

CITY OF BOISE

To: Mayor and Council
FROM: Amy Snyder, Boise Airport
RESOLUTION NUMBER: R-176-11
DATE: May 17, 2011
SUBJECT: Land Lease Agreement – Nelson Construction Co.

ACTION REQUIRED: Approval of Land Lease Agreement with Nelson Construction Co.

RECOMMENDATION: Staff recommends approval of Land Lease Agreement with Nelson Construction, Co.

FISCAL IMPACT/BUDGET IMPLICATIONS: Initial annual rent payments of \$46,511.

BACKGROUND: Nelson Construction holds the state mineral lease for a gravel pit adjacent to this land lease. Nelson has historically leased this site but activities have increased and the lease required an update.

Nelson uses or intends to use the lease premises for the following: water well, access to their gravel mining operations, stockpile of mineral product, pre-approved sublease to Ritchie Bros. Auctioneers (America) Inc. for occasional heavy equipment auctions (subject to Boise City approval of a re-zone), and is working with Boise City Public Works Dept. for a glass recycling stockpile and crushing operation.

ATTACHMENTS: Three original Land Lease Agreements

RESOLUTION NO. _____

BY THE COUNCIL:

CLEGG, EBERLE, JORDAN, MCLEAN,
SHEALY AND THOMSON

A RESOLUTION APPROVING A LAND LEASE AGREEMENT BETWEEN BOISE CITY (DEPARTMENT OF AVIATION) AND NELSON CONSTRUCTION, CO. FOR THE LEASE OF CERTAIN PREMISES UPON BOISE AIR TERMINAL (GOWEN FIELD); AUTHORIZING THE MAYOR AND CITY CLERK TO RESPECTIVELY EXECUTE AND ATTEST SAID LEASE AGREEMENT ON BEHALF OF BOISE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Nelson Construction, Co. wishes to lease premises upon Boise Airport; and
WHEREAS, the Director of Aviation recommends approval of said Lease as it is in the best interests of the City to enter into said Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:

Section 1. That the Land Lease Agreement for said premises upon and within the Boise Air Terminal (Gowen Field), a copy of which is attached hereto marked Exhibit "A" and made a part hereof by attachment be, and the same hereby is, approved both as to form and content.

Section 2. That the Mayor and City Clerk be, and they hereby are, authorized to respectively execute and attest said Agreement for and on behalf of Boise City.

Section 3. That this Resolution shall be in full force and effect immediately upon its adoption and approval.

ADOPTED by the Council of the City of Boise, Idaho, this ____ day of May, 2011.

APPROVED by the Mayor of the City of Boise, Idaho this ____ day of May, 2011.

APPROVED:

ATTEST:

David H. Bieter
MAYOR

Debbie Broughton
EX-OFFICIO CITY CLERK

BOISE AIRPORT
LAND LEASE
Nelson Construction Co.

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BOISE AIRPORT
LAND LEASE
Nelson Construction Co.

THIS LEASE AGREEMENT entered into this 1st day of May, 2011 between the City of Boise City (Lessor) and Nelson Construction Co. (Lessee);

WITNESSETH:

In consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

ARTICLE I - PREMISES

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in Ada County, Idaho:

A parcel of land approximately 33 acres in size located in the E ½ of the S ¼ of the NW ¼ and the N ½ of the SW ¼ of the NE ¼ lying south of Interstate Highway I-84 in Section 35 T3N, R2E.

The said property is further described on Exhibit "A" attached hereto and hereinafter referred to as the "Premises" or "Leased Premises".

ARTICLE II - TERM OF LEASEHOLD

2.01 Term. This Lease shall be for a term of three (3) years commencing on the first day of May, 2011. At the expiration of this Lease, and upon written consent of Lessor, this Agreement will continue on a month to month basis and may be canceled upon thirty days notice by either party. Nothing herein shall be construed as authorizing or allowing holding over of the Leased Premises.

2.02 Renewal Term. Providing Lessee is not in default at the time Lessee requests an extension, the Lessee may request an extension of the term of this Lease for an additional period of two (2) years and ten (10) months, terminating on the last day of February, 2017, by giving written notice of request to so extend not less than sixty days prior to the end of the term; provided, however, said extension of Lease shall be subject to negotiation and agreement, in writing, of rental consideration as provided in Article III, and any other terms or conditions.

