REQUEST FOR PROPOSALS (RFP)

LOT 8 HANGAR DEVELOPMENT

AT SKY HARBOR AIRPORT

ISSUE DATE: January 29, 2018

ONE ON ONE
ON SITE PRE PROPOSAL
CONFERENCE DUE DATE
(NON MANDATORY):

March 2, 2018

WRITTEN QUESTIONS/COMMENTS
DUE DATE:
March 16, 2018, at 3:00pm
Central Standard Time

WRITTEN QUESTIONS/COMMENTS
RESPONSE DUE DATE:
April 13, 2018, at 3:00pm
Central Standard Time

PROPOSAL DUE DATE:
May 4, 2018 at 3:00pm Central
Standard Time

MAILING ADDRESS:
3 Copies to:
Duluth Airport Authority
Attn: Brian Madsen
4701 Grinden Drive
Duluth, MN 55811

CONTACT:
Brian Madsen, Airport Manager
E-mail: bmadsen@duluthairport.com
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I. Background

The Sky Harbor Airport and Seaplane Base (Airport) is located 4.4 miles southeast of Duluth Minnesota’s Canal Park Aerial Lift Bridge at the end of Park Point. The Airport is owned by the City of Duluth and operated by the Duluth Airport Authority (DAA).

The Airport is certified as a General Aviation Airport and Seaplane Base. The Airport is served by one asphalt runway, (Runway 14/32; 3500 feet long x 75 feet wide), and two water runways, (Water Runway 13/31; 10,000 feet long x 2,000 feet wide)(Water Runway 09/27; 5,000 feet long x 1,500 feet wide). The Airport is non-towered and is open 24 hours per day.

The Sky Harbor Airport is currently conducting a runway construction project. The runway relocation and environmental preservation project began after Labor Day 2017. The project will be constructed in three phases. Phase 1 was completed during the fall of 2017. This phase consisted of creating the new runway footprint and shoreline. Phase 2 will be conducted during the fall of 2018. This phase will be the placement of surcharge into the areas created during phase 1. The surcharge will provide weight for the soils below to compact over a time period of 10 months. Finally phase 3 will be conducted during the fall of 2019. This phase will be the removal of the surcharge, removal of the old runway, and the final construction of the new runway. Impacts on operations will be consisting of occasional short term closures of the old runway during phase 2 construction. The final phase the impacts will be a little more significant. During phase 3 construction runway closure will be estimated to be 2 to 3 weeks. Seaplane operations will not be affected by the runway construction besides increased barging activity in the bay. The final length and width of the runway, upon completion of the project, will be 2600 feet by 60 feet. A graphic of how the new runway is depicted can be found in the airport layout plan in exhibit A.

II. General Provisions

The Duluth Airport Authority (DAA) is issuing this Request for Proposals (RFP) to seek proposals from interested parties (Proposers) who may be interested in leasing land to develop a private aircraft hangar on Lot 8 (Site) located at the Sky Harbor Airport (Airport). The proposed Site is identified on the attached Exhibit B is an overall airport site plan showing existing development, taxiways, apron, and runways.

Available utilities are also shown in Exhibit B. Electrical can be brought to the site from a transformer, with 240/120 split phase service, located behind hangar 10. City water runs through a 6 inch pipe from the parking lot, near hangar 1, under the apron along the
hangars, and ends between hangars 10 and 11. All requirements for a fire suppression system will be determined solely by the Duluth Fire Marshall. Phone lines are available and the nearest junction box is located at the Site. All utilities brought from the main utility location to the site are the responsibility of the Proposer. There is no space for septic systems to be installed for the proposed hangar. Public restrooms are available at hangar 1.

The Proposer must provide a detailed construction schedule. A construction schedule will be a determining factor in the award process.

The Proposer must complete and submit for approval by the FAA, the Notification of Proposed Construction or Alteration, FAA form 7460-1, prior to proposal submittal.

Construction hours will be limited between 8am and 7pm, Monday through Friday. Access will be granted to contractors names listed to the DAA.

Proposed construction will be of an aviation hangar. Uses and design of the hangar will solely be for aviation uses in compliance with FAA regulations and minimum standards as maybe amended from time to time.

The DAA reserves and may exercise the following rights and options: (i) to reject any and all proposals and reissue the RFP at any time prior to execution of a final Land Lease Agreement if, in the DAA’s sole opinion, it is in the DAA’s best interest to do so; (ii) to supplement, amend, substitute, or otherwise modify this RFP at any time prior to selection of one or more proposer for negotiation and (iii) to cancel this RFP with or without issuing another RFP; (iv) to reject the proposal of any proposer who, in the DAA’s sole judgment, has been delinquent or unfaithful in the performance of any contract with the DAA, is financially or technically incapable or is otherwise not a responsible responder; (v) To reject as informal or non-responsive, any proposal which, in the DAA’s sole judgment, is incomplete, is not in conformity with applicable law, is conditional in any way, or deviates from the mandated requirements of the RFP and; (vi) to waive any informality, defect, non-responsiveness and/or deviation from this RFP that is not, in the DAA’s sole judgment, material to the proposal.

All costs associated with the development of the RFP response will be the sole responsibility of the Proposer

Any exceptions to the specifications included in the RFP must be clearly stated in the proposal
III. Site

The Hangar 8 site is depicted in Exhibit B. The legal boundary is also stated below:

*Beginning at the southeasterly corner of the Duluth Airport Authority Hangar Concrete Ramp at the Sky Harbor Airport: Thence southeasterly along the northeast edge of the bituminous aircraft parking ramp 485’ 11” to the point of beginning of the line described. Then deflect 90 degrees to the left and go 105’ 0” to a point, then deflect 90 degrees to the right and go 80’ 0” to a point, then deflect 90 degrees to the right and go 105’ 0” to a point, then deflect 90 degrees to the right and go 80’ 0” to the point of beginning, consisting of 8,400 square feet, more or less.*

The lot is 105 feet by 80 feet with a total of 8400 square feet of space. This is the entire space available for construction. Depending on setback requirements as determined by the City of Duluth the entire space may not be taken up by the hangar. The minimum hangar size must be at least 50 feet by 60 feet. Designs of proposed hangar must be compatible with structures currently at the Airport. Details of design must be submitted with the proposal.

Site elevations are provided in Exhibit C. FAA height restrictions are available in Exhibit D of this document.

The Airport is zoned AP for airport. Zoning requires a minimum setback requirement of 5 feet on all sides. However, the City may require up to 30 feet depending on building design and occupancy code. Determining further setback requirements will be the sole responsibility of the Proposer.

Maintenance of the site and proposed hangar are the sole responsibility of the Proposer, such as trash removal, snow removal, mowing, painting, and general up keep.

A paved apron connector to the proposed hangar is required and the sole responsibility of the Proposer.

IV. Type of Operation

The site and hangar must be used for an aeronautical purpose. The Proposer must state in the proposal if the site and hangar will be used for private or commercial aeronautical use. An Aviation related business use is encouraged but not a requirement of a successful proposal.
V. Submittal Information

As stated earlier, the proposals received from this RFP may be used in the development of a formal selection of a new hangar tenant for the Airport. In addition to the specific information requested below, we encourage you to provide detailed information on alternative plans.

A. New Specialized Aviation Service Operation (SASO): If applicable, please provide a detailed narrative description of any services that will be provided. Any new SASO must have a Commercial Aeronautical Operator Agreement with the DAA. Attachment G is the form of the Commercial Aeronautical Operator Agreement. Please provide a detailed business plan with the proposal. Aviation related business use is encouraged but not a requirement of a successful proposal.

B. Ownership Status: The Proposer must complete and submit the Proposer Questionnaire Form in Exhibit E with the proposal.

