

RESOLUTION NO. 10-26-21 E

**A RESOLUTION APPROVING AN INTERIM LEASING
POLICY FOR THE CITY OF BENTONVILLE MUNICIPAL
AIRPORT.**

WHEREAS, the City of Bentonville has entered into a series of grant agreements with the Federal Aviation Administration for the development and improvement of the Bentonville Municipal Airport, through which the City is bound, as the federally-obligated airport sponsor, to comply with a set of standard conditions that govern how it may operate the Airport, and

WHEREAS, in order to meet the terms of those requirements and provide reasonable access to the Airport, the City has worked with experts in the field of aviation law in order to develop clear guidance and frameworks for entities interested in obtaining a lease or other agreement for aeronautical purposes at the airport.


**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE
CITY OF BENTONVILLE, ARKANSAS.**

Section 1: That the attached Interim Lease/Permit Application and Negotiation Policy for the Bentonville Municipal Airport should be and the same is hereby approved.

Section 2: That this resolution shall be in full force and effect from and after the date of its passage and approval.

PASSED and APPROVED this 26 day of OCTOBER, 2021.

APPROVED:


MAYOR

ATTEST:


CITY CLERK



**Bentonville Municipal Airport
City of Bentonville, Arkansas**

Interim Lease/Permit Application and Negotiation Policy

I. Background

The City has entered into a series of grant agreements with the FAA for the development and improvement of the Airport, through which the City is bound, as the federally-obligated airport sponsor, to comply with a set of standard conditions that govern how it may operate the Airport (the “Grant Assurances”). Among other things, the City must make the Airport available for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities. When two or more entities express interest in developing the same property for aeronautical purposes, it is particularly important that the City follow objective and not unjustly discriminatory criteria to determine which entity will best serve the Airport’s needs.

The City has adopted “Minimum Requirements for Aeronautical Operations or Activity at Bentonville Municipal Airport (Louise M. Thaden Field) Bentonville, Arkansas” (the “Minimum Standards”). The Minimum Standards contain procedures regarding applications to enter into a lease of Airport property or other written agreement authorizing the provision of commercial aeronautical services. However, the Minimum Standards do not address the situation where multiple parties are interested in developing the same piece of Airport property. Additionally, there has been confusion regarding the procedures prescribed in the Minimum Standards and the level of documentation that must be provided to the Board on initial application.

The City of Bentonville is adopting this Interim Lease/Permit Application and Negotiation Policy (this “Policy”) to address the situation described above and to provide a more robust framework for entities interested in obtaining a lease or other agreement for aeronautical purposes at the Airport. This Policy does not apply to entities seeking to use airport property for nonaeronautical purposes. Nonaeronautical use of airport property will be considered on a case-by-case basis.

II. Applicability

This Policy shall apply to all persons wishing to enter into an agreement with the City for the lease of Airport property for aeronautical purposes or which otherwise confers the right to conduct a commercial aeronautical activity at the Airport (e.g., a commercial activity permit) after October 26, 2021, including applications pending as of the date of the adoption of this Policy.

This Policy shall apply in lieu of Section III, *Lease Agreement Process*, of the Minimum Standards and shall remain in force and in effect until such time that it is repealed or modified by the Board.

All capitalized terms not defined herein shall refer to the definitions in the Minimum Standards.

III. Interim Application Process

To apply for the lease of Airport property for aeronautical purposes or the right to conduct a commercial aeronautical activity at the Airport, a person must complete the following steps and

comply with the following requirements, and, thereafter, must provide such additional information as may be requested by the Airport Manager, the Airport Advisory Board (the “Board”), or the City Council.

No person shall be permitted to perform a commercial aeronautical activity at the Airport without an appropriate permit, operating agreement, lease, or other agreement with the City.