This renewal clause is specifically subject to such negotiation and agreement between the parties for an extension, and shall not be construed as a Lessee "right of renewal." As such, Lessor retains sole discretion in determining whether or not to further extend the Lease for the Leased Premises.

2.03 Holding Over . It is agreed and understood that any holding over by Lessee of the Leased Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rental of one and one-half times the current monthly rental, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises or to use self help as authorized by law.

2.04 National Emergency . In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of such suspension.

ARTICLE III - RENTAL

3.01 Ground Rental . For the purpose of computing the rental payments, Lessor and Lessee agree that the Leased Premises comprise approximately 33 acres of which approximately 23 acres is useable. The annual rental for the Leased Premises will, during the first year, be \$46,511 payable in monthly installments of \$3,875.92.

3.02 Commencement of Rental . Payment of ground rental by Lessee to Lessor as aforesaid shall commence on the effective date of this Lease, which is May 1, 2011. Partial months shall be prorated.

3.03 Readjustment of Ground Rental . For the purpose of computing adjustments to rental payments, Lessor and Lessee agree that the Base Year Consumer Price Index is _____ (May, 2011 - to be completed when information is available) and the Base Rent is \$46,511. The annual rental payable under this Lease Agreement shall be adjusted as follows, with each adjustment effective as of the appropriate anniversary date, regardless of the date the actual adjustment is made:

- a. Within ninety (90) days prior to or after each annual Lease anniversary, the rent will be adjusted to:

An amount equal to the base rent times the percentage increase in the Consumer Price Index from the base year to the anniversary year plus base rent.

For example, if the percentage increase in the Consumer Price Index from the base year to the anniversary year is five percent (5%) and the base rent is \$100.00, then the adjusted rental shall be 105% of the base rent or \$105.00. ($[\$100 \times 5\%] + \$100.00 = \105)

- b. For purposes of Paragraph 3.03, the following definitions will apply:

"Base Year" - the year in which the Lease becomes effective.

"Base Rent" - the initial annual rental at the Lease onset, in this case \$46,511.

"Anniversary Year" - the year in which the rent is currently being adjusted, i.e. each annual anniversary.

"Consumer Price Index" - the Revised Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84 = 100) or, if this Index is discontinued, any other renamed national index covering metropolitan areas.

The Consumer Price Index used for the base year will be the Consumer Price Index published for the month and year in which the Lease is effective. In the event a price index (as defined in this section) is not yet published or otherwise unavailable for the month in which the Lease is effective, the price index used will be that price index for the closest preceding month for which the price index is available.

The Consumer Price Index used for the anniversary years shall be that Consumer Price Index published for the month in which the designated anniversary occurs. In the event that the U. S. Department of Labor, Bureau of Labor Statistics changes the publication frequency of the price index (as defined in this section) or if the price index is not yet published or otherwise unavailable for the month in which the anniversary falls, the adjustment will be based on the price index for the closest preceding month for which the price index is available. At the time the index becomes available, the adjustment will be recalculated and Lessee will be notified of the adjustment and any additional rent which may be due and payable.

3.04 Time of Payment . Monthly rental payments shall be paid in advance on or before the first day of each and every month during the term of this Lease, without notice from the City.

3.05 Security Deposit . Contemporaneously with the execution of this Agreement, Lessee will deposit the sum of \$ 4,000 as a security deposit to serve as a guarantee that Lessee will comply with all of the covenants and conditions of this Agreement. In the event Lessee breaches any of the terms, covenants or conditions of this Agreement and Lessor incurs costs, expenses or other damages as a result thereof, such costs, expenses or other damages may, at Lessor's option be paid from said security deposit, and Lessee agrees to immediately, upon Lessor's demand, replenish the security deposit to restore it to its original amount. In the event Lessee breaches any of the terms, covenants or conditions of this agreement, Lessor may at Lessor's option perform such term, covenant or condition, or cause the same to be performed, and any cost or expense incurred by Lessor, (including reasonable compensation for Lessor's time spent in performing said breached term, covenant or condition), may, at Lessor's option, be paid from said security deposit, and Lessee agrees to immediately, upon Lessor's demand, replenish the security deposit to restore it to its original amount. Nothing in this Paragraph, including the amount of security deposit required, shall be construed as a limit or waiver of damages incurred by Lessor as a result of any breach of this Agreement by Lessee.

