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Relocation Policy (Non-Commercial Lessee)

City of Williston

Sloulin Field International Airport (ISN)

March 15, 2013



I. SCOPE

This Relocation Policy (Policy) governs the relocation of existing non-commercial Lessees (Lessee) from Sloulin Field International Airport (existing airport) to the new (yet to be named) airport (new airport) currently being considered by the City of Williston (City).

The first step in the relocation process is completing the Subject Property Assessment worksheet (see **Attachment A**) which is designed to capture essential information about the existing subject property (and the existing lease agreement). The completed worksheet provides the framework for the City and an existing Lessee (the Parties) to discuss the potential relocation of the Lessee.

Based on the Lessee's decision regarding relocation, this Policy outlines a course of action and identifies the steps within each course of action required to implement the decision. A Critical Path Flowchart, which graphically depicts the potential courses of action, is provided in this Policy (see **Attachment B**).

A. Assessment

The relocation process begins with an assessment of the subject property (and the key terms and conditions of the underlying lease agreement between the Parties) at the existing airport. The Subject Property Assessment (see **Attachment A**) is provided to facilitate the assessment. In essence, this worksheet is designed to capture the following information:

1. Lease
 - a. Lessee (name of the existing Lessee)
 - b. Term
 - i. Date of lease
 - ii. Base term (number of years)
 - iii. Options (number of options and number of years for each option)
 - iv. Total term (total number of years – base term and options)
 - v. Years remaining (including option years)
 - c. Use (purpose)
 - i. Non-commercial (not for hire)
 - ii. Other including government or military
 - d. Fees
 - i. General (to all lessees)
 - ii. Specific (to lessee)
 - e. Other key lease provisions (e.g., relocation, condemnation, etc.)



2. Relocation
 - a. Does the Lessee desire to relocate from the existing airport to the new airport?
 - i. Yes
 - ii. No
 - iii. Uncertain
3. Existing Subject Property (at existing airport)
 - a. Land area when the original lease was signed (square feet and rent – per square foot per year)
 - b. Improvements when the original lease was signed (square feet, year constructed, associated capital expenditure, rent – per square foot per year, capital expenditure per year, buyout – if any, and owner) for the following:
 - i. Hangar
 - ii. Office
 - iii. Shop
 - iv. Fuel storage
 - v. Ramp/apron
 - vi. Parking (vehicles)
 - vii. Other
 - c. Additional land since the original lease was signed (square feet and rent – per square foot per year)
 - d. Additional improvements since the original lease was signed (square feet, year constructed, associated capital expenditure, rent – per square foot per year, capital expenditure per year, buyout – if any, and owner) for the following:
 - i. Hangar
 - ii. Office
 - iii. Shop
 - iv. Fuel storage
 - v. Ramp/apron
 - vi. Parking (vehicles)
 - vii. Other
4. Proposed subject property (at new airport)
 - a. Land (square feet and rent – per square foot per year)
 - b. Improvements (square feet, entity responsible for construction, owner, associated capital expenditure, rent – per square foot per year, and description of related improvement) for the following:
 - i. Hangar
 - ii. Office
 - iii. Shop
 - iv. Fuel storage
 - v. Ramp/apron
 - vi. Parking (vehicles)
 - vii. Other



B. Course of Action

After the Subject Property Assessment worksheet is completed, based on the decision made by the Lessee regarding relocation, three potential courses of action could be taken, as follows:

1. Lessee is desirous of relocating to the new airport.
2. Lessee is not desirous of relocating to the new airport.
3. Lessee is uncertain about relocating to the new airport.

There are several key steps associated with each course of action, as follows.

1. Lessee is desirous of relocating to the new airport

- a. Existing lease and improvements (if applicable) at the existing airport
 - i. The City shall offer to compensate the Lessee for the undepreciated value of the improvements (made by the Lessee) using the following approach:
 1. The capital investment (**both original and additional**) made by the Lessee to develop the existing improvements shall be depreciated on a straight-line basis using the total term (base term and options) of the lease and the Lessee shall be compensated for the remaining (or undepreciated) value (i.e., buyout).
 - a. The compensation amount shall be credited to the Lessee and dispersed by the City as desired by the Lessee:
 - i. to approved City contractors to make improvements (on behalf of the Lessee) at the new airport,
 - ii. to abate Lessee's rents or fees at the new airport, and/or
 - iii. to be paid to the Lessee in cash.
 2. The Lessee shall be required to provide (to the City) actual (and verifiable) documentation of the capital investment (**both original and additional**) made by the Lessee to develop the existing improvements.
 - ii. The City's offer to compensate the Lessee for the undepreciated value of the improvements made by the Lessee shall be valid for 30 days.
 1. If the Lessee accepts the offer, the Parties shall enter into a Memorandum of Understanding which memorializes the general understanding (between the Parties) regarding the relocation and compensation of the Lessee (see **Attachment C**).
 2. If the Lessee rejects the offer, the offer shall be withdrawn by the City and the offer shall no longer be valid.
 - a. However, once the offer has been withdrawn by the City and the offer is no longer valid, the Lessee may, at Lessee's own risk, cost, and expense, dispute the offer, in which case, the process outlined in **Attachment D** shall be followed.



