



City of Madras
Work Session
City Council Chambers

June 14, 2016
5:30 p.m.

AGENDA

- I Call to Order

- II Willowbrook Subdivision Pump Station (VERBAL)

Public Works Director, Jeff Hurd
Chet Antonsen

- III "Draft" FBO and Airport Management Services Agreement - Rob Berg

City Administrator, Gus Burrell

- IV Adjourn

Pursuant to ORS 192.640, this agenda includes a list of the principal subjects anticipated to be considered at the above referenced meeting; however, the agenda does not limit the ability of the City Council to consider additional subjects. Meetings are subject to cancellation without notice.

This meeting is open to the public and interested citizens are invited to attend. This is an open meeting under Oregon Revised Statutes, not a community forum; audience participation is at the discretion of the Council. The meeting may be audio taped. Minutes of this and all public meetings are available for review at the Madras City Hall. The meeting place is handicapped accessible. Those needing assistance should contact the City Recorder two (2) days in advance of the meeting.

The Council takes no formal action during Work Sessions.

Executive Sessions are not open to the public; however, members of the press are invited to attend. *The City of Madras is an Equal Opportunity Provider.*

CITY OF MADRAS
Request for Council Action

Date Submitted: June 8, 2016

Agenda Date Requested: June 14, 2016

To: Mayor and City Council

From: Gus Burrell, City Administrator

Subject: **Work Session – Review “Draft” FBO and Airport Management Services Agreement – Rob Berg.**

TYPE OF ACTION REQUESTED: Discussion only to inform finishing terms of new proposed 5 year agreement

STAFF ANALYSIS AND DESCRIPTION:

The City’s current Fixed Based Operator (FBO) and Airport Management Services agreement with Robert M. Berg, dba Berg Air, LLC will expire on July 1, 2016. Berg Air and City staff are interested in renewing the agreement for another five year period. The City Administrator has met on two occasions this winter and spring to discuss terms of the new agreement. The new terms proposes the following general items:

- In reviewing comparable data of other Central Oregon airport management services and in evaluating increased lease management & airport operations activities, there is an airport management services fee increase proposed going from \$1,500 per month to \$3,500 per month.
- Generally the same buildings for use by Berg Air and arrangements of current revenue share of hangar rentals, firefighting (Heli-base), and fuel sales remain unchanged.

Items for Council feedback for the new agreement:

- Staff has received comment that there is concern about dogs being kept in the General Aviation Building (GAB) by Berg Air staff and its discomfort and questionable image to some people. What does Council want to see in this agreement about Berg Air having animals in the building?
- Staff has received concern about personal vehicles and recreational equipment not related to airport activities being kept at the Airport by Berg Air or its affiliates. Staff has discussed the issue with Rob Berg, and he has stated that he intends to have the situation corrected by the end of June 2016.
- Staff has received comment that there needs to be some clarification as to the hours of operation at the GAB and FBO Hangar for when services are available, and if unattended

a phone number of whom to call for service or assistance. The new agreement will plan to include this clarification and service request.

- Is Council generally satisfied with the level of services being provided?
- Are there any issues that Council wishes addressed in the new agreement?

The City Attorney is in the process of completing edits to the renewal agreement. It has been requested by Berg Air to be two separate agreements (i.e. FBO part one and Airport Management Services as part two) as it was in 2006 so that in the event Rob is only able to fulfill responsibilities for one or the other agreements in the future.

SUMMARY:

- A. **Fiscal Impact:** Hangar rental share, fire-fighting (Heli-base) revenue share, and splitting of fuel profit proceeds remain the same as the current agreement. An increase to the Airport Management Services fee is proposed to increase from \$1,500 per month to \$3,500 per month with an escalator adjustment annually.
- B. **Recognition of Collateral Material and Technical Report:** See attached current FBO and Airport Management Services Agreement

RECOMMENDATION: Discussion only to inform finishing terms of new proposed 5 year agreement

**FIXED BASED OPERATOR
MANAGEMENT AGREEMENT
AND
AIRPORT PREMISES LEASE**

This agreement is made this 1ST day of July, 2011, between the **CITY OF MADRAS**, hereinafter "CITY," and **ROBERT M. BERG**, dba **BERG AIR, LLC**, hereinafter referred to as "BERG", for the occupation of portions of the Madras Municipal Airport for the purposes of conducting a commercial aviation business and is conditioned upon BERG also providing the services of Fixed Base Operator (FBO), as herein described.

1. PURPOSE

1.1 The "CITY" owns the Madras Municipal Airport and the aviation fuel concession/facility located at the Airport, and wishes to lease out operation of the fuel facility and certain aviation business activities, as well as utilize BERG'S skill and knowledge concerning the day-to-day airport operations in furtherance of the "CITY'S" desire to provide a safe, convenient, and attractive facility for the flying public. BERG wishes to operate the aviation fuel facility, BERG'S businesses, and serve as the Fixed Base Operator (FBO) for the City of Madras.

2. PREMISES

2.1 In consideration for serving as the FBO, BERG is entitled to a nonexclusive occupation and use of the Madras Municipal Airport, subject to certain exceptions described below and subject to any existing or future leasehold granted by the CITY.

The Madras Municipal Airport is described as:

See Quitclaim Deed recorded in Book 23, Page 91, attached hereto as Exhibit "A."

2.2 BERG'S use of the Airport is subject to the leaseholds and/or other use of:

- A. Williams Land and Livestock, LLC, which lease was executed for purposes of permitting farming activities on portions of the Airport;
- B. Freightliner Corporation (now Daimler Trucks North America, LLC), which includes abandoned runway 29-11;
- C. Harold Siegenhagen S and L Farms, which was executed for purposes of permitting farming activities on portions of the Airport;

- D. The area described as the Desert Peaks Golf Course;
- E. Jefferson County Rod and Gun Club;
- F. Mt. Jefferson Rifle, Archery and Pistol Association;
- G. Madras Drag Racing Association, dba Madras Drag Strip;
- H. Madras Speedway, Inc.;
- I. Butler Aircraft Company / Travis and Katherine Nan Garnick;
- J. ITT Corporation;
- K. MACAIR, LLC;
- L. Mid-Oregon Lumber Products, LLC;
- M. Middleton Septic and Portable Toilets, LLC;
- N. Oregon State University Central Oregon Agricultural Research Center;
- O. Precision Applications;
- P. Douglas Shepard, Et Al (T-Hangar #3);
- Q. Charles and Deloras Skeans / Harold Horning / Martin Lehr (T-Hangar #2);
- R. Jim Waetjen / Jim Preuit (T-Hangar #1);
- S. Wilbur-Ellis Company.

