

**AIRPORT USE AGREEMENT  
BETWEEN  
THE YAKIMA AIR TERMINAL-McALLISTER FIELD AND  
THE UNITED STATES AIR FORCE**

THIS AGREEMENT, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019, between the YAKIMA AIR TERMINAL – McALLISTER FIELD, a department of the City of Yakima, Washington, hereinafter referred to as “YAT”, and the United States Air Force, an agency of the United States federal government, hereinafter referred to as “USER”.

**WITNESSETH:**

**WHEREAS**, YAT operates the Yakima Air Terminal - McAllister Field, hereinafter referred to as “YAT”; and

**WHEREAS**, YAT has approved facilities available for use as provided by this Agreement and USER desires to use such facilities in accordance with this Agreement,

**NOW THEREFORE**, in consideration of the mutual promises contained herein and the benefit to be derived by each party, the parties agree as follows:

1. **PREMISES:**

YAT does hereby agree to allow USER, and USER does hereby agree to use on an “as needed basis” as defined herein:

- A.** approximately 333,049 square feet of land adjacent to 2012 S. 16<sup>th</sup> Ave in the City of Yakima, Yakima County, Washington, (Exhibit “A”) together with the right of ingress to and egress from these premises and the public use areas/facilities used in connection therewith, over the roadways and designated Airport property subject to rules and regulations governing the use of the Airport as said rules and regulations now exist and as the same may be promulgated by YAT from time to time. The YAT may, at any time hereafter, provide a specific legal description of the premises and such description shall become a part of this Agreement, and;

**1. TERM:**

The term of this Agreement shall commence on September 1, 2019, and terminate on September 30, 2019 unless otherwise terminated or extended in writing as provided for herein. This Agreement will only be activated if the USER needs the facility to provide access to a suitable storage hangar in support of a brief U.S. military exercise. USER will receive a key to the building on or after September 1, 2019 at such time as the Agreement is activated, and USER shall return the key to the Administration Office during normal business hours upon completion of the exercise. If the key is not returned within 2 days of the expiration of this Agreement USER shall be charged a twenty five dollar (\$25.00) key replacement fee. The key shall not be duplicated.

USER shall have the right to request to extend the original term or any future term extension by one or more days, provided that USER delivers to YAT, not less than twenty four (24) hours before the expiration of the current term, written notification of its intent to extend the term and the specific length of the extension requested. Each request shall be subject to explicit approval by YAT; if approval is not received, the original term or latest agreed-upon term shall apply.

**2. FEES:**

USER promises and agrees to pay the following fees during the duration of the exercise. For purposes of this agreement the duration of the exercise shall be from September 6 through September 29, 2019:

- A. \$3,867.00 for the use of airport property identified in Exhibit A. In the event this agreement is extended in accordance with the provisions hereof, the USER will be assessed an additional \$175.77 per day for each additional day or portion thereof that they use the premises.
- B. \$13,200.00 for airfield operations, escorting, security, Notice to Airman, and airport personnel utilized in support of the exercise. In the event this agreement is extended, the USER shall be subject to the additional fee of \$55.00 per hour for personnel support during the extension period.

Fee payment shall be due within 30 days of invoicing following termination of the use. The daily rates for extended use shall apply whether actual usage is for a complete 24 hour period or any fraction thereof. All payments shall be made to the City of Yakima, Accounts Receivable, 129 N. 2<sup>nd</sup> St, Yakima, WA 98901, and shall identify this Agreement as the basis for the payment remitted.

**3. DEPOSIT:**

No deposit is required for this Agreement.

**4. TAXES AND LIENS:**

YAT is responsible for all taxes and liens associated with the premises identified in this Agreement.

**7. USE:**

USER agrees to use the premises only for an aeronautical oriented activity or for any other use that is specifically approved by YAT and is allowed by the Airport Master Plan and the applicable zoning. The use of the property for any other purpose shall be deemed a material breach of this Agreement constituting grounds for its immediate termination. USER further agrees at all times during use of the premises identified in this Agreement to be courteous and respectful of YAT staff and members of the public when entering, exiting and using the lease space in the Yakima Air Terminal.