RELOCATION POLICY

3. If the Lessee does not respond to (i.e., accept or reject) the City's offer within 30 days, the offer shall be withdrawn and the offer shall no longer be valid and the Lessee shall be required to remove the existing improvements and restore the land to its original condition (normal wear and tear excepted) prior to the existing airport being closed (decommissioned) unless otherwise mutually agreed upon in writing by the Parties.
 - a. If the Lessee fails to remove the existing improvements and restore the land to its original condition (normal wear and tear excepted), the City shall remove or cause to be removed, at Lessee's sole risk, cost, and expense, without liability to the City for any damage, the existing improvements and restore the land to its original condition (normal wear and tear excepted) prior to the existing airport being closed (decommissioned) and Lessee shall be required to pay the City for such costs and expenses incurred by the City within 14 calendar days after receipt of an invoice from the City.
 - b. The City may also dispose of the Lessee's personal property (e.g., fixtures, equipment, tools, machinery, materials, and/or other items) abandoned on the subject property in accordance with the Airport's Primary Guiding Documents and/or regulatory measures.
- iii. If the undepreciated value of the improvements is zero, Lessee shall remove the improvements and restore the land to its original condition (normal wear and tear excepted) unless otherwise mutually agreed upon (in writing) by the Parties.
- b. Relocation
 - i. With regard to relocation of the Lessee's personal property, the Lessee can select from one of three options, as follows:
 1. The City can arrange for relocation of the Lessee's personal property using an approved vendor of the City in which case, the City shall pay the "actual" costs/expenses of relocation directly to the approved vendor.
 2. The Lessee can arrange for relocation of the Lessee's personal property using the Lessee's vendor of choice (subject to the requirements and the written consent of the City) and the City shall reimburse the Lessee for reasonable (and verifiable) relocation costs/expenses.
 3. The Lessee can relocate the Lessee's personal property (subject to the requirements and the written consent of the City) and the City shall reimburse the Lessee for reasonable (and verifiable) relocation costs/expenses.
 - ii. Relocation costs/expenses shall be limited solely to cost/expenses associated with the packing, transporting (from the existing airport to the new airport), and unpacking the Lessee's personal property. The cost/expenses associated with moving Lessee's vehicles and/or aircraft shall not be included.



- c. New lease and improvements (at the new airport)
 - i. The City shall (at a minimum) lease the amount of land required to meet the City's minimum standards and/or development guidelines to the Lessee at the new airport.
 - ii. If the existing improvements were owned by the City, the City shall (at a minimum) lease the type and size of improvements required to meet the City's minimum standards and/or development guidelines to the Lessee at the new airport.
 - iii. The City shall charge market rent for the land and/or improvements that will be leased by the Lessee at the new airport – consistent with the City's leasing/rents and fees policy.
 - iv. The City shall charge cost-recovery fees for activities that will be conducted by the Lessee at the new airport – consistent with the City's leasing/rents and fees policy.
 - v. The terms and conditions of the new lease (including the length of the lease – base term and options) will be predicated on the City's leasing/rents and fees policy.
 - vi. The City shall adjust rents and fees throughout the term of the new lease in accordance with the City's leasing/rents and fees policy
 - vii. The Lessee shall comply with the City's:
 - 1. Development guidelines (for any improvements the Lessee will make at the new airport).
 - 2. Minimum standards (for any commercial aeronautical activities the Lessee may conduct at the new airport).
 - 3. Rules and regulations (for use of the new airport).