The above referenced leaseholds are subject to change from time to time.

2.3 Notwithstanding Section 2.2, BERG shall have authority to ensure that use of these leaseholds does not represent a risk to the airport and its operations and otherwise comply with FAA airport requirements and similar management practices.

2.4 BERG shall have exclusive possession and use of the two (2) large hangars with the repair shop in the South Hangar, the FBO office space in the General Aviation Building, the property located immediately North of the General Aviation Building which contains tanks for aircraft fuel storage, and jurisdiction over the tie-down areas which will be rented through BERG.

2.5 The terms of this lease and the rights and obligations of the parties are subject to the terms of the deed conveying the Airport from the United States of America to the City of Madras, including but not limited to the following:

No exclusive right for the use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others of the same class. The term exclusive right being defined to mean:

- A. Any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft;
- B. Any exclusive right to engage in the sale or supplying of aircraft, accessories, or supplies, excluding the sale of gasoline and oil, or aircraft services necessary for the operation of aircraft (including the maintenance, repair of aircraft, aircraft engines, propellers, and appliances).

2.6 CITY warrants that it has possession of the leased premises and has the right to lease same. CITY will defend BERG'S right to quiet enjoyment of the leased premises against the lawful claims of all persons during the term of this lease, except claims of the United States made pursuant to the terms of the deed disclosed to the LESSEE and referred to above.

3. TERM

3.1 The term of this agreement shall commence on July 1, 2011, and shall continue for five (5) years, unless sooner terminated.

4. RENT AND CONSIDERATION

4.1 The consideration for the LEASE of the PREMISES shall be an annual payment by BERG of \$1.00 (one dollar) and satisfactory performance as the Fixed Base Operator for the Madras Airport as herein described, plus other valuable consideration. Rent is payable on the day this lease is executed for the upcoming year, thereafter on the anniversary date of the date this lease is executed.

4.2 For services as the Fixed Base Operator (FBO), in addition to the non exclusive occupation of the airport as described herein, the CITY agrees to pay BERG \$1,500 per month (during such time as BERG is providing day-to-day Airport management services), as well as allow BERG the right to keep certain fees, or portions thereof, collected for use of the AIRPORT and sale of aviation fuel, and to allow BERG to purchase aviation fuel for his own use at \$0.05 (five cents) over the CITY'S cost. BERG shall be entitled to:

- One-half of the profits from the sale of aviation fuel,
- One-half of the rental proceeds from the two old military hangars (also known as the "North" and "South" hangars),
- All of the proceeds of aircraft tie-down space rental,
- Twenty dollars (\$20.00) per month per unit rented on the new nine unit T-hangers (owned by the City) and
- Eight dollars (\$8.00) per month per storage unit rented. (There are two 8 ft. storage units which are located on the North and South end of the City's Nine Unit T-Hangars.)

4.3 In consideration of the considerations set forth in 4.1 and 4.2 above, BERG agrees to perform the duties of Fixed Base Operator.

4.4 BERG is engaged as an independent contractor, and will be so deemed for purposes of the following:

- A. BERG will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.
- B. BERG is not entitled to any benefits generally granted to City employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this agreement to BERG are vacation, holiday, sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, comp time, Social Security, Worker's Compensation, unemployment compensation, or retirement benefits.

5. FIXED BASE OPERATOR DUTIES

5.1 Operate the Airport UNICOM (or CTAF) radio frequency assigned to the Madras Municipal Airport in conformance with standards set forth in Federal law, the Federal Aviation Regulations (14 CFR et. Seq.) and the Aeronautical Information Manual.

5.3 Maintain or ensure the maintenance of the AWOS, runway lighting and associated features.

5.4 Monitor the various leases to ensure compliance with airport operational and safety standards including periodic inspections as allowed for in the respective lease.

5.5 Assist the City in recruiting new businesses to lease and or locate their business or aircraft at the Madras Municipal Airport and promoting the use of the airport for industrial and business activities beneficial to the airport and its long-term operation.

5.6 Encourage pilots operating on the Airport or in the Airport traffic pattern to conduct their operations in conformance with the standards set forth in the Federal Aviation Regulations, the Aeronautical Information Manual and any applicable local rule or practice established at the Airport.

5.7 Perform janitorial service and maintenance of the General Aviation Terminal including minor repairs as required.

5.8 Maintain the parking lot, yard and landscaping.

5.9 Manage the Airport courtesy car(s) or rental car(s).

5.10 Provide material and data on Airport operations in a timely manner, as related to FBO services and duties as herein described.

5.11 Manage the CITY'S aircraft fuel concession by:

- (a) Maintaining adequate supplies of avgas and jet fuel in storage tanks.
- (b) Provide fuel service for aircraft during normal working hours and, for an extra service charge, provide on-call fuel service, should the card lock system not be sufficient.
- (c) Account for fuel sales and report fuel purchase and sale information to CITY on monthly basis.
- (d) Report promptly to the City the need for maintenance or repairs of the fuel tanks, card lock system, pumps, truck and related equipment.

5.12 Regularly attend Airport Industrial Site Commission meetings.

5.13 Attend City Council meetings as requested by the City Administrator, Mayor, or City Council.

5.14 Represent the Madras Municipal Airport in various forums and public meetings.

5.15 Provide leadership in the development and management of the ALP (Airport Layout Plan).

5.16 Inspect all fences and gates on the Airport and report to the City Public Works Director or his designee the need for repairs or improvements.

5.17 Report to Public Works any required maintenance needed to keep all taxiways, parking areas, runways and land adjacent to the hangars free from litter and debris which would constitute a hazard to aircraft or a fire hazard to building and structures located on or adjacent to the Airport.

5.18 Routine inspection of all taxiways, parking areas, runways, runway and taxiway lights, approach lights and rotating beacon for defects which amount to or could lead to a hazard to aircraft and report same to the CITY and to the responsible FSS as a NOTAM, if appropriate. Routine inspection of all other physical facilities and equipment.

5.19 Encourage pilots operating on the Airport or in the Airport traffic pattern to conduct their operations in conformance with the standards set forth in the Federal Aviation Regulations, the Aeronautical Information Manual and any applicable local rule or practice established at the Airport.

