

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this ____ day of _____, 2018 between the Metropolitan Airports Commission (“Commission”), a public corporation of the State of Minnesota, as Licensor, and the City of St. Paul, a municipality in the State of Minnesota (“CITY”), as Licensee.

WITNESSETH:

WHEREAS, CITY has requested to locate a non-motorized trail onto property at the St. Paul Downtown Airport; and

WHEREAS, the proposed non-motorized trail will serve as an integral part of a trail network, providing both transportation and recreational use, connecting residential areas, regional parks and trail segments that lead into downtown St. Paul; and,

WHEREAS, the Commission has determined that currently the CITY’s proposed use would be compatible with the Commission use of the property as an airport and the Commission is authorized to lease or license the property for compatible uses; and

WHEREAS, the Commission’s Long-Term Comprehensive Plan (LTCP) for St. Paul Downtown Airport (adopted in June 2010) does not anticipate that the proposed trail corridor will be needed for aeronautical-use purposes through the year 2030; and

WHEREAS, the Commission reserves the right to terminate this license for currently unforeseen aeronautical-use purposes; and

WHEREAS, the Commission has determined that the authorized uses under this License Agreement would not interfere with airport operations.

NOW THEREFORE, in consideration of the mutual covenants hereinafter stated, the parties hereto agree as follows:

1. PROPERTY,

The Commission grants to CITY a license to occupy and use, subject to the terms and conditions hereinafter stated, a portion of the lands constituting St. Paul Downtown Airport - Holman Field in Ramsey County, Minnesota, more particularly shown in the attached Exhibit 1 (“Premises”).

2. USE,

The premises may be occupied and used by CITY for the passive recreational purposes consisting of constructing, maintaining and operating a non-motorized trail to be used by public persons. Use of the Premises, and improvements made in furtherance of such use, shall at all times comply with clearance requirements under FAA regulations and state zoning requirements.

All uses authorized by this License Agreement shall be subordinate to MAC's use of the Premises for airport purposes. This License Agreement does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife//waterfowl refuge that would become subject to Section 4(f) of the Federal Aid Highway Act of 1968, nor does it establish a Bikeway or Pedestrian way which would require replacement pursuant to Minnesota Statutes 160.264.

CITY is not authorized to construct any buildings in the Premises.

CITY is not permitted to use, conduct or advertise any commercial business activity in the Premises. The CITY's use is non-exclusive and is subject to use by utilities and airport-related tenants and visitors.

3. TERM,

The term of this License shall be for three (3) years, commencing on the 1st day of _____ 2018, with automatic renewal for additional one year periods thereafter. After the three-year term, the Commission reserves the right to terminate this License upon one hundred twenty (120) days written notice to City.

Renewal of this License will be based on the determination by the Commission and the FAA that the Premises is not needed for exclusive aviation use during the next renewal period and that the compatible use of the area for passive recreational purposes does not conflict with the safe operation of the airport.

In the event of termination, CITY shall, by the end of the 120 days' notice, remove any of its property equipment and fixtures located or placed thereon and to restore the Premises to its original condition or other condition mutually agreed upon at the time of termination.

4. RENT

In exchange for use of the Premises, CITY shall, at all times and at no cost or expense to Commission, provide police protection/emergency response and maintain the lands under this License Agreement and all improvements thereon in a neat and clean condition and in good repair.

CITY shall also construct, maintain, and repair as needed a new fence separating the CITY's trail from the Airport and the adjacent roadway. Such fence shall be at least eight feet high and be constructed to the Commission's standards for airport security fencing, including signage.

5. ASSIGNMENT OF LICENSE

CITY shall not assign or transfer this License, nor permit the License 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.

6. CONSTRUCTION

Any construction and supervision of the construction shall be at no cost or expense to the Commission. All construction shall be subject to the following conditions:

(a) Before beginning any construction, the Commission shall approve in writing the plans for construction. Any changes or modifications to the construction plan must also be approved in writing by the Commission.

(b) The CITY shall construct the trail only on the Premises as shown in Exhibit 1.

(c) All construction shall be conducted in a manner to be compatible with the safe and efficient operation of the airport.

(d) CITY shall obtain any necessary documentation or met any requirements as established by Federal and State regulatory agencies for clearance and protection of approaches in respect to the Airport. Such work may include a Determination of No Hazard from the FAA prior to commencing construction activities on the Premises. A copy of any documentation or approval (such as FAA determination(s)) shall be provided to the Commission.

(e) The CITY shall notify the Commission's Airport Manager at least 48 hours before commencing any construction activities on the Premises. CITY shall coordinate with the Airport Manager for any access to the Premises.

(f) At all times, the CITY shall maintain the existing airport security gates and fencing for the Premises. The CITY will not remove or discard any airport fencing until replacement fencing is in place.

(g) CITY shall oversee and monitor any and all of its construction activities on the Premises for completion under the approved plans and specifications.

(h) CITY shall preserve and protect any utilities located in the Premises at no expense to the Commission. CITY shall be responsible for locating and preserving any underground utilities in the area.