2. Lessee is not desirous of relocating to the new airport

- a. Existing lease and improvements (if applicable) at the existing airport
 - i. The City shall not offer to compensate the Lessee for the undepreciated value of the improvements made by the Lessee.
 - ii. The Lessee shall be required to remove the existing improvements and restore the land to its original condition (normal wear and tear excepted) prior to the existing airport being closed (decommissioned) unless otherwise mutually agreed upon (in writing) by the Parties.
- b. Relocation
 - i. The City shall not arrange (or pay) for relocation of the Lessee's personal property nor reimburse (or pay) the Lessee for relocation of the Lessee's personal property.
 - ii. Lessee shall be required to remove personal property from the leased premises prior to the existing airport being closed (decommissioned) unless otherwise mutually agreed upon in writing by the Parties.
- c. New lease and improvements (at the new airport)
 - i. The City shall not be obligated to lease land and/or improvements to the Lessee at the new airport.



3. Lessee is uncertain about relocating to the new airport

- a. The City shall provide written notice to the Lessee that the Lessee may take an additional 60 days to make a decision regarding relocation and that the Lessee shall be required to notify the City (of its decision) within 60 days.
 - i. If no decision is made (or communicated to the City) by Lessee within 60 days, the City shall proceed as if Lessee is not desirous of relocating to the new airport and the Lessee shall have no recourse against the City.



ATTACHMENT A SUBJECT PROPERTY ASSESSMENT

Summary of Existing Lease Provisions			
Lessee: _____			
Term:	Date of lease: _____ Base term (years): _____ Number of options: _____ Years (each option): _____	Total term (years): _____ Years remaining: _____	Use: Non-commercial: <input type="checkbox"/> Other: <input type="checkbox"/> Government <input type="checkbox"/> Military
			Fees: General (to all lessees): _____ Specific (to lessee): _____
Other key provisions (please describe): 1. _____ 2. _____ 3. _____			Does Lessee desire to relocate to new airport? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Uncertain

Summary of Existing Subject Property															
Land/Improvement	Original Lease							Additional							
	Square feet	Year	CapEx	Rent (psf/yr)	CapEx per year	Buyout	Owner	Square feet	Year	CapEx	Rent (psf/yr)	CapEx per year	Buyout	Owner	
Land	_____	N/A	N/A	\$_____	N/A	N/A	Select	_____	N/A	N/A	\$_____	N/A	N/A	Select	
Hangar	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	
Office	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	
Shop	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	
Fuel storage	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	
Ramp/apron	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	
Parking	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	
Other*	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	_____	_____	\$_____	\$_____	\$_____	\$_____	Select	
*Please describe: _____															
Total	_____	N/A	\$_____	N/A	N/A	\$_____	N/A	_____	N/A	\$_____	N/A	N/A	\$_____	N/A	