5.20 Maintain the parking lot, yard and landscaping surrounding the General Aviation Terminal.

5.21 Provide material and data on Airport operations in a timely manner.

5.22 Assist in snow removal, weed control and other general Airport maintenance activities.

6. USE OF PREMISES

6.1 BERG shall use the premises only for the conduct of a commercial aviation business, including but not limited to aircraft repair, aircraft maintenance, aircraft storage, the sale of aircraft, the sale of aircraft parts, the sale of pilot supplies, pilot training, check rides, aircraft rental, and provision of aircraft charter services pursuant to 14 CFR Part 135. Any other use of the premises must be approved in writing by the CITY.

7. RESTRICTIONS ON USE

7.1 BERG shall at all times conduct its business in conformance with all applicable laws, ordinances, and regulations of any public governmental authority affecting the premises and use of the premises, including but not limited to, those issued by the Federal Aviation Administration and the Oregon Department of Transportation, Aeronautics Division. BERG shall not:

- (a) Omit or fail to procure at the appropriate time any permit or license necessary for any activities or operations on the leased premises and shall not omit or fail to pay before delinquent any cost, charge expense, of any kind or nature, incurred as a consequence of any activities or operations of the leased premises; or
- (b) Omit or fail to do anything, or do or permit anything to be done on or about the leased premises, or bring or keep anything on the leased premises, or in any improvement or facility erected thereon, which will in any way conflict with any law, ordinance, rule or regulation which is now in force or which may hereafter be enacted or promulgated by any public authority having jurisdiction over the leased premises; or
- (c) Commit or suffer to be committed in or upon the leased premises any other act or thing which may disturb any other tenant at the airport. It is understood that the normal operation of airplanes in the air, and to and from the leased premises, is not considered a nuisance or disturbance and that BERG has the right to conduct such operations twenty-four (24) hours a day.

7.2 BERG shall refrain from any use which would allow animals or livestock on the Airport.

7.3 BERG shall not erect any structure which, in the opinion of the CITY, constitutes a hazard to aircraft.

8. ABANDONMENT

8.1 BERG shall not vacate or abandon the leased premises at anytime during the term hereof, and if BERG shall vacate or abandon the premises, any personal property belonging to BERG and left upon the leased premises and any or all of BERG'S improvements and facilities thereon, shall, at the option of the CITY, become the property of the CITY. Abandonment of the premises by BERG for a period of more than thirty (30) days shall constitute an event of default by BERG.

9. LIENS

9.1 BERG shall keep the leased premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligation incurred by BERG, BERG'S employees, agents and contractors. BERG agrees to save the CITY harmless from any such liens, and to pay the CITY upon demand, the cost of discharging such liens with interest at the then existing legal rate per annum from the

date of such discharge, together with reasonable attorney's fees in connection with the settlement, trial, or appeal of any such lien matter.

10. TAXES

10.1 During the term of this lease (original and any additional), BERG hereby agrees to pay or cause to be paid prior to delinquency, any taxes, including possessory interest and any assessments levied or assessed:

- (a) On the leased premises;
- (b) On all possessory interest hereunder or in the leased premises, and;
- (c) On any improvements, fixtures, and equipment now or hereafter existing on the leased premises and on any personal property situated in, on, or about any building improvements thereon.

10.2 It is understood, however, that BERG may pay any such taxes and assessment under protest, and without liability, cost or expense to the CITY, in good faith contest the validity or amount thereof. Current taxes shall be prorated as of the date of this lease.

11. SEWAGE AND STORMWATER

11.1 BERG shall prevent the entrance of objectionable quantities of petroleum products and other deleterious wastes into the sewage and storm water drainage systems serving the airport specific to the area he uses and/or controls. Discharge of industrial waste is prohibited. For discharge of anything other than domestic waste, BERG must obtain clearance from the appropriate regulatory authority.

12. UTILITIES

12.1 Except as provided by written agreement of the parties, all charges for utility services to the leased premises shall be paid by BERG when due, including connection fees, plant expansion fees such as System Development Charges, monthly service fees, and standby charges, all as amended from time to time.

12.2 It is agreed that the collection and disposal of hazardous wastes, trash, clippings, and refuse from the leased premises shall be at BERG'S own expense in accordance with applicable laws and ordinances.

12.3 BERG shall not allow hazardous wastes, clippings, trimmings, cans, cartons, barrels, used equipment, scrap or other debris to collect in any way on or about the leased premises provided, however, that same may be stored in a suitably screened and protected enclosure pending collection and removal, as long as such storage does not generate odors, attract rodents or insects, or become offensive in any manner and is otherwise accomplished in compliance with all state and federal laws and regulations.

13. ALTERATIONS

13.1 BERG shall not make any alteration to the leased premises without prior written approval by the CITY.

13.2 All alterations or improvements to structures situated on the leased premises, together with any structures or buildings constructed on the leased premises, shall be the property of the CITY unless the CITY has agreed in writing to the contrary. Any alteration or improvement constituting a fixture under Oregon law shall be the property of the CITY. Furniture, decorations, curtains, blinds, supplies, products, tools, equipment and other personal property placed by BERG on the leased premises shall remain the property of BERG.

14. DEFAULT

14.1 The following conduct by BERG shall constitute an event of default by BERG.

- (a) BERG'S failure to pay the rent herein fixed;
- (b) BERG'S failure to perform the duties of fixed base operator as described in Section 5, Fixed Base Operator Duties;
- (c) BERG'S failure to pay any taxes, including possessory interest taxes or assessments agreed to be paid by BERG in paragraph 10.1 of this agreement, in accordance with the terms of said paragraph;
- (d) BERG'S failure, after thirty (30) days written notice from the CITY, to keep, perform, or observe any other term, covenant, or condition of this agreement to be kept, performed, or observed by BERG.
- (e) BERG'S absence from the leased premises for more than thirty (30) days;
- (f) BERG'S filing of a voluntary petition in bankruptcy or the assignment of all, or substantially all of BERG'S assets for the benefit of BERG'S creditors or the institution of proceedings in bankruptcy against BERG or the appointment

of a receiver of the assets of BERG; provided, however, that if such proceedings or appointments are involuntary, then they shall not be considered "an event of default by BERG unless BERG fails to procure a dismissal thereof within thirty (30) days after the institution of such involuntary bankruptcy proceedings or the appointment of such receiver.