- A. Statement of Interest. An applicant must first submit a written Statement of Interest to the Airport Manager indicating their interest in leasing Airport property and/or performing a commercial aeronautical activity at the Airport. If the Airport Manager has prescribed a particular form of Statement of Interest, the City shall post it on the Airport’s website and the applicant shall submit using that form. In any case, the Statement of Interest should include, at minimum, the following:
 - 1. The full name, address, phone number, and email address of the applicant;
 - 2. A proposed date of the commencement of the services and/or lease;
 - 3. A description of the intended aeronautical use of the Airport land and/or facilities and, if commercial aeronautical activities are to be performed, a description of the scope of the proposed operations and the means and methods intended to be employed to satisfy the Minimum Standards and to provide high-quality service to Airport users and the general public of the Bentonville service area; and
 - 4. A description of the space the applicant wishes to lease or proposes to sublease from another entity with a current lease at the Airport, including approximate square footage and description of improvements that are proposed to be leased, subleased, or constructed.
- B. Review by Airport Manager. Upon receipt of a Statement of Interest, the Airport Manager shall ensure that the applicant has provided the above information and, if not, notify the applicant in writing of what additional information is required. The Airport Manager may also request additional information from the applicant at this time. If the applicant submits a complete Statement of Interest, the Airport Manager shall forward the Statement of Interest to the Board.
- C. Notice to Applicant; Competitive Process. The Airport Manager shall review each Statement of Interest and determine whether to initiate a competitive process pursuant to the below Section III.C.1. In order to decide whether to initiate a competitive process, the Airport Manager may also request additional information from the applicant at this time, including to aid in its understanding of the proposed activity(ies) and/or the applicant’s capacity to provide the proposed service(s) and/or lease the proposed space. Once he or she has made this determination, the Airport Manager will inform the Board of how the Airport intends to proceed regarding the Statement of Interest. Unless the City has determined that it will follow a competitive process, the Airport Manager will request a formal written

application from the applicant who has submitted a Statement of Interest pursuant to Section III.D.

1. *Competitive Process.*

- (a) Upon receipt of a Statement of Interest, or at any other time, including if the City has reason to believe that more than one person may be interested in providing similar commercial aeronautical services or may be interested in operating at the same or similar location, the City may, but is not obligated to, issue a request for qualifications or proposals or otherwise select an operator(s) or lessee(s) through a competitive solicitation in accordance with applicable law and Airport policies. In that instance, the competitive procurement process will supersede the formal written application process described below, provided, however, the City shall accept responses for a reasonable time period so as not to unreasonably delay consideration of any pending applications. In such cases, the Airport Manager will develop and draft the appropriate solicitation and provide to the Board for the Board's review and comment before issuance.
- (b) If an applicant has submitted a Statement of Interest in compliance with this Section III, and the City receives an additional Statement of Interest that indicates an interest in the particular space at the Airport requested by the first applicant with a pending application, it will notify both applicants of the other's interest. In such event, the City shall make reasonable efforts to accommodate one or both applicants at another location on the Airport, to the extent that appropriate space is available and such applicant(s) are qualified pursuant to this Policy, the Minimum Standards, and all applicable federal, state, and local law, rules, and regulations.
- (c) When the City has not initiated a competitive process, but while the City is considering an application and/or in negotiations with an applicant for a potential lease agreement, the City shall continue to accept and consider applications from other persons interested in developing that subject property and will not reserve any property for an applicant.

D. Formal Written Application. The written application shall be in the form prescribed by the Airport Manager, or, in the absence of a form, shall include the information listed below and any such additional information as may be requested by the Airport Manager or the Board.

1. *Information to be Included in All Formal Written Applications.*

- (a) Full name, address, phone number, and email address of the applicant (if the applicant is a legal entity, full name, address, phone number, and email address of all principals of such entity);
- (b) The proposed date of the commencement of the services and/or lease;
- (c) Description of the space the applicant wishes to lease or proposes to sublease from another entity with a current lease at the Airport, including approximate square footage and description of improvements that are proposed to be leased, subleased, or constructed and including a map, to scale, of the location, configuration, and amount of such land and improvements
- (d) Evidence of financial capacity and capability to initiate the proposed operations and, if applicable, for the construction and maintenance of improvements and appurtenances that are proposed or may be required for the proposed concept of operations;
- (e) Evidence of the applicant's financial and managerial capability to perform and provide the proposed services and/or construct the proposed improvements, including financial statements, cash flow and profit and loss projections, identification of any bankruptcies relating to the applicant or its principals, and, for Commercial Operators, past experience of the applicant's key employees in providing the proposed services;
- (f) The amount and type of insurance coverage the applicant will maintain, and evidence of such insurance or the ability to obtain such insurance; and
- (g) Disclosure of any and all documented violations by the applicant and/or the applicant's principals of Federal Aviation Administration regulations.

