



Missoula County Airport Authority
5225 W Broadway Street
Missoula, MT 59808
(406) 728-4381

Lease Rates and Charges Policy

Missoula County Airport Authority

Missoula Montana Airport (MSO)

Table of Contents

1. INTRODUCTION..... 3

1.1. Statement of Policy..... 3

1.2. Compliance with Regulatory Measures..... 4

1.3. Temporary Structures 4

1.4. Conflicts with Existing Agreements..... 4

1.5. Governing Body..... 4

1.6. Rights Reserved 4

1.7. Severability 4

1.8. Subordinate 4

2. APPLICATION REQUIREMENTS 5

2.1. New Operator..... 5

2.2. Existing Operator (with an Existing Agreement) 5

2.3. Immediate Need..... 6

2.4. Grounds for Denial of Application 6

2.5. Public Disclosure..... 7

2.6. Approval Process..... 7

2.7. Competitive Proposal Process..... 8

3. AGREEMENTS 10

3.1. General/Introduction 10

3.2. Premises..... 10

3.3. Term..... 11

3.4. Improvements 13

3.5. Responsibilities 14

3.6. Condemnation 14

3.7. Relocation..... 16

4. RENTS AND FEES..... 18

4.1. General/Introduction 18

4.2. Establishing Rents (for Land and/or Improvements) 18

4.3. Establishing Fees 18

4.4. Authority Rights 19

4.5. Adjusting Rents 19

4.6. Dispute Resolution 20

4.7. Payment of Rents, Fees, and/or Other Charges..... 21

4.8. Bookkeeping and Records..... 21

5. ATTACHMENT A..... 22

5.1. Rights Reserved 22

1. INTRODUCTION

1.1. *Statement of Policy*

It is the intent of the Missoula County Airport Authority (Authority) to: (1) plan, manage, operate, finance, and develop the Missoula Montana Airport (Airport) to ensure the long-term financial health of the Airport and the safety of the public consistent with all applicable Regulatory Measures; and (2) encourage the development and operation of air carriers and general aviation and the provision of air carriers and general aviation products, services, and facilities to the public at the Airport

As set forth by the Federal Aviation Administration (FAA), by way of its Airport Sponsor Assurances, any airport developed with federal grant assistance is required to operate for the use and benefit of the public and is to be made available to all types, kinds, and classes of Aeronautical Activity on fair and reasonable terms and without unjust discrimination.

Accordingly, any Entity wishing to lease Airport land or improvements or engage in an Aeronautical Activity at the Airport shall be given equal opportunity to compete, without discrimination, for the use of available Airport land or improvements subject to the Primary Guiding Documents.

However, no Entity shall occupy or use (for commercial purposes) Airport land or improvements or engage in an Aeronautical Activity at the Airport unless both parties have executed an Agreement authorizing such occupancy/commercial use or Activity.

In addition, in accordance with the Sponsor Assurances given to the federal and/or state government as a condition to receiving federal and/or state funds, the granting of rights and/or privileges to engage in Activities shall not be construed in any manner as affording an Operator any exclusive right, other than the exclusive use of the land or improvements that may be leased to the Operator, and then only to the extent provided in an Agreement.

1.1.1.1. The presence on the Airport of only one enterprise engaged in a particular Aeronautical Activity (and/or non-aeronautical commercial activity) does not, in and of itself, indicate that an exclusive right has been granted. However, it is the policy of the Authority not to enter into or promote an understanding, commitment, or express agreement to exclude other reasonably qualified enterprises. Accordingly, those who desire to enter into an Agreement with the Authority should neither expect nor request that the Authority exclude others who also desire to engage in the same or similar activities. The opportunity to engage in an Aeronautical Activity (and/or non-aeronautical commercial activity) shall be made available to those Entities meeting the qualifications and the requirements set forth in the Primary Guiding Documents and as space may be available at the Airport to support such Activity provided such use is consistent with the best interests of the Airport and is consistent with the current and planned uses of Airport land and improvements.

1.1.1.2. If the FAA determines that any provision of an Agreement or a practice constitutes a grant of a prohibited exclusive right, such provision or grant shall be deemed null and void.

1.1.2. The right of use of the Airport infrastructure and any land and/or improvements other than that leased “exclusively” to an Operator is non-exclusive.

1.1.3. To this end, this Policy sets forth the parameters for leasing Airport land and/or improvements, using Airport land and/or improvements for commercial purposes, and/or engaging in Aeronautical Activities at the Airport. In addition, this Policy outlines the process that will be utilized by the Authority to establish and adjust associated rents, fees, and/or other charges.

1.2. Compliance with Regulatory Measures

All Operators shall comply, at the Operator's expense, with all applicable Regulatory Measures, including, without limitation, those of the United States Department of Transportation, the FAA, and the Authority including the Primary Guiding Documents; all as may be in effect and amended from time to time.

1.3. Temporary Structures

No temporary or mobile structures shall be placed on Airport land except those that are directly related to a construction project on the Airport. The Authority must approve the siting (and the allowed number of days) of temporary or mobile structures in writing. In addition, no Activities may be performed from temporary or mobile structures, unless approved in advance by the Authority.

1.4. Conflicts with Existing Agreements

- 1.4.1. This Policy does not affect the current term or currently authorized extension of any Agreement properly executed prior to the date of adoption of this Policy, unless provided for in the Agreement in which case this Policy shall be effective consistent with the Agreement. Upon expiration of the term of an existing Agreement or if an Operator desires to change or expand its Activities, the Operator shall then comply with the provisions of this Policy and the Primary Guiding Documents.
- 1.4.2. Within this policy statement, existing Agreements refer to those Agreements that are currently in effect at the Airport and in which specific land and/or improvements (premises) and/or Activities are defined, and a termination date is specified.
- 1.4.3. New Agreements refer to Agreements with Entities who are not presently leasing land and/or improvements and/or engaging in an Activity at the Airport or to new agreements with an existing Operator for additional land and/or improvements and/or Activities at the Airport.