15. RESULTS OF BERG'S DEFAULT

15.1 Upon the occurrence of an event of default by BERG, and after thirty (30) days written notice from the CITY, the CITY, besides any other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the leased premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of BERG. Should the CITY elect to re-enter as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this lease, relet the leased premises and any improvements thereon or any part thereof for such term or terms (which may be for a term extending beyond the term of this lease) and at such rental or rentals and upon such other terms and conditions as the CITY in its sole discretion may deem advisable, with the right to make alterations and repairs to said leased premises and improvements. Upon such reletting:

- (a) BERG shall be immediately liable to pay the CITY, in addition to any indebtedness other than rent due hereunder, the cost and expenses of such reletting and of such alterations and repairs incurred by the CITY, and the amount, if any, by which the rent reserved in this lease for the period of such reletting (up to but not beyond the term of this lease) exceeds the amount agreed to be paid as rent for the leased premises for the period of such reletting; or
- (b) At the option of the CITY, rents received by the CITY from such reletting shall be applied; first, to the payment of any indebtedness, other than rent due hereunder from BERG to the CITY; second, to the payment of any costs and expenses of such reletting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by the CITY and applied in payment of future rent as the same may become due and payable hereunder.

15.2 If BERG has been credited with any rent to be received by such reletting upon option 15.1(a), and such rent shall not be promptly paid to the CITY by the new tenant, or if such rentals received from such reletting under option 15.1(b) during any month be less than that to be paid during the month by BERG hereunder, BERG shall pay any such deficiency to the CITY. Such deficiency shall be calculated and paid monthly.

No such re-entry or taking possession of the leased premises and any improvement thereon by CITY shall be construed as an election on its part to terminate this lease, unless a written notice of such intention be given to BERG. Notwithstanding any such reletting without termination, the CITY may, at any time thereafter, elect to terminate this lease for such previous breach.

Should the CITY at any time terminate this lease for any breach, the CITY may, upon thirty (30) days written notice thereof, take title to LESSEE's interest in any and all buildings and improvements on the leased premises. The CITY may, at its option, extend said thirty (30) day notice period for additional periods for purposes of possible settlement of any breach, including the cost of recovering the leased premises, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term, all of which amounts shall be immediately due and payable from BERG to the CITY.

16. NONWAIVER

16.1 The waiver by the CITY of any breach by BERG of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant, or condition of the lease or any other part of this agreement. No term, covenant, or condition hereof can be waived except by the written consent of the CITY, and forbearance of indulgence of the CITY, in any regard whatsoever, shall not constitute a waiver of the terms, covenant, or condition to be performed by BERG to which the same may apply; and until complete performance by BERG of the term, covenant, or condition, the CITY shall be entitled to invoke any remedy available to it hereunder or by law, despite such forbearance or indulgence.

17. TERMINATION

17.1 If BERG is not in default hereunder, BERG shall have the right to terminate this lease and inclusive FBO agreement upon ninety (90) days advanced written notice to the CITY and after paying all amounts due the CITY hereunder. Upon termination pursuant to this paragraph, BERG may remove only the trade fixtures, BERG may have placed or installed upon the leased premises during the term of the lease; provided, however, that upon said removal, BERG shall repair, at BERG'S own expense, any damage resulting therefrom and leave the leased premises in a clean and neat condition. BERG shall deliver possession of the leased premises on or before the expiration of the ninety (90) day notice period provided herein.

17.2 If the CITY, at any time during the term of this Lease / FBO Agreement makes a determination that the duties that are generally performed by an Airport Manager should be under a separate and distinct agreement, the City reserves the right to terminate

BERG'S services as Airport Manager upon giving thirty (30) days advanced written notice to BERG.

18. INDEMNIFICATION

18.1 The CITY shall not be liable to BERG, or any other person or entity for personal injury, disease, sickness or death, or property damage of any nature or description, including but not limited to the costs of cleanup, storage, removal or remediation of hazardous or toxic wastes of any kind, arising out of BERG'S operations or use of the leased premises. BERG shall, for the full term of this lease, indemnify, hold harmless and defend the CITY and its respective officers, agents, employees and insurers, of and from any and all such claims, liens, liability, expense (including attorney's fees), cost or penalty associated with the cleanup, storage, removal or remediation of hazardous or toxic wastes, losses, awards and judgments arising out of BERG'S operations.

19. INSURANCE

19.1 BERG shall obtain and maintain comprehensive general liability insurance covering the premises described in paragraph 2.4, products insurance and completed operations insurance, all naming the CITY as an additional insured and with limits of liability not less than \$1,000,000 per claimant per occurrence, with an aggregate limit of not less than \$1,000,000 per occurrence.

19.2 BERG shall obtain and maintain liability insurance coverage for all insurable liability arising out of BERG'S use of aircraft, and activities involving the risk of an aircraft accident, including but not limited to aircraft rental, aircraft charter, pilot services, glider towing operations, aerial photography or survey, flight training and other pilot training, all naming the CITY as an additional insured and with limits of liability not less than \$1,000,000 per occurrence with an aggregate limit of \$1,000,000 per occurrence

19.3 All insurance policies required under this lease shall be written by companies satisfactory to the CITY and shall contain a provision that written notice of cancellation or material change shall be delivered to the City ten (10) days in advance of the effective date thereof.

19.4 BERG shall at all times during this lease and FBO agreement give the CITY adequate evidence, in the form of certificates of insurance, that all policies of insurance required to be obtained by BERG under this lease and FBO agreement have been obtained and are in full force and effect.

19.5 The CITY is not required to maintain fire insurance on any buildings or structures covered by this lease and if any such building or structure is damaged or destroyed by fire, The CITY has no obligation to repair or replace such building or structure.

19.6 The CITY shall obtain and keep in force a policy of insurance providing standard Owners, Landlords and Tenant's liability coverage with limits of at least \$200,000 per occurrence and \$500,000 aggregate limit per occurrence for liability of the CITY arising out of defects in the entire airport premises. BERG shall not be an insured on such policy, and thus entitled to no benefits of such insurance.

19.7 The CITY shall obtain and maintain products and completed operations liability coverage with respect to aviation gasoline and jet fuel storage, fuel truck operations and fuel sales, with such limits of liability as required by the fuel supplier or suppliers. BERG and any employee of BERG shall be insured with respect to such products and completed operations coverage.