3.06 Modification Charge . In the event Lessee requests, and Lessor approves, an amendment or modification of the Lease, Lessee shall, in its next rental payment, include a \$100 fee for administrative expenses related to the development, review, and approval of the Amendment.

3.07 Unpaid Rent, Fees and Charges . Any installment of rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Lessor by the 20th day of the month in which payment is due, shall bear interest at the rate of eighteen percent (18%) per annum from the date when the same was due according to the terms of this Lease until paid by Lessee.

3.08 Place of Payment . All rental payments provided herein shall be paid to Lessor at the following address: Airport Director's Office, Boise Airport, 3201 Airport Way, Suite 1000, Boise, Idaho 83705.

ARTICLE IV - OBLIGATIONS OF LESSOR

Lessor agrees that upon Lessee's payment of rent and performance of all of the covenants, conditions, and agreements herein set forth, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the terms hereby provided. Lessor has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder, and to do so throughout the Lease term and any renewals or extensions thereof.

ARTICLE V - OBLIGATIONS OF LESSEE

5.01 Net Lease . This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth in Article IV above and elsewhere in this Lease Agreement.

Lessee shall:

- a. Keep and maintain the Leased Premises and improvements located thereon in a good state of repair at all times;
- b. Pay all ad valorem taxes and similar taxes assessed against Lessee's interest in the Leased Premises and improvements, and all of Lessee's personal property located on the Leased Premises; and
- c. Pay all casualty and liability insurance premiums required in accordance with Article VI herein below; and
- e. Comply with the reclamation plans on file with the State of Idaho for former mineral lease 2110-R and existing mineral lease E-8778. No additional fill shall be utilized without prior written consent of Lessor.
- f. Allow inspection of the Leased Premises by Lessor or Lessor's representative upon 24 hours' notice.

5.02 Condition of Premises. Lessee accepts the Leased Premises in their present condition and agrees that the Leased Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon.

5.03 Maintenance of Premises . Lessee agrees to maintain any improvements upon the Leased Premises in a good state of repair and condition, including the appearance of the improvements. Lessee further agrees to keep the grounds in a neat and orderly condition as determined by the sole discretion of Lessor. Landscaped areas shall be watered, trimmed, and weeded as necessary to maintain a healthy, neat appearance. Weeds in non-landscaped areas shall be kept cut close to the ground. Lessee shall not allow any trash or litter to accumulate on the premises. If following notice from Lessor, Lessee fails to make any necessary repairs or perform any necessary maintenance for which Lessee is responsible, Lessor may cause such repairs or maintenance to be performed and Lessor's costs of doing so shall be reimbursed to Lessor within thirty (30) days of Lessee's receipt of Lessor's invoice for such costs.

5.04 Trash, Garbage, Etc. Lessee shall make suitable arrangements for the storage, collection, and removal of all trash, garbage and other refuse resulting from Lessee's activities on the Leased Premises. Lessee shall provide appropriate, covered, commercial type receptacles for such trash, garbage, and other refuse, and will maintain these receptacles, screened from view from adjoining properties or public streets, in an attractive, safe, and sanitary manner as determined by Lessor in its sole discretion.

5.05 Permitted Uses . Lessee will not enter into any business activities on the Leased Premises other than those stated as follows:

Access to Idaho State mineral leases 8778 and 8779, Stockpiling of gravel, water well, weight scales and other uses related to mineral mining and reclamation, Stockpiling of recyclable glass in the pit not to exceed three thousand (3,000) cubic yards, as determined by visual inspection, unless otherwise approved by Lessor, in writing, and glass crushing.

All other uses require written approval by Lessor.