1.5. Governing Body

The Airport is owned and operated by the Missoula County Airport Authority, governed by and through the Missoula County Airport Authority Board of Commissioners. While the Airport Director has the authority to manage the Airport (including the authority to interpret, administer, and enforce Agreements and the Primary Guiding Documents and the authority to permit temporary, short-term occupancy/use of Airport land and/or improvements), the ultimate authority to grant the occupancy/use of Airport land and/or improvements and the right to engage in an Aeronautical Activity at the Airport, and to approve, adopt, amend, or supplement any Agreement, policy, or practice relating thereto is expressly reserved to the Authority.

1.6. Rights Reserved

In addition to the rights and privileges identified in Attachment A, the Authority reserves the rights and privileges outlined under federal and/or state Sponsor Assurances.

1.7. Severability

If one or more clauses, sections, or provisions of this Policy shall be held to be unlawful, invalid, or unenforceable by final judgment of any court of competent jurisdiction, the invalidity of such clauses, sections, or provisions shall not in any way affect any other clauses, sections, or provisions of this Policy.

1.8. Subordinate

This Policy is subject and subordinate to the provisions of any existing or future agreements between the Authority and the United States or the state of Montana pertaining to the operation, management, planning, and development of the Airport.

2. APPLICATION REQUIREMENTS

2.1. *New Operator*

Any Entity desiring to enter into an Agreement with the Authority for permission to occupy or use (for commercial purposes) land or improvements and/or engage in an Aeronautical Activity at the Airport shall submit a written application to the Authority using the Aviation Operator and Lessee Application form provided in the Authority's Primary Guiding Documents . Non-commercial Lessees or Operators need only to complete those portions of the application form relevant to the proposed occupancy of Airport land/or improvements.

2.1.1. At the time of and as part of its application, the prospective Operator shall submit all of the information requested on the application form and, thereafter, shall submit any additional information that may be required or requested by the Authority in order to properly evaluate the application.

2.2. *Existing Operator (with an Existing Agreement)*

2.2.1. **No Change in Scope of Activities** - An existing Operator may request to enter into a new Agreement (subject to the provisions of this Policy) without filing a new application provided that the Operator proposes no changes in the scope of the previously approved Activity; is in compliance with the Primary Guiding Documents in place at the time of such request; is current in payment of all rents, fees, or other sums accruing to the Authority; and is not in default of any provision of any existing Agreement with the Authority.

2.2.2. **Change in Scope of Activities** - If an existing Operator intends to change or expand the scope of the previously approved Activity or if the Authority deems that a new application is required, the Operator must submit a new application at least twelve months prior to the expiration of an existing Agreement.

2.2.3. **Notification Process** - If an existing Operator desires to enter into a new Agreement with the Authority (subject to the provisions of this Policy), the Operator shall notify the Authority twelve months in advance of the expiration date of the Operator's existing Agreement.

2.2.3.1. Within three months of receiving such notification from an existing Operator, the Authority shall inform the Operator whether the existing Agreement will be extended, whether a new Agreement will be granted, or whether the Authority has determined that no new Agreement will be granted and/or that a Request for Proposals shall be issued.

2.2.3.2. Denial of an extension or new agreement is at the sole discretion of the Authority and will be based on the factors included in Section 2.4 of this Policy as well as factors related to the Operator's prior or current performance such as, but not limited to:

2.2.3.2.1. Has the Operator remained in good standing with the Authority throughout the duration of a prior or existing Agreement; and

2.2.3.2.2. Has the Operator's maintenance of the property and facility satisfied maintenance, safety and appearance standards.

2.2.3.2.3. Is the Operator in compliance with other terms of a prior or existing Agreement.

- 2.2.3.3. If an extension or new Agreement will be granted, the Authority’s notice will convey the terms, conditions, rents, fees, and/or other charges that have been established (by the Authority) for the continued occupancy and/or use of the subject land and/or improvements.
- 2.2.3.4. The term length of an extension or new agreement will be based on the factors described in more detail in Section 3.3.
- 2.2.3.5. Within one month of receiving this information from the Authority, the existing Operator shall indicate whether the terms, conditions, rents, fees, and/or other charges established (in accordance with this Policy) by the Authority are acceptable (to the Operator).
 - 2.2.3.5.1. If the terms, conditions, rents, fees, and/or other charges established by the Authority are not acceptable, the Operator shall present (to the Authority) the terms, conditions, rents, fees, and/or other charges that are acceptable to the Operator.
 - 2.2.3.5.2. If terms, conditions, rents, fees, and/or other charges that are acceptable to both parties cannot be negotiated within one month from the time this information is presented to the Authority (by the Operator), the Authority may initiate the Competitive Proposal Process, under Authority Initiative (as described in this Policy).

2.3. Immediate Need

Any Entity seeking to lease land and/or improvements from the Authority must demonstrate an “immediate need” for the entire land area(s) and/or improvement(s) proposed to be leased (i.e., the Entity must demonstrate that the entire land area(s) and/or improvement(s) will be required to engage in the proposed Activities and will be Immediately utilized).

2.4. Grounds for Denial of Application

The Authority may deny any application for any one or more of the following reasons:

- 2.4.1. The Applicant, for any reason, does not fully meet the qualifications, standards, and requirements established by the Authority. The burden of proof shall be on the Applicant and the standard of proof shall be by clear and convincing evidence.
- 2.4.2. The Applicant’s proposed Activities and/or improvements will create a safety hazard at or on the Airport.
- 2.4.3. The granting of the application will require the Authority to expend funds and/or supply labor and/or materials in connection with the proposed Activities and/or improvements that the Authority is unwilling and/or unable to spend and/or will result in a financial loss or hardship to the Authority.
- 2.4.4. No appropriate, adequate, or available land and/or improvement exists at the Airport to accommodate the proposed Activity of the Applicant at the time of application, nor is such availability contemplated within a reasonable time frame (approximately 12 months).
- 2.4.5. The proposed Activities and/or improvements do not comply with the Master Plan of the Airport (and/or ALP) then in effect or anticipated to be in effect within the time frame proposed by the Applicant.
- 2.4.6. The development or use of the land requested by the Applicant will result in a congestion of Aircraft and/or the improvements will, in the sole discretion of the

Authority, unduly interfere with Activities of any existing Operator on the Airport and/or prevent adequate access to the Leased Premises of any existing Operator.

