capital improvements and expansions.
- IV. Ensures continued commercial lease revenue stream to airport.
- V. Encourages growth for General Aviation at IDA.

## Airport Leasing Policy Information

(Excerpts from the FAA compliance handbook)

There are various lease agreements, each with unique characteristics, which are in effect at the airport. The variance between lease structures is dependent upon the type of tenant (i.e., commercial versus private individual), the location of the leasehold (i.e., airside versus landside), and the type of activity to take place within the leasehold. The structure of the lease, as indicated by the lease elements included in the agreement, should always reflect the activity, tenant type, and location of the leasehold in order to protect the financial, development, and regulatory needs of the airport. The following overview of the characteristics of differing lease types, and the considerations the airport should take into account before executing a lease agreement.

A recommended best practice is that airport sponsor develop a standard Airport Leasing Policy that applies to both facility and land leases. The Leasing Policy must be flexible enough to allow for unanticipated development opportunities while being comprehensive enough to account for multiple tenant types and operations. A standard, comprehensive Leasing Policy provides for the equitable treatment of all airport tenants and will minimize questions, concerns, and potential conflict between the airport and its tenants. The Leasing Policy should include, at a minimum, the following provisions:

- Land lease rates (per square foot), differentiated by area. Aeronautical versus non-aeronautical, for example, and consideration of the land's proximity to infrastructure.
- Hangar lease rates (per square foot), with consideration to the gauge of aircraft that the hangar will accommodate in terms of hangar doors size, height, and clear span distance.
- Building and facility lease rates (per square foot).
- Standard lease terms that are compliant with state and local law.
- FBO/SASO lease requirements, which are consistent with an airport's Minimum Standards.
- Process for adjusting rents and fees.
- Insurance requirements, preferably in one document and adopted by official action, of the governing body. Consolidation of all insurance requirements applicable to the airport allows an airport to review, update, and have them reconsidered by the governing body from time to time.
- Obligations of lessee, covered in a Rules and Regulations document.
- Routine inspection provisions for safety and compliance of airport tenants and users.
- Construction and improvement standards that outline pre-approval by the landlord and the airport sponsor, local permitting agency requirements, and FAA notification of proposed construction once all other approvals are secured.
- Subletting policy.



The Airport Leasing Policy should consider appropriate lease lengths. Land leases are routinely set at 20- to 30-year terms; lease terms beyond this length may be limited by local or state statutes. Provisions for the extension of a land lease should be included in the lease agreement and outline the requirements that must be met before the lessee is allowed to extend the lease, preferably contingent upon the lessor's concurrence and approval, by periods of 5 to 10 years. These extensions of the lease are considered addendums to the original lease document with all covenants and provisions of the original remaining in effect. The length of a lease and the ability to extend the lease term is an important consideration for potential tenants who will be making substantial investment in improvements that will need to be amortized over a number of years. It is important to consider the useful life of the improvements and the size of the tenant's investment when negotiating length of term.

Best practices for leasing and developing airport property include reversion of improvements back to the airport sponsor at the termination of the lease. Therefore, the lease must be long enough for the developer to be able to amortize the investment the company makes in improvements, but not so long as to unnecessarily restrict the options available to the sponsor to develop and improve the airport in the future. The savvy airport sponsor will be prepared to balance these sometimes competing goals so as to attract development without impeding future options, all the while securing market-rate fees that will support the operational costs of the airport in a sustainable fashion.

## FAA Leasing Policy FAQ's

[FAA Home](#) ▶ [Airports](#) ▶ [Airport Compliance](#) ▶ Hangar Use Policy FAQs

# Frequently Asked Questions & Answers On FAA Policy on Use of Hangars at Obligated Airports

## Airports

**Updated:** 6/9/2016

An airport operator who accepts federal airport grants agrees to the conditions and assurances in those grant agreements. These assurances include the obligation to use hangars and other designated aeronautical facilities on the airport exclusively for aeronautical purposes.

On June 9, 2016, the FAA issued a [notice of final policy about the storage of non-aeronautical items in airport facilities designated for aeronautical](#) (PDF). In conjunction with that notice of policy, the FAA is posting this series of Frequently Asked Questions and Answers (FAQs). These FAQs, intended to assist airport sponsors and users, will be periodically updated and may be included in the next update to [FAA Order 5190.6, Airport Compliance Handbook](#).

## Frequently Asked Questions

1. [Why are hangars limited to certain kinds of use?](#)
2. [What is an airport sponsor's responsibility for hangar use?](#)
3. [What is the primary purpose of an aircraft hangar?](#)
4. [Why is the FAA issuing a separate policy statement on hangar use?](#)
5. [To what airport facilities does the policy apply?](#)
6. [Does the policy apply to airports that have never received federal assistance in the form of AIP grants or federal surplus or non-surplus property conveyances?](#)
7. [Does the policy apply to privately owned hangars on private property?](#)
8. [What aeronautical uses of a hangar are permissible?](#)
9. [What uses are not permissible under the policy?](#)
10. [What discretion does the policy allow the airport sponsor?](#)
11. [What are the policy changes for homebuilders?](#)
12. [Is it possible that some aspects of aircraft construction may not be permissible in all hangars?](#)
13. [Does the policy apply to privately constructed hangars on federally obligated airports?](#)
14. [May hangars be used for aviation museums or non-profit organizations activities encouraging aviation?](#)
15. [How does the use of a hangar affect the rent charged?](#)
16. [If there is no unsatisfied aviation demand for hangars, can they be leased to generate revenue from non-aeronautical uses?](#)



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## 1. Why are hangars limited to certain kinds of use?

Airport sponsors that have accepted FAA grants or deeds of federal surplus property are obligated to use dedicated aviation facilities for aeronautical use. If hangars are not reserved for aeronautical use, federal airport grant funds could inadvertently subsidize non-aeronautical users, and aeronautical users could be denied access to needed airport facilities.

Conditions in AIP grant assurances that can apply to hangar use include:

- preserving rights and powers (Grant Assurance 5);
- making the airport available for aviation use on certain terms (Grant Assurance 22);
- not granting exclusive rights (Grant Assurance 23);
- ensuring safe operations (Grant Assurance 19); and
- complying with the ALP (Airport Layout Plan) process and requirements (Grant Assurance 29).

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## 2. What is an airport sponsor's responsibility for hangar use?

To assure appropriate use of hangars, an airport sponsor should:

- manage the use of hangars through an airport leasing program that requires a written lease agreement or permit;
- monitor the use of hangars on the airport and take steps to prevent unapproved non-aeronautical use;
- ensure that the length of time on a waiting list of those in need of a hangar for aircraft storage is minimized; and
- in cases where temporary non-aeronautical use of a vacant hangar is permitted, ensure that non-aviation users pay a fair market rental for the use of the hangar, and that the hangar can be returned to aviation use when needed.

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## 3. What is the primary purpose of an aircraft hangar?

The primary purpose of an aircraft hangar is aircraft storage. If a hangar is serving its primary purpose, the storage of aircraft, then storage of non-aeronautical items in the hangar does not violate the airport sponsor's federal obligations.