C. Construction Details: Provide an outline of the facilities you are proposing at the Airport including the type of facility, size, approximate cost and timeline to construct. Please include a site plan with your proposal. Design standards must meet all local, State, and/or Federal building code guidelines. All licenses and permits will be the sole responsibility of the Proposer. All required FAA documents must be included, such as FAA form 7460-1.

D. Financial Information: The Proposer will be required to demonstrate that it is financially capable of performing the obligations contained within this RFP. The determination of the Proposer’s financial qualifications and ability to execute a Land Lease Agreement will be in the sole discretion of the DAA. The Proposer shall provide a written certification from Proposer’s lender that the Proposer has the financial ability to consummate the transaction and pay the lease price to the DAA. If self funding the Proposer shall submit, with its proposal, a written statement from the bank where funds are kept, representing that the Proposer has the financial ability to consummate the transaction and pay the lease price to the DAA.

VI. Land Lease Agreement

Exhibit F is a sample of the land lease document (or suggested language) including special terms and conditions expected to be incorporated in the lease agreement. Rate changes will be subject to Consumer Price Index. If Proposer does not commence or complete the project within sixty (60) days of the proposed date included in the proposal the Proposer will be considered in default and the proposal will be rejected.
The Land Lease proposed terms are as follows:

**Term:** Base Ten (10) Years with one (1) optional 10 year term beyond the base term. At the end of the lease the property reverts to the DAA.

**Rate:** For the term of the agreement, the Lessee agrees to pay rent on the Leased Premises in the amount of $.21 cents per square foot (8,400 square feet) per year (prorated for portions thereof). Rate changes subject to Consumer Price Index.

**Utilities:** The Proposer shall be solely responsible for connecting the available electrical, phone, and or water (for fire suppression system only) from the main to the site and proposed hangar.

**Insurance:** Refer to Sections 7 and 8 of Exhibit F for insurance requirements

**VII. Operator Agreement Document**

If applicable Exhibit G is a sample of the Operator Agreement document (or suggested language) including special terms and conditions expected to be incorporated in the lease agreement.

Operator Agreement Terms (if applicable):

- **Term:** 3 Year base term with automatic month to month provision following base term expiration
- **Rate:** A break down of rates can be found in Exhibit H.
- **Utilities:** The Proposer shall be solely responsible for connecting the available electrical, phone, and or water (for fire suppression system only) from the main to the site and proposed hangar.
- **Signage:** The Operator shall be allowed to erect suitable advertising signs on the Airport to identify its business in the Leased Premises, but the form, type, size and method of installation of any such signs shall be subject to the approval of the Executive Director.
- **Insurance:** Refer to Section 8 of Exhibit G for insurance requirements
VIII. Award Criteria

The following criteria will be used by the RFP Evaluation Committee during the evaluation and selection process:

Criteria Weight

1. Proposed Development for Property  30 points
2. Financial Ability to Perform  30 points
3. Schedule  30 points
4. Aviation Business Use being proposed  10 points

Each Proposer will be ranked according to the evaluation criteria. The highest ranking Proposer will be recommended to enter into land lease agreement negotiations.

1. Proposed Development for Property

Proposers will be evaluated on the feasibility of the property based on size, design, and exceptions. The Evaluation Committee will evaluate the proposed development of the property for compliance with Airport Minimum Standards, FAA regulations (including, but not limited to Compatible Land Use and 14 CFR Part 77) as well as City of Duluth Planning, Zoning and Building Code requirements. The Proposer should be prepared to discuss these plans before the Evaluation Committee, if requested.

2. Financial Ability to Perform

The Evaluation Committee will evaluate financial statements from certified lenders or banks to determine the Proposer’s ability to perform under the lease.

3. Schedule

Proposers will be evaluated on the timing and schedule of the proposed hangar construction.

4. Aviation Business Use being proposed

If applicable, additional evaluation points will be award for any proposed Aviation Business Use of the Site.
Beginning at the southeasterly corner of the Duluth Airport Authority Hangar Concrete Ramp at the Sky Harbor Airport; thence southeasterly along the northeast edge of the bituminous aircraft parking ramp 485'11" to the point of beginning of the line described. Then deflect 90 degrees to the left and go 105' 0" to a point; then deflect 90 degrees to the right and go 80' 0" to a point; then deflect 90 degrees to the right and go 105' 0" to a point; then deflect 90 degrees to the right and go 80' 0" to the point of beginning, consisting of 8,400 square feet, more or less.
**EXHIBIT E**
**GENERAL INFORMATION QUESTIONNAIRE**

**NAME OF PROPOSING ENTITY:**

(Exactly as it would appear on agreement)

**PRINCIPAL ADDRESS:**


**Legal Structure of Entity:**

(Example: Private, Corporation, or LLC)

**PRIMARY CONTACT**

**NAME:**


**POSITION:**


**TELEPHONE:**


**FAX:**


**EMAIL:**


**ALTERNATE CONTACT**

**CONTACT NAME:**


**POSITION:**


**TELEPHONE:**


**FAX:**


**EMAIL:**


Proposer's Operating Name

Proposer has operated under its current name since ______________, a period of _____ years, and Proposer (if such be the case) formerly operated under the name ____________________.

Proposer has provided similar services as requested in this RFP for ________ years.

The Proposer □ is  □ is not currently involved in litigation. (If the answer is in the affirmative, please identify the business location and give such information as is required to explain the circumstances.)

________________________________________

________________________________________

________________________________________

(Use additional sheet(s) to explain circumstances if necessary.)
EXHIBIT F

HANGAR LAND LEASE
SKY HARBOR AIRPORT

Parties to this Agreement are the DULUTH AIRPORT AUTHORITY, hereinafter called "Authority" and __________, hereinafter referred to as "Lessee".

THE PARTIES ACKNOWLEDGE THE FOLLOWING:

Pursuant to Laws 1969, Chapter 577, the Authority is the operator of Duluth Sky Harbor Airport, located in the City of Duluth, State of Minnesota; and

Lessee is engaged in the pursuit of aviation and desires to maintain a hangar building for its use on said Airport;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties agree as follows:

SECTION 1
Definitions

The following terms, as used in this Agreement, shall have the meanings as ascribed to them hereunder.

A. Airport: shall mean Sky Harbor Airport located in the City of Duluth, County of St. Louis, State of Minnesota.

B. Consent or Approval of Authority and/or of Executive Director: where this Agreement calls for the consent or approval of the Authority, the same shall be in the form of a resolution approved by the Authority as provided by law; where the consent or approval of the Executive Director is required, the same shall be evidence by a written document signed by him/her.

C. Executive Director: shall refer to the Executive Director of the Authority or his/her designee.

D. Leased Premises: shall refer to that portion of the Airport leased to Lessee for its exclusive use as further described in SECTION 3, Subparagraph A of this Agreement and Exhibit A attached hereto and incorporated herein.

E. Leasehold Improvements: shall refer collectively to all items located on, within, and attached to the Leased Premises provided or purchased by Lessee, including such items as buildings, structures, insulation, utilities from the building to the public utility mainline, systems, and connecting aprons.
SECTION 2
Use of Leased Premises

Lessee is hereby authorized to utilize the Leased Premises only for the following purposes:

A. To securely store and maintain aircraft in Lessee’s hangar which aircraft is owned or controlled by Lessee for private and non-commercial aviation purposes.