**8. UTILITIES:**

YAT shall be responsible for all costs associated with utility services utilized during the USE including, but not limited to, power, natural gas, water, and sewer. YAT is responsible for proper disposal of trash or garbage and will provide four porta potties during actual dates of exercise, as described above. USER will be responsible for providing appropriately self-contained showers and hand washing stations during the conduct of the exercise.

**9. PREMISES CONDITION:**

USER has made a full inspection of the premises, is fully aware of its condition except with respect to environmental conditions and accepts the premises on an "AS-IS" basis. USER agrees to pay for any improvements, repairs and/or modifications necessary for USER's use of the premises. USER agrees that no improvements, repairs and/or modifications to the existing premises shall be undertaken without prior written approval by YAT.

**10. MAINTENANCE:**

USER agrees to keep, maintain and return the premises to YAT upon conclusion of the Use in a condition at least as good as the condition of the premises at the beginning of USER's occupancy, normal wear and tear excluded. USER further agrees that USER shall be responsible to maintain all areas, buildings, trade fixtures and other improvements included in this Agreement, existing and future, in an attractive and usable manner as determined by the Airport Manager and consistent with other properties at the Airport. Maintenance shall include, but not be limited to weed control, garbage and debris removal, painting, snow removal and pavement maintenance. USER agrees to leave the premises in a clean and neat condition

upon vacation thereof.

**11. SIGNS:**

No signs or other advertising matter or devices shall be used or displayed in or about the premises or upon any portion of the Airport without the prior written approval of the Airport Manager.

**12. IMPROVEMENTS:**

All buildings, construction, trade fixtures and other improvements made to the premises by USER shall conform to applicable rules, regulations and codes, and USER shall procure all necessary building and other applicable permits therefore. All buildings, trade fixtures and other improvements shall be designed with a view toward aesthetic considerations and installation shall not commence until plans and specifications therefore have been submitted to and approved in writing by the Airport Manager, which approval shall not be unreasonably withheld. YAT makes no representation or guarantee as to the suitability of the premises for construction of buildings, roads, ramps, etc., and is not responsible for the costs of excavation and/or removal of any object found either above or below ground level except for hazardous materials and archaeological artifacts existing prior to tenancy.

**13. REVERSION OF IMPROVEMENTS:**

In the event this Agreement is terminated due to default by USER or upon expiration, or any extension of this Agreement as provided in Section 2 hereof, YAT may, at its option, either accept ownership of the improvements constructed or installed on the Premises, except for trade fixtures, or require USER to remove such improvements within ten (10) days of such termination or expiration. Such removal shall include removing the foundation, utilities, and other land improvements and restoring the land to grade level, unless otherwise directed by YAT.

Prior to the termination or expiration of this Agreement, USER shall remove all such trade fixtures and repair any damage to the premises caused by removal of trade fixtures to the reasonable satisfaction of the Airport Manager. Fixtures not removed within ten (10) days after termination or expiration shall become the property of the YAT unless other arrangements have been previously approved in writing by the Airport Manager.

**15. REGULATIONS:**

USER agrees to comply with all applicable laws, ordinances, rules, regulations and policies of all governmental authorities having jurisdiction over the Airport, including policies adopted by YAT, as such laws, ordinances, rules, regulations and policies apply to the use and operation of Airport property, facilities and operations as those laws, ordinances, rules, regulations and policies now exist or may hereafter become effective.

**16. SUBLETTING:**

USER shall not sublet any part of the premises.

**17. ASSIGNMENT:**

USER shall not assign this Agreement.

**18. MISCELLANEOUS PROVISIONS:**

**A.** The parties agree that YAT, through its Airport Manager or other person authorized by the Airport Manager, may enter upon the premises at any reasonable time to make such inspections as YAT may deem necessary to the proper enforcement of any term, provision or condition of this Agreement. No such entry or inspection by YAT is required by this provision, and the failure of YAT to enter and make inspection shall not alter the relationship of the parties and their respective rights and duties provided by this Agreement. USER shall be granted the right of quiet enjoyment upon performance of all terms of this Agreement.