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#### **4. Why is the FAA issuing a separate policy statement on hangar use?**

The FAA had received a number of questions from airport sponsors and airport tenants about the possible uses of hangars, and about how rigidly the aeronautical use requirement should be applied. In developing the policy statement, the FAA focused on giving discretion to the local airport sponsor and allowing reasonable accommodation of activities that do not impact other aeronautical uses and do not create unjustly discriminatory conditions at the airport.

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#### **5. To what airport facilities does the policy apply?**

The policy applies to all aircraft storage areas or facilities on a federally obligated airport that are designated for aeronautical use on an FAA-approved Airport Layout Plan (ALP). The policy does not apply to property designated for non-aeronautical use on an approved ALP or otherwise approved for non-aeronautical use by the FAA.

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#### **6. Does the policy apply to airports that have never received federal assistance in the form of AIP grants or federal surplus or non-surplus property conveyances?**

No, it does not. An airport operator-owner of a non-federally obligated airport may impose any restrictions the owner-operator deems necessary. FAA standards and policies are acceptable guidance for non-obligated airports.

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#### **7. Does the policy apply to privately owned hangars on private property?**

The policy does not apply to privately owned facilities located off the airport.

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## 8. What aeronautical uses of a hangar does the FAA permit?

Permitted uses include:

- storing active aircraft;
- sheltering aircraft for maintenance, repair, or refurbishment, but not indefinitely storing non-operational aircraft;
- constructing amateur-built or kit-built aircraft provided that activities are conducted safely;
- storing aircraft handling equipment, e.g., tow bar, glider tow equipment, workbenches, and tools and materials used to service, maintain, repair or outfit aircraft; items related to ancillary or incidental uses that do not affect the hangars' primary use;
- storing materials related to an aeronautical activity, e.g., balloon and skydiving equipment, office equipment, teaching tools, and materials related to ancillary or incidental uses that do not affect the hangars' primary use;
- storing non-aeronautical items that do not interfere with the primary aeronautical purpose of the hangar, e.g., televisions and furniture; or
- parking a vehicle at the hangar while the aircraft usually stored in that hangar is flying, subject to local airport rules and regulations.

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## 9. What uses are *not* permissible under the policy?

Uses not permitted include:

- use as a residence;
- operation of a non-aeronautical business, e.g., limo service, car and motorcycle storage, storage of inventory, and non-aeronautical business office;
- activities that impede the movement of the aircraft in and out of the hangar or other aeronautical contents of the hangar;
- activities that displace the aeronautical contents of the hangar or impede access to aircraft or other aeronautical contents of the hangar;
- storage of household items that could be stored in commercial storage facilities;
- long-term storage of derelict aircraft and parts;
- storage of items or activities prohibited by local or state law;
- storage of fuel and other dangerous and Hazmat materials; or
- storage of inventory or equipment supporting a municipal agency function unrelated to the aeronautical use.

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## **10. What discretion does the policy allow the airport sponsor?**

The policy:

- preserves the airport sponsor's discretion to manage or address issues including:
  - adopting rules covering the different uses of hangars;
  - mitigating related safety concerns (e.g., emergency access, fire codes, insurance, and the impact of vehicular traffic);
  - managing airport planning;
  - preserving airport efficiency; and
  - managing funding aspects of airport management;
- provides protection against claims of discrimination by imposing consistent rules for incidental storage in all similar facilities at the airport;
- provides airport sponsors with the ability to permit certain non-aeronautical items to be stored in hangars provided the items do not interfere with the aeronautical use of the hangar;
- allows an airport sponsor to request FAA approval of an interim use of a hangar for non-aeronautical purposes for a period of 3 to 5 years; and
- allows an airport sponsor to request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis.

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## **11. What are the policy changes for homebuilders?**

The FAA understands the substantial convenience to aircraft builders of locating the entire aircraft construction process at the same location, specifically in an airport hangar. The new policy offers protections that never existed in the FAA's prior policy. First, the FAA recognizes amateur-built aircraft construction as an aeronautical activity to be accommodated at airports on reasonable terms, without unjust discrimination and without granting an exclusive right. Second, the new policy provides for the safe construction of amateur-built aircraft in hangars (see [Question 8](#)). As an airport asset management tool, an airport sponsor leasing a vacant hangar for amateur-built aircraft construction may incorporate progress benchmarks in the lease to ensure the construction project proceeds to completion in a reasonable time.

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## **12. Is it possible that some aspects of aircraft construction may not be permissible in all hangars?**



Some hangars may not have been designed to accommodate aircraft construction or all phases of aircraft construction. Airport sponsors have an obligation to mitigate inherent hazards in the operation, and to prevent unsafe conditions or practices. For example, a sponsor could prohibit painting or other use of volatile or highly flammable materials in a hangar.

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### **13. Does the policy apply to privately constructed hangars on federally obligated airports?**

An airport sponsor's permission to lease aeronautical land on the airport for construction of a hangar accepts the sponsor's conditions that come with that land, in return for the special benefits of the location. The fact that the tenant uses the land through a ground lease with the airport sponsor and constructs the hangar using tenant funds does not affect the airport sponsor's agreement with the FAA. That agreement requires the airport land and facilities, including aircraft hangars, to be used for aeronautical purposes.

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### **14. May hangars be used for aviation museums or non-profit organizations' activities encouraging aviation?**

An airport sponsor, at its discretion, may provide access to airport property at less than fair market rent to aviation museums and other non-profit, aviation-related organizations (including aviation-focused community-based organizations). However, there is no reason for such activities to displace aircraft owners seeking hangar space for storage of operating aircraft, unless the non-profit or community activity itself involves use and storage of operating aircraft. Accordingly, aviation museums and non-profit organizations have the same access to vacant hangar space as other activities that do not actually require a hangar for aviation use.

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### **15. How does the use of a hangar affect the rent charged?**

If a hangar is being used for an aeronautical use, the airport sponsor will generally charge the tenant the airport's standard rate for aeronautical leases, which should recover the airport's costs but which may be less than fair market rent. If the hangar is used for an interim non-aeronautical purpose, the sponsor must charge a fair market rent for the hangar. Please consult the Airport Compliance Handbook for the application of below-market rent for aviation museums and other aviation related non-profit organizations.

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## **16. If there is no unsatisfied aviation demand for hangars, can they be leased to generate revenue from non-aeronautical uses?**

If a sponsor has empty aeronautical use hangars for which it has no current aeronautical demand, it may seek FAA approval to lease those hangars to non-aeronautical tenants in one of two ways.

- **Option 1.** When a sponsor wants to lease aeronautical hangars to a tenant for an extended time period (usually 3 to 5 years), it can request FAA approval for interim non-aeronautical use of a hangar until there is demand for an aeronautical purpose. The sponsor must charge a fair market commercial rental rate for any hangar rental or use for non-aeronautical purposes.
- **Option 2.** A sponsor may also request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis. Once the sponsor receives initial FAA approval, it may lease the open space for consecutive 30-day periods without further approval. The sponsor must charge a fair market commercial rental rate for any hangar rental or use for non-aeronautical purposes.

Aeronautical use must receive priority and accommodation over non-aeronautical use, even if the rental rate would be higher for the non-aeronautical use.



# Reversion Clauses Revisited

Are airports really that different?