- 2.4.7. The Applicant has either intentionally or unintentionally misrepresented or omitted material fact in the application or in supporting documentation.
- 2.4.8. The Applicant has failed to make full disclosure on the application or in supporting documentation.
- 2.4.9. The Applicant or an officer, director, agent, representative, shareholder, or employee of Applicant has a record of violating the Regulatory Measures of any other Airport, FAA, or any other Regulatory Measure applicable to the Airport or the Applicant's proposed Activity.
- 2.4.10. The Applicant or an officer, director, agent, representative, shareholder, or employee of Applicant has defaulted in the performance of any Lease, Sublease, or other Agreement at the Airport or at any other airport.
- 2.4.11. The Applicant does not exhibit adequate financial responsibility or capability to undertake the proposed Activity.
- 2.4.12. The Applicant cannot provide a performance bond or applicable insurance in the type and amounts required by the Authority for the proposed Activity.
- 2.4.13. The Applicant or an officer or director of Applicant has been convicted of a felony.
- 2.4.14. Applicants' proposed Activity has been or could be detrimental to the Airport.
- 2.4.15. The Applicant seeks terms and conditions which are inconsistent with Authority policies or any RFP, invitation for proposals, or other advertisement issued by the Authority.
- 2.4.16. The proposed use and/or the Applicant are not in the best interests of the Authority and/or is inconsistent with the Airport's mission, goals, objectives, or purposes or inconsistent with any grant assurances. See also, Section 3.2.3.
- 2.4.17. The Applicant has not demonstrated an immediate need for the entire land area(s) and/or improvement(s) proposed to be leased.

2.5. **Public Disclosure**

Applicants should be aware that the Authority, as a governmental entity, is subject to the general public's "right to know" provision of the Montana Constitution. This gives the public a right to examine public records of a government agency and observe the agency's public meetings unless "the demand of individual privacy clearly exceeds the merits of public disclosure." Montana Constitution, Article II, Section 9. Therefore, applicants should designate those portions of their applications that they deem confidential, if any, and state the basis for the claimed right of individual privacy that applies to each such designated part of their application.

2.6. **Approval Process**

- 2.6.1. The application and all accompanying materials (deemed necessary to facilitate an analysis of the prospective Operator's proposal) shall be submitted to the Airport Director for review and recommendation.
- 2.6.2. The Authority, subject to the Primary Guiding Documents, will then review complete applications. No application will be deemed complete that does not provide the Authority with the information necessary to allow the Authority to make a meaningful assessment of the costs and the benefits of committing Airport land or improvements to the Applicant.

- 2.6.3. Once the Authority approves the application, an Agreement will be negotiated with the prospective Operator. At the discretion of the Authority, the Authority may require that the prospective Operator shall pay an earnest money deposit equivalent to the rents, fees, and other charges for one month and submit a written letter of acceptance of the general terms and conditions of the Agreement as evidence of good faith to proceed with the preparation of the Agreement by the Authority.

The Agreement will then be presented to the Authority for approval. If the Authority approves the Agreement, the Operator shall execute the Agreement within 30 days. If the Operator does not execute the Agreement within 30 days, the Agreement shall be void and the Authority will retain any earnest money deposit.

2.7. *Competitive Proposal Process*

2.7.1. Authority Initiative

- 2.7.1.1. If land or improvements are available at the Airport, the Authority may issue a Request for Proposal (RFP) seeking competitive proposals from Entities who wish to occupy or use (for commercial purposes) such land or improvements and/or engage in Aeronautical Activities at the Airport.
- 2.7.1.2. The Authority shall advertise (in accordance with Authority practices and legal requirements) the opportunity using local and/or industry mediums. The advertisement shall provide a description of the opportunity (which shall include identification of the land and/or improvements that are available for use/occupancy and the products, services, and/or facilities required and/or desired by the Authority if known), instructions to proposers for obtaining the RFP document, the time and place for submitting sealed proposals, and the Authority's right to reject any and all proposals. In addition, the Authority may mail the RFP directly to those Entities who have expressed previous interest, may be interested, or that the Authority may wish to attract.
- 2.7.1.3. The RFP document shall:
- 2.7.1.3.1. Provide an overview of the Airport, the market, and the opportunity (products, services, and/or facilities required and/or desired);
 - 2.7.1.3.2. Identify the location of the land and/or improvements (and provide associated site plans, drawings, or photographs);
 - 2.7.1.3.3. Indicate the expected timeframe for occupancy of the land and/or improvements;
 - 2.7.1.3.4. Outline the submission and selection process, state the proposer's responsibilities, and provide a schedule for the process;
 - 2.7.1.3.5. Provide the proposal (response) format (or forms) and the proposed Agreement;
 - 2.7.1.3.6. Convey the evaluation and/or selection criteria that will be utilized by the Authority;
 - 2.7.1.3.7. State the grounds for denial or disqualification and withdrawal; and
 - 2.7.1.3.8. Indicate the place, date, and time the proposals will be opened.
 - 2.7.1.3.9. If a pre-proposal conference will be held, the RFP document shall state the place, date, and time of such conference. During the pre-proposal conference, the RFP process, procedures, and

requirements shall be discussed, and prospective Operators shall be given the opportunity to ask questions and/or convey concerns that shall be addressed by the Authority or its representatives during and/or subsequent to the conference.

- 2.7.1.4. The Authority will receive and open the proposals at the designated place and time. The Authority will then review (for compliance with the RFP specifications), evaluate, and rank the proposals. The Authority may also require interviews with prospective Operators. Upon completion of the review and evaluation process, the Authority shall select the best proposal (i.e., the proposal that is most advantageous to the Authority). The Authority will then negotiate an Agreement with the selected proposer. If an Agreement cannot be reached with the selected proposer, the Authority may negotiate with the next best proposer.
- 2.7.1.5. The Authority has the right to reject any and all proposals, to advertise for new proposals, and to modify the proposal process. In addition, the Authority is under no obligation to make any award or to make an award to the proposer specifying the highest price.
- 2.7.2. Initiative of Others
 - 2.7.2.1. If during the application process, a qualified Entity (other than the Applicant) expresses interest and demonstrates an immediate need for the same land and/or improvements, the Authority may negotiate with the Entity and/or issue an RFP (in which case, the Competitive Proposal Process, under Authority Initiative, would be followed).
 - 2.7.2.2. However, if the Authority approves an application (during public session), the Authority is under no obligation to negotiate with any Entity (other than the Applicant).