B. To safely store other personal property in Lessee’s hangar as approved by the Executive Director.

SECTION 3
Leased Premises

A. Leased Premises - During the term of this Agreement and any extensions thereof, Authority does hereby lease to Lessee for its exclusive use that tract of land lying in Parcel 6 of the REFEREE’S PLAT OF MINNESOTA POINT as recorded in the St. Louis County Office of the Register of Deeds in Book “G” of Plats, Page 38, labeled as Hangar 8 on Exhibit A, more particularly described as follows:

Beginning at the southeasterly corner of the Duluth Airport Authority Hangar Concrete Ramp at Sky Harbor Airport; thence southeasterly along the northeast edge of the bituminous aircraft parking ramp 485’ 11” feet to the point of beginning of the line described. Then deflect 90° to the left and go 105’ 0” to a point, then deflect 90° to the right and go 80’ 0” to a point, then deflect 90° to the right and go 105’ 0” to a point, then deflect 90° to the right and to 80’ 0” to the point of beginning, consisting of 8,400 square feet, more or less.

B. Use of Airport Facilities - Authority does additionally hereby grant to Lessee a license for the use of all public facilities at the Airport to the same extent as other tenants, including, but not limited to, runways, ramps and taxiways.

SECTION 4
Rent, Taxes, Assessments, License Fees, Utilities & Deposit

A. Rent

For the term of this Agreement, Lessee agrees to pay rent on the Leased Premises in the amount of $.21 cents per square foot (8,400 square feet) per year (prorated for portions thereof), for a total annual rent of $________, payable in advance on or before January 1st of each year, except the initial year, with the initial year payment to be made upon execution of this Agreement.

On January 1 of each subsequent year during the term of this Agreement, or any extension, renewal or holding over thereof, the annual rent shall increase to the amount calculated by multiplying the previous year’s rent by the rate of increase, if any, of the most recent Consumer Price Index, U.S. City Average, published by the U.S. Bureau of Labor Statistics.
for the preceding twelve-month period. However, in no event shall the rent for any year be less than the rent for the previous year.

B. Taxes, Assessments and License Fees

Lessee shall be liable for the payment of all taxes, assessments, license fees or other charges that may be levied or assessed during the term of this Agreement arising in any manner out of this Agreement, charged by any governmental agency and shall provide evidence of payment of any such taxes to Authority as such taxes shall become due. If Lessee shall fail or neglect to pay any of said taxes, assessments, license fees or other charges when the same become due, the Authority may pay the same, together with any cost or penalty which may be accrued thereon, and collect the entire amount so paid from Lessee, and Lessee hereby agrees to pay such entire amount due to the Authority upon demand therefor.

C. Utilities

Authority is providing the following utilities up to the Leased Premises: ______________________. Lessee shall be responsible for connecting any such utilities, at its cost, to the Leased Premises. Lessee shall be responsible for any additional utilities at its cost. Lessee shall promptly establish accounts in its name for all utilities at the Leased Premises. Lessee shall be responsible for promptly paying the applicable monthly utility service charges and any other fees for use for the Leased Premises.

SECTION 5
Term

The Base Term of this Agreement shall be for ten (10) years commencing on ____________, 2018 through ______________, 2028, unless sooner or later terminated as herein provided.

The parties mutually reserve the right to exercise one (1) Option Term beyond the Base Term provided that Lessee provides written notice to the Authority of its interest in exercising the Option Term on or before ______________. Within sixty (60) days of receipt of such notice, the Authority will provide a written response indicating whether or not it desires to exercise an Option Term. In the event that both parties desire to exercise the Option Term, said Option Term must be executed no later than ______________. The Option Term shall be under the same terms and conditions as set forth herein. If the Option Term is not exercised as called for herein, the Agreement will terminate according to the provisions of this Agreement.

It is further agreed that after the Base Term, and the Option Term if exercised, expires, the Authority in its sole discretion may allow the Agreement to continue on a month-to-month basis under the terms and conditions of this Agreement subject to the adjustment of rates and charges at the sole discretion of the Authority and further subject to the right of either party to terminate said month-to-month tenancy upon twenty-nine (29) calendar days’ written notice to the other party.
SECTION 6
Premises Maintenance

Lessee agrees to keep the Leased Premises in a clean, neat and orderly condition and in compliance with all laws and codes applicable to the Leased Premises. In the event that Lessee shall fail to so maintain any portion of the said Leased Premises, Authority shall have the right, but not the obligation, to itself perform or have performed said maintenance and to charge Lessee therefor, which charge Lessee shall be obliged to promptly pay. Lessee is responsible to perform all maintenance on its own personal property.

SECTION 7
Construction

In the event that Lessee wishes to make any modifications or Leasehold Improvements on the Airport, it shall present its request to the Executive Director in writing together with design development or construction drawings showing all details of said Leasehold Improvement. No Leasehold Improvement shall be made on the Leased Premises without the prior written approval of the Executive and then only in conformance with the approved plans and this Section. Color of building or roof, exterior construction material and decorations are subject to the discretion, approval and regulation of the Executive Director which will not be unreasonably withheld or delayed.

A. Construction Standards and Approvals

All work done by Lessee, or under its direction, shall conform to all applicable regulations, building codes and health standards, as well as the following requirements:

1. All construction shall meet the requirement of Type I (fire resistant) construction as set forth in the Minnesota State Building Code (current edition) and the building standards for the Airport, where relevant.

2. Complete contract drawings and specifications on all work, including alterations, additions or replacements, must be submitted for and receive prior written approval of the Executive Director.

3. All work must be done by competent contractors in the time and manner approved by the Executive Director and coordinated with him/her. Lessee shall comply with the indemnity and insurance and bond requirements of this Section.

4. An authorized representative of Lessee shall be available at all reasonable times at the site to coordinate the work of the Leasehold Improvements.

5. A complete “as built” set of drawings and a copy of same in Autocad shall be submitted to the Authority within sixty (60) calendar days following the issuance of a certificate of occupancy by the City.

B. Construction Bonds and Insurance

1. Bonds
   During the term of this Agreement, when any modifications or Leasehold Improvements are constructed, installed or renovated, Lessee shall procure and furnish to Authority a
contractors' bond or bonds written by a company or companies authorized to write such bonds in the State of Minnesota and who are acceptable to the Authority, in an amount not less than the cost of such construction, installation or renovation, for the use obligee, Lessee and the Authority and all persons doing work or furnishing skills, tools, machinery, materials, insurance premiums, equipment or supplies incident to such construction, installation or renovation, such bond or bonds to be conditioned for payment of claims as required and in full compliance with Minnesota Statutes Section 574.26. Further, during the term of this Agreement, for any construction, installation or renovation, and before the commencement of work thereon, Lessee shall furnish to Authority performance bonds, written by similarly qualified companies, covering all work to be performed thereunder guaranteeing the performance of all such work. Notwithstanding the foregoing, Lessee may furnish Executive Director with a personal indemnity and other evidences, at the sole option of and satisfactory to the Executive Director, of its ability to complete construction without liens.

2. Contractor's Public Liability and Property Insurance

Before commencing any Leasehold Improvement, work or equipment installation on the Airport, Lessee shall require all contractors and subcontractors to procure and maintain insurance during the life of such contracts, protecting both the Authority and the Lessee as follows:

a. Workers' Compensation Insurance.

b. Contractors Comprehensive Public Liability and Property Damage Insurance.

c. Contractors Automobile Liability and Property Damage Insurance, including automobile and non-ownership and hired cars.

d. Owners Protective Public Liability and Protective Property Damage Insurance.

e. Builders Risk Insurance (fire, extended coverage, vandalism and malicious mischief, including sprinkler leakage).