MICHAEL HODGES

DECEMBER 28, 2016

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In over 28 years of dealing with aviation leases, one of the industry “hot buttons” is still the reversion clause. The reversion clause address what happens to improvements on an airport leasehold during the term of or at the termination of a lease. Usually, ownership of improvements made by a tenant reverts to the airport sponsor at some point during a lease, usually at the end. It is at this time of reversion when the airport begins to receive rent on both the land and improvements at their prevailing market rent, as opposed to just charging ground rent. Some airports require that improvements transfer to the airport upon completion, but are not subject to rent until a set point in the lease. Other airports grant long-term leases of 30 to 40 years, but have a provision in the lease where the improvements revert during the lease, usually after 20 years, but the tenant maintains the right to occupy the property for the full lease term, albeit at a higher rent after reversion occurs.

Reversion can also take other forms. In some instances, reversion can mean that at the termination of a lease, the Lessor can require that the tenant remove them at their own expense and bring the site back to its original unimproved state. Regardless, in simple terms, the reversion clause simply addresses what happens to ownership of improvements and their responsibilities at some point during the term of a lease.

## Airports are not special

Airports are special in a lot of ways; however, leases are not one of them. Time and time again I have had airport management and current/prospective tenants state that airports are the only ones that have reversion clauses in their leases. This is not true. Reversion clauses are a standard condition in any ground or facility lease. In speaking with commercial real estate brokers around the country, every one of them stated that reversion is a standard clause in every lease that they have negotiated on behalf of a tenant or landlord. In the general real estate market, property owners elect to enter into a ground lease on their property because for a variety of reasons, they choose not to sell their property. In the aviation real estate market, ground leases exist because the airport sponsor cannot sell their property. In addition, from the

airport's standpoint, the reversion clause provides for future revenue streams and the control/management over airport development and facility maintenance.

What about the FAA's position? According to FAA representatives I have spoken with, they recommend reversion clauses to make it clear to the tenant what happens at lease termination. Interestingly, they further indicated that their interpretation is that if the lease is silent on the issue, it automatically reverts to the airport since tenants cannot own the public land. Regardless, the most common response from the FAA is that regardless of any legal considerations, reversion clauses are just a good business practice for airports. It provides for the future benefits of an enhanced revenue stream that comes from leasing land and facilities.

## **Facility maintenance suffers because of reversion**

A common theme when addressing the negatives associated with reversion clauses relates to the concern that tenants will not maintain their facilities if they are just turning them over to the airport at the end of the lease. First of all, while this might sometimes occur with private hangars (often out of spite), it is not typical of commercial facilities. In part this is due to the fact that a tenant operating a business out of a facility tends to maintain their facilities due to public perception, safety, and otherwise reduced operating costs. Nevertheless, there is a way to address this concern.

What is becoming a standard lease condition within leases is requiring tenants to provide "Condition Assessment" reports on their facilities during the term of the lease. How this works is the tenant is required to have a professional engineer or building inspector perform an assessment of the condition of the facilities at set intervals during the lease, typically every 5 years in a 20 or 30-year lease, as well as within the last year of the lease. (The engineer/inspector is hired by and paid for by the tenant, but must be approved by the airport.) This Condition Assessment will look at the building's structural components, as well as items such as the electrical and plumbing systems, heating and air conditioning system, etc. If the tenant has parking lots or aircraft ramp/apron on their leasehold that they are responsible for, then those are assessed too. This provides a baseline for the airport to insure the facilities are being maintained beyond what is basic "wear and tear" over time. If there are major items of deferred maintenance, then the airport can make sure they are addressed both during the term of the lease, as well as before reversion occurs. By having this assessment done on a scheduled basis during the term of a lease, it sets forth clear expectations for both parties.

Another benefit of the Condition Assessment is to provide the airport with comprehensive information about whether they even want the improvements at the end of the lease. As stated above, the reversion clause simply addresses what happens to ownership of improvements and their responsibilities at some point during the term of a lease. In many cases, and in my opinion

it should be all cases, the terms of the reversion clause provide the airport sponsor with the option of whether to retain ownership of the improvements at the end of the lease, or to require the tenant to remove the structures and bring the site back to a site-ready development parcel. This is an important option for the airport sponsor when regardless of the condition of a facility, it is no longer functional to serve the type of aviation activity at the airport, or the property is needed for an alternative use.

## **If you don't renew my lease at ground rent, I will go to another airport**

The reversion clause has caused more than one airport tenant to threaten to leave the airport if they have to start paying rent on the improvements. More times than not, this is merely a negotiating strategy. The reality is that there are many more factors beyond a rent increase that will impact a tenant's ability to relocate. For example, if you are dealing with an aircraft manufacturer or MRO, the requirement to effectively "start over" with hiring and training a new labor base is much more cost prohibitive than even a significant increase in rent. No to mention the fact that wherever they move will either require them to build a new facility or lease and retrofit an existing one. While there are a few communities that might be willing to bite the bullet and cover some of those costs, they will still have a hard time overcoming the employment factor.

With cargo carriers, they are probably at your airport because that is where their operating metrics tell them that they need to be to serve to region, not because their rent is cheap. Several years ago, I was approached by airport that was going to be the next "FedEx Regional Hub". When I contacted FedEx to find out about the reality in that statement, I was told that they would probably never move from their current airport, because "that's where the people are."

The loudest screams probably come from the private hangar owners. These are the folks that "knows somebody," or worse "know somebody that knows somebody" that can get them fired, or at least get them the deal they want. However, a survey we performed several years indicated that the number one reason that an aircraft owner selected their particular home airport was proximity to their home or office. Price was 4th on the priority list. So unless the individual has moved closer to another airport, the threat is probably an idle one.

The risk of letting that private hangar owner "win," is that it will set a precedent for every other deal in the future. There is no such thing as a "special deal just between us" anymore. Everybody wants to brag about the deal they made, and then everybody wants that same deal or better. The enforcement of the reversion clause on these types of tenants must be enforced diligently at airports, because these are the deals that can impact all of the larger, more substantial deals at your airport.



Many tenants will claim that they were not aware of the reversion clause in the lease. This usually occurs when the leasehold is sold during the term of the existing lease. However, ignorance is not a valid excuse for a condition in a lease not being enforced. Nevertheless, since politics will usually play a role in this type of dispute, it is recommended that the airport sponsor makes it a habit to remind their tenants of pending reversions on an annual basis. This can be handled in notifications about scheduled lease rate adjustments, requests for updated insurance certificates, or other written communications between the airport sponsor and tenant.

## **Are there any other options?**

While the inclusion of a reversion clause is the industry standard in ground leases, both at airports and in the general real estate world, there are some airports that have looked outside the box. For example, one airport offers a 50 percent discount on the improvement portion of the rent for corporate hangar tenants that are renewing ground lease. These tenants must have maintained ownership of the leasehold for a minimum amount of time before the ground lease expires. Most importantly, the “discount” is not transferrable if the incumbent tenant sells their lease to another party.

A few airports offer two types of leases: reversionary and non-reversionary. (Most of these are airports that had only non-reversion leases and were looking for a way to escape that cycle). In the non-reversion lease, the improvements do not revert, but the tenant pays a substantially higher ground rent to reflect that the airport is foregoing the future economic benefit of being able to lease the improvements. However, these types of leases must have some type of termination provision so that they do not become perpetual ground leases, in violation of the FAA’s restrictions. In most cases, this is handled by limiting the number of times that a ground lease can be renewed before the tenant must remove the improvements.