Existing rent: Monthly: \$_____ Annually: \$_____

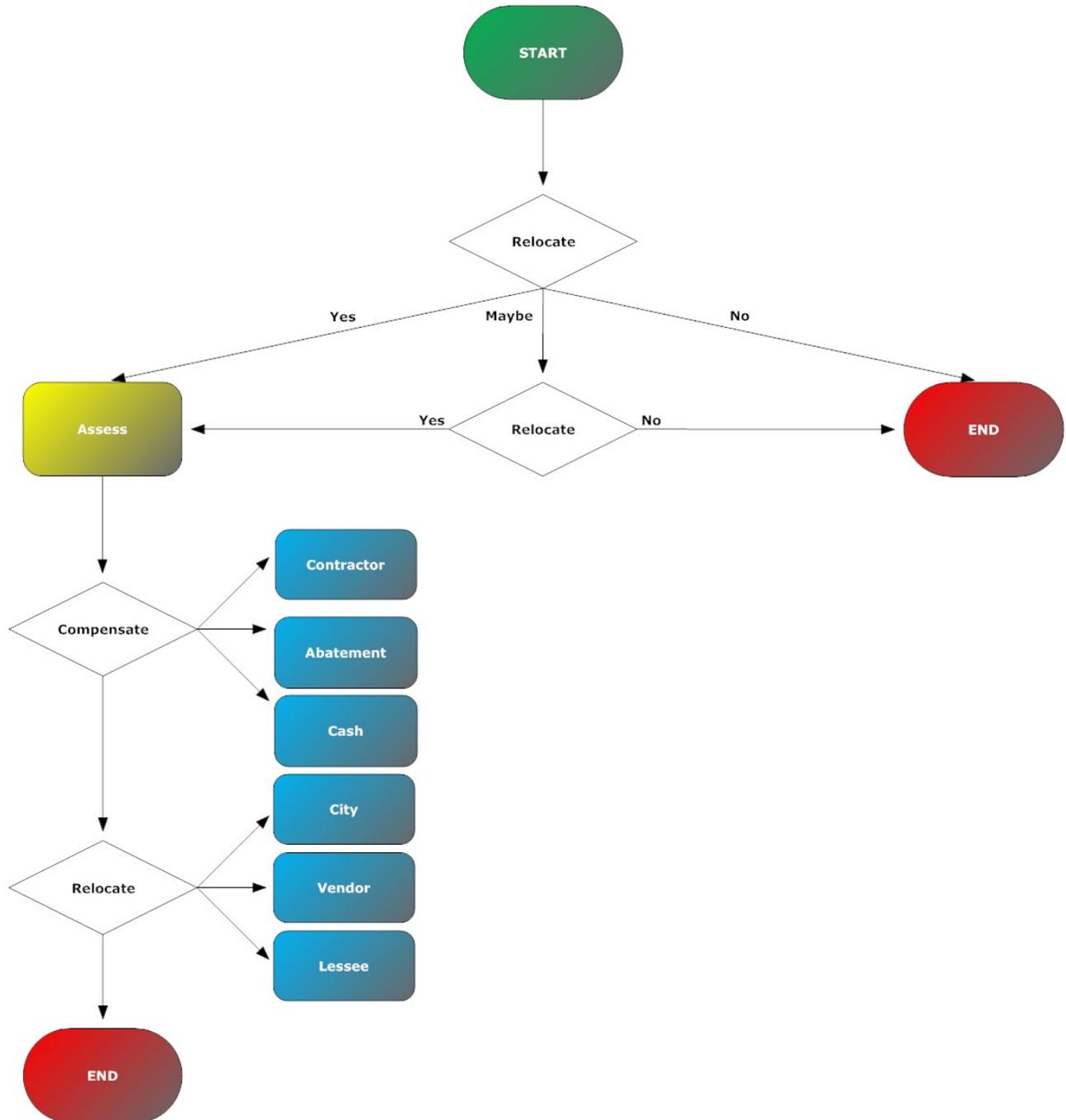
Summary of Proposed Subject Property						
Land/Improvement	Square Feet	Constructed by:	Owner	CapEx	Rent (psf/yr)	Description
Land	_____	N/A	Select	N/A	\$_____	_____
Hangar	_____	Select	Select	\$_____	\$_____	_____
Office	_____	Select	Select	\$_____	\$_____	_____
Shop	_____	Select	Select	\$_____	\$_____	_____
Fuel storage	_____	Select	Select	\$_____	\$_____	_____
Ramp/apron	_____	Select	Select	\$_____	\$_____	_____
Parking	_____	Select	Select	\$_____	\$_____	_____
Other	_____	Select	Select	\$_____	\$_____	_____
Total	_____	N/A	N/A	\$_____	N/A	_____

Proposed rent: Monthly: \$_____ Annually: \$_____



ATTACHMENT B CRITICAL PATH FLOWCHART

The following Critical Path Flowchart graphically depicts the potential courses of action for relocation.





ATTACHMENT C MEMORANDUM OF UNDERSTANDING TEMPLATE

Memorandum of Understanding Template

The following Memorandum of Understanding (MOU) template can be used to memorialize the general understanding (between the Parties) regarding the relocation and compensation of the Lessee (as applicable).

Memorandum of Understanding between City of Williston, North Dakota and _____

This memorandum of understanding ("Agreement") is made and entered into this _____ day of _____, _____, by and between City of Williston, a political subdivision of the State of North Dakota ("City") and _____, a _____ corporation ("Lessee").

This Agreement represents a preliminary expression of the general understanding of the City and Lessee ("Parties") as it relates to the relocation of Lessee from Sloulin Field International Airport ("existing airport") to the new (yet to be named) airport ("new airport"), as follows.

1. GENERAL TERMS

- 1.1. The City is the owner and operator of the existing airport; the City is leasing land and/or improvements to Lessee at the existing airport; the City desires to close (decommission) the existing airport and open (commission) a new airport; and, the City desires to relocate Lessee from the existing airport to the new airport;
- 1.2. Lessee desires to relocate from the existing airport to the new airport;
- 1.3. The Parties agree that the existing lease agreement (between the Parties) at the existing airport shall be terminated, that the Parties shall enter into a new lease agreement at the new airport, and that Lessee's personal property shall be relocated from the existing airport to the new airport.