Amounts shall be not less than One Million Five Hundred Thousand Dollars ($1,500,000) for injuries, including accidental death to any one person, and subject to same limit for each person, and in an amount not less than One Million Five Hundred Thousand Dollars ($1,500,000) on account of any one accident, and property damage in an amount not less than One Million Five Hundred Thousand Dollars ($1,500,000) aggregate for the policy. Insurance, as above provided, shall be kept intact and in force throughout the term of construction work and equipment installation on the Leased Premises. Such insurance shall be subject to the approval of the Executive Director and copies furnished to the Executive Director prior to the commencement of construction. The amounts shall be subject to change by the Executive Director to the extent that the liability limits as provided in Minnesota Statute Section 466.04 are increased.

C. Subsequent Leasehold Improvements

Any changes in, additions to or deletions from existing or later constructed Leasehold Improvements shall be at Lessee's sole expense and subject to the prior written approval of the Executive Director, and the Executive Director may impose such conditions as he/she shall deem necessary to protect and promote the Authority and the integrity of all operations at the Airport, including, but not limited to, bonding and insurance requirements.
SECTION 8
Indemnity, Insurance and Waiver of Claims

A. Indemnification

Lessee shall indemnify, save, hold harmless, and defend Authority and the City of Duluth (the “City”), their officials, agents and employees, successors and assigns, individually or collectively, (1) from and against any and all claims including a claim for contribution or indemnity, demands, causes of action, loss, injury, liability, costs and expenses of whatsoever kind or nature (including but not limited to reasonable attorneys’ fees, disbursements, court costs, and expert fees) and damages for or related to injury to or death of persons or damage to property, and (2) from and against any fines in any way arising from or based upon the violation by Lessee, its agents, employees, or successors and assigns of any federal, state, or municipal laws, statutes, resolutions, or regulations, including rules or regulations of the Authority now in effect or hereafter promulgated; all arising out of, resulting from, in conjunction with or incident to any act or omission of Lessee, its officials, agents or employees, successors or assigns, the performance of obligations under this Agreement, or the use and/or occupancy of the Leased Premises or of the Airport by Lessee, officials, its agents or employees, successors or assigns, and on ten (10) days’ written notice from the Authority, the Operator shall appear and defend all claims and lawsuits against the Authority and/or the City growing out of any such injury or damage. The provisions of this paragraph shall survive the expiration, termination or early cancellation of this Agreement.

B. Insurance

Lessee shall carry comprehensive general liability insurance. All such insurance shall be in amounts and shall be in a form acceptable to the Executive Director, shall name the Authority and the City of Duluth as additional insureds and shall provide for thirty (30) days’ written notice to the Authority of any cancellation, modification or non-renewal thereof. Certified copies thereof or appropriate certificates of insurance evidencing the existence thereof shall be delivered to the Executive Director. The minimum insurance requirements are set forth below. The Authority reserves the right and Lessee agrees to increases in the minimum insurance requirements to the extent that the liability limits as provided in Minnesota Statute Section 466.04 are increased. All insurance policies required below shall be primary and shall not require contribution from any coverage maintained by the Authority and/or the City:

1. Public Liability Insurance with a $1,500,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate limit of $1,500,000 and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; and Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or on behalf of Lessee with a $1,500,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate limit of $1,500,000.

2. Workers Compensation Insurance sufficient to comply with the laws of the State of Minnesota for Lessee's employees.

C. Authority's Fire Insurance

Lessee covenants that it will not do or permit to be done any act which:

1. will invalidate or be in conflict with any fire insurance policies covering the Airport or any part thereof or upon the contents of any building thereof; or
2. will increase the rate of fire insurance on the Airport or any part thereof or upon the contents of any building thereof; or
3. in the opinion of the Authority, will constitute a hazardous condition so as to increase the risks normally attendant upon the operations contemplated by this Agreement.

If, by reason of Lessee's failure to comply with the provisions of this section, any fire insurance rate on the Airport or any part thereof or upon the contents of any building thereof, at any time, be higher than it otherwise would be, then the Lessee shall, upon demand, reimburse the Authority for that part of all fire insurance premiums paid or payable by the Authority which shall have been charged because of Lessee's failure to comply with this section.

D. Insurance Not Limitation

It is understood that the specified amounts of insurance stated in this paragraph shall in no way limit the liability of Lessee under this Section.

E. Disclaimer. Authority does not represent or guarantee that these types or limits of coverage are adequate to protect the Lessee's interests and liabilities. It shall be the obligation and responsibility of Lessee to insure, as it deems prudent, its own personal property, against damage. Authority does not have insurance coverage for Lessee's property and Authority expressly disclaims any and all liability for any and all losses, damage and/or claims to vehicles and/or personal possessions of Lessee.

F. Waiver of Claims

Lessee waives all claims or causes of action against the Authority, its officers, agents or employees for any failure of the Authority to properly maintain, operate and manage the Airport at all times in a safe manner resulting from any reason or cause beyond the control of the Authority, including, but without the generality of the foregoing, war, strikes, riots, civil commotion and similar causes.

F. Hazardous Waste

Notwithstanding any provision of this Agreement, it is specifically agreed between the parties that Lessee shall be responsible in all aspects for the use of or generation of any petroleum based substance or product, or any volatile organic compound, or any substance classified as a pollutant or as a contaminant, or as waste, or as a "hazardous waste" by either the Environmental Protection Agency of the Government of the United States or the Minnesota Pollution Control Agency, or any laws or rules they administer. Lessee shall specifically be responsible for the disposition of all such substances and for the cleanup of any environmental condition deemed by those agencies or either of them to require environmental response or cleanup activities of any kind which need arises, directly or indirectly, out of Lessee's operations at the Airport; and Lessee specifically agrees that the obligations of Paragraph A above shall apply specifically to any costs or obligations of Authority or City of Duluth arising out of any such disposition or cleanup.
G. **Attorneys’ Fees**

In the event the Authority prevails in any action or suit or proceeding to enforce compliance with this Agreement or for the failure to observe any of the covenants of this Agreement by Lessee, Lessee shall pay the Authority such sums as the court may adjudge reasonable as attorneys' fees and costs to be allowed in such action, suit or proceeding.

**SECTION 9**

**Laws, Ordinances, and Rules**

A. **Laws, Ordinance and Rules**

The Lessee shall comply with all laws of the United States and the State of Minnesota, the ordinances of the City of Duluth and the ordinances, rules, regulations and orders of the United States and the State of Minnesota or of any agency, department or governmental subdivision of appropriate jurisdiction thereof or of the Authority relating to Lessee's activities at the Airport.

B. **Non-discrimination**

The Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities, and

2. In the construction of any improvement on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and

3. That the Lessee shall use the premises in compliance with all of the requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

**SECTION 10**

**Authority’s Rights Upon Default**

A. **Rights**

If at any time Lessee shall be in default, as defined in this Section, with regard to the requirements of this Agreement, it shall be lawful for the Authority, and the Authority may at any time thereafter:

1. Immediately or at any time thereafter without further notice to Lessee, re-enter onto or upon the Leased Premises or any part thereof and take possession of the same fully and absolutely without such re-entry working a forfeiture of the charges to be paid and of the covenants, terms and conditions to be performed by Lessee for the full term of this Agreement, and in the event of such re-entry, the Authority may proceed with the collection of charges to be paid under this Agreement or to recover properly measured damages; or
2. Authority may at its election terminate this Agreement upon written notice in the manner hereinafter provided and re-enter upon said Leased Premises as of its former estate therein, and the Lessee covenants in case of such termination to indemnify the Authority against all loss of rents and expense which the Authority has suffered or paid by reason of such termination, during the residue of the term; or

3. The Authority shall further have all other rights and remedies including injunctive relief, ejectment or summary proceedings for unlawful detainer, and any and all legal remedies, actions and proceedings and all such remedies shall be cumulative.