In summary, the reversion clause in ground leases is not only limited to airports, but is consistently found in ground leases throughout the general real estate marketplace. In fact, the airport industry is more flexible in their handling of the application of the clause than the commercial real estate market. While non-airport leases typically only offer the option for the current tenant to either lease the improvements or remove them, airports have been creative in finding ways to allow their tenants to remain under circumstances that do not have a significant economic impact to either party. While creativity might be viable in certain cases, it is important for airports to look at the big picture when entering in ground leases by considering not only the present, but also the long-term economic, operational and development impacts on the airport. You don’t want to be the person that your successor mentions every time a bad lease deal comes up under their watch.

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*Michael A. Hodges, MAI is the President and CEO of Airport Business Solutions, a diverse aviation valuation and consulting company based in Tampa, Florida. Airport Business Solutions assists airports and aviation businesses worldwide on a variety of property, business, operational and marketing issues. Michael is also the President and CEO of ABS Aviation, a contract management company for FBOs and general aviation airports.*



Idaho Falls Regional Airport  
Non-Commercial Lease Agreement

**AIRPORT LEASE AGREEMENT**

Lease Agreement, made and entered this \_\_\_\_ day of \_\_\_\_\_ by and between the CITY OF IDAHO FALLS, a municipal corporation of Bonneville County, Idaho, herein referred to as IDAHO FALLS REGIONAL AIRPORT herein referred to as "IFRA", and \_\_\_\_\_ Whose address is \_\_\_\_\_ herein referred to as "LESSEE";

**WITNESSETH:**

For and in consideration of the mutual covenants, conditions and obligations set forth herein, the parties agree as follows:

1. Premises. IFRA agrees to lease to LESSEE, subject to the full and faithful performance of the terms, conditions and covenants contained herein the premises located at IFRA, at \_\_\_\_\_, which premises is legally described in Exhibit "A" and Exhibit "B" (a legal description and plot plan showing the location of the improvements on the premises) attached hereto.
2. Rental and Payment. LESSEE agrees to pay to IFRA as rental for the demised premises:
  - A. \_\_\_\_\_ per annum for \_\_\_\_\_ square feet Hangar area, identified in exhibit \_\_\_\_\_ at an initial rate of \_\_\_\_\_ per square foot per annum, and \_\_\_\_\_ per annum for \_\_\_\_\_ square



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feet of apron area at an initial rate \_\_\_\_\_ per square foot,  
as described in Exhibit "A"

B. An infrastructure fee of \_\_\_\_\_ cents per square foot per annum of the leased area in 2.A to reimburse CITY for the construction of Utilities and other improvements, as applicable.

The total amount owed under 2.A and 2.B above is \_\_\_\_\_ (total lease payment due per annum). However, the annual rent shall be adjusted for inflation in October of every year throughout the term of this Agreement, or any extensions thereof, the amount of such rental shall be adjusted by multiplying the original rental by a fraction determined as follows: The U.S. Consumer Price Index of all Urban Consumers (CPI-U), U.S. City Average as determined by the U.S. Department of Labor, Bureau of Labor Statistics as denominator, and the most current CPI-U available at the time of such adjustment, as numerator. Rental shall be due and payable in advance on or before July 10<sup>th</sup> of each year. LESSEE shall be subject to a late payment penalty of 1.5% per month or \$30 per day for every day the payment is late, whichever is greater.

3. Term. The initial term of this Lease Agreement is \_\_\_\_\_ years and shall commence on \_\_\_\_\_, and shall terminate on \_\_\_\_\_ and that LESSEE shall have the right to extend this Lease Agreement for two (2) additional terms of five (5) years. At the five-year renewal option, the Agreement shall be brought into conformity with then-existing leases for lease rate, insurance and other provisions which are required by federal or state law or regulation.



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LESSEE shall give CITY at least sixty (60) days written notice prior to the expiration of the term hereof, or subsequent renewal term, of its intention to exercise such right of renewal.

a. LEASE RENEWALS:

CITY reserves the right to extend or not extend Lease agreements based on future plans for the AIRPORT including the current Airport Master Plan and/or other aviation uses which may be more desirable to the IFRA. In order to maintain a high standard of hangar quality, improvements to bring hangar maintenance up to date will be one consideration of Lease Agreement renewal.

i. No lease renewals will be approved unless the LESSEE provides a facility condition assessment report prepared by an independent, qualified contractor, approved by the CITY in writing, attesting to the condition of the leasehold improvements. The facility condition assessment report must indicate what improvements and maintenance need to be accomplished to bring the condition of the leasehold improvement up to a standard that is "like new" or "reconditioned" less normal wear and tear for the approval of any lease extensions.

ii. Reversion. All Lease Agreement renewals are subject to a "reversion" clause. Upon termination of a Lease Agreement whereby improvements to AIRPORT property were made by LESSEE or Operator, LESSEE or Operator shall agree that all said improvements as well as the property leased to it, shall, without compensation from the CITY, become the property of the CITY. Under no circumstances shall the party to such Lease Agreement be entitled to any payment by reason of the value of its business or franchise.





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4. Infrastructure Fees. An Infrastructure Fee for all new construction for Public improvements, including but not limited to water, power, sewer that have been constructed which LESSEE has the use and benefit of, and for construction and ongoing maintenance of taxi lanes serving the LESSEE hangars. LESSEE agrees to pay (\$) per square foot per annum, or a minimum fee of (     ) Dollars per annum for its share of those improvements.
  
5. Airport Privileges. LESSEE is granted the privilege of using, in common with the public, all existing or future public aeronautical facilities at the IFRA, including but not limited to the landing area, its extensions, additions, roadways, runways, ramps, aprons, taxiways, public air navigation facilities, radio aids, beacons, control towers, signals, floodlights, landing lights, and all other conveniences now or hereafter provided for flying, landing or taking off of aircraft, subject to such reasonable rules, regulations, charges, fees or other costs which may be generally promulgated or established by IFRA or its authorized agents, including the Airport Director; provided, however, that nothing herein shall be construed to grant an exclusive right to LESSEE, and IFRA expressly retains the privilege of entering into other agreements which authorize any lawful use of such AIRPORT facilities upon such terms and conditions as may be determined by IFRA.



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6. Improvements/Building Requirements.

- a. All structures erected on the AIRPORT premises shall meet the Idaho Falls Building Code. All such structures shall be of a design harmonious with the surrounding structures. All structures will be located in the areas specified for their particular use on the Airport Layout Plan.
- b. All buildings, leased areas, and privately owned facilities must be maintained in accordance with pertinent CITY ordinances, rules and regulations.
- c. Access shall be provided the CITY to all buildings for periodic inspection purposes.
- d. Prior CITY approval must be obtained before any structural alterations, repair, or additional equipment installation.
- e. All refueling and fuel storage installations will be located only in the areas so designated on the Airport Layout Plan and require a separate authorized Airport Self-Fueling Permit from the Airport Director.
- f. All facilities and areas at the Airport shall be used only for purposes directly connected with, or in incident to, aviation (Accepting only those areas designated by CITY for AIRPORT Industrial Park, agriculture, or recreation.)
- g. All new construction or alteration requires an FAA form 7460 to be filed and approved by Federal Aviation Administration (FAA) prior to approval of improvements by CITY.
- h. Any storm water swales and ponds related to LESSEE's improvements shall be maintained by the LESSEE.
- i. All construction must be completed within (2) two years from the execution of this lease.