3. AGREEMENTS

3.1. General/Introduction

Prior to engaging in Activities at the Airport, an Operator will be required to enter into an Agreement with the Authority that will recite the terms and conditions under which the Operator shall use/occupy land and/or improvements and/or engage in Activities at the Airport. Neither the conditions stated nor set forth in this Policy represent a complete recitation of the provisions to be included in the Agreement. In addition, the provisions contained in any Agreement shall not be deemed or construed to modify this Policy.

The Agreement shall convey one or more of the following privileges: (1) the privilege of using the Airport in common with others who are authorized to do so, (2) the privilege of occupying and/or exclusively using specifically designated land and/or improvements at the Airport, and/or (3) the privilege of providing products, services, and/or facilities to the public at the Airport.

3.2. Premises

3.2.1. Aviation Use

3.2.1.1. The Agreement shall identify the aviation products, services, and facilities that must (required), may (optional), or can with permission (additional) be provided by an Operator. The products, services, and facilities that must and/or may be provided by an Operator must meet the minimum requirements set forth in the Minimum Standards. Additional products, services, and/or facilities may only be provided after receiving written permission from the Authority. Failure to meet the Minimum Standards or obtain written permission from the Authority before providing additional products, services, and/or facilities shall be considered a default under the Agreement.

3.2.2. Restrictions

3.2.2.1. Airport land and/or improvements shall not be leased for any use(s) or purpose(s) that are contrary to: (1) the best interests of the Authority, (2) the safe, effective, and efficient operation of the Airport including the safety of the public and the Aircraft (or other property) located at the Airport, (3) the goals of financial self-sufficiency for the Airport, (4) the future development of the Airport, and (5) Airport Sponsor Assurances.

3.2.3. Assignment

3.2.3.1. An Operator shall not assign an Agreement (or any part of an Agreement) or any interest the Operator may have in an Agreement, without the prior express written consent of the Authority.

3.2.3.1.1. At the time an assignment is approved (written consent is provided) by the Authority, the Operator shall reimburse the Authority for reasonable attorney's fees and expenses (incurred by the Authority) directly relating to the assignment.

3.2.3.1.2. Any proposed Assignee must complete an application, satisfy all criteria for new Operators as set forth in this Policy and be approved by the Authority.

3.2.4. Encumbrances

3.2.4.1. An Operator shall not mortgage, pledge, assign as collateral, encumber or in any manner transfer, convey, or dispose of the land and/or improvements leased by the Operator or any interest therein without the prior written consent of the Authority.

- 3.2.4.1.1. At the time an encumbrance is approved (written consent is provided) by the Authority, the Operator shall reimburse the Authority for reasonable attorney's fees and expenses (incurred by the Authority) directly relating to the encumbrance.
- 3.2.4.1.2. The Authority Board of Commissioners may delegate authority to the Airport Director to consent to specific types of encumbrances.
- 3.2.5. Subletting
 - 3.2.5.1. Unless otherwise stated in an Agreement, an Operator shall not sublease all or a portion of the Leased Premises without the prior written consent of the Authority. A sublease made contrary to the requirements of this section shall be null and void. Unless otherwise stated in the written consent, a sublease is subject to all of the terms and conditions of the lease governing the land and/or improvements being sublet. A sublessee may not occupy the premises before the Authority consents to the sublease in writing.
 - 3.2.5.1.1. Any proposed Sublessee must complete an application, satisfy all criteria for new Operators as set forth in this Policy and be approved by the Authority.
 - 3.2.5.1.2. The Authority may enter into an Agreement with an Operator that authorizes the subletting of portions of their Leased Premises, or of space for Aircraft parking, Tiedown, and hangar (and associated office and/or shop space) or other designated areas without prior written consent. In such a case, the sublease agreement utilized by the Operator must be approved by the Authority, must not allow further subletting and must be consistent with the Agreement between the Operator and the Authority.
 - 3.2.5.1.3. At the time subletting (or the sublease agreement) is approved (written consent is provided) by the Authority, the Operator shall reimburse the Authority for reasonable attorney's fees and expenses incurred by the Authority directly relating to the subletting.
 - 3.2.5.1.4. The Operator shall pay to the Authority all rents, fees, and/or other charges relating to the subletting (in accordance with this Policy).
 - 3.2.5.1.5. It is the policy of the Authority that an Operator shall not sublease space to Entities providing non-aeronautical products and/or services currently provided at the Passenger Terminal Building (i.e., car rental companies, gift shops, etc.).

3.3. *Term*

- 3.3.1. The term of an Agreement (for both new Agreements and extensions of existing Agreements) shall be at the sole discretion of the Authority. Terms may be month-to-month or in yearly increments but shall normally reflect an initial term of 1-5 years for short term Agreements and 5-10 years for long term Agreements; terms may extend beyond 10 years in limited circumstances based on the factors described below in Sections 3.3.2.2 through 3.3.2.4.
- 3.3.2. Shorter term or longer terms may be determined at the sole discretion of the Authority and will be guided by long term airport planning such as the Airport Master Plan,

Airport Layout Plan and development visions for the airport. The following factors will be utilized to administratively constrain the Authority's decision-making to parameters that reflect the Authority's duties to support aeronautical purposes, operate in a financially self-sustaining manner and avoid unjust economic discrimination among public-serving aeronautical service providers.