**B.** YAT may further develop or improve Airport property and facilities, regardless of the desire or views of USER regarding any such development or improvement, and without interference or hindrance on the part of USER and without liability to USER, provided the operations of the USER are not unreasonably interrupted.

**C.** YAT reserves the right, but shall not be obligated to USER, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of USER in that regard.

**D.** YAT reserves the right to take any action necessary or desirable by YAT to protect the operations of the Airport against obstruction, or any other activity interfering with the efficient operation of the Airport, together with the right to prevent USER from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the Airport Manager, would limit the usefulness of the Airport or constitute a hazard to aircraft. USER shall limit the building area to that portion of the property which is outside of the building restriction line as defined by the Airport Layout Plan and to a height not to exceed thirty five (35) feet.

**E.** During time of war or national emergency, YAT shall have the right to lease the landing area or any part thereof to the United States of America for military use, and, if any such lease is executed, the provisions of this Agreement shall be suspended insofar as they are inconsistent with the provisions of the lease agreement with the United States of America.

**F.** This Agreement shall be subordinate to the provisions of any existing or future agreement between YAT and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition to the expenditure of federal funds for the development of the Airport.

**G.** If the premises or any interest therein is taken as a result of the exercise of the right of eminent domain, this Agreement shall terminate as to such portion as may be taken. If the portion taken does not feasibly permit the continuation of the USER's operations, USER shall have the right to terminate this Agreement. Such termination shall be effective as of the date USER's operations cease. USER shall be entitled to a portion of the award representing its interest in the premises. YAT shall be entitled to the remainder of the award.

**19. INDEMNITY/DUTY TO DEFEND:**

Not Applicable.

**20. INSURANCE:**

Not Applicable.

**21. DAMAGE OR DESTRUCTION:**

**A. TENANT IMPROVEMENTS:** In the event the premises defined herein, or improvements thereto, are partially or totally damaged by fire or other casualty, the USER shall be responsible for the restoration of the premises to as good or better a condition as it had existed prior to the Use by USER.

**B. OTHER AIRPORT PROPERTY:** In the event of damage or destruction of Airport property caused by the USER, its agents, employees, aircraft or other equipment, USER agrees to repair, reconstruct, or replace the affected property to the condition which existed prior to such damage or destruction. USER further agrees to cause such repair, reconstruction or replacement of affected property with due diligence.

**22. DEFAULT, TERMINATION & FORFEITURE:**

**A.** The failure by USER to pay fees in the amounts and at the times specified herein, or the failure by USER to otherwise comply with any term, provision or condition of this Agreement, shall constitute grounds for termination of this Agreement and forfeiture of all fees paid by USER to the time of termination. This Agreement and tenancy shall terminate and fees paid shall be forfeited for cause as specified above on written notice by YAT to USER stating the amount of fee in default or otherwise stating accurately the manner in which USER fails or has failed to comply with this Agreement. USER shall make full payment or otherwise comply with this Agreement in the manner specified in the notice within three (3) days from USER's receipt of such notice, otherwise this Agreement and tenancy shall be terminated and fees paid to the point of termination forfeited. Such notice shall be given in writing and served on USER by personal delivery or mailed by certified mail with return receipt requested addressed to USER at its address stated below USER's signature to this Agreement or such other address as the parties may advise each other in writing. It is further agreed that after receipt of notices and as an additional condition to avoid forfeiture, USER shall pay YAT's costs and

expenses, including attorney's fees, for the preparation and service of such notice. Nothing contained herein shall release or diminish USER's obligation to pay fees for the full term of this Agreement. Notices shall be deemed received three (3) days after mailing to USER at the address below USER's signature to this Agreement or such other address as the parties may advise each other in writing.