6. Limitation on Use.

- a. This Lease Agreement shall be subject to FAA's policy on non-aeronautical use of AIRPORT hangars which requires that AIRPORT's charge LESSEE off AIRPORT fair market rent for



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hangars not being utilized for aeronautical purposes. These fees will be set by the CITY.

- b. Small amounts of non-aeronautical property of the hangar owner or LESSEE may be allowed so long as airplanes can easily be accessed and at least the number of aircraft the hangar was built for can access and be parked in the hangar.
  - c. Temporary use of the hangar to park a personally owned vehicle while the aircraft is flying away from the AIRPORT is permitted.
  - d. The N number of all aircraft stored in the hangar shall be reported to the Airport Director annually on October 1st of each year.
  - e. Failure to report the N number of the aircraft stored in the hangar will result in a de-facto presumption that the hangar is being used for a non-aeronautical purpose and the lease rate will be adjusted to a rate set by the CITY which represents an off AIRPORT non-aeronautical use fee.
  - f. At the discretion of the Airport Director, upon 5 day notice the LESSEE agrees to allow the LESSOR access to the property for the purpose of inspection to ensure compliance with lease terms.
  - g. Non-aeronautical use of a hangar is not permitted.
  - h. Failure to use a hangar for aeronautical purposes as defined by FAA shall result in a presumption that the Lease Agreement terms have been violated and that the Lease Agreement can be cancelled at the option of the CITY.
8. Utilities. LESSEE will pay for specific utility extension fees required and will pay all utility fees as such utilities are billed for water, electricity, telephone and sewer.
9. Maintenance of Leased Premises. LESSEE agrees to keep the Leased Premises clear of any debris, trash, weeds, clutter or other unattractive items of personal property. LESSEE shall also keep the Leases Premises in good state of repair and shall maintain the same



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in neat and attractive conditions. Should LESSEE fail to maintain its Leased Premises within thirty (30) days of written notification from the Airport Director then IFRA can arrange for the cleanup of the leasehold and bill the LESSEE for costs incurred including IFRA personnel and equipment.

10. Waste. LESSEE agrees not to commit nor permit any waste, or destruction of the Leased Premises or the improvements thereon, and shall upon the expiration of the term hereof, return the premises to IFRA in as good a condition as the same now exists.
  
11. Compliance With Applicable Law. LESSEE agrees at all times herein to comply with all applicable rules, regulations, ordinances, statutes and administrative laws of the CITY of Idaho Falls, the State of Idaho, the United States of America or any agency or political subdivisions thereof having jurisdiction over the Leased Premises. LESSEE further agrees to comply with all reasonable rules and regulations, Minimum Standards for Commercial Aviation Activity, and to provide proof of insurance in the amount generally promulgated by the Airport Director for the CITY, which said rules and regulations pertain to the use, operation or maintenance of the IFRA.
  
12. Compliance with Environmental Laws. LESSEE agrees not to store, dispose, use or allow the use of any "hazardous substance" or "hazardous waste" upon the Leased Premises, as such terms are defined under the Comprehensive Environmental Response,



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Compensation and Liability Act of 1980 ("CERCLA", 42 U.S.C. § 9601, et seq.) the Clean Water Act ("CWA", 33 U.S.C. § 1251, et seq.), the Clean Air Act ("CAA", 42 U.S.C. § 7401, et seq.), the Toxic Substances Control Act ("TSCA", 15 U.S.C. § 2601, et seq. the Resource Conservation and Recovery Act of 1976 ("RCRA", 42 U.S.C. § 6901, et seq.), the Idaho Environmental Protection and Health Act of 1972 ("IEPHA", Title 39, Chapter 1, Idaho Code), the Idaho Hazardous Waste Management Act of 1983 ("IHWMA", Title 39, Chapter 44, Idaho Code), or any other similar state or federal law or regulation regulating the use, storage, transport or manufacture of a hazardous substance (such laws and regulations are hereafter referred to as "Environmental Laws"), without first sending written notice of such intended use to IFRA at least sixty (60) days prior to the commencement of such use. Such notice shall specifically describe the hazardous substance involved the reason for such use and all methods, precautions and procedures to be employed by LESSEE to ensure such hazardous substance is not released into the environment. IFRA also agrees to strictly comply with all terms and provisions of such acts, statutes and laws, and any other similar environmental law or any rule or regulations, enacted or promulgated after the date hereof, and to design and construct all facilities in a manner which reasonably ensures hazardous substances will not be released into the environment. IFRA may prohibit the use, storage, or deposit of such substances until LESSEE demonstrates to IFRA complete satisfaction that such proposed use will comply in every respect with such laws and that such use will be conducted in a proper and safe manner. IFRA, and its agents, attorneys, employees,





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consultants and contractors, hereby reserve the right to enter upon and inspect the real property and facilities leased hereby at any time for the purpose of determining LESSEE'S compliance with the provisions of this paragraph, including without limitation the right to perform such inspections, examinations, subsurface testing, soils and ground water testing and other tests necessary to protect IFRA interest in the property and ensure LESSEE'S compliance with the terms and provisions of this paragraph.

If LESSEE gives notice of an intent to use such hazardous substances, IFRA may require that Lessee annually submit a written site assessment and environmental audit to IFRA, in scope, form and substance satisfactory to IFRA and prepared by an independent, competent and qualified licensed engineer showing that the engineer has conducted an environmental audit of the Leased Premises, consistent with good commercial and customary practice and certifying that no evidence or indication came to light which would suggest there has been a release of hazardous substances on the demised Leased Premises or which would necessitate an environmental response action by the United States government or the State of Idaho, or any agency thereof. Such assessment shall further certify that LESSEE'S use of the Leased Premises and the condition of the Leased Premises complies with and does not deviate from all applicable environmental statutes, laws, ordinances, rules and regulations, including any licenses, permits or certificates required thereunder. If any environmental response action is initiated by any federal or state agency as a result of LESSEE'S use, storage,



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generation, disposal or transport of hazardous substances upon the demised Leased Premises, IFRA may require such environmental audit and inquiry be conducted more frequently than annually and as frequently as necessary to ensure LESSEE'S compliance with the terms and provisions hereof. If any environmental response action is initiated or taken by any state or federal regulatory agency as a result of such use by LESSEE, IFRA may require LESSEE to post and deliver a performance bond or policy of insurance indemnifying and holding the CITY harmless from any and all reasonable foreseeable costs, penalties, fines or response costs of any kind which may be assessed by such agency on account of LESSEE'S failure to comply with the provisions of such environmental laws and regulations, as a condition for LESSEE'S continued use of the Leased Premises pending determination by court of law of LESSEE's compliance with such statutes. If LESSEE fails to strictly comply with the Environmental Laws, IFRA may immediately and without prior notice enter upon the Leased Premises and take such response action as reasonably necessary to bring the property into compliance with such laws and comply with any response action taken by any agency charged with the enforcement thereof. In such event, all costs, expenses and consultants' fees incurred by IFRA for such response or remediation effort shall be promptly and immediately paid by LESSEE, and together with interest at a rate of twelve percent (12%) per annum until paid, from the date such costs were incurred by IFRA.