- 3.3.2.1. Factors supporting the use of shorter-term Agreements involve maintaining land and facilities more readily available for future aeronautical uses and/or allowing the Authority to more easily adapt to changing markets, increase competition, encourage compatible public uses, and increase future revenue opportunities. Example factors supporting shorter term lengths include:
 - 3.3.2.1.1. Long-term airport plans: The use is not reflected in long-term airport planning documents and/or a different use is reflected in long term airport planning documents for the same area.
 - 3.3.2.1.2. Intended use: The use is non-aeronautical in purpose.
 - 3.3.2.1.3. Intended use: Use is private or corporate with little public benefit, including hangars and non-hanger uses.
 - 3.3.2.1.4. Type of Agreement: Ground leases of unimproved land.
 - 3.3.2.1.5. Type of Agreement: Operating or concession leases/agreements.
 - 3.3.2.1.6. Level of Investment: Agreements involving existing facilities with little to no additional capital investment.
- 3.3.2.2. Factors supporting the use of longer-term Agreements involve:
 - 3.3.2.2.1. Long-term planning: If the use is identified in long term airport planning documents as a long-term use for the same area.
 - 3.3.2.2.2. Intended use: If the use is aeronautical in purpose.
 - 3.3.2.2.3. Intended use: If the use supports airport purposes.
 - 3.3.2.2.4. Intended use: If the use is commercial or public therefore enhancing public benefit, including hangar and non-hanger uses.
 - 3.3.2.2.5. Level of Investment: Agreements with new construction or major capital improvements may require a longer Agreement term to amortize and/or finance the capital investment. See more below in Section 3.3.b.iv.
- 3.3.2.3. Additional considerations for setting Agreement term lengths:
 - 3.3.2.3.1. Careful consideration and analysis will be needed if the use is a combination of non-aeronautical and aeronautical activities.
 - 3.3.2.3.2. Consideration of the Operator's compliance with prior or current Agreements involving the Authority's property or facilities.
 - 3.3.2.3.3. Costs or benefits to the Authority in terms of other improvements or infrastructure needed to support the use.
 - 3.3.2.3.4. Whether the agreement term aligns with the reasonable remaining useful life of the improvements on the property.
 - 3.3.2.3.5. Montana state statute limits contract or lease terms to a maximum of 50 years.
 - 3.3.2.3.6. The Federal Aviation Administration (FAA) will not consent to an aeronautical lease with a term longer than 50 years.

- 3.3.2.3.7. The FAA prohibits exclusive concession agreements in excess of 10 years.
 - 3.3.2.3.8. The FAA recommends terms of only 3-5 years for the non-aeronautical use of hangers and only when there is no current aeronautical need for hangar space.
 - 3.3.2.3.9. As a general standard, improvements above 50 years in age may be nearing the end of their reasonable useful life and will be reviewed with additional scrutiny prior to the negotiation of any new lease term. Such improvements may be considered candidates for shorter term extensions.
 - 3.3.2.4. When considering a longer-term Agreement due to the Operator's investment in new construction or a major capital investment, the term may be influenced by the following considerations:
 - 3.3.2.4.1. The standard amortization period for the investment;
 - 3.3.2.4.2. The useful life of the investment if it is new construction; and
 - 3.3.2.4.3. The length of the financing mechanism for the improvement.
 - 3.3.2.4.4. Additionally, the FAA recommends that 30-35 years is the upper threshold needed to provide an Operator sufficient time to retire their financial obligations for major aeronautical facility improvements.
 - 3.3.3. In the case of new Agreements whereby the Authority constructs all or part of the capital improvements, the Authority may amortize all or part of the costs of such improvements over the term of the Agreement granted to the Operator. The Authority shall utilize a minimum amortization period of 15 years. In addition, if the improvements are constructed for the exclusive use of an Operator, the Operator may be involved in the design process.
 - 3.3.4. When an existing Operator undertakes new construction or implements major capital improvements to the property or facility during the term of an existing Agreement, the term of the Agreement may be extended by the Authority based upon the level of capital improvement/investment made (or which will be made) by the Operator.
 - 3.3.5. Whenever possible and practical, the Authority may extend the term of an existing Agreement when such major capital improvements/investments are made by an Operator as opposed to entering into a new Agreement. However, the Authority reserves the right to amend other provisions of the Agreement at the time the term of an existing Agreement is extended.
 - 3.3.6. Agreements shall expire on June 30th. This will provide the Operator with the opportunity for the timely removal of any improvements (if desired by the Authority) during favorable weather conditions and will provide the Authority the ability to streamline its administration of its Agreement management system and to align with the Authority's fiscal year.
- 3.4. Improvements**
- 3.4.1. All improvements made (or which will be made) by an Operator shall comply with the requirements set forth by the appropriate Agency and the Authority.
 - 3.4.2. Upon the expiration of the term of the Agreement, the Authority shall have the option of purchasing all permanent improvements (at fair market value) not currently owned by the Authority and/or require that the Operator demolish and/or remove all (or a

portion of the) improvements not currently owned by the Authority and return the leasehold as nearly as possible to its original condition (and character) excluding ordinary wear and tear.

3.4.3. Upon the extension of an Agreement, the Authority retains the option to purchase all permanent improvements (at fair market value utilizing the cost approach), not currently owned by the Authority, at the time the Agreement was originally scheduled to expire. If this option is exercised, the Operator shall then pay the Authority fair market rent (as established by this Policy) for use of those improvements purchased by the Authority during the remaining term of the Agreement.

3.4.4. With the prior written consent and at the sole discretion of the Authority, the Operator may sell all permanent improvements to a third party willing and able to enter into an Agreement with the Authority.

3.5. *Responsibilities*

3.5.1. Authority

3.5.1.1. Unless otherwise stated in an Agreement, all Agreements shall reflect Triple Net terms with the Authority responsible for maintenance of all public Airport infrastructure and common areas including runways, taxiways, public apron areas, roadways, nav aids, and associated land areas.

3.5.2. Operator

3.5.2.1. Unless otherwise stated in an Agreement, the Operator shall be responsible for all maintenance (and related expenses) of land and/or improvements (situated on the leasehold) which includes all structural components, all exterior and interior maintenance, landscaping, janitorial, trash removal, snow removal, and sweeping.

3.5.2.2. The Operator shall be responsible for all utilities, shall maintain all insurance coverages at or above the policy limits set forth in the Minimum Standards, and shall remain current on all taxes and/or assessments charged by any applicable government entity including leasehold (or possessory interest tax), personal property, income, or any other business taxes.

3.5.2.3. The failure of an Operator to maintain the land and/or improvements and/or pay all utilities, insurance, and taxes shall be considered a default of the Agreement.

3.6. *Condemnation*

3.6.1. In the event of a full condemnation action, the Authority shall engage an appraiser to determine the value of the leasehold interest held by the Operator.

3.6.1.1. The appraisal shall be performed by an MAI appraiser or similarly designated and equally qualified appraiser who is certified by a recognized appraisal organization. Furthermore, the appraiser shall hold a Certified General Appraiser classification within the state of Montana obtained through the qualification procedures set forth by the Montana Department of Labor & Industry Division of Professional & Occupational Licensing Board of Real Estate Appraisers.