5.06 Outdoor Storage . Outdoor storage of equipment or materials related to permitted uses must be specifically approved by Lessor in writing. Said approval shall not be withheld unreasonably. Storage of such items may be required to be in a fenced enclosure; screening may also be required. Approval of outdoor storage by the Lessor shall not be construed as approval for Lessee to maintain, either in reality or appearance, a junkyard or salvage yard. Storage of glass shall only be allowed in the pit. No stockpiling of glass allowed at surface grade.

5.07 Environmental Compliance . The Lessee shall comply with all Federal, State and Local environmental laws, rules and regulations with regard to the Leased Premises, including its business use and activity on the Leased Premises and for any environmental response or remedial activities. If the Lessee fails to comply with any applicable environmental laws, the Lessor, may enter the premises and take all reasonable and necessary measures, at the Lessee's sole expense, to insure compliance with environmental laws. In the event of a release or a threatened release of hazardous materials, hazardous wastes or other contaminants into the environment relating to or arising out of the Lessee's use or occupancy of the Leased Premises, or in the event of any claim, demand, action or notice is made against the Lessee regarding the Lessee's failure or alleged failure to comply with any environmental laws, the Lessee immediately shall notify the Lessor in writing and shall provide the Lessor with copies of any written claims, demands, notices or actions so made.

5.08 Environmental Remediation . The Lessee shall undertake such steps to remedy and remove any hazardous materials or hazardous wastes and any other environmental contamination as are caused by the Lessee on or under the Leased Premises, as are necessary to protect the public health and safety and the environment from actual or potential harm and to bring the Leased Premises into compliance with all environmental laws. Such work is to be performed at the Lessee's sole expense after the Lessee submits to the Lessor a written plan for completing the work and receives the prior written approval of the Lessor which approval shall not be withheld unreasonably.

ARTICLE VI - INSURANCE AND INDEMNIFICATION

6.01 Liability Insurance . Throughout the duration of this agreement, Lessee, at its sole cost and expense, shall provide and keep in force for the benefit of Lessor and Lessee comprehensive general liability insurance in the minimum amount of specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code

The limits of insurance shall not in any manner impair the obligations of Lessee to indemnify, protect, defend and hold harmless Lessor as specified in this agreement. Should Lessor become liable for any amount in excess of those insurance limits as provided herein, Lessee covenants and agrees to indemnify, protect, defend and hold harmless Lessor from and for all such liabilities, actions, suits, claims, judgments, fines, losses, costs, expenses or demands for damages, injury or liability with respect to persons or property.

Lessee shall provide Lessor with a Certificate of Insurance evidencing Lessee's compliance with the requirements of this paragraph; Lessee shall file such proof with the Airport Director's office.

If the Lessee is self insured for liability they shall provide the following documentation to the Lessor.

Financial statements certified by an independent licensed accountant that they have the financial capacity to meet any and all obligations to indemnify the Lessor, the City of Boise, its agents and employees to the full extent required by the Idaho Tort Claims Act and the indemnification clause of this Agreement. The Lessor shall supply annual financial statements to the Lessor to show maintenance of their financial condition. If the financial condition of the Lessee should change at anytime during the term of this Agreement to the extent that the Lessee's ability to meet all financial obligations of this section is not possible then the Lessee will have 10 days to secure liability insurance to meet the conditions of this Agreement. Notice from the Lessor or Lessee shall be sufficient to enact this condition. At any time, the Lessor, for any reason, may provide notice to the Lessee that the proof of financial condition is insufficient and the Lessee shall provide liability insurance and notice to the Lessor pursuant to this section.

6.02 Authorized Insurance Companies and Certificates of Insurance . Any insurance policy shall be written by insurance companies authorized to do business in the State of Idaho and shall be written by companies approved by Lessor, such approval not to be unreasonably withheld. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain (a) a statement of the coverage provided by the policy; (b) a statement certifying the Lessor to be listed as an additional insured in the policy; (c) a statement of the period during which the policy is in effect; (d) a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and (e) an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in amount for any reason whatsoever without at least thirty (30) days' prior written notice to Lessor.