Pursuit of any of the foregoing remedies shall not preclude Authority from pursuing any other remedies provided by law, nor shall pursuit of any remedy provided herein constitute a waiver of any other obligation due to Authority herein. Forbearance by Authority to enforce one or more of the remedies herein provided upon an event of Lessee's default shall not be deemed or construed to constitute a waiver of such default.

B. Default Defined

For the purposes of this Section only "default" shall be defined when any of the following circumstances exits:

1. If the Lessee has failed to pay rent, fees, taxes or other charges when due hereunder and such failure to pay shall continue for ten (10) calendar days after notice in writing in the manner hereinafter provided for.

2. If the Lessee fails in the observance or performance of any of the other terms, covenants and conditions of this Agreement and such failure shall continue for thirty (30) calendar days after Authority has given Lessee written notice, or the Lessee shall have failed to commence the rectification of such failure within ten (10) calendar days after such notice and to diligently prosecute the same where the same cannot be completed within thirty (30) calendar days, or

3. If a petition to reorganize the Lessee or for its arrangement of its unsecured debts shall be filed, or

4. If the Lessee shall be adjudicated bankrupt, or

5. If a receiver or trustee of the Lessee's property shall be appointed by any court, or

6. If the Lessee shall make a general assignment for the benefit of creditors, or

7. If all of the interest of the Lessee in its property shall be taken by garnishment, attachment, execution or other process of law, or

8. If the Leased Premises shall be deserted or vacated.

SECTION 11

Force Majeure

If war, civil insurrection, natural disaster, change in law, action of the federal, state or city government, or other force beyond the control or expectation of the parties render the continuance of this Agreement impossible, then it shall terminate on thirty (30) days' notice to the other party.
SECTION 12
Waiver of Breach

The waiver by the Authority of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

SECTION 13
Subleases and Assignments

The Lessee shall not assign or transfer, in whole or in part, in any manner, this Agreement, nor any interest therein, nor permit the Agreement to become transferred by operation of law, including inheritance, or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part, unless the written consent of the Executive Director shall first be obtained in each and every case of such assignment or transfer. The parties expressly agree that a majority change in ownership of the controlling interest in Lessee, if any, shall be deemed to be an assignment hereunder. It is expressly agreed by the Lessee that in the event consent is granted by the Executive Director as herein provided, the assignee or transferee shall be required to assume and agree to perform the covenants of this Agreement. The parties agree that Executive Director shall meet and confer in good faith with any party Lessee proposes as an assignee or transferee of this Agreement for the purpose of reaching an accord on occupation of the Leased Premises.

SECTION 14
Erection of Signs

The Lessee shall be allowed to erect suitable signs on the Leased Premises to indicate its location or occupancy, but the form, type, size and method of installation of any such signs shall be subject to the prior written approval of the Executive Director.

SECTION 15
Governmental Commitments

This Agreement shall be subordinate to the provisions of and requirements of any existing or future agreements between the Authority and the United States, or other governmental authorities, relative to the development, operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds, or other governmental authority funds, for the development of the Airport, to the extent that the provisions of any such existing or future agreements are generally required by the United States, or other governmental authorities, of other civil airports receiving such funds.

SECTION 16
Sponsor Assurances

Should the FAA determine that any term or provision of this Agreement results in, or could result in, a violation by the Authority of its obligations as an airport sponsor under grant assurances
contained or incorporated in any grant agreement, existing or future, to which the Authority is a 
party ("Sponsor Assurances"), Lessee and the Authority unconditionally agree to modify or amend 
this Agreement to remedy any such violation, or potential violation, and bring this Agreement into 
strict compliance with the Authority's Sponsor Assurances.

SECTION 17
Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining 
provisions shall continue in force and effect and shall be binding upon the parties to this 
Agreement.

SECTION 18
Surrender

Upon the expiration or other termination of this Agreement, Lessee's authority to use the Leased 
Premises, rights and facilities herein granted shall cease and Lessee shall, upon such expiration 
or termination, promptly and in good condition, ordinary wear and tear excepted, surrender the 
same to Lessor. Upon termination, any improvements which have become part of the realty (to 
include any hangars) shall become the property of the Authority, and the same, together with the 
Leased Premises shall be immediately returned to the control of the Authority. Any 
improvements not part of the realty shall be removed therefrom within fifteen (15) days after the 
termination of this Agreement or the same shall be deemed to have been abandoned to the 
Authority and the right of Lessee to possession thereof shall cease.

SECTION 19
No Third Party Rights

Nothing in this Agreement confers or purports to confer on any third party any benefit or any 
right to enforce any term of this Agreement.

SECTION 20
Immunity

Nothing in this Agreement shall be construed as a waiver by the 
Authority or the City of any immunities, defenses, or other limitations on liability to which the 
Authority or the City is entitled by law, including but not limited to the maximum monetary 
limits on liability established by Minnesota States, Chapter 466.

SECTION 21
Modification of the Agreement

Any of the terms of this Agreement may be changed upon the mutual consent of the Authority 
and the Lessee, but to be valid any such changes must be in writing, dated and must be executed 
with the same formalities as this Agreement.
SECTION 22
Notices

All notices to be given by Lessee to the Authority shall be deemed to have been given by depositing written notice in the United States Mail addressed to Authority at the Duluth International Airport, 4701 Grinden Drive, Duluth, Minnesota, 55811, Attn: Executive Director. All notices to be given by Authority to Lessee shall be deemed to have been delivered by depositing the same in writing in the United States Mail addressed to Lessee at ______________, at ________________.

SECTION 23
Applicable Law

This Agreement, together with all of its articles, terms and provisions, is made in the State of Minnesota and shall be construed and interpreted according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

SECTION 24
Entire Agreement

This Agreement, including Exhibit A, constitutes the entire Agreement between the Authority and Service Provider and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereeto.

Dated: ____________________  Dated: ____________________

DULUTH AIRPORT AUTHORITY  LESSEE

By__________________________ By__________________________
President

By__________________________
Secretary

APPROVED AS TO FORM:

By__________________________
Assistant City Attorney
DULUTH AIRPORT AUTHORITY

Acknowledgement:
On this ___ day of ______, 2018, appeared before me __________________ and __________________, the president and secretary respectively, of the Duluth Airport Authority, and acknowledged that this lease had been approved at a legal meeting of the Authority, by majority vote, a quorum being present and proper notice of meeting being given and duly executed this agreement.

Notary Public

LESSEE:

Acknowledgement:
On this ___ day of ______, 2018 appeared __________________ before me the Lessee, and executed this agreement as the __________________ of ______________________, on behalf of the ______________________.

Notary Public

Certificate of Secretary

The foregoing instrument was approved at a duly held meeting of Duluth Airport Authority by a majority vote of directors, a quorum being present and proper notice of meeting having been previously given, and the signatures of the proper officials are genuine and were executed before me.

By ______________________
Secretary

I:\ATTORNEY\Airport (DAA) (002)\General Files (GF)\Hangar 8 RFP (17-0258)\Land Lease Template 12-18-17 JC clean.doc
EXHIBIT G

OPERATOR AGREEMENT
SKY HARBOR AIRPORT

PARTIES TO THIS AGREEMENT are the DULUTH AIRPORT AUTHORITY, the governmental authority organized and existing under the Laws of Minnesota, 1969, Chapter 577, hereinafter referred to as "Authority", and ______________, a ______, hereinafter referred to as "Operator";

THE PARTIES ACKNOWLEDGE THE FOLLOWING:
1. The Authority is the operator of the Sky Harbor Airport, located in the City of Duluth, County of St. Louis, State of Minnesota and is in the business of promoting and managing aviation activity at the airport; and
2. Operator desires to offer ______________ to the public at the Sky Harbor Airport.
3. The Authority desires to allow this service to be provided at Sky Harbor Airport.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1
DEFINITIONS

The following terms, as used in this Lease Agreement, shall have the meanings as ascribed to them hereunder.

