

**THROUGH THE FENCE AIRPORT ACCESS AGREEMENT**

**DRIGGS REED MEMORIAL AIRPORT**

**DRIGGS, IDAHO**

## *THROUGH THE FENCE AIRPORT ACCESS AGREEMENT*

*THIS AGREEMENT* is entered into as of \_\_\_\_\_  
 (“Effective Date”) by and between **THE CITY OF DRIGGS, IDAHO**, a municipal corporation  
 of the State of Idaho (“City”) and an individual (“Licensee”).

### **RECITALS**

A. City is the legal owner of certain real property known as the Driggs  
 Reed Memorial Airport (the “Airport”).

B. Licensee is an owner or lessee of private land adjacent to the Airport, as  
 more particularly described in Exhibit “A” attached hereto and made a part hereof by this  
 reference (the “Private Land”).

C. Licensee desires to access the Airport from the Private Land in  
 Licensee’s private aircraft.

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

### **AGREEMENT**

**1. Access to Airport.** City hereby grants to Licensee access to the  
 Airport in Licensee’s own private aircraft at the location designated in Exhibit “A” attached  
 hereto and made a part hereof by this reference.

**2. Term.** The term of this Agreement shall be five (5) years from it’s  
 “Effective Date”; provided, however, that so long as Licensee is not in default of any of the  
 provisions of this Agreement, Licensee shall have four (4) consecutive five (5) year options to  
 extend the term. Such options shall be exercisable in five (5) year increments only, no earlier  
 than 18 months before the expiration of the then applicable term. Options shall be exercised by  
 written notice to the Airport Board. The terms of this Agreement including the Access Fee shall  
 continue to apply to the option periods. In the event Licensee shall fail to timely exercise its  
 option to renew, this Agreement shall terminate upon the expiration of the then existing term.

**3. Security and Gates.** Licensee shall be responsible for the cost of  
 installing and maintaining all security measures and means of access, including, but not limited to,  
 fences, gates and taxiways, in accordance with City and Airport Board policies adopted from time to time  
 and FAA requirements.

**4. Conditions and Restrictions.** Licensee's right hereunder to access the Airport shall be subject to the following conditions:

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

(i) rules, regulations, and other requirements of the FAA or any successor federal regulatory agency;

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

(iii) County and City laws, rules, regulations, ordinances, and codes, including without limitation rules and regulations of the Airport Board;

b. All plans, designs and specifications for security measures and means of access, shall be subject to the prior review and approval by the Airport Board, and Licensee shall also obtain and submit to the Airport Board all approvals which may be required by the FAA from time to time;  
and

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

**5. Access Fee.** Licensee shall pay to the City of Driggs the sum of twenty two and ½ cents (\$0.225) per square foot based on the size of the hanger space built by Licensee on Private Property. Said fee shall be payable on an annual basis. It is acknowledged that the Licensee has built \_\_\_\_\_ square foot hangar.

**6. Payment of Access Fee.** The Access Fee, as adjusted from time to time as hereinafter set forth, shall be due and payable on the first of January.

**7. Adjustment of Access Fee.** On the fourth and each succeeding anniversary of the Effective Date, the Access Fee shall be adjusted each year on the first of January by adding to the Adjusted Access Fee for the previous twelve (12) months an amount equal to the percentage change of the Consumer Price Index (Bureau of Labor Statistics, West Urban). The Consumer Price Index applied shall be that most recently published prior to the dates of such annual calculation and in determining the percentage change, such index shall be compared to the same index 12 months prior to the date of the current Index. Should the Consumer Price Index as now constituted, compiled and published, be revised or cease to be compiled and published during the term hereof, then the Bureau of Labor Statistics (or successor or similar governmental or quasi-governmental agency), shall be requested to furnish a statement as to a comparable index and such other index shall be applied in computing the above adjustment. In no event shall the adjusted Access Fee be less than the Access Fee or adjusted Access Fee in effect immediately prior to the adjustment.

**8. Late Charges.** Any Access Fee not paid within 30 days of the due date shall be deemed late and, in addition to the Fee due, Licensee agrees to pay (i) a late charge equal to 10% of the Access Fee then due, and (ii) interest on the Access Fee at the rate of 10% per annum until paid in full. Any fee, which is due and unpaid at the expiration, termination, or cancellation of this Agreement, shall continue to be an obligation of the Licensee notwithstanding such termination or cancellation.