6.03 Indemnification . To the extent not prohibited by law, Lessor and its respective officers, directors, officials, agents, employees and/or subdivisions (collectively the Lessor), shall not be liable for any damage, injury or death, either to person or property, of any nature whatsoever or otherwise resulting from the loss of use thereof, which damage is sustained by Lessee, by persons claiming through Lessee, or any other third party. Lessee shall indemnify, protect, defend and hold harmless Lessor from and against any and all liabilities, losses, suits, claims, judgments, fines, losses, costs, expenses or demands, of any nature whatsoever (including court costs, expert fees and attorneys' fees), incurred in connection with or arising from any cause or incident to this agreement and/or the use or occupancy of the Premises or any acts, omissions or negligence of Lessee, it's officers, directors, officials, agents, employees, contractors, subcontractors, licensees and/or invitees (collectively, the Lessee), in, on or about the Premises; provided, however, that this indemnification clause shall not apply where the damage, injury or death results solely from the negligence of Lessor. Should Lessor be named as a defendant, a party or otherwise identified in any suit, action or demand brought against Lessee in connection with or arising out of an event covered by this indemnification provision, Lessee shall pay and/or otherwise compensate Lessor for Lessor's costs and expenses incurred in such suit, action or demand without limitation. The Lessor shall give reasonable notice to Lessee of any such claims or actions. The Lessee shall, in writing, notify Lessor of the counsel to be used in carrying out its obligations herein. Lessor shall be entitled to object to use of said counsel and shall give reasonable notice of any objection regarding the use of said counsel. Further, Lessee's

agreement to indemnify Lessor is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Lessee pursuant to the provisions of this agreement.

The provisions of this section shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this agreement.

ARTICLE VII - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

7.01 Expiration . This Lease shall expire at the end of the term or any extension thereof.

7.02 Cancellation . This Lease shall be subject to immediate cancellation by Lessor in the event Lessee shall:

- a. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due;
- b. Hold over their tenancy beyond this Lease and any options expressly identified in this Lease;
- c. Make any general assignment for the benefit of creditors;
- d. Abandon the Leased Premises;
- e. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- f. Be adjudged a bankrupt in involuntary bankruptcy proceedings;
- g. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver;
- h. Visual inspection of the Leased Premises by Lessor reveals that Lessee is not in compliance with the Permitted Uses provision, including, but not limited to, the recyclable glass stockpiling limitation of three thousand (3,000) cubic yards, as determined in the sole discretion of Lessor; or

- i. Visual inspection of the Leased Premises by Lessor reveals that the stockpiling of recyclable glass upon the Leased Premises creates a risk of bird strikes or other wildlife hazard, as determined in the sole discretion of Lessor.

In any of the aforesaid events, Lessor may take immediate possession of the Leased Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Lease cancelled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Leased Premises.

7.03 Repossessing and Reletting . In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may in a manner consistent with Idaho Law:

- a. Enter into and upon the Leased Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such force as may be necessary; and
- b. Either cancel this Lease by notice or without canceling this Lease, relet the Leased Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Leased Premises and the amounts received from reletting the Leased Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

7.04 Assignment and Transfer . Lessee shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Lessor, which approval may be withheld at the sole discretion of the Lessor.

Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 11 U.S.C. SS 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

7.05 Subleasing . Upon written approval by Lessor, Lessee may have the right to sublease all or any part of the space demised hereunder for the same purposes permitted under the terms and provisions of this Lease. Any such sublease shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease. Lessee shall furnish Lessor with a copy of the Sublease Agreement.

Notwithstanding the foregoing, Lessor acknowledges that Lessee is subleasing portions of the Leased Premises to the following party: Ritchie Bros. Auctioneers (America) Inc. Lessee has furnished a draft of the sublease to Lessor, Lessee hereby agrees to require compliance with this master Lease and furnish executed copies of such sublease to Lessor.

7.06 Lien by Lessor . It is expressly agreed that in the event of default by Lessee hereunder, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock, or any other items specifically exempted under law, belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect any statutory lien given by law, but shall be cumulative thereof. Lessee shall seek permission of the Lessor to subordinate its lien to potential lenders of the lessee for improvements. Said permission shall not be unreasonably withheld.