A. Airport: shall mean the Sky Harbor Airport located in the City of Duluth, County of St. Louis, State of Minnesota.
B. Consent or Approval of Authority and of Executive Director: where this Agreement calls for the consent or approval of the Authority, the same shall be in the form of a resolution approved by the Authority as provided by law; where the consent or approval of the Executive Director is required, the same shall be evidenced by a written document dated and signed by him/her or by a person designated by him/her to sign such document.
C. Executive Director: shall mean the Executive Director of the Authority, or designee.
D. Leased Premises: shall refer to the premises located at Sky Harbor Airport and described in Section 2.

SECTION 2
LICENSED PREMISES AND OPERATIONS AT THE AIRPORT

A. Leased Premises
   Operator has been granted a lease for the use of the Leased Premises at the Airport of that tract of land lying in Parcel 6 of the REFEREE’S PLAT OF MINNESOTA POINT as recorded in the St. Louis County Office of the Register of Deed in Book “G” of Plats, Page 38, labeled as Hangar 8. Operator may use the Leased Premises for the purpose of
as defined by Federal Aviation Administration ("FAA"), to the public for a fee. Operator may, by approved signs or handbills, solicit customers on the public business areas of the Airport that are approved by the Executive Director. Operator shall not engage in any other business at the Airport.

B. **Common Premises**
Authority does grant to Operator and to its employees’ access in common with the access granted to members of the general public to all public portions of the airport, roads, dock and parking facilities.

C. **Operation**
 may be operated only during the days of the week and hours of the day approved in writing by the Executive Director.
[Include additional details of operation]

D. **Compliance**
Operator shall comply with all applicable MnDOT and Federal Aviation Administration laws, rules, regulations and certifications.

**SECTION 3**
**EQUIPMENT**

Operator agrees to provide or cause to be provided any and all equipment needed for its business. Authority will not be responsible for Operator’s equipment. Equipment must be kept on the Leased Premises.

**SECTION 4**
**FEES, TAXES AND OTHER CHARGES**

A. **Operator Fee:** Operator agrees to pay the Authority a minimum annual guarantee fee of $ or two and one-half (2.5) percent of gross sales and services, whichever is greater, derived from its business operations pursuant to this Agreement.

B. **"Gross Sales" Defined:** The term "Gross Sales", for the purposes of this Agreement, shall include all monies paid or payable to the Operator for sales made and for services rendered at the Airport pursuant to this Agreement; provided, however, that any sales taxes or similar taxes imposed by law which are separately stated and paid by the consumer and which are directly payable to a taxing authority by Operator shall be excluded therefrom.

C. **Monthly Statements:** Within ten (10) days of the month following the month in which Gross Sales arose, Operator shall submit to Authority a monthly statement, showing the amount of Gross Sales for the preceding month and an itemization of all claimed exclusions therefrom. This duty shall survive termination of this Agreement.

D. **Payment Dates:** All payments of the monthly consideration referred to in Paragraph A above shall be due and payable within ten (10) days of the month following the month in which Gross Sales arose. All other payments required by this Agreement shall be due and payable
immediately upon being billed to Operator by Authority. If Operator is delinquent for thirty (30) days or longer in paying any amounts owed to the Authority under this Agreement, Operator shall pay to the Authority a late payment charge assessed on the delinquent amount at the Authority’s then-prevailing rate on delinquent accounts (the rate at the date of execution of this Agreement is one and one-half percent (1½%) per month). The late payment charge shall accrue from the date the delinquent amount was due until paid. The remedy provided by this Section is in addition to all the other remedies the Authority may have for a breach of this Agreement by Operator, and nothing in this Section shall be deemed to be a waiver by the Authority or prevent the Authority from asserting any other remedy.

E. **Utilities:** No utilities will be provided by Authority as part of this Agreement.

F. **Refuse and Garbage:** Operator assumes all responsibility at its sole cost for the disposal of refuse and garbage generated by its operations on the Licensed Premises during the term this Agreement.

G. **Fee for Repair and Replacement:** Operator shall promptly repair or replace any property of the Authority lost, destroyed or damaged by its operations hereunder. If Operator fails to promptly repair or replace such property following written notice by the Executive Director of such deficiency and a reasonable cure period as determined solely by the Executive Director, Authority may repair or replace it and Operator agrees to reimburse for the direct and indirect costs incurred by Authority for such repair or replacement plus a fifteen (15%) percent administrative fee, due and payable upon receipt.

H. **Fee for Unpaid Licenses, Fees, Taxes, and Assessments:** Operator shall be liable for the payment of all taxes, assessments, license fees or other charges that may be levied or assessed during the term of this Agreement arising in any manner out of this Agreement, or on account of the transaction of business thereon by Operator, charged by any governmental agency and to provide evidence of payment of any of such taxes, assessments, license fees or other charges when the same become due. Should Operator fail to pay such amounts following written notice of such deficiency and a reasonable cure period as determined solely by the Executive Director, it is expressly agreed that Authority may pay the same on behalf of Operator, and Operator agrees to reimburse Authority for said amounts paid plus a fifteen percent (15%) administrative fee due and payable upon receipt.

I. **Payment Obligations Unconditional:** The obligations of Operator to pay any amounts due to Authority under this Lease Agreement in accordance with the terms hereof shall be absolute and unconditional, irrespective of any defense or rights of set off, recoupment or counterclaim which may at any time be available against Authority. Such payments shall be due without notice or demand therefore except as specifically provided for herein.

J. **Books and Records:** Operator shall maintain full and accurate financial books of accounts and records conforming to sound and accepted accounting principles consistently applied from which Gross Sales can be determined. These books of accounts and records shall be kept at the Airport or at a convenient location which Operator shall designate within the City of Duluth. Any and all books and records shall be kept, maintained and preserved by the Operator throughout the course of this Agreement and for not less than six (6) years after the termination or expiration of this Agreement. The records so required to be kept and maintained shall include all federal, state and local tax returns; records of daily bank deposits of the entire receipts from transactions at the Airport; sales slips; daily dated cash register tapes; sales books; duplicate bank deposit slips, and bank statements. Until the end of the six-year period, the Authority shall have the right to inspect and audit all books and records and
all other papers and files of the Operator relating to Gross Sales. Any such inspection or audit shall be conducted during regular business hours and Operator shall produce the appropriate books and records upon the request of the Authority. In the event any audit discloses that the amount of Gross Sales on any statement was understated by one percent (1%) or more of Gross Sales for any month, the Operator shall pay to the Authority the cost of its audit and investigation, plus any arrearage in fees due to the Authority under this Agreement.

SECTION 5
TERM

The term of this Agreement shall commence on [insert date] and shall continue through [Insert Date] unless terminated sooner as herein provided. Either party may terminate without cause upon thirty (30) days written notice.

SECTION 6
OPERATOR'S OBLIGATIONS

A. Diligent Operation: Operator covenants and agrees that it shall be diligent in the prosecution of its business, including the activities listed in Section 2, on the Airport and do all things reasonably necessary and advisable to serve the customer adequately and fairly and to conduct its business in such a manner as will not reflect discredit upon the Authority or cause Authority loss or damages and will furnish prompt and efficient service as shall be adequate to meet the demands of the customers.

B. Maintenance of Structures and Facilities: Operator agrees to keep the Airport and Leased Premises used in a clean, neat and orderly condition. Operator agrees to perform all janitorial services and all maintenance of the Leased Premises it controls. In the event that Operator shall fail to so maintain any portion of said Leased Premises as stated above, Authority shall have the right, but not the obligation, to itself perform or have performed said maintenance and to charge Operator therefor, which charge Operator shall be obliged to promptly pay.