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If LESSEE has used, stored or transported a hazardous substance or waste upon the Leased Premises, IFRA may, at the termination of this Lease Agreement, perform an environmental audit of such scope and extent determined necessary by IFRA, in order to determine LESSEE'S compliance with the terms and provisions of this paragraph. Such audit shall be performed at the sole expense of LESSEE.

LESSEE agrees to indemnify and save IFRA harmless from any and all damages, remedial orders, judgments, decrees, costs and expenses, including but not limited to attorney's fees, consultants' fees, clean-up costs, removal and response costs arising from LESSEE'S failure to strictly comply with the terms and provisions of this paragraph. The terms and provisions of this paragraph shall survive the termination of this Lease Agreement and shall remain in effect for the full period of any statute of limitations with respect to the enforcement of the Environmental Laws or the terms and conditions of this Lease Agreement, whichever is longer. Nothing herein shall be deemed to impose upon LESSEE any obligation or duty to indemnify IFRA on account of any violation of the Environmental Laws by IFRA or by any leaseholder who was in possession of the demised premises prior to the commencement of the term of this Lease.

13. Subordination to Agreements With United States Government. This Lease Agreement shall be subordinate to any existing or future Lease Agreement which may be made between IFRA r and the





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United States Government for military or national emergency use of part or all of the AIRPORT, the landing area, publicly-owned air navigation facilities or other aeronautical facilities or areas of the AIRPORT. This Lease Agreement also shall be subordinate to any existing or future Lease Agreements between IFRA Lessor and the United States of America or the State of Idaho, the execution of which has been or may be required as a condition precedent to the expenditure of funds, allocations or grants for the development of the AIRPORT. .

14. Discrimination. LESSEE shall not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Federal Aviation Regulations or other applicable state or federal law.
15. Interference With Operation of Airport. IFRA reserves the right to take any action it considers necessary to protect the aerial approaches of the AIRPORT against any obstruction which would limit the usefulness of the AIRPORT or constitute a hazard to aircraft or which would otherwise interface with the safe or efficient operation of the AIRPORT.
16. Indemnification. LESSEE agrees to indemnify, defend and hold CITY, its agents, officers, representatives, and employees harmless from any and all costs, expenses, fees, penalties, liability or loss resulting from any claim or claims, of any kind or nature, arising directly or indirectly from the acts of LESSEE, its agents, servants,



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guests, employees or invitees, under this Lease Agreement or by reason of any act or omission of Lessee.

17. Assignment and Subletting. LESSEE shall not assign, mortgage, encumber, sublease or transfer this Lease Agreement or any part thereof, or improvements thereon or any privileges arising hereunder, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.
  - a. Any financing proposed for the leasehold Leased Premises shall be subordinate to the interests of CITY and the lien holder shall be responsible to cure lease violations, including but not limited to, delinquent lease fees, violation of Airport Rules and Regulations, failure to provide insurance, and Violation of Airport Minimum Standards.
  - b. Subleasing for the storage of aircraft may be permitted if the LESSEE provides proof of adequate insurance, including hangarkeepers insurance if required and a written agreement with the sublease party to provide adequate insurance and follow airport rules and regulations.
  - c. Sale of the leasehold will require approval of a separate Lease Agreement transfer/assignment along with payment of lease transfer fees.
18. Termination of Lease. LESSEE agrees to surrender and quit the Leased Premises immediately upon the termination of this Lease Agreement.
19. Default. In the event LESSEE shall file or have filed against it a petition under the Bankruptcy Act, or shall make an assignment for the benefit of creditors, become insolvent, or fail to fully and faithfully comply with the terms and provisions hereof, then in such event,



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LESSEE shall be deemed to be in default of this Lease Agreement, and in the event LESSEE shall fail to cure such default within thirty (30) days after written notice shall have been given to them by IFRA in a manner provided here in below, CITY may elect to terminate this Lease Agreement or alternately or in addition thereto, the CITY may pursue any other remedies at law or in equity to enforce the performance of this Lease Agreement or to recover damages for the breach thereof. Such notice shall generally set forth the nature of the default claimed by LESSOR.

20. Notices. All notices required under the terms of this Lease Agreement shall be given by depositing a copy of such notice in the United States mail, postage prepaid, certified mail, returned receipt requested, addressed to the receiving party at the address set forth below, or such other addresses as may be given in writing delivered to the sending party. All notices shall be deemed to be received upon their deposit in the United States mail in the manner provided above. For the purposes of this paragraph, the parties' addresses are as follows:

Idaho Falls Regional Airport  
Airport Director  
2140 N Skyline Drive #12  
Idaho Falls, Idaho 83402



Idaho Falls Regional Airport  
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21. Venue and Applicable Laws. This Lease Agreement is governed by the laws of the State of Idaho. The venue for any action or suit arising from the terms and conditions of the Lease Agreement shall be in the District Court of the Seventh Judicial District, Bonneville County, State of Idaho.
22. Attorney's Fee. In the event either party is required to commence legal action to enforce the terms and provisions hereof, the prevailing party shall be entitled to recover from the defaulting party a reasonable attorney's fee and court costs as determined by the court.
23. Waiver/Invalidity. If either waives a breach of this Lease Agreement, such waiver shall not be construed as a waiver of any other simultaneous or subsequent breach of this Lease Agreement. If any provision of this Lease Agreement is found invalid, such invalidity shall not affect the enforcement of any other term or provision of this Lease Agreement.
24. Binding Effect. This Lease Agreement shall be binding upon the heirs, successors, personal representatives or assigns of the parties hereto.
25. Complete Lease Agreement. The parties acknowledge and agree that this writing shall constitute the complete and final Lease Agreement of the parties hereto, that all prior negotiations, representations or understandings of the parties shall be deemed to merge into and are superseded by this Lease Agreement. The parties further agree that any prior written agreements regarding the



Idaho Falls Regional Airport  
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demised Leased Premises, between the parties or between IFRA and LESSEE'S predecessor, shall be superseded by this Lease Agreement. This Lease Agreement may be amended only by written agreement duly and regularly executed by the parties hereto.



Idaho Falls Regional Airport  
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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this day and year first above written.

ATTEST:

LESSOR:

CITY OF IDAHO FALLS

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

Rebecca L. Noah Casper  
Mayor

LESSEE:

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Randy Fife  
City Attorney

\_\_\_\_\_  
Craig Davis

IFRA NON-COMMERCIAL LEASE



Idaho Falls Regional Airport  
Non-Commercial Lease Agreement

Airport Director

STATE OF IDAHO            )  
                                      )ss.  
County of Bonneville        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016 before me, the undersigned, a Notary Public for Idaho, personally appeared Rebecca L. Noah Casper, known to me to be the Mayor of the City of Idaho Falls, Idaho, the municipal corporation that executed the foregoing document, and acknowledged to me that she is authorized to execute the same for and on behalf of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

\_\_\_\_\_  
Notary Public for State of Idaho  
Residing at Idaho Falls, Idaho  
My Commission Expires: \_\_\_\_\_

STATE OF IDAHO            )  
                                      )ss.  
County of Bonneville        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016 before me, the undersigned, a Notary Public for Idaho, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (she) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Idaho Falls Regional Airport  
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(SEAL)

\_\_\_\_\_  
Notary Public for State of Idaho  
Residing at Idaho Falls, Idaho  
My Commission Expires: \_\_\_\_\_





## Statement of Annexation Principles

In an effort to provide efficient and equitable tax and fee supported services, encourage orderly growth, and thoughtfully and carefully expand the tax base of the City, the principles espoused in this document are intended to provide guidance when considering annexation. These principles represent the general practice of the City and do not bind City leaders from exercising annexation authority granted by Idaho statutes. Typically, a departure from these principles would most commonly occur as a response to an unusual circumstance or need.