ARTICLE VIII - GENERAL PROVISIONS

8.01 New Construction/Remodel of Existing Improvement . This Lease is written for the lease of the ground described, which may or may not have any existing improvements. Proposed construction or remodeling by Lessee must be in accordance with all applicable Federal, State and Local codes and laws and will require the specific written approval of Lessor, which approval shall not be withheld unreasonably; and Lessor may require an amendment to the Lease. Said amendment may include, but not be limited to, construction and landscaping standards (such as building-to-land ratios, drainage plans, etc.), additional insurance requirements, rights of Lessee to encumber improvements, etc. Lessee shall obtain all required permits.

8.02 Improvements upon Termination . Upon termination of this Lease the Lessee shall return the land to Lessor in the same condition as when initially leased pursuant to the provisions of this section. Lessor may require Lessee to conduct reasonable, commonly accepted testing procedures at Lessee's expense to demonstrate that the land has not been degraded during the Lessee's tenancy. Any remediation, repairs or other actions required to return the property to its original condition will be solely at Lessee's expense.

At the option of the Lessee, any improvements or alterations made to the property by Lessee may be offered, in writing, to Lessor, at no cost to the Lessor, rather than be removed by Lessee. Acceptance by Lessor may be subject to testing as stated above. Nothing herein shall be construed to require acceptance by Lessor of improvements or alterations.

8.03 Right of Flight . Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on Boise Airport.

Lessor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the real property hereinafter described to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at Boise Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

Lessor reserves for itself, its successors and assigns, the right to prevent any use of the Leased Premises which would interfere with aircraft landing on or taking off from Boise Airport and the right to prevent any other use of said land which would constitute an airport hazard.

8.04 Prohibited Uses . The following uses shall not be permitted on the Leased Premises at any time: residential; trailer courts; labor camps; junkyards; mining and quarrying; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, refuse; hazardous material or hazardous waste; fat rendering; stockyards or slaughtering of animals; smelting of iron, tin, zinc or other ores; or large animal raising.

8.05 Performance Standards . The Leased Premises shall not be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions, including but not limited to:

- a. Hazardous Activities: No activity shall be conducted on the Leased Premises that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining property, or that shall be illegal.

- b. Vibration or Shock: No vibration or shock perceptible to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.
- c. Noise: No noise objectionable to a person of normal sensibilities shall be permitted within fifty (50) feet of the property line.
- d. Air Pollution: Except for the operation of motor vehicles to, from, and on the Leased Premises as incidental to the use thereof, the following requirements shall apply:
 - 1. Any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmospheric pollutant shall be conducted within a completely enclosed building.
 - 2. Any use producing atmospheric emissions shall comply with the standards of the U. S. Environmental Protection Agency, the Ada County Air Quality Board, any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exist at the date of the Lease or which may be enacted during the term of the Lease.
 - 3. The emission of odors that are detectable at any point beyond the property line of the Leased Premises shall not be permitted.
- e. Heat or Glare: Any operation producing intense glare or heat shall be performed within an enclosed screened area in such manner that the glare or heat emitted will not be discernable from the property line.
- f. Electronic or Radio Interference: No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct or adversely affect the operation of air navigation aids and Airport communications.
- g. Illumination:
 - 1. The maximum height of any lighting standards on the Leased premises shall be limited to thirty (30) feet above ground level.
 - 2. The intensity of illumination shall be limited to 10 foot candles or 0.1 lumens per square foot per open areas or surface areas visible at the property line.
 - 3. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA or any other governmental agency having applicable jurisdiction with respect to height, type and placement of lighting standards as they may affect the safety of flight operations into, from and around the Airport.

- h. Liquid or Solid Refuse and Waste: No liquid or solid refuse or waste shall be kept, stored, or allowed to accumulate on any lot.
- i. Other substance, condition, or element in such amount as to affect the surrounding area or adjoining premises

8.06 Signs . The number, size, design, and location of all signs displayed on the Leased Premises shall be subject to approval by the Airport Director after review and approval by any authorized regulatory agencies such as Boise City Community Planning & Development Department or an equivalent County agency, if the Leased Premises lie within Ada County rather than Boise City.