3.6.1.1.1. This requirement shall not preclude out-of-state appraisers from performing the required appraisal; however, any out-of-state appraiser must obtain a Certified General Appraiser license from the state of Montana prior to being awarded an appraisal contract by the Authority.

- 3.6.1.2. In addition to the aforementioned qualifications, any appraiser selected by the Authority to perform appraisals of aeronautical land and/or improvements shall have working knowledge of the aviation industry (to include air carrier operations, fixed base operations, and specialized aviation service organizations) and demonstrate familiarity with FAA rules, regulations, and policies impacting airport properties.
- 3.6.1.3. Furthermore, the appraiser shall have performed a minimum of two aeronautical property appraisals completed within the past five years and shall provide a list to the Authority identifying the location and type of appraisal conducted. It should be noted that appraisals performed on non-aeronautical properties for the purpose of airport acquisition shall not meet these requirements.
- 3.6.1.4. Appraisals performed on all aeronautical properties, to include land and/or improvements, shall consider all three recognized appraisal methods: Cost Approach, Market Data or Sales Comparison Approach, and Income Capitalization Approach. Although application of all three approaches is not required, the appraiser must adequately explain the omission of any method.
- 3.6.1.5. However, at a minimum, the appraiser shall utilize the Income Capitalization Approach (direct capitalization technique) to derive the value of the leasehold interest. Integral to this process, the appraiser shall conduct an analysis of rents, fees, and/or other charges for similar aeronautical properties (and/or activities) at similar (comparable) airports. All rents, fees, and/or other charges used in the appraisal process shall be obtained from and confirmed by either the lessor or lessee in the transaction.
- 3.6.1.6. The appraiser shall utilize current appraisal methods that are appropriate for the appraisal of aeronautical properties. The appraiser shall utilize an appropriate (justifiable) rate of return for airport-based properties (land and/or improvements). To this end, the capitalization rates utilized by the appraiser shall be obtained through reasonable and acceptable methods and must be adequately discussed in the appraisal report.
- 3.6.1.7. The property shall be appraised assuming that highest and best use is aviation-related. It shall also be assumed that the property will continue to be part of an operating airport and that access to the infrastructure and amenities of the Airport will continue to be available.
- 3.6.1.8. In addition, the appraisal shall meet the Uniform Standards of Professional Appraiser Practice (USPAP).
- 3.6.2. The Agreement shall terminate effective when the physical taking shall occur in the same manner as if the date of taking were the date originally fixed in the Agreement for the expiration of term. Upon termination of the Agreement, the Authority shall pay the Operator the appraised value less any adjustment for amounts due to the Authority.
- 3.6.3. If the Operator disagrees with the value conclusion reached by the appraiser, the Operator shall have the right to engage an unbiased, objective third party appraiser to conduct an independent appraisal subject to the same qualification standards set forth in this Policy. All costs (fees and/or expenses) associated with this engagement shall be the responsibility of the Operator.

- 3.6.3.1. If the conclusions of the two appraisals reflect a variance of ten percent or less, the results of both appraisals shall be averaged to determine the value. If the variance exceeds ten percent and an agreement cannot be reached to the mutual satisfaction of both parties, the parties shall mutually select a third appraiser (subject to the same qualification standards) who shall serve as an Arbitrator.
- 3.6.3.2. The Arbitrator shall review both appraisals and have the discretion to request a hearing at which both appraisers shall be available to provide additional information and/or clarification to the Arbitrator.
- 3.6.3.3. The Arbitrator shall derive a conclusion based upon the data contained in each appraisal and/or in each appraiser's files. Furthermore, the Arbitrator shall have the right to gather, analyze, and consider additional data not provided by either appraiser. All decisions rendered by the Arbitrator shall be legally binding to the full extent allowed by applicable law.
- 3.6.3.4. The cost (fees and/or expenses) associated with engaging an Arbitrator shall be divided equally between the parties.
- 3.6.4. In the event of a partial condemnation (which would not prevent or materially interfere with the use of the Leased Premises for the purpose for which it is then being used), the Agreement shall not terminate, but the rents, fees, and/or other charges due to the Authority during the unexpired portion of the Agreement shall be reduced proportionately based upon the square footage of the Leased Premises.
- 3.6.5. In the event of a full or partial condemnation by an Agency other than the Authority, the Authority and the Operator shall each be entitled to receive or retain separate awards, or a portion of lump sum awards as may be allocated to each party based upon the respective interests held by each party in any condemnation proceeding.
- 3.6.6. Condemnation shall follow all applicable federal, FAA, and Montana Regulatory Measures for condemnation proceedings and any appraisal report shall meet the requirements of such Regulatory Measures. If there is any inconsistency between this Policy and such Regulatory Measures, then the Regulatory Measures shall control.

3.7. Relocation

- 3.7.1. If relocation is deemed necessary, the Authority may provide land and/or improvements, if available, that are comparable to the land and/or improvements currently being leased by (and/or that have been developed by) the Operator. Such land and/or improvements shall be leased to the Operator at the same rent and/or for the same fees and under the same terms and conditions as stipulated in the current Agreement.
- 3.7.2. If comparable improvements are not available, the Authority shall buy out the Operator's interest in any improvements that have been made by the Operator as determined by an appraiser who meets the qualification standards set forth in this Policy. The Authority shall engage the appraiser to determine the value of the Operator's improvements using the Cost Approach.
- 3.7.3. If the Operator disagrees with the value conclusion reached by the appraiser, the Operator shall have the right to engage an unbiased, objective third party appraiser to conduct an independent appraisal subject to the same qualification standards set forth in this Policy. In this case, the balance of the dispute resolution provision delineated under the condemnation section of this Policy would apply.

- 3.7.4. The Authority shall pay all reasonable relocation costs and expenses associated with moving the Operator, unless otherwise stated in the Operator's Agreement with the Authority.
- 3.7.5. Relocation shall follow all applicable federal, FAA, and Montana Regulatory Measures for relocation proceedings and any appraisal report shall meet the requirements of such Regulatory Measures. If there is any inconsistency between this Policy and such Regulatory Measures, then the Regulatory Measures shall control.