### General Principles

When considering land use and growth, the City of Idaho Falls will prefer annexation policies that:

- **Encourage Core Development.** When possible, the city prefers to support development closer to the City's core where infrastructure such as roads and utilities already exists. This will help to avoid urban sprawl.
- **Strengthen the Tax Base.** The city recognizes the value of maintaining the efficient and cost-effective provision of both tax and fee-supported services.
- **Balance Property Rights with Growth.** Individual property rights must be protected while at the same time ensuring the City is able to continue to grow.
- **Provide Public Services and Amenities that Enhance Quality of Life.** The Community derives value and strength from a robust Parks and Recreation system, a highly rated Fire Department, excellent Police protection, a wonderful Library, well-maintained streets and neighborhoods, and a commitment to providing a high quality of life at an affordable tax rate.
- **Support the Comprehensive Plan.** The City's Comprehensive Plan is carefully developed to capture best practice planning principles coupled with careful implementation of public input. The resultant document outlines principles and policies designed to guide growth in a healthy, sustainable manner..

### City-Initiated Annexation

The City strongly believes there is value in being annexed. The City of Idaho Falls proudly offers excellent tax and fee supported services and utilities. All residents, both City and County, benefit from a strong Idaho Falls. Residents in the County close to the City's core benefit from being close to City limits and should bear an equal burden in the provision of those benefits. As was argued in a court case in Baltimore in 1918, *"Those who locate near the city limits are bound to know that the time may come when the legislature will extend the limits and take them in. No principle of right or justice or fairness places in their hands the power to stop the progress and development of the city, especially in view of the fact that a large majority of them have located near the city for the purpose of getting benefit of transacting business or securing employment...in the city"* (emphasis added).

At times, the City may exercise its authority to annex prior to the request of the property owner. When considering these city-initiated annexations, the City will strive to:

- Focus on properties that receive a City-operated utility. Many such properties agreed to annexation at a future date as a condition of receiving the utility service. However, in cases where the utility was connected prior to 2008, Idaho Code considers the connection to be consent to annexation. Idaho Falls will consider utility connections just as valid as written agreements in terms of consent to annexation.
- For properties that do not receive a City-operated utility, focus on properties that are enclaved, i.e. completely surrounded, by existing City limits and which clearly benefit from their proximity to City limits and tax-supported services that support and enhance surrounding City neighborhoods.
- Avoid annexing properties on the fringe of the City except in response to unusual circumstances or needs.
- Educate property owners of these principles and annexation law to provide predictability and avoid undue concern over potential annexation.

The following sections specify how the City intends to exercise annexation authority within the bounds of the Idaho Code Section 50-222 [citation] in conjunction with the principles outlined above:

## **Category A**

The City of Idaho Falls exercises its legal annexation authority for all Category A annexations.

### **Procedures:**

1. For annexation in which, “all private landowners have consented to annexation”:
  - No public hearing will be required
  - The application will be considered by the Planning and Zoning Commission (P&Z) for its recommendation
  - The application will then be considered by the Council for final decision, passage of the annexation ordinance, and adoption of a reasoned statement of relevant criteria and standards
2. For annexation of “any residential enclaved lands of less than one hundred (100) privately-owned parcels, irrespective of surface area, which are surrounded on all sides by land within a city or which are bounded on all sides by lands within a city and by the boundary of the city’s area of impact”:
  - City staff will hold a neighborhood meeting prior to the advertisement of the proposed annexation
  - A public hearing will be held before the P&Z for its recommendation
  - A public hearing will be held before the Council for final decision, passage of the annexation ordinance, and adoption of a reasoned statement of relevant criteria and standards

## **Category B**

The same procedure will apply for annexations which “contain less than one hundred (100) separate private ownerships and platted lots of record and where not all such landowners have consented to annexation,” as well as annexations where “the subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50) of the area of the subject private lands have consented to annexation prior to the

commencement of the annexation process.” These principles do not apply to lands subject to Idaho Code 50-222(5)(b)(v)(c) which exempts land of “five (5) acres or greater, actively devoted to agriculture, as defined in section 63-604(1), Idaho Code, regardless of whether it is surrounded or bounded on all sides by lands within a city” from city-initiated annexations.

Category B annexations will be considered when:

- The land is completely enclaved by City boundaries, but not subject to 50-222(5)(b)(v)(c) as noted above; OR
- The property has at least one (1) utility connection (regardless of an annexation agreement for the property); OR
- The parcel is less than 5 acres and:
  - Is contiguous by more than merely touching corners AND
  - Includes a primary structure and a primary use that is not agricultural AND
  - Has immediate access to a utility service

**Procedures:**

- City staff will prepare an annexation plan prior to advertising the annexation and send it to property owners within the annexation boundaries
- Staff will hold a neighborhood meeting prior to advertisement of the proposed annexation
- A public hearing will be held by P&Z for its recommendation
- A public hearing will be held by the Council for the final decision, passage of the annexation ordinance, and adoption of a reasoned statement of relevant criteria and standards

**Category C**

The City does not intend to exercise its annexation authority for category C annexations

**Road Rights-of-way**

Generally the City will not annex a County right-of-way until annexation has occurred on both sides of the right-of-way. The City recognizes that there may be times when it is appropriate to annex the County right-of-way prior to the City having annexed property on both sides of the right-of-way. In these cases City Public Works staff will work with County Public Works staff to determine the appropriate limits for annexing right-of-way.

## **CHAPTER 16**

### **ECONOMIC DEVELOPMENT INCENTIVE PROGRAM**

#### **SECTION:**

- 1-16-1: Purpose
- 1-16-2: Eligibility Requirements and Criteria
- 1-16-3: Available Incentives
- 1-16-4: Application Procedures
- 1-16-5: Evaluation
- 1-16-6: Incentive Agreement
- 1-16-7: Discontinuance of Incentives

#### 1-16-1: PURPOSE:

(A) The City is committed to the promotion of quality development in all parts of the City and to improving the quality of life for its citizens. In order to help meet these goals, the City will consider providing incentives for the retention and/or expansion of existing businesses located within the City and to encourage the establishment of new targeted businesses within the City. It is the policy of the City that such incentives will be provided in accordance with the procedures and criteria outlined in this Chapter. However, nothing in this policy shall imply or suggest, by implication or otherwise, that the City is under any obligation to provide any incentive to any applicant; and all such decisions and actions shall be at the sole discretion of the City Council. All applicants for economic development incentives will be considered on an individual basis.