**B.** As additional and not alternative remedy, optional with YAT and upon thirty (30) days written notice to USER, should USER be in default hereunder other than default in the payment of fees, YAT may cure or correct the same and the cost of such action by YAT shall immediately become due and payable from USER, together with late fees on said sum at a rate of twelve percent (12%) per annum, and the non-payment of said sum by USER shall be adequate grounds for YAT to invoke the other remedies as provided in this Agreement.

**C.** Upon termination of this Agreement for any reason, USER shall immediately surrender the premises to the YAT in as good a condition and repair as existed prior to the Use, ordinary wear and usage excepted; and USER shall remove all of USER'S personal property, trade fixtures, equipment or improvements removable by prior agreement with YAT from the premises and shall repair any damage to the premises caused by such removal. Any personal property of USER, or anyone claiming under USER, which shall remain upon the premises at the expiration or termination of this Agreement shall be deemed to have been abandoned and may be retained by YAT as YAT's property or disposed of by YAT in such manner as YAT sees fit without compensation to any party.

## **23. NON-DISCRIMINATION CLAUSE:**

To the extent required by law and not in conflict with USER's specifically authorized personnel policies and practices, USER, for itself, its personal representative, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

**A.** No person, on the grounds of race, color, religion, sex, age, marital status, handicap or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in USER's personnel policies and practices or in the use or operation of USER's services or facilities.

**B.** USER agrees that in the construction of any improvements on, over or under Airport land and the furnishing of services thereon, no person, on the grounds of race, color, religion, sex, marital status, handicap, age or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

**C.** USER shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, 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.

**D.** It is the policy of the Department of Transportation that minority business enterprise as defined in 49 CFR Part 23, i.e., firms owned and controlled by minorities; firms owned and controlled by women and firms owned and controlled by financially disadvantaged persons; shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR Section 23.5. Consequently, this Agreement is subject to 49 CFR Part 23 as applicable.

**24. NON-WAIVER:**

The failure by one party to require performance of any provision of this Agreement shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

**25. INTEGRATION:**

This document embodies the entire Agreement between the parties with respect to the subject matter herein contained. No amendments or modifications hereof shall be enforceable unless in writing, signed by the party to be charged.

**26. JURISDICTION AND VENUE**

This Agreement shall be administered and interpreted under the laws of the State of Washington and under applicable federal law provisions. Jurisdiction of litigation arising from this Agreement shall be in Washington State. If any part of this Agreement is found to conflict with applicable state and federal laws, such part shall be inoperative, null, and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect. Venue for all disputes arising under this Agreement shall be in the federal court in Yakima County, State of Washington.

**27. DISPUTE RESOLUTION**

In the event that any dispute shall arise as to the interpretation of this agreement, or in the event of a notice of default as to whether such default does constitute a breach of the contract, and if the parties hereto cannot mutually settle such differences, then the parties shall first pursue mediation as a means to resolve the dispute. If the afore mentioned methods are either not successful then any dispute relating to this Agreement shall be decided in the federal court in Yakima County, in accordance with the laws of Washington and of the United States, as shall be applicable. If both parties consent in writing, other available means of dispute resolution may be implemented.

Time is of the essence of this entire Agreement.



**YAT:**

**City of Yakima**

**YAKIMA AIR TERMINAL - McALLISTER FIELD**

2406 W. Washington Avenue, Suite B

Yakima, Washington 98903

(509) 575-6149 - phone

(509) 575-6185 - fax

---

City Manager

Date

STATE OF WASHINGTON

County of Yakima

I certify that I know or have satisfactory evidence that \_\_\_\_\_ signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Interim City Manager respectively of the City of Yakima to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date \_\_\_\_\_

By: \_\_\_\_\_

Notary Public

Appointment Expires \_\_\_\_\_

**USER:**  
**United States Air Force**

Mailing Address:

Telephone:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ respectively of the \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date \_\_\_\_\_  
By: \_\_\_\_\_  
Notary Public  
Appointment Expires \_\_\_\_\_

## Exhibit "A"