8.07 Non-discrimination Covenant . Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- a. That no person on the grounds of race, creed, color, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- b. That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- c. That Lessee shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A., Part 21, "Non-discrimination in Federally-assisted Programs of the Department of Transportation -Effectuation of Title VI of the Civil Rights Act of 1964" and as said Regulations may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- d. That, in the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Lease and re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

8.08 Affirmative Action . Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from Lessor, to insure that no person shall, on the grounds of race, color, sex, or national origin be excluded from participating in or receiving the services or benefits of any

program or activity covered by this Subpart. Lessee assures that it will require that its covered suborganizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

8.09 Time is of the Essence . Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

8.10 Notices . All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LESSOR: Boise Airport
Attn: Property & Contract Administrator
3201 Airport Way, Suite 1000
Boise, Idaho 83705
(208) 383-3110 ext 0

LESSEE: Nelson Construction Co.
4301 Federal Way
Boise, ID 83716
(208) 343-3051

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this paragraph.

8.11 Attorney's Fees . If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

8.12 Agreement Made in Idaho . The laws of the State of Idaho shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in Ada County, Idaho.

8.13 Cumulative Rights and Remedies . All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

8.14 Interpretation . Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

8.15 Agreement Made in Writing . This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

8.16 Paragraph Headings . The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

8.17 Severability . If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

8.18 Successors and Assigns . All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

8.19 Rules and Regulations . Lessee shall observe and comply with all Laws and Rules and Regulations governing the conduct and operation of the Boise Airport whether established and promulgated by Lessor, by the Boise Airport Commission, by a political subdivision of the State of Idaho having jurisdiction, by the State of Idaho, or by the United States and its agencies thereof. All Rules and Regulations now in existence, or as herein amended, or hereinafter promulgated and adopted, are incorporated herein and made a part hereof by reference.

8.20 Taxes and Other Charges . The Lessee shall pay all taxes, and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Leased Premises, during the term of this Lease including any extensions or option periods granted thereto.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless in the opinion of counsel satisfactory to the Lessor such action will not adversely affect any right or interest of the Lessor.

8.21 Authorization to Enter into Lease . If Lessee signs this Lease as a corporation, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Idaho, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will

provide evidence satisfactory to Lessor confirming these representations.

8.22 Effective Date . Regardless of the date signed, this Lease shall be effective as of May 1, 2011.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this 29 day of April, 2011.

ATTEST

LESSOR
BOISE CITY
A Municipal Corporation

CITY CLERK

MAYOR

LESSEE:
Nelson Construction Co.

By [Signature]

Its Corp Sec

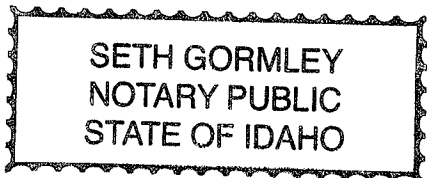
STATE OF IDAHO)
) SS.
County of Ada)

On this 9 day of MAY, 2011, before me, a Notary Public in and for said State, personally appeared CHRIS NELSON known to me to be the CORPORATE SECRETARY of Nelson Construction Co., an S-Corp, that executed the said instrument, and acknowledged to me that such Corporation executed the same.

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

[Signature]

Notary Public for Idaho
Residing at Boise, Idaho

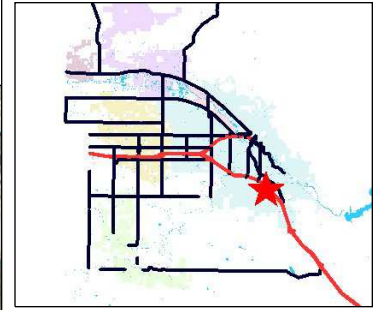


My Commission Expires 3/7/2017



Nelson Lease

EXHIBIT "A"



Legend

Roads

- UNKNOWN
- INTERSTATE
- LOCAL
- MAJOR COLLECTOR
- MINOR ARTERIAL
- PARKS
- PRINCIPAL ARTERIAL
- PRIVATE
- SECTION LINE

Railroads

- Railroads

Parcels

- Parcels

2007 Color Ortho Photos



Scale: 1:3,459

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