(B) It is the intent of the City to offer economic development incentives on an individual basis so that the total package of incentives, if any, may be designed specifically for each project which is proposed. This approach will allow the City the flexibility necessary to satisfy the unique needs and concerns of each applicant and the needs and concerns of the City and its citizens.

#### 1-16-2: ELIGIBILITY REQUIREMENTS AND CRITERIA:

(A) The following are the minimum requirements that must be satisfied for any application for economic development incentives to be considered:

- (1) Any request for incentives shall be initiated at least sixty days prior to applying for a building permit for construction of the proposed project.
- (2) The applicant must create one hundred or more new full-time equivalent positions working at a business located within the City. For the purposes of this section, "full-time employee" means an employee who is expected in normal course of employment to provide at least two thousand eighty (2,080) hours of compensated

hours during any consecutive twelve month period. "Full-time equivalent" is any combination of seasonal or part-time employees whose compensated hours during a consecutive twelve month period equals two thousand eighty (2,080) hours.

- (3) The average hourly wage paid to employees shall be at least twice the federal minimum wage or \$15 per hour, whichever is greater.
- (4) The firm seeking assistance shall provide medical, dental and vacation benefits to full-time employees.
- (5) The applicant shall provide new capital investment equal to or in excess of \$5.0 million if the applicant will establish a new business in the City and equal to or in excess of \$2.0 million if the applicant will expand a business in the City or use a building which has been vacant for at least two years. For purposes of this section, "capital improvements" means property improvements that will enhance the assessed valuation of the land and buildings on the property.
- (6) Any waivers provided under Section 1-16-3(B) shall not exceed \$5,000 per full-time equivalent employee.
- (7) Any waivers provided under Section 1-16-3(B) or other assistance provided by the City shall not exceed the amount of estimated City taxes to be levied on the capital improvements within the seven (7) calendar years after receipt of the Certificate of Occupation.
- (8) Any waivers provided under Section 1-16-3(B) or other assistance provided by the City shall not exceed five (5) percent of the estimated assessed valuation of the land and buildings at the time of issuance of the Certificate of Occupancy.

(B) Nothing herein shall imply or suggest that the City is obligated to offer incentives to any person, organization, joint venture, partnership, association or corporation.

(C) The City reserves the right to review and change the incentive program at any time, except that where an incentive agreement has been duly executed, the incentive agreement shall supersede.

1-16-3: AVAILABLE INCENTIVES: The City offers a variety of incentives and assistance options for qualifying businesses. The specific type of incentive or assistance will depend upon the needs of the business as well as the benefits created by the proposed business. Incentives available for qualifying businesses are:

(A) Expedited Permitting Process. The City may expedite the permitting process required for business location or expansion.

(B) Waiver of Fees. The City may waive all or part of the following fees associated with the establishment of a new businesses: road and bridge fees, storm drainage fees, land use application and plan review fees, and building permit fees. Such fees shall not be waived with respect to any fee for which the services of an outside consultant are necessary to review the application or construction documents or for any other purpose necessary to facilitate the issuance of the associated permit.

1-16-4: APPLICATION PROCEDURES: Any person, organization, joint venture, partnership, association, or corporation desiring that the City consider providing economic development incentives shall submit an application containing, as a minimum, the following information:

(A) The applicant's name, name of business entity, principal place of business, mailing address, telephone number, fax number, website address and contact information of an officer or employee of the applicant who is responsible for completing the application.

(B) A complete legal description of the property along with a plat showing the precise location of the project.

(C) A brief description of the proposed improvements or expansion, including but not limited to the project's estimated cost of construction, fixtures, landscaping and site improvements; the type of business operation proposed, the number and type of jobs created and the anticipated wage or salary of each job position; description of benefits available to employees; the expected source of labor to fill such jobs, the projected date of the commencement of business operations; expected duration of business location based on history of company operations.

(D) A brief description of the type of incentives requested.

(E) A current financial statement of the applicant, if currently in business, or a prospective financial statement, if a startup business.

(F) A proposed business plan for the contemplated business.

(G) Such other information as required or requested by the City.

1-16-5: EVALUATION:

(A) Each request for incentives will be evaluated by City staff on an individual basis taking into consideration the following factors:

- (1) Revenue benefit to the City.
- (2) Number and quality of jobs created.
- (3) Strength of public benefit to the City.



- (4) Ability of the project to spur additional economic development in the City.
- (5) Impact of the proposed development on existing businesses within the City.
- (6) Level of applicant's creditworthiness and financial strength.
- (7) Applicant's willingness to construct public facilities and infrastructure, including but not limited to parks, pathways, library space, police station space, emergency services space, bus stops, public parking, public open space, and public recreation facilities.

(B) City staff will provide a written recommendation of full, partial or no incentive to the City Council based upon review of the application and the criteria set forth in this Chapter.

(C) The City Council may adopt the recommendation of City staff or otherwise approve economic development incentives based upon its review of the application and the criteria set forth in this Chapter.

#### 1-16-6: INCENTIVE AGREEMENT:

(A) If the City Council determines in its sole discretion that it is in the best interest of the City to grant incentives to a particular applicant, a resolution shall be adopted approving the terms and conditions of the incentive agreement with the applicant. The incentive agreement will enumerate the types of incentives to be provided and the conditions applicable to such incentives, if any.

(B) All such incentive agreements must, at a minimum, be in writing and include:

- (1) A description of each of the types of incentives to be provided.
- (2) The commencement date of the incentives and the duration of the incentives.
- (3) A legal description of the property indicating its location.
- (4) Detailed information regarding the type, number, location and cost of planned improvements.
- (5) A method by which the business receiving incentives will certify in writing to the City that the business is in compliance with the incentive agreement and provide the City with documentation to substantiate the level of value, including but not necessarily limited to, annual company financial reports, state and/or federal employment reports, and Bonneville County tax appraisal statements.

- (6) A method for the City to recover all waived fees and costs which are lost as a result of the agreement if the applicant(s) fail(s) to perform its obligations under the agreement.
- (7) A provision requiring the applicant to keep good and accurate financial records sufficient to demonstrate applicant's performance of the terms and conditions of the agreement and a provision allowing the City to inspect such records upon reasonable advance notice during normal business hours. Such provision shall also require the applicant to provide copies of such records to the City at the applicant's expense, upon written request of the City.
- (8) Such other provisions as the City Council shall deem appropriate.

(C) The incentive agreement shall be nontransferable. Businesses entering into an incentive agreement shall promptly disclose to the City, in writing, any transfer of ownership of the business, any sale or transfer of shares in the business which results in a change of control of the business or any bulk sale of more than seventy five percent of the assets of the business.

(D) A provision requiring repayment of all incentives in the event the application contains any misstatement or misrepresentation of material fact, together with interest at a rate of twelve percent per annum from the date each of said fees would have otherwise become due, together with a penalty in the amount of five percent of the total amount of the fees waived.

(E) A provision requiring payment by the applicant of the City's reasonable attorneys' fees and costs, in the event legal action is required to enforce any of the terms of such incentive agreement.

1-16-7: DISCONTINUANCE OF INCENTIVES: Changing economic conditions and availability of funds may cause the City Council to modify, amend, or discontinue the economic development incentive program at any time. Should the incentives program be discontinued, the City Council will honor any incentive agreement to which it committed before the discontinuance of the incentive program.