**9. Insurance.** At all times during the term of this Agreement, including any extensions thereof, Licensee shall procure and maintain insurance against the hazards and in the amounts hereinafter set forth and shall provide City with a certificate of such insurance naming the City as an additional insured:

a. All Risk Insurance in Connection with Construction. Before commencement of any construction or demolition on or related to the access granted hereunder, Licensee shall procure and shall maintain in force until the completion of the work "All Risk" insurance in a form reasonably satisfactory to City, covering all risks of physical loss or damage to any property in an amount of not less than \$1,000,000.

b. Public Liability Insurance. Comprehensive broad form general public liability and aviation liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the access granted hereunder or Licensee's use of the Airport, with personal injury, death and property damage combined single limit liability of not less than \$1,000,000 for each accident or occurrence.

c. General Provisions. The insurance coverage required by the foregoing provisions may be provided by means of one or more blanket policies issued to the Licensee (and naming City as an additional insured), which includes such coverage or greater coverage. In the event Licensee shall default in its obligation to procure or maintain any insurance required hereunder, then without limitation on City's other rights or remedies hereunder, City may at its option, but shall not be required to, procure or maintain such insurance and pay any or all premiums thereon or other costs or expenses in connection therewith, in which event all costs and expenses to City in connection with such insurance, including but not limited to such premiums, shall be payable to City by Licensee immediately upon City incurring the same. The amount of coverage required in sections (a) and (b) shall be increased each five (5) years at the beginning of each new option term exercised by Licensee to reflect the greater of (i) the then current economic conditions relating to insurance needs and availability of such insurance upon commercially reasonable terms as may be mutually agreeable to Licensee and City, or (ii) an increase by a percentage which is equal to the percentage change in the Consumer Price Index during the immediately preceding term of the Agreement.

**10. General Indemnification.** Licensee hereby indemnifies and holds City, its elected and appointed officials, including the members of City Council and the Airport Board, and its agents and employees, harmless from and against all liability for injuries to persons or damage to property caused wholly or in part by use of the access granted hereunder.

11. **Assignment.** Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable in whole or in part without the prior written consent of the Airport Board.

12. **Non-responsibility of City for Airport Closures.** City shall not be responsible for Airport closures or the inability to operate specific aircraft at any time. Notwithstanding the foregoing, and without in any way imposing upon City a financial obligation other than as may be approved by the City Council from time to time as part of its budget, City shall use good faith efforts to keep the Airport open and generally accessible to the flying public and Licensee and to enter into agreements with Fixed Base Operators or others to assist in meeting such objectives.

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

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

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

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

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

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

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

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

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

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

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

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

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

l. Gender. Any reference to he, she, or it shall not be binding as to gender, but shall be construed and interpreted to mean he, she, or it as appropriate in connection with the correct gender.

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

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

o. Facsimile Copies. Facsimile executed copies of this Agreement shall be deemed an original copy. Any party may rely upon the facsimile copy of the original executed Agreement, which may be executed in counterparts. The parties agree to exchange fully executed original copies by mail within 5 days after signing, provided that said exchange or the failure to exchange originals shall in no way be construed as voiding or negating use of the facsimile copies as originals.

p. Notices. All notices permitted or required under this Agreement shall be deemed given upon (i) personal delivery (ii) actual receipt of notice by the party to whom such notice was directed, or (iii) 48 hours after having been deposited in the United States mail, certified, postage prepaid, with a second copy sent by regular first class mail and addressed to the appropriate party, at the address provided below or such other address as may hereafter be given by one party to the other party.

**In Witness Whereof, the parties have executed this Agreement as of the Effective Date \_\_\_\_\_**

**“City”**

**The City of Driggs, Idaho  
a Municipal Corporation**

\_\_\_\_\_

**“Licensee”**

\_\_\_\_\_

**Mailing Address**

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02/08/00 LAB/SL  
08/31/02 MO/SL  
10/24/02 Driggs Airport Board/SL  
2/18/03 Driggs Airport Board/SL  
08/16/2006 Driggs Airport Board/YK