4. RENTS AND FEES

4.1. *General/Introduction*

- 4.1.1. The Authority recognizes its duties and obligations to make all Airport land and/or improvements productive and to obtain fair market rents and fees. In addition, the Authority has an obligation to maintain a rent and fee structure that makes the Airport as self-sustaining as possible. To this end, the Authority, through Agreements with Operators and by other means that may be available to the Authority shall endeavor to recover the cost of providing, operating, and maintaining the Airport through rents, fees, and/or other charges.
- 4.1.2. Accordingly, all Agreements must adequately compensate the Authority for the rights and/or privileges granted to an Operator. It is the policy of the Authority to seek Agreement terms and conditions that, while being fair, reasonable, and non-discriminatory, provide the greatest return to the Authority.
- 4.1.3. Every Operator at the Airport shall be subject to the same rates, fees, and other charges as are uniformly applicable to other Operators utilizing the same or similar land and/or improvements at the Airport for the same or similar use or purpose. However, Operators seldom lease land and/or improvements that have the same attributes and/or values. As a result, the Authority may charge different rates to similar users of the Airport if such rates are non-discriminatory. In addition, Agreements that were reached through negotiation or a competitive proposal process may generate rents, fees, and/or other charges that may be higher than those being generated by existing Operators at a given point in time.

4.2. *Establishing Rents (for Land and/or Improvements)*

- 4.2.1. The Authority shall establish rents for land and/or improvements by conducting a market survey, of comparable rents paid by other Operators of the same class, or by competitive proposal process.

4.3. *Establishing Fees*

4.3.1. Use of the Airport

To recover the costs associated with the development, operation, and maintenance of the Airport, the Authority shall charge fees based upon the proportionate use of the Airport by tenants, consumers, and users.

- 4.3.1.1. Fees shall be determined using compensatory and residual approaches. The costs (both direct and indirect) incurred by the Authority to develop, operate, and maintain the Airport property, infrastructure, and/or facilities shall be allocated to one of four cost centers: Administrative, Passenger Terminal Building, Airfield, Operations (Public Safety), and.
- 4.3.1.2. The Passenger Terminal Building is defined as the building(s) and/or related facilities that are used by air carriers (to facilitate the provision of commercial air transportation services to the public), by airport concessions (to facilitate the sale of goods and services), and by airport consumers and/or visitors including the Passenger Terminal Building, the cooling well house and well, the sidewalks approaching the building (to the roadway curb back). It also includes the permit parking lot west of the building and the air carrier parking/operating ramp and security access control system.

- 4.3.1.3. Airfield Operations Area (AOA) is defined as those areas that provide for Aircraft landing, takeoff, and taxiing. The AOA includes, without limitation, the runways, taxiways, approach and clear zones, safety areas, infield areas, landing and navigation aids, and other areas at the Airport that are required by or related to Aircraft operations. The AOA is displayed in yellow on the Airport Layout Plan depicting visually the AOA.
- 4.3.1.4. Parking and Roadways is defined as those roadways (outside the AOA) that accommodate Vehicle operations between and among airport facilities. The Parking portion of this cost center includes the public and employee parking areas.
- 4.3.1.5. Support Facilities includes the FBO leasehold and areas identified for future general aviation use, T-hangars, corporate hangars, FAA offices, rental car Vehicle storage/staging/cleaning facilities, fuel farms, surface parking lots, etc.
- 4.3.1.6. Operations (Public Safety) is defined as those costs associated with police, fire protection, emergency response and any associated buildings and/or vehicles.
- 4.3.1.7. Administration is defined as those costs associated with the administration and management of the Airport and Authority.
- 4.3.1.8. Costs shall include all operating and maintenance costs, debt service, small capital outlays, reserves, and amortization.
- 4.3.1.9. Costs associated with Operations (Public Safety) and Administration will be distributed over the remaining cost centers on a pro-rata basis.
- 4.3.1.10. All revenues shall be deducted from the appropriate cost center and the difference (in the form of fees) shall be charged to Airport tenants, consumers, and/or users on a pro-rata basis using the formulas provided in the following table:
- 4.3.1.11. All fees shall be adjusted each year based upon the Authority's fiscal year budget for the Airport. All adjustments shall be effective on July 1st or the first day of the fiscal year budget.
- 4.3.1.12. Any deficits shall be carried forward to (and considered when establishing fees for) the following year. The Authority may utilize any surplus for capital improvements (or carry any surplus or any portion of any surplus forward for consideration in establishing fees for the following year).

4.4. Authority Rights

- 4.4.1. The Authority reserves the right to use other methodologies and/or establish and/or charge additional (or other) rents, fees, and/or other charges for the use and/or occupancy of Airport land and/or improvements (and/or engaging in activities at the Airport).

4.5. Adjusting Rents

- 4.5.1. All rents and fees owed to the Authority for aeronautical leases shall be adjusted from time to time, but not more frequently than annually, to the rate specified per square foot per year by Resolution of the Missoula County Airport Authority Board of Commissioners ("Rate Resolution"). Resolutions shall be adopted pursuant to state and local regulations, including open meeting and notice laws.
- 4.5.2. All rents and fees owed to the Authority for non-aeronautical, commercial leases shall be adjusted (either upward or downward) at least every three years, effective July 1st, by a percentage equal to the percentage change in the Consumer Price Index (U.S.

Department of Labor, Consumer Price Index, All Urban Consumers, All Items, U.S. City Average, Not Seasonally Adjusted, 1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index") between April of the initial year of the Agreement and April in the year of the adjustment. The CPI adjustment is based on the Index figures for April, rather than the index figures for July to ensure that the Index will be available at the time of the adjustment, because the index figures for July are not published and readily available for several months after the beginning of July. If the Index ceases to be published by the United States Department of Labor, Bureau of Labor Statistics, or a significant change is made in the manner in which the Index is calculated, then the parties agree to substitute the most nearly equivalent cost of living index which is published by the United States Department of Labor, its successor, or a similar agency.

4.5.2.1. An example of the adjustment of the Ground Rent provided for in this section is as follows: if the Index for April of 2001 is 168.3 and for April of 2006 is 180.0, which is a 7.0 percent increase in the Index from the base Index (i.e. $180.0 - 168.3 = 11.7$, and $11.7/168.3 = 0.07$ or 7%), then effective July 1, 2006, the Ground Rent will be increased by \$0.008 (i.e., $\$0.12 \times .07 = \0.008) to \$0.128 per square foot per year.