19.8 The CITY shall obtain and maintain hangar keepers liability insurance, naming BERG as an additional insured, with limits of liability deemed adequate by the parties in light of the number and value of aircraft hangared or tied down at the Airport, and after consultation with the CITY'S risk manager or insurance agent.

20. INSPECTION OF PREMISES

20.1 BERG shall permit the respective agents, employees, or appointees of the CITY to enter in and upon the leased premises, and all improvements thereon, at all reasonable times for the purpose of inspecting the same.

21. SUBLETTING

21.1 BERG may rent and sublease space for any lawful purpose. However, BERG shall first obtain written approval from the CITY for the activity that the sub-tenant wishes to perform.

22. ASSIGNMENT

22.1 BERG shall not assign this lease without the prior written consent of the CITY.

23. CONSENT

23.1 Whenever consent is required hereunder by either BERG or the CITY, such consent is not to be unreasonably withheld.

24. RELATIONSHIP OF THE PARTIES

24.1 The CITY is neither a joint venturer with, nor a partner or associate of BERG with respect to any matter provided for in this lease or FBO agreement. Nothing herein contained shall be construed to create any such relationship between the parties or to subject the CITY to any obligation of BERG'S whatsoever. BERG'S business is entirely separate from the business of the CITY, and BERG is in no way an employee or agent of the CITY.

25. TIME IS OF THE ESSENCE

25.1 Time is of the essence of this FBO Agreement / lease.

26. CHOICE OF LAW

26.1 This lease and FBO agreement has been made, and shall be construed in accordance with the laws of the State of Oregon. All duties, obligations, and liabilities of the CITY and BERG with respect to the leased premises and FBO agreement are expressly set forth herein and this lease and FBO agreement can only be amended in writing.

27. ATTORNEYS FEES

27.1 In the event that either party shall commence any action to enforce the terms of this lease and FBO agreement, the prevailing party shall be awarded reasonable attorneys fee, which shall be fixed by the Court. The prevailing party's right to attorney fees shall include fees incurred for the purposes of arbitration, mediation, at both trial, and upon appeals.

28. NOTICES

28.1 All notices to be given hereunder shall be in writing and shall be deemed given when deposited in the United States mail, postage prepaid, certified or registered, addressed as follows, or to such other address as from time to time may be designated by a party by written notice to the other party.

CITY OF MADRAS
Madras City Hall
71 S.E. "D" Street
Madras, OR 97741-1605

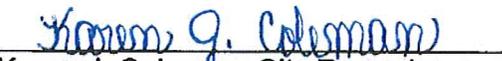
ROBERT M. BERG
2028 N.W. Airport Way
Madras, Oregon 97741

IN WITNESS WHEREOF, the parties hereto have executed the LEASE AND FBO AGREEMENT as of the day and year first above written.

CITY OF MADRAS


Melanie Widmer, Mayor

ATTEST:


Karen J. Coleman, City Recorder

LESSEE AND FBO


Robert M. Berg, dba Berg Air, LLC

**APPROVED AS TO LEGAL
SUFFICIENCY BY:**


Robert S. Lovlien, City Attorney
Bryant, Lovlien and Jarvis, PC

THIS INDENTURE, made as of the 16th day of July 1948, between the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), and the Surplus Property Act of 1944 (58 Stat. 765) as amended thereby, and regulations and orders promulgated thereunder, party of the first part, and the CITY OF MADRAS, OREGON, a municipal corporation, and JEFFERSON COUNTY, OREGON, a body politic and corporate, under the laws of the State of Oregon, acting by and through their Mayor and County Judge, respectively, parties of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the assumption by the parties of the second part of all the obligations and their taking subject to certain reservations, restrictions and conditions and their covenant to abide by and agreement to certain other reservations, restrictions and conditions, all as set out hereinafter, does remise, release and forever quitclaim to the said parties of the second part, their successors and assigns, under and subject to the reservations, restrictions and conditions, exceptions, and reservation of fissionable materials and rights hereinafter set out, all its right, title and interest in the following described property situate in the County of Jefferson, State of Oregon, to-wit:

Tract 1 (formerly A-1)

That part of the south half of the Southwest quarter of Section 23, Township 10 south, Range 13 East of the Willamette Meridian, lying west of the west right-of-way line of the Warm Springs State Highway, subject to easements for county roads. ALSO, subject to an easement granted to the Plains Water District by the United States of America for a water pipeline;

TRACT 2 (formerly A-2)

The Southeast quarter of the Southeast quarter of Section 22, Township 10 south, Range 13 East of the Willamette Meridian, subject to easements for county roads; ALSO, subject to an easement granted to the Plains Water District by The United States of America for a water pipeline;

TRACT 3 (formerly A-3)

Beginning at the Southwest corner of the Northeast quarter of Section 26, Township 10 South, Range 13 East of the Willamette Meridian; thence North $89^{\circ} 40' 24''$ East on the South line of said Northeast quarter, a distance of 544.17 feet to the Westerly right-of-way line of the Warm Springs Highway; thence North $27^{\circ} 07' 04''$ West on said right-of-way line 1213.67 feet to the North-South center line of said section; thence South on said center line a distance of 1085.22 feet to the point of beginning;

TRACT 4 (formerly A-4)

Beginning at the Southeast corner of the Northwest quarter of Section 26, Township 10 South, Range 13 East of the Willamette Meridian; thence South $89^{\circ} 40' 24''$ West along the East-West center line of said Section 1324.28 feet to the Southwest corner of the East half of the Northwest quarter of said Section; thence North along the West line of the said East half of the Northwest quarter 2624.30 feet to the North line of said Section 26; thence North $89^{\circ} 39' 44''$ East along the said North Section line a distance of 482.54 feet to a point on the West right-of-way line of the Warm Springs State Highway; thence South $27^{\circ} 07' 04''$ East along said West right-of-way line 726.48 feet; thence continuing along said right-of-way line North $62^{\circ} 52' 56''$ East 500 feet; thence still continuing along said right-of-way line South $27^{\circ} 07' 04''$ East 1021.35 feet to a point on the North-South center line of said Section 26; thence south along said center line 1085.22 feet to the point of beginning; ALSO, subject to an easement granted to the Plains Water District by the United States of America for a water pipeline;

TRACT 5 (formerly A-5)

The West half of the West half of Section 26, Township 10 South, Range 13 East of the Willamette Meridian;

TRACT 6 (formerly A-6)