2. SPECIFIC TERMS

- 2.1. The City shall compensate Lessee for the undepreciated value of the improvements made by Lessee in the amount of \$_____. This amount shall be credited to Lessee and dispersed by the City as follows:
 - 2.1.1. \$_____ to approved City contractors to make improvements (on behalf of Lessee) at the new airport,
 - 2.1.2. \$_____ to abate Lessee's rents or fees at the new airport, and/or
 - 2.1.3. \$_____ to be paid to Lessee in cash.
- 2.2. The City shall enter into a new lease agreement with Lessee at the new airport based on the following the general terms and conditions:
 - 2.2.1. Use: _____
 - 2.2.2. Base term (years): _____



ATTACHMENT C MEMORANDUM OF UNDERSTANDING TEMPLATE

- 2.2.3. Number of options:
- 2.2.4. Years (each option):
- 2.2.5. Land (square footage) and improvements (type, square footage, constructed by, owner, CapEx, and rent): as identified and described in the Subject Property Assessment worksheet (attached hereto, made part hereof, and incorporated herein by reference).
- 2.3. Lessee's personal property shall be relocated:
- 2.3.1. By an approved vendor of the City and the City shall pay the "actual" relocation costs/expenses directly to the approved City vendor.
- 2.3.2. By Lessee's vendor of choice and the City shall reimburse the Lessee for "reasonable" (and verifiable) relocation costs/expenses.
- 2.3.3. By Lessee and the City shall reimburse the Lessee for "reasonable" (and verifiable) relocation cost/expenses (incurred by the Lessee).
- 3. SALE, ASSIGNMENT, OR TRANSFER**
- Lessee shall not sell, assign, or transfer its interest in this Agreement, in whole or in part, without the prior express written consent of the City. Any such sale, assignment, or transfer without City's prior express written consent shall be null and void.
- 4. INDEPENDENT ENTITIES**
- Nothing in this Agreement is intended to nor shall it be construed, in any way, as creating or establishing a relationship of partners between the Parties or as constituting Lessee as a representative, officer, official, employee, agent, or volunteer of the City for any purpose or in any manner whatsoever.
- 5. SUBORDINATION**
- This Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States, the State of North Dakota, or any other entity pertaining to the planning, development, operation (including maintenance and repair), and management of the existing airport or the new airport.
- 6. GOVERNING LAW AND VENUE**
- This Agreement shall be deemed to have been made in, and shall be construed in, accordance with the laws of the State of North Dakota without regard to conflicts of law principles. If any legal action is brought about by either Party to enforce this Agreement or any part thereof, the prevailing party shall be entitled to recover attorney and court fees, costs, and expenses.
- 7. COUNTERPARTS**
- This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



ATTACHMENT C
MEMORANDUM OF UNDERSTANDING TEMPLATE

8. MODIFICATION

Any change or modification to this Agreement shall not be valid unless made in writing, agreed to, and signed by both Parties.

9. TIME OF ESSENCE

It is mutually agreed by the Parties that time is of the essence.

10. ENTIRE AGREEMENT

This Agreement contains and embodies the entire understanding and agreement between the Parties and supersedes and replaces any and all prior understandings and agreements, written or oral, expressed or implied, relating to this Agreement.

11. REPRESENTATIONS AND WARRANTIES OF LESSEE

Lessee represents and warrants to the City that it is duly organized and validly existing under the laws of its jurisdiction, incorporation, or establishment and it has the power and the City to enter into this Agreement.

12. OTHER

_____.

The Parties have executed this Agreement as of the day and year set forth herein. This Agreement is effective as of the last date signed by either Party and is valid until _____. Select on _____, _____, _____.

The Parties intend that neither shall have any contractual obligations to the other with respect to the matters referred to herein unless and until definitive agreements have been fully executed by the Parties.

Terms and conditions approved by:

Form and legality approved by:

Steven Kjergaard
Airport Manager

_____, Esq.
Attorney for the City of Williston

ATTEST:

CITY OF WILLISTON

_____, _____
City of Williston, North Dakota

_____, _____
City of Williston, North Dakota

Date: _____

ATTEST:

_____, _____
_____, _____

_____, _____
_____, _____

Date: _____



Offer Dispute Process

1. Lessee may engage an appraiser, at Lessee's sole risk, cost, and expense, to conduct an independent appraisal to determine the value of the existing improvements (**both original and additional**) made by the Lessee.
 - a. The appraiser shall: (1) meet the minimum qualifications stipulated in **Attachment E**, (2) use the approach outlined in **Attachment F**, and (3) complete the appraisal within 30 days.
2. Once the appraisal is received by the City, the City shall have 30 days to consider the conclusions.
 - a. If the City agrees with the conclusions of the appraisal (i.e., the findings of the appraisal are acceptable to the City), the City shall compensate the Lessee in accordance with this Policy.
3. If the City disagrees with the conclusions of the appraisal (i.e., the findings of the appraisal are unacceptable to the City), the City shall, at the City's risk, cost, and expense, engage a second appraiser to determine the value of the existing improvements (**both original and additional**) made by the Lessee.
 - a. The second appraiser shall: (1) meet the minimum qualifications stipulated in **Attachment E**, (2) use the approach outlined in **Attachment F**, and (3) complete the appraisal within 30 days.
4. If the conclusions of the two appraisals reflect a variance of 10% or less, the results of both appraisals shall be averaged to determine the value of the existing improvements.
5. If the variance exceeds 10% and an agreement cannot be reached between the Parties regarding the value based on the conclusions of the first and second appraisers, the first and second appraisers shall mutually select a third appraiser who shall meet the minimum qualifications stipulated in **Attachment E**.
 - a. The third appraiser shall make a determination regarding the value of the existing improvements based on review of the first and second appraisals.
6. If the first and second appraisers are unable to agree upon the third appraiser, the City shall appoint a third appraiser who shall meet the minimum qualifications stipulated in **Attachment E** to make a determination regarding the value of the existing improvements based on review of the first and second appraisals.
7. The third appraiser may request a hearing at which both the first and second appraisers shall provide such additional information and/or clarification regarding the appraisals as the third appraiser may request.
8. The third appraiser shall make a final determination based on the data contained in the two appraisals and any additional information provided by the first and second appraisers.
9. The third appraiser shall have the right to gather, analyze, and consider additional data as the third appraiser deems appropriate. The decision of the third appraiser regarding the value of the existing improvements shall be accepted by the Parties and shall be legally binding upon the Parties.
10. All costs and expenses associated with the work of the third appraiser shall be paid equally by the Parties.



Appraiser Qualifications

1. Appraisals shall be performed by an appraiser who shall be a Member, Appraisal Institute (MAI) or similarly designated and equally qualified appraiser who shall be certified by a recognized appraisal organization.
2. Appraiser must be a certified by the North Dakota Real Estate Appraiser Qualifications and Ethics Board (NDREAB) as a General Appraiser.
 - a. However, an out-of-state appraiser may perform the appraisal provided that the appraiser (prior to being engaged to conduct the appraisal) satisfies the NDREAB's requirements by way of reciprocity or otherwise.
3. Appraiser shall have the ability to conduct an appraisal to determine the value of on-airport improvements (used for general aviation purposes) using the approach outlined in **Attachment F**.
4. Appraiser shall have working knowledge of the aviation industry (in general) and airports (in particular) including non-commercial entities (i.e., aircraft owners and operators) and related activities.
5. Appraiser shall be familiar with federal laws and Federal Aviation Administration regulations, obligations, and guidance pertaining to valuing on-airport improvements (being used for general aviation purposes).
6. Appraiser shall have experience providing the same services at similar airports.
 - a. Appraiser shall have performed a minimum of five appraisals involving on-airport improvements within the past five years.
 - i. Prior to initiating work, appraiser shall provide a list (to the City) identifying the airport, the type of appraisal conducted, and the extent of analysis performed.
 1. Appraisals of non-aeronautical properties performed in connection with the acquisition of such properties by an airport owner/operator shall not be applied towards this requirement.
7. Appraisers who only conduct appraisals of off-airport properties (for acquisition or other purposes) shall not qualify.



Appraisal Approach

1. The appraiser shall use current appraisal methods that are appropriate for appraising on-airport improvements used for general aviation purposes (i.e., the subject improvements).
2. To determine the undepreciated value of the subject improvements, the appraiser shall use the cost approach to derive the replacement cost of the subject improvements less (after deducting for) depreciation.
 - a. The depreciation deduction shall be based on the economic life and the effective age of the subject improvements.
 - i. Widely recognized and highly regarded national publications (such as Marshall Valuation Service) shall be used as the basis for determining the economic life of the subject improvements.
 1. This approach is well recognized and commonly accepted for valuing improvements for the purposes of facilitating relocation.
3. The subject improvements shall be appraised assuming that highest and best use is aviation-related.
4. The appraiser shall also assume that the subject improvements will be located on an airport and that access to the infrastructure and amenities of the airport shall be available.
5. Additionally, the appraisal shall meet the Uniform Standards of Professional Appraiser Practice (USPAP).