(i) CITY shall minimize and control dust at all times within the Premises.

(j) CITY shall be responsible for removing excess soil or other vegetation. CITY shall be responsible for removal and disposal required by federal, state, or local law of any hazardous materials encounter in the CITY's construction work or use of the Premises.

(k) CITY shall not store equipment or materials on the Premises without prior approval of the Commission's Airport Manager.

(l) The CITY shall restore all disturbed slopes and ditches in such a way so that drainage, erosion control and aesthetics are perpetuated.

7. HOLD HARMLESS - CONSTRUCTION

CITY agrees to hold and save harmless the Commission from any and all claims, liens or liability which may arise from CITY's construction, maintenance, repair or replacement aforesaid or from claims of labor or materials involved in or rising out of the CITY's construction on the Premises.

8. INDEMNIFICATION

The CITY's use of the Premises will allow and invite other users including the general public to access and use the Premises once constructed. With the CITY's use, the potential for liability could increase. As such, the CITY agrees to indemnify, defend and save harmless the Commission from any and all claims or causes of action related to any use of the Premises including injury, death, damage to property or other alleged damages which arise out of the CITY's, or its invitees, use of the Premises. Any persons using the Premises and/or the trail constructed by the CITY shall be determined to be an invitee of the CITY and thus the responsibility of the CITY. The CITY's indemnification to the Commission includes all claims related to the construction, design, natural conditions, and placement of the trail onto the Premises.

To assist in the indemnification provided by the CITY, the CITY shall either: (a) procure and maintain throughout the term, or renewed term, of this License Agreement, comprehensive general liability insurance covering personal injury including bodily injury and property damage liability with a combined single limit of \$1,000,000 for each occurrence and aggregate; or, (b) maintain adequate self-insurance to Minnesota state statutory maximums. If so elected, the acquired comprehensive general liability insurance shall name CITY as insured and shall also name the Commission as additional insured.

9. FAA AND MNDOT

Execution and continuation of this License is conditioned upon approval and agreement of the Federal Aviation Administration and MN/DOT, Division of Aeronautics that the development and use of the Premises for passive recreational purposes would not conflict with aircraft operations to and from the airport and would comply with the clearance and approach requirements presently applicable at the Airport.

10. COMPLIANCE WITH LAWS

CITY shall comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, or of agencies, departments or divisions of either or of the Commission relating to the lands under license and the use thereof or relating to control of ground and air traffic, aircraft operations and the general use and operation of the airport; and CITY shall see to the payment of any and all taxes, assessments, license fees or other charges that may be legally levied, assessed or made during the term of this License or any extension thereof by reason of the uses hereby permitted of the lands. CITY shall provide evidence of compliance with such laws to the Commission upon request of the Commission.

11. HEIGHT

CITY expressly agrees for itself, its successors and assigns to restrict the height of signs, objects of natural growth, and other objects on the Premises to a height that will not constitute an obstruction as determined by the standards in Federal Aviation Regulation, Part 77, or as amended. Further, CITY agrees that no lights will be permitted or installed on the premises which will have a detrimental effect on control tower operations or otherwise affect operations of the Airport.

12. FLIGHT OF AIRCRAFT

CITY expressly agrees for itself, its users, successors and assigns to prevent any use of the herein-described real property which would interfere with or be a hazard to the flight of aircraft over the property or to and from the airport or interfere with air navigation and communication facilities presently or in the future serving the airport.

13. WITHOUT PREJUDICE

It is understood that grant of this License and use of the premises is conditioned upon and shall be without prejudice to the rights of the Commission as owner and operator of the aforesaid public airport of which the subject premises constitute a part.

14. NONDISCRIMINATION.

CITY for itself, its heirs, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said Premises described in this license for the purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, CITY shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

CITY for itself, its heirs, representatives, successors in interest, does hereby covenant and agree 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 be subjected to discrimination in the use of said facilities thereon (2) construction of any improvements 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) CITY shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

15. CIVIL RIGHTS.

CITY assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates CITY for the period during which Federal assistance is extended to the airport program, except

where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structure or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the Premises is used by the sponsor or any transferee for the purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the Premises.

16. COMMISSION RIGHT OF ENTRY

Commission shall at all times and through its agents and employees or contractors have a right of entry upon the lands under License, as may be necessary in the development, maintenance, operation of the airport. Further, the Commission reserves the right to install and maintain under the lands under License such utility lines, conduits, pipes and facilities as may be necessary to the development of said airport, provided Commission shall at its cost and expense, repair any damages and restore any portion of the premises damaged by reason of such installation and maintenance. However, if CITY causes the need for such repair, construction, installation or maintenance, the Commission will not pay to repair or restore any part of the premises.

17. REQUIRED NOTICE

Incident to use and occupancy of the Premises, CITY will advise those making use of or coming on the Premises that CITY or a department of the CITY is responsible in respect to maintenance, care, policing, control and supervision of the Premises. CITY will post signage visible to property users that the Premises covered by this License Agreement is being operated by the CITY.