The Northeast quarter of Section 27, Township 10 South, Range 13 East of the Willamette Meridian, subject to easements for county roads;

TRACT 7 (formerly A-7)

The East half of the Northwest quarter and the Southwest quarter of the Northwest quarter of Section 27, Township 10 South, Range 13 East of the Willamette Meridian;

Should be Sec. 28

TRACT 9 (formerly A-8)

The Southeast quarter of Section 28, Township 10 South, Range 13 East of the Willamette Meridian, subject to easements for county roads;

TRACT 10 (formerly A-9)

The Southwest quarter of Section 27, Township 10 South, Range 13 East of the Willamette Meridian, subject to easement for county roads;

TRACT 11 (formerly A-10)

The Southeast quarter of Section 27, Township 10 South, Range 13 East of the Willamette Meridian, subject to easements for county roads;

TRACT 12 (Portion) (formerly A-11)

The East half of the Southwest quarter and all that part of the West half of the Southeast quarter of Section 26, Township 10 South, Range 13 East of the Willamette Meridian, that lies Southwesterly of the Southwesterly right-of-way line of the Warm Springs Highway, except the following described property: starting at the South quarter corner of said Section 26; thence Northerly along the North-South center line of said Section 26 a distance of 480 feet more or less; thence Easterly, parallel to the South section line of said Section 165 feet; thence Northerly, parallel to the North-South center line of said Section 245 feet; thence westerly, parallel to the said South Section line and 725 feet distant therefrom to a point that is 1400 feet Easterly from the West Section line of said Section 26; thence Southerly parallel to the said West Section line and 1400 feet distant therefrom a distance of 725 feet to said South Section line; thence Easterly along said South Section line a distance of approximately 1240 feet to the point of beginning;

TRACT 14 (Portion) (formerly A-13)

All that part of the Southeast quarter of the Southeast quarter, of Section 26, Township 10 South, Range 13 East, of the Willamette Meridian, that lies Southwesterly of the Southwesterly right-of-way line of the Warm Springs Highway;

TRACT 15 (formerly A-14)

The Northwest quarter (NW $\frac{1}{4}$) of Section 35, Township 10 South, Range 13 East of the Willamette Meridian;

TRACT 16 (formerly A-15) and 19 (formerly A-18)

The East Half (E $\frac{1}{2}$) of Section 34, Township 10 South, Range 13 East of the Willamette Meridian;

TRACT 17 (formerly A-16)

The North half of the Northeast quarter of Section 33 and the North half of the Northwest quarter of Section 34, Township 10 South, Range 13 East of the Willamette Meridian, subject to an easement for a county road;

TRACT 18 (formerly A-17)

The South half of the Northwest quarter and the Northeast quarter of the Southwest quarter of Section 34, Township 10 South, Range 13 East of the Willamette Meridian;

TRACT 20 (formerly A-19)

The West Half (W $\frac{1}{2}$) of the Southwest quarter (SW $\frac{1}{4}$) of Section 35, Township 10 South, Range 13 East of the Willamette Meridian;

TRACT 34 (formerly A-34)

The East half of the Southwest quarter of Section 35, Township 10 South, Range 13 East of the Willamette Meridian, subject to easements for a county road;

Together with the following easements:

TRACT 8-E (formerly A-7a)

An easement 25 feet in width for a drainage ditch over and across the Northwest quarter of the Northwest quarter of Section 27, Township 10 South, Range 13 East of the Willamette Meridian, said easement being 12.5 feet on either side of and adjacent to the following described center line;

Beginning at a point on the South line of the Northwest quarter of the Northwest quarter of said Section 27, said point being approximately 1320 feet South and 940 feet East of the Northwest corner of said Section 27; thence North 700 feet to the terminal point of said easement.

TRACT 30-E (formerly A-29)

A parcel of land situated in Lot 3, Section 3, Township 11 South, Range 13 East of the Willamette Meridian, in Jefferson County, Oregon, said parcel being a strip of land 20 feet in width over and across said Lot 3, and being 10 feet on each side of the following-described center line:

Beginning at a point on the North line of said Section 3 from which the Southeast Corner of Section 34, in Township 10 South, Range 13 East of the Willamette Meridian, bears North 88° 15' East 2582.4 feet; thence South 57° 22' West 480 feet, more or less, to the West line of Lot 3 in said Section 3.

being a part of the same property acquired by the United States of America under Declarations of Taking filed in the District Court of the United States for the District of Oregon, Civil No. 1901 and No. 1912; and under deeds from various owners all of record in Jefferson County, Oregon. The above described premises are transferred subject to existing easements, recorded and unrecorded, for roads, highways, public utilities, railways and pipelines and to all of the conditions, restrictions, reservations and exceptions contained in the Declarations of Taking and deed whereby the United States of America acquired title to the property conveyed.

TOGETHER WITH appurtenant avigation easements and buildings and structures with their attached fixtures, improvements and equipment described as follows:

<u>Bldg No.</u>	<u>Description</u>	<u>Size</u>
101	Guard House	20' x 76'
102	Crew Chief Building	20' x 60'
103	Administration Building	20' x 100'
104	Administration Building	20' x 100'
105	Hangar	20' x 100', 11' x 13'
106	Bombsight Storage	5' x 6'
107	Latrine	20' x 20'
108	Control Tower	15' x 15', 96'8" x 16'
109	Hangar	80'2" x 122'3 1/2"
110	Administration Building	20' x 100'
111	Crew Chief Building	20' x 60'
112	Sig. Operations	20' x 100'
113	Armament Building	20' x 100', 32' x 48'
114	Fire Station	20' x 56', 12' x 12', 16' x 12'
115	Alert Building	20' x 60'