2. *Additional Information for Commercial Aeronautical Activities.* Applicants proposing to conduct commercial aeronautical activities shall also include the following information in their formal written applications:

- (a) Comprehensive listing and description of the proposed commercial aeronautical activity(ies);
- (b) List of the employees who have been or will be hired as appropriate for the scope of the proposed operations and descriptions of their roles, responsibilities, and prior experience and including a list of the necessary licenses or certifications that apply to such positions;

- (c) List and descriptions of the tools, equipment, services, and inventory, if any, proposed to be furnished in connection with such activity(ies), including the number, type(s) and basing of aircraft to be provided/maintained (as applicable);
- (d) Copies of the necessary certificates from the FAA or other authority where the same are required for the activity proposed, or demonstration that the applicant can reasonably obtain such approvals;

3. *Supporting Documents.*

- (a) In addition to the above, if requested by the Board, the applicant shall submit the following supporting documents to the Board, together with any other such documents and information as may be requested by the Board:
 - (1) Financial Statement. A current financial statement certified by a Certified Public Accountant.
 - (2) Assets. A written listing of the assets owned or being purchased which will be used in the operation of the business on the Airport.
 - (3) Credit Report. A current credit report covering all areas in which the applicant has done business during the past ten years.
 - (4) List of References. A written list of persons who work at other airports where the applicant has engaged in commercial aeronautical activity that can provide a reference for the applicant and their current contact information, including phone numbers and email addresses.
 - (5) Authorization for Release of Information. A written authorization for the FAA and all aviation or aeronautic commissions, administrators, or departments in all states in which the applicant has engaged in aviation business to supply the Airport Advisory Board with all information in their files relating to the applicant or his operation. The applicant shall execute such forms, releases, and discharges as may be requested by any of these agencies.

- E. Review by Airport Advisory Board. The Board shall not take any action on an application to lease Airport property for aeronautical purposes or conduct a commercial aeronautical activity on the Airport unless and until it has received all required and/or requested information and documentation specified in Section III.D.1, III.D.2, and III.D.3 above, and provided further that the Board shall not

provide a final approval of an application unless and until the applicant has completed the Large-Scale Development process, as applicable, and as described further in Section F. However, if an applicant has submitted a complete formal written application prior to submitting, the Board may, on its own initiative or at the request of the Airport Manager and/or the applicant, review such application and provide a preliminary approval (contingent on submission of an approved Large-Scale Development plan) or deny such application.

F. Large-Scale Development Plan.¹

1. Prior to the approval by the Board of an agreement with an applicant, the applicant must have complied with all applicable requirements for Large Scale Developments at the Airport, including without limitation:
 - (a) The applicant must first meet with the Airport Manager before initiating the Large-Scale Development process. At that meeting, the applicant must provide preliminary drawings and concepts sufficient for informal review and discussion.
 - (b) Following the initial meeting with the Airport Manager, the applicant must proceed with the Large-Scale Development process described in Section 700 of the Bentonville Municipal Code.
 - (c) The applicant's Large-Scale Development plan must comply with the design standards for the Airport contained in Section 1100.24 of the Bentonville Municipal Code.
 - (d) The applicant's Large-Scale Development plan must be approved by the Planning Commission pursuant to Section 700.04 of the Bentonville Municipal Code.
 - (e) After the applicant's Large-Scale Development plan is approved by the Planning Commission, the applicant must submit such plan to the Airport Advisory Board for its review and approval.
2. The applicant may initiate the Large-Scale Development process before or after submitting their formal written application, provided, however, that the Board shall not approve any formal written application (nor the terms of any form of lease agreement) unless and until an applicant has also submitted to the Board for its approval a Large-Scale Development plan that has been prepared pursuant to the above and approved by the Planning Commission.