C. Fair and Nondiscriminatory Services: Operator, in the conduct of its authorized activities on the Airport, shall furnish good, prompt and efficient service adequate to meet the demands for its services at the Airport, and shall furnish such service on a fair, equal and not unjustly discriminatory basis to all users thereof, and shall charge fair, reasonable, and not unjustly discriminatory prices for each such unit of sale or service; provided, however, that Operator shall be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types or price reductions to volume purchasers.

D. Authority's Fire Insurance: Operator covenants that it will not do or permit to be done any act which:

1. will invalidate or be in conflict with any fire insurance policies covering the Airport or any part thereof or upon the contents of any building thereof; or
2. will increase the rate of any fire insurance on the Airport or any part thereof or upon the contents of any building thereof; or
3. in the opinion of the Authority, will constitute a hazardous condition so as to increase the risks normally attendant upon the operations contemplated by this Agreement.
If, by reason of Operator's failure to comply with the provisions of this section, any fire insurance rate on the Airport or any part thereof or upon the contents of any building thereof, at any time, be higher than it otherwise would be, then the Operator shall, upon demand, reimburse the Authority for that part of all fire insurance premiums paid or payable by the Authority which shall have been charged because of such violation by the Operator.

E. Airport Promotion: Operator agrees to use its best efforts to actively promote the Airport and its utilization by members of the flying public. Operator shall, at all times, purchase fuel at the Airport while operating as defined herein.

SECTION 7
INDEMNITY

A. Defense and Indemnity: Operator shall indemnify, save, hold harmless, and defend Authority and the City of Duluth (the “City”), their officials, agents and employees, successors and assigns, individually or collectively, (1) from and against any and all claims including a claim for contribution or indemnity, demands, causes of action, loss, injury, liability, costs and expenses of whatsoever kind or nature (including but not limited to reasonable attorneys’ fees, disbursements, court costs, and expert fees) and damages for or related to injury to or death of persons or damage to property, and (2) from and against any fines in any way arising from or based upon the violation by Operator, its agents, employees, or successors and assigns of any federal, state, or municipal laws, statutes, resolutions, or regulations, including rules or regulations of the Authority now in effect or hereafter promulgated; all arising out of, resulting from, in conjunction with or incident to any act or omission of Operator, its officials, agents or employees, successors or assigns, the operation of business and/or performance of obligations under this Agreement, or the use and/or occupancy of the Leased Premises or of the Airport by Operator, its officials, agents or employees, or successors or assigns, and on ten (10) days’ written notice from the Authority, the Operator shall appear and defend all claims and lawsuits against the Authority and/or the City growing out of any such injury or damage. The provisions of this paragraph shall survive the expiration, termination or early cancellation of this Agreement.

B. Environmental Liability: In addition to the general indemnity stated above, and as part of it, it is specifically agreed between the parties that Operator shall be responsible in all respects for Operator’s use of or Operator’s generation of or release or threatened release of any petroleum based substance or product, or any volatile organic compound, or any substance classified as a pollutant, contaminant, toxic substance, solid waste or a "hazardous waste" by either the Environmental Protection Agency of the Government of the United States or the Minnesota Pollution Control Agency. Operator shall specifically be responsible for the disposition of all such waste or substances and for the environmental response activities and costs, monitoring, or cleanup of any environmental condition deemed by those agencies or either of them to require environmental response, monitoring or cleanup activities of any kind which arises directly or indirectly out of Operator's use of or Operator’s generation of such substances in its operations at the Airport; and Operator specifically agrees that the obligations of Paragraph A above shall apply specifically to any costs or obligations of Authority arising out of any such disposition, cleanup, or environmental response.
C. **Survival**: The provision of this Section shall survive the expiration, termination and early cancellation of this agreement.

**SECTION 8**

**INSURANCE**

A. **Insurance**: Operator shall carry and maintain in full force and effect during the term of this Agreement the minimum amounts of insurance set forth below. The Operator shall carry workers' compensation insurance on all of its employees employed on the Airport. Operator may request the Authority to approve alternative types of insurance providing at least equal protection. All such insurance shall be in at least the following amounts and shall be in a form acceptable to the Authority and approved by the City Attorney, shall name the Authority and the City of Duluth as additional insureds on each liability policy and shall provide for thirty (30) days' written notice to the Authority of any cancellation or modification thereof. To the extent that the "Accord" form of certificate is used, the words "endeavor to" shall be stricken from the notification provisions. Certified copies thereof or appropriate certificates of insurance evidencing the existence thereof shall be delivered to the Authority prior to the execution of this agreement. The Authority reserves the right and Operator agrees to revisions upward or downward in the minimum insurance requirements hereinafter set forth. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms — 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) — or equivalent, as approved by the City Attorney. All insurance required under this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. All insurance policies required below shall be primary and shall not require contribution from any coverage maintained by the Authority and/or the City.

1. Commercial general liability insurance, including contractual, completed operations, premises and operations and products liability coverage in an amount of not less than $1,500,000 combined single limit or $1,500,000 bodily injury per occurrence; $1,500,000 property damage per occurrence and $1,500,000 in aggregate.
2. Owned, non-owned and hired vehicles in an amount not less than $1,500,000 combined single limit or $1,500,000 bodily injury per occurrence; $1,500,000 per occurrence.
3. (Where applicable). Aircraft Liability insurance from an admitted aviation insurance carrier in limits per each occurrence of not less than $1,000,000 and Aircraft Passenger Liability insurance in limits of not less than $100,000 for each passenger seat.
4. (Where applicable). Worker's Compensation insurance in accordance with the laws of the State of Minnesota.

B. **Insurance Primary**: All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by Authority and/or City.

C. **Insurance Not Limitation**: It is understood that the specified amounts of insurance stated in this paragraph shall in no way limit the liability of Operator under this Section.
D. **Disclaimer:** Authority does not represent or guarantee that these types or limits of coverage are adequate to protect the Operator's interests and liabilities. It shall be the obligation and responsibility of Operator to insure, as it deems prudent, its own personal property, against damage. Authority does not have insurance coverage for Operator's property and Authority expressly disclaims any and all liability for any and all losses, damage and/or claims to vehicles and/or personal possessions of Operator.

SECTION 9
**LAWS, ORDINANCES, RULES AND NON-DISCRIMINATION**

A. **Laws, Ordinances and Rules:** The Operator shall comply with all laws of the United States and the State of Minnesota, the ordinances of the City of Duluth and the ordinances, rules, regulations and orders of the United States and the State of Minnesota, or of any agency, department or governmental subdivision of any of the above, or of the Authority relating to Operator's activities at the Airport.

B. **Non-discrimination:** The Operator for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant with the land that:

1. No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities; and

2. In the construction of any improvement on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

3. That the Operator shall use the premises in compliance with all of the requirements imposed by or pursuant to Title 49, Code of Federal Regulations, and Department of Transportation of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

SECTION 10
**INDEPENDENT CONTRACTOR**

Operator is an independent contractor and not an employee of the Authority or the City. No statement contained in this Agreement shall be construed so as to find Operator to be an employee or agent of the Authority or the City, and Operator shall not be entitled to any of the rights, privileges, or benefits of Authority or City employees. Nothing contained herein is intended nor shall be construed as in any manner creating or establishing a partnership relationship or as constituting Operator to be the agent representative or employee of the Authority or the City for any purpose.
SECTION 11
AUTHORITY'S RIGHTS UPON DEFAULT

A. Authority's Rights: If at any time Operator shall be in Default, as defined in this Section, with regard to the requirements of this Agreement, it shall be lawful for the Authority, and the Authority may at any time thereafter:

1. Immediately, or at any time thereafter without further notice to Operator, re-enter into or upon the Airport or any part thereof and take possession of the same fully and absolutely without such re-entry working a forfeiture of the charges to be paid and of the covenants, terms and conditions to be performed by Operator for the full term of this Agreement, and in the event of such re-entry, the Authority may proceed with the collection of charges to be paid under this Agreement or to recover properly measured damages; or

2. Authority may at its election terminate this Agreement upon written notice in the manner hereinafter, and the Operator covenants in case of such termination to indemnify the Authority against all loss of operator fees, revenues and expenses which the Authority has suffered or paid by reason of such termination, during the residue of the term; or

3. The Authority shall further have all other rights and remedies including injunctive relief, ejectment or summary proceedings for unlawful detainer, and any or all legal remedies, actions and proceedings and all such remedies shall be cumulative.