4.5.3. Additionally, rental rates may be increased pursuant to a Market Survey as outlined in §4.2.2 above.

4.6. Dispute Resolution

- 4.6.1. If an Operator disagrees with an adjustment made pursuant to a Market Survey, the Operator shall have the right to engage an unbiased, objective third party aviation consultant to conduct a Lease Rate Analysis (Market Survey) subject to the same qualification standards set forth in this Policy. All costs (fees and/or expenses) associated with this engagement shall be the responsibility of the Operator.
- 4.6.2. If the conclusions of the two Lease Rates Analyses (Market Surveys) reflect a variance of ten percent or less, the results of both Lease Rate Analyses (Market Surveys) shall be averaged to determine the rental rate.
- 4.6.3. If the variance exceeds ten percent and an agreement cannot be reached to the mutual satisfaction of both parties, the parties shall mutually select a third aviation consultant (subject to the same qualification standards) who shall serve as an Arbitrator.
- 4.6.4. The Arbitrator shall review both Lease Rate Analyses (Market Surveys) and have the discretion to request a hearing at which both aviation consultants shall be available to provide additional information and/or clarification to the Arbitrator.
- 4.6.5. The Arbitrator shall derive a conclusion based upon the data contained in each Lease Rate Analysis (Market Survey) and/or each aviation consultant's files. Furthermore, the Arbitrator shall have the right to gather, analyze and consider additional data not provided by either aviation consultant. All decisions rendered by the Arbitrator shall be legally binding to the full extent allowed by applicable law.
- 4.6.6. The cost (fees and/or expenses) associated with engaging an Arbitrator shall be divided equally between the parties.
- 4.6.7. The Operator shall still be responsible for the payment of the adjusted rents, fees, and/or other charges during the dispute period.

4.7. *Payment of Rents, Fees, and/or Other Charges*

- 4.7.1. No Operator shall be permitted to engage in Activities unless the Operator is current (not in default and beyond the point at which the default can be cured) in the payment of all rents, fees, or other charges accruing to the Authority under any and all Agreements with the Authority.
- 4.7.2. An Operator's failure to remain current in the payment of all rents, fees, or other sums accruing to the Authority will be grounds for termination of the Agreement authorizing the conduct of Activities at the Airport.
- 4.7.3. In addition, the Authority shall have the right to enforce the payment of any rent, fee, and/or other charge assessed by the Authority by any legal means available to the Authority under any Agreement and/or as provided by Montana law.

4.8. *Bookkeeping and Records*

Records must be kept to evidence amounts due to the Authority for rents, fees, and/or other charges applicable to the Operator's Activities at the Airport. The Authority or its representatives shall be entitled to have access to such records upon reasonable notice. The Authority reserves the right to audit such records.

5. ATTACHMENT A

5.1. *Rights Reserved*

- 5.1.1. The Authority reserves and retains the right for the use of the Airport by others who may desire to use the same pursuant to applicable federal, state, and local Regulatory Measures pertaining to such use.
- 5.1.2. The Authority further reserves the right to designate specific Airport areas for Activities in accordance with the currently adopted Airport Layout Plan (ALP), as may be amended from time to time. Such designation shall give consideration to the nature and extent of current and/or future Activities and the land and/or improvements that may be available and/or used for specific Activities and shall be consistent with the safe, orderly, and efficient use of the Airport.
 - 5.1.2.1. The ALP depicts all of the Airport's land and/or improvements and future development plans. The ALP reflects an agreement with the FAA regarding the proposed allocation of Airport land and/or improvements to specific uses and/or development. It is the policy of the Authority that any use, occupancy, construction, or modification of land and/or improvements that is inconsistent with the ALP is undesirable. Any development that is substantially different than that depicted on the ALP could adversely affect the safe, orderly, or efficient use of the Airport. While the Authority may consider making an application to the FAA for approval of the revision of the ALP on behalf of a prospective Operator, nothing contained in this Policy shall require the Authority to make such application.
- 5.1.3. The Authority reserves the right to develop and make any improvements and/or repairs to (at) the Airport that it deems necessary. The Authority will provide advance notice of the date and time that such developments, improvements, and/or repairs will be made.
- 5.1.4. The Authority reserves the right to prohibit any Entity from using the Airport or engaging in Activities at the Airport (and/or revoke or suspend any privileges granted to any Entity) upon determination by the Authority that such Operator has not complied with the Primary Guiding Documents, any other applicable Regulatory Measures, or has otherwise jeopardized the safety of Entities utilizing the Airport or the land and/or improvements located at the Airport.
- 5.1.5. The Authority reserves the right to lease the Airport or portions thereof during war or national emergency to the United States government for military use. If such lease is executed, the provisions of any Agreement including, without limitation, the Operator's financial obligations, to the extent they are inconsistent with said lease, shall be suspended.
- 5.1.6. The Authority will not enter into an Agreement that will require the Authority to relinquish the right to take any action the Authority considers necessary to protect the aerial approaches of the Airport against obstruction or to prevent an Entity from erecting or permitting to be erected any building or other structure which might limit the usefulness of the Airport or constitute a hazard to Aircraft.
- 5.1.7. The Authority will not enter into an Agreement that requires the Authority to waive any sovereign, governmental or other immunity to which the Authority may be entitled or that would require the Authority to submit to the laws of any state other than those of the state of Montana.

- 5.1.8. The Authority is under no obligation to provide financing and/or make any improvements to Airport land and/or improvements to facilitate any development proposed by a prospective Operator.
- 5.1.8.1. While the Authority may choose to pursue federal, state, and/or other funds to contribute to the development, the Authority is under no obligation to do so. In addition, the Authority is under no obligation to provide matching funds if required to secure such funding.
- 5.1.9. This Policy may be supplemented, amended, or modified by the Authority, from time to time, and in such manner and to such extent as is deemed appropriate by the Authority.
- 5.1.10. The Authority reserves the right to take such actions as it may deem necessary, appropriate, and/or in the best interest of the Authority to preserve and protect the safety and integrity of the Authority's mission, purpose, and facilities as well as those who use the Airport.