Bldg. No.	Description	Size
116	Alert Building	20' x 60'
117	Sewage Pump House	13' x 10'
119	Hydrogen Storage	6' x 9', 25' x 36'
120	Link Trainer Building	12'6" x 18'4", 61'1 1/2" x 80'2 3/4"
122	Balloon Release	5' x 5'
123	Emergency Power Plant	6' x 4'
124	Transmitter Building	10' x 20'
301	Dispensary	25' x 12 1/2'
310	Flag Pole	75' high
401	Barracks	20' x 100'
402	Barracks	20' x 100'
403	Barracks	20' x 100'
404	Barracks	20' x 100'
405	Mess Hall	40' x 108'
409	Lavatory	20' x 40'
410	Lavatory	20' x 40'
411	Lavatory	20' x 40'
412	Lavatory	20' x 56'
413	Office Building Administration	20' x 100'
414	Barracks	20' x 100'
415	Barracks	20' x 100'
416	Barracks	20' x 100'
420	Barracks	20' x 100'
421	Barracks	20' x 100'
422	Barracks	20' x 100'
424	Office Building Administration	20' x 100'
425	Recreation Building	20' x 100'
427	Recreation Building	22' x 72'
810	Beacon Tower	
811	Main Gate Guard House	6'4" x 10'4"
903	Barracks (Cooks Quarters)	20' x 60'
904	Latrine	20' x 32'
907	Barracks (Dormitory)	20' x 100'
908	Watchman's Shack	8'4" x 14'3"
1002	Used Laboratory	10' x 16'
1003	Barracks (Used Dorm.)	20' x 60'
1010	Field Office Building	32' x 68'
1102	Post Eng. Office Adm.	20' x 80'
1105	Storehouse	20' x 40'
1106	Paint Storage Building	8' x 10'
	Wind Indicator	
	Lamp Assembly 24" Beacon and Tower	
	Runways, Taxiways, Aprons, Roads, Parking Areas and Sidewalks	
	Fencing	
	Sanitary Sewage System with Imhoff tank and sewage pumps	
	Water Distribution System including tank with connecting lines	
	Electrical Distribution System	
	Telephone System	
	Field Marking, Field Lighting and Field Drainage Systems	
1	Pickup, International Mod. K-1214113, Motor No. 61692, S/N 2352, Cap. 1/2 Ton, USN37918	
1	Plow, Snow, Model 721, S/N 2322	
1	Tractor, Crawler type, Allis Chalmers Model WN50, Eng. No. 14081, w/dozer	
1	Grader, Motor, Adams Model 511, Mtr. No. TDFM-8137-T-1, S/N 3236 NA-13-172, Int'l. Mtr. S/N 8173TDFMLHC, Tractor Model 1D-14, Chassis TDFM8173TL	
1	Truck, Fire, Chev., USA502786, w/equipment, General Fire Pumper Mtr. BG54450, 1 1/2 Ton, Conventional Cab, Chassis No. 21MS12, Model Master 5814 - 1942	
1	Truck, Dump Watters, #60118869, w/Snow Plow and Banker, Truck Model SMD-S/N 424412, 5 Ton, w/equipment	
1	Battery Charger, Model 16RB33B1, 1 to 6 volt batteries 6 amp. DC, 5.5 amp. AC	

4 Axes, Fire, w/handles, #6
 1 Desk, exec. flat top, 36" x 63" 30"
 1 Desk, exec. flat top, 60" x 34" x 30"
 1 Truck, Ford, Model KMM54, S/N 527350, 1 1/2 Ton; Model
 Ltr. S/N 907 Mtr. w/fire extinguisher and snow
 truck loader
 1 Mixer, Concrete "Wonder", Size 3 1/2 cu yd, Shop # 31007
 W/AGO, 2 HP, 600 RPM, Type CFI, No. TA254671
 Portable

EXCEPTING, HOWEVER, from this conveyance all right, title and interest in and to all its property in the nature of equipment, furnishings and other personal property located on the above described premises which can be removed from the land without material injury to the land or structures located thereon, other than property of such nature located on the premises conveyed hereby which is reasonably necessary for the operation or maintenance of the airport or for the operation or maintenance of the structures and improvements specifically listed hereinabove as being transferred hereby, for any reasonable use for which such structures or improvements are readily adaptable; and further excepting from this conveyance all its structures on said premises other than structures specifically described or enumerated above as being conveyed hereunder; and reserving to the party of the first part for itself and its lessees, licensees, permittees, agents and assigns the right to use the property and structures excepted hereby in such a manner as will not materially and adversely affect the development, improvement, operation or maintenance of the airport and the right of removal from said premises of such property and structures, all within a reasonable period of time after the date hereof, which shall not be construed to mean any period more than one (1) year after the date of this instrument, together with a right of ingress to and egress from said premises for such purposes.

And further excepting from this conveyance and reserving to the party of the first part, in accordance with Executive Order 9908, approved on December 5, 1947, (12 F. R. 8223), all uranium, thorium, and all other materials determined pursuant to section 5 (b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761), to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the lands covered by this instrument which are hereby reserved for the use of the United States

together with the right of the UNITED STATES through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such use results in the extraction of any such material from the land in quantities which may not be transferred or delivered without a license under the Atomic Energy Act of 1946, as it now exists or may hereafter be amended, such material shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such material to it by any possessor thereof after such material has been separated as such from the ores in which it was contained. If the Commission requires the delivery of such material to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extraction, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect.

Further, the party of the first part, for the considerations hereinabove expressed, does hereby surrender, subject to the terms and conditions of this instrument, to JEFFERSON COUNTY, OREGON, the former's interest in and to those certain License Agreements No. W04-193-Eng-3441 dated February 16, 1944 and No. W04-193-Eng-5975 dated June 6, 1945 which granted to the UNITED STATES OF AMERICA licenses to construct, operate, maintain, renew and remove a water pipe line and power line, respectively, over, under and across certain property owned by said Jefferson County, Oregon.

Said property transferred hereby was duly declared surplus and was assigned to the War Assets Administrator for disposal, acting pursuant to the provisions of the above mentioned Act, applicable rules, regulations and orders.

TO HAVE AND TO HOLD said premises, with appurtenances, except the fissionable materials and other property excepted above and the rights reserved above, and under and subject to the reservations, restrictions and conditions set forth in this instrument, unto the said parties of the second part, their successors and assigns forever.

By the acceptance of this deed or any rights hereunder, the said parties of the second part, for themselves, their successors and assigns agree that the transfer of the property transferred by this instrument, is accepted subject to the following restrictions set forth in subparagraphs (1) and (2) of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Federal Property and Administrative Services Act of 1949 (Public Law 152 - 81st Congress), the Surplus Property Act of 1944, as amended thereby, and applicable rules, regulations and orders:

(1) That, except as provided in subparagraph (6) of the next succeeding unnumbered paragraph, the land, buildings, structures, improvements and equipment in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of the terms "exclusive right" as used in subparagraph (4) of the next succeeding paragraph. As used in this instrument, the term "airport" shall be deemed to include at least all such land, buildings, structures, improvements and equipment.