B. Default Defined: For the purposes of this Section only, "Default" shall be defined when any of the following circumstances exist:

1. If the Operator has failed to pay operator fees, taxes or other charges when due hereunder and such failure to pay shall continue for ten (10) days after notice in writing to the Operator in the manner hereinafter provided for.

2. If the Operator fails in the observance or performance of any of the other terms, covenants and conditions of this Agreement and such failure shall continue for thirty (30) days after Authority has given Operator written notice, or the Operator shall have failed to commence the rectification of such failure within thirty (30) days after such notice and to diligently prosecute the same where the same cannot be completed within thirty (30) days, or

3. If a petition to reorganize the Operator or for its arrangement of its unsecured debts shall be filed, or

4. If the Operator shall be adjudicated bankrupt, or

5. If a receiver or trustee of the Operator's property shall be appointed by any court, or

6. If the Operator shall make a general assignment for the benefit of creditors, or

7. If all of the interest of the Operator in its property shall be taken by garnishment, attachment, execution or other process of law, or

8. If the Leased Premises shall be deserted or vacated.

C. Attorneys' Fees: In the event Authority shall prevail in any action or suit or proceeding brought by Authority to enforce compliance with this Agreement or for the failure to observe any of the covenants of this Agreement, Operator agrees to pay Authority such sums as the court may adjudge reasonable as attorneys' fees and costs to be allowed in such action, suit or proceeding.
SECTION 12
WAIVER OF BREACH

The waiver by the Authority of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

SECTION 13
ASSIGNMENTS

The Operator shall not assign or transfer this Agreement in whole or in part, in any manner, nor any interest therein, nor permit the foregoing agreement to become transferred by operation of law or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part, unless the written consent of the Executive Director shall first be obtained in each and every case of assignment or transfer. It is expressly agreed by the parties that a change in ownership of the controlling share of stock in Operator, if any, shall be deemed to be an assignment hereunder. It is expressly agreed by the Operator that in the event consent is granted by the Executive Director as herein provided, the assignee or transferee shall be required to assume and agree to perform the covenants of this Agreement.

SECTION 14
ERECITION OF SIGNS - DECORATIONS

The Operator shall be allowed to erect suitable advertising signs on the Airport to advertise its business in the Leased Premises, but the form, type, size and method of installation of any such signs shall be subject to the approval of the Executive Director. Decorations, graphics outdoor advertising, paint schemes, promotional structures, must comply with all regulations, be safe for air terminal operations, and be approved in writing by the Executive Director. No audio advertising or amplified audio solicitation shall be allowed.

SECTION 15
WAIVER OF CLAIMS

Operator waives all claims or causes of action against the Authority, its officers, agents or employees for any failure of the Authority to properly maintain, operate and manage the Airport at all times in a safe manner resulting from any reason or cause beyond the control of the Authority, including, but without the generality of the foregoing: war, strikes, riots, civil commotion and similar causes.

SECTION 16
NON-EXCLUSIVE RIGHTS

Operator shall have the right and privilege of engaging in and conducting a limited service on the premises of the Airport under the terms and conditions as set forth herein. However, this
Agreement shall not be construed in any manner to grant Operator or those claiming under it the exclusive right to the use of the premises and facilities of said Airport other than those premises leased exclusively to Operator hereunder. The parties to this agreement do not intend to create any rights in any third party beneficiary.

SECTION 17
GOVERNMENTAL COMMITMENTS

This Agreement shall be subordinate to the provisions of and requirements of any existing or future agreements between the Authority and the United States, or other governmental authorities, relative to the development, operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds, or other governmental authority funds, for the development of the Airport, to the extent that the provisions of any such existing or future agreements are generally required by the United States, or other governmental authorities, of other civil airports receiving such funds.

SECTION 18
SPONSOR ASSURANCES

Should the FAA determine that any term or provision of this Agreement results in, or could result in, a violation by the Authority of its obligations as an airport sponsor under grant assurances contained or incorporated in any grant agreement, existing or future, to which the Authority is a party ("Sponsor Assurances"), Operator and the Authority unconditionally agree to modify or amend this Agreement to remedy any such violation, or potential violation, and bring this Agreement into strict compliance with the Authority's Sponsor Assurances.

SECTION 19
SEVERABILITY

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in force and effect and shall be binding upon the parties to this Agreement.

SECTION 20
MODIFICATION OF THE AGREEMENT

Any of the terms of this Agreement may be changed upon the mutual consent of the Authority and the Operator, but to be valid any such changes must be in writing, dated and duly executed by the parties.

SECTION 21
NOTICES

All notices to be given by Operator to the Authority shall be deemed to have been given by depositing written notice in the United States Mail addressed to Authority at the Duluth International Airport, 4701 Grinden Drive, Duluth, Minnesota, 55811. All notices to be given by
Authority to Operator shall be deemed to have been delivered by depositing the same in writing in the United States Mail addressed to Operator at ________________________________.

SECTION 22
IMMUNITY

Nothing in this Agreement shall be construed as a waiver by the Authority or the City of any immunities, defenses, or other limitations on liability to which the Authority or the City is entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.

SECTION 23
APPLICABLE LAW

This Agreement, together with all of its sections, terms and provisions, is made in the State of Minnesota and shall be construed and interpreted according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

SECTION 24
ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the Authority and the Operator and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day of ______________________, 201__.

DULUTH AIRPORT AUTHORITY

By ________________________________
President

By ________________________________
Its ________________________________

By ________________________________
Secretary

Approved to form:

______________________________
Assistant City Attorney
DULUTH AIRPORT AUTHORITY

Acknowledgement:

On ______________________ appeared before me ______________________ and ______________________, the President and Secretary of Duluth Airport Authority acknowledged that this lease had been approved at a legal meeting of the Authority, by majority vote, a quorum being present and proper notice of meeting being given and duly executed this agreement.

__________________________________________

Notary Public
My commission expires __________

Acknowledgement:

On __________, 201____ appeared before me ______________________(Operator), and executed this agreement.

__________________________________________

Notary Public
My commission expires __________
EXHIBIT H

Sample Operator Rates

Operator Fee: Operator agrees to pay the Authority a minimum annual guarantee fee of $200 or percentage of gross sales and services listed below; which ever is greater, derived from its business operations pursuant to the Agreement.

The following are percentages of gross receipts which are defined as Authority’s User Fees:

1. Rental/Storage Hangar Fees 2.5%
2. Equipment Rental & Catering 2.5%
3. Leased Area Tie Down/Parking Fees 5%
4. Aircraft Maintenance, Oil, Liquids 2.5%
5. Aircraft Parts 1%
6. Flight Training 2.5%
7. Charter Service & Aircraft Rental 1%
8. Ground Handling Fees 15%
9. Airplane Rides/Sightseeing Tours 2.5%
10. Merchandise Sales 10%