¹ "Large-Scale Development" shall have the meaning given to it in the Bentonville Municipal Code.

3. The applicant must continue to comply with all applicable requirements for Large-Scale Developments during the term of the applicant's lease agreement at the Airport.

G. Grounds for Denial of an Application. In reviewing an application to lease Airport property for aeronautical purposes or to conduct a commercial aeronautical activity on the Airport, any of the following reasons shall be grounds for denial of that application:

1. Not Qualified. The applicant proposes to conduct a commercial aeronautical activity for which it does not meet the established qualifications, standards, and requirements.
2. Safety Hazard. The applicant's proposed operations or construction will create a safety hazard on the Airport.
3. Authority Expenditure. The granting of the application will require the City to spend Airport revenue or public funds, or to supply labor or materials in connection with the proposed operations to an extent which or at a time when the City is unwilling to enter into such arrangement; or, the operation will result in a financial loss to the Airport.
4. Availability. There is no appropriate, adequate, or available space or building on the Airport to accommodate the entire activity of the applicant at the time of the application.
5. Non-Compliance with Airport Layout Plan or Airport Master Plan. The proposed operation or Airport development or construction does not comply with the Airport Layout Plan or current Airport Master Plan.
6. Congestion. The development or use of the area requested by the applicant will result in depriving existing operators of portions of the area in which they are operating; or will result in a congestion of aircraft or buildings; or will result in unduly interfering with the operations of any present operator on the Airport through problems in connection with aircraft traffic or service, or preventing free access to the operator's area.
7. Misrepresentation. The applicant, or person with a substantial interest therein, has either intentionally or unintentionally, supplied the City with any false information or has misrepresented any material fact in their application or in supporting documents or has failed to make full disclosure on their application or in supporting documents.
8. History of Violations. The applicant, or person with a substantial interest therein, has a record of violating the Minimum Standards, the rules and regulations of this or any other airport, or FAA regulations.

9. Defaulted Performance. The applicant, or person with a substantial interest therein, has defaulted in the performance of any agreement with the City.
10. Poor Credit Report. The applicant, or person with a substantial interest therein, has a credit report which contains derogatory information and does not appear to have satisfactory business responsibility and reputation.
11. Lack of Finances. The applicant does not appear to have, or have access to, the finances necessary to lease the Airport property and/or conduct the proposed operation for a minimum period of six months (for example, the applicant lacks the ability to post performance bond equal to six months' rental) or to construct the necessary proposed improvements.
12. Undesirable Reputation. The applicant, or person with a substantial interest therein, has been convicted of any crime or violation of any ordinance of such nature that it indicates to the City that the applicant would not be a desirable operator on the Airport.
13. FAA Determination. The FAA has determined that any proposed development would constitute an obstruction or hazard to air navigation.
14. Other. Denial of the application is otherwise appropriate because it would cause the sponsor to be in violation of applicable federal, state, or local obligations.

H. Agreement with the City.

1. Upon the approval of an application by the Board, the Airport Manager or their designee shall cause to be prepared a form of agreement setting forth the terms and conditions by which the applicant may conduct the proposed activity(ies) and/or lease the proposed space.
2. In considering the term of any lease agreement, the City shall take into account the applicant's financial investment and the need to amortize any improvements to the leasehold.
3. In addition to all other appropriate provisions, any agreement shall contain a provision stating that such agreement shall be subject and subordinate to the provisions of any existing or future agreements between the City and the United States of America relative to the operation and maintenance of the Airport System, the terms and execution of which have been or may be required as a condition precedent to the expenditure by or reimbursement to the City of Federal funds for the development of the Airport.
4. In addition to all other appropriate provisions, agreements for the conduct of aeronautical activity at the Airport shall state that nonaeronautical activity is prohibited in any permitted or leased space except for

nonaeronautical activity solely incidental to the primary aeronautical use(s) permitted by the agreement.

5. Lease agreements may not be assigned without the prior written approval of the Board. The Board must be given forty-five (45) days' written notice by a lessee of any proposed assignment and the Board shall act upon the request within sixty (60) days of such notice.
6. The Board must approve the final form of agreement with an applicant and may recommend such agreement to City Council for appropriate action.