(2) That, except as provided in subparagraph (6) of the next succeeding paragraph, the entire landing area, as defined in WAA Regulation 16, dated June 26, 1946, and all structures, improvements, facilities and equipment in which this instrument transfers any interest shall be maintained for the use and benefit of the public at all times in good and serviceable condition, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the remainder of their estimated life, as determined by the Civil Aeronautics Administrator or his

successor, further provided, however, that the parties of the second part shall be required to maintain only that part of the landing facilities as is outlined in red on the attached General Plan drawing designated MMA-1-1/6. In the event materials are required to rehabilitate or repair certain of the aforementioned structures, improvements, facilities or equipment, they may be procured by demolition of other structures, improvements, facilities or equipment transferred hereby and located on the above described premises which have outlived their use as airport property in the opinion of the Civil Aeronautics Administrator or his successor.

By the acceptance of this deed or any rights hereunder, the said parties of the second part for themselves, their successors and assigns, also assume the obligations of, covenant to abide by and agree to, and this transfer is made subject to, the following reservations and restrictions set forth in subparagraphs (1) to (7), inclusive, of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Federal Property and Administrative Services Act of 1949 (Public Law 152 - 81st Congress), the Surplus Property Act of 1944, as amended thereby, and applicable rules, regulations and orders:

(1) That insofar as it is within their powers, the parties of the second part shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(2) That the UNITED STATES OF AMERICA (hereinafter sometimes referred to as the "Government") through any of its employees or agents shall at all times have the right to make nonexclusive use of the landing area of the airport at which any of the property transferred by this instrument is located or used, without charge; Provided, however, that such use may be limited as may be determined at any time by the Civil Aeronautics Administrator or his successor to be necessary to prevent undue interference with use by other authorized aircraft; Provided, further, that the Government shall be obligated to pay for damages caused by such use, or if its use of the landing area is substantial, to contribute a reasonable share of the cost of maintaining

and operating the landing area, commensurate with the use made by it.

(3) That during any national emergency declared by the President of the United States of America or the Congress thereof, the Government shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which any of the property transferred by this instrument is located or used, or of such portion thereof as it may desire, provided, however, that the Government shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, or control, and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; Provided, further, that the Government shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively of any improvements to the airport made without United States aid.

(4) That no exclusive right for the use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the term "exclusive right" being defined to mean

- (a) any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft;
- (b) any exclusive right to engage in the sale or supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances).

(5) That, except as provided in subparagraph (6) of this paragraph, the property transferred hereby may be successively transferred only with the proviso that any such subsequent transferee assumes all the obligations imposed upon the parties of the second part by the provisions of this instrument.

(6) That no property transferred by this instrument shall be

used, leased, sold, salvaged, or disposed of by the parties of the second part for other than airport purposes without the written consent of the Civil Aeronautics Administrator, which shall be granted only if said Administrator determines that the property can be used, leased, sold, salvaged or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the airport at which such property is located; Provided, that no structures disposed of hereunder shall be used as an industrial plant, factory, or similar facility within the meaning of Section 23 of the Surplus Property Act of 1944, as amended, unless the parties of the second part shall pay to the UNITED STATES such sum as the General Services Administrator or his successor in function shall determine to be a fair consideration for the removal of the restriction imposed by this proviso.

(7) The parties of the second part do hereby release the Government, and will take whatever action may be required by the General Services Administrator to assure the complete release of the Government from any and all liability the Government may be under for restoration or other damages under any lease or other agreement covering the use by the Government of the airport, or part thereof, owned, controlled or operated by the parties of the second part, upon which, adjacent to which, or in connection with which, any property transferred by this instrument was located or used; Provided, that no such release shall be construed as depriving the parties of the second part of any right they may otherwise have to receive reimbursement under Section 17 of the Federal Airport Act for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal agency.

In addition to the foregoing, Jefferson County, by the acceptance of this deed, does hereby release the Government from any and all liability the Government may be under for restoration or damages under License Agreements Nos. W04-193-Eng-3441 and W04-193-Eng-5975 herein surrendered to said County.

By acceptance of this instrument or any rights hereunder, the parties of the second part further agree with the party of the first

part as follows:

BOOK 23 PAGE 103

(1) That in the event that any of the aforesaid terms, conditions, reservations or restrictions is not met, observed, or complied with by the parties of the second part or any subsequent transferee, whether caused by the legal inability of said parties of the second part or subsequent transferee to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights transferred by this instrument to the parties of the second part, or any portion thereof, shall at the option of the party of the first part revert to the party of the first part sixty (60) days following the date upon which demand to this effect is made in writing by the Civil Aeronautics Administrator or his successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions, reservations and restrictions shall have been met, observed or complied with, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the parties of the second part, their transferees, successors and assigns.

(2) That if the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the Government may exercise its option to cause the title, right of possession and all other rights transferred to the parties of the second part, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be executed as of the day and year first above written.

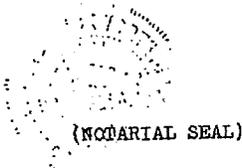
UNITED STATES OF AMERICA
Acting by and through
The Administrator of General Services

By L. W. Friberg
L. W. FRIBERG
Acting Deputy Regional Director
Public Buildings Service

STATE OF WASHINGTON)
COUNTY OF KING) ss

On this 4 day of June 51, before me, a Notary Public in and for said County and State, appeared L. W. Friberg, to me personally known, who, being duly sworn, did say that he is the Acting Deputy Regional Director, Public Buildings Service, General Services Administration, acting for the United States of America, to me known to be the individual described in and who executed the foregoing instrument on behalf of the United States of America, by authority of law, and said L. W. Friberg acknowledged said instrument to be the free act and deed of the United States of America.

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



Carl Ruckstuhl, Jr.
Notary Public in and for the State of Washington, residing at Renton
My Commission Expires 9/26/52

APPROVED AS TO FORM:

C. H. Graff
C. H. GRAFF
Regional Counsel

STATE OF OREGON, } #039699
County of Jefferson } ss. UNITED STATES OF AMERICA
to---CITY OF MADRAS, AND JEFFERSON COUNTY, OREGON

I certify that the within instrument was received for record on the 18th day of June, A. D. 1951, at 10:40 o'clock A. M., and recorded in book 23 on page 9. Record of Deeds of said County.
Witness my hand and seal of County affixed.

.....Hellie Watts.....
County Clerk.

By J. L. Allen
Deputy

