

AGENDA ITEM SUMMARY



DATE: 2/28/2011

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Amended and Restated Joint Powers Agreement

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am enclosing a memorandum, several recent drafts of the proposed Amended and Restated Joint Powers Agreement and a proposed letter.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Case # _____

Budget Line Item # _____ YTD Line Item Balance \$ _____

Estimated Hours Spent to Date: _____ Estimated Completion Date: _____

Staff Contact: _____ Phone # _____

Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

| | | | |
|----------------------|------------------------------|----------------|--------------|
| ___ City Attorney | ___ Clerk / Finance Director | ___ Engineer | ___ Building |
| ___ Library | ___ Planning | ___ Fire Dept. | ___ |
| ___ Safety Committee | ___ P & Z Commission | ___ Police | ___ |
| ___ Streets | ___ Public Works, Parks | ___ Mayor | ___ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss options and provide direction on the proposed revisions to the agreement.

FOLLOW-UP REMARKS:

MEMORANDUM

TO: Hailey Mayor and City Council Members

FROM: Ned C. Williamson

DATE: February 28, 2011

RE: Amended and Restated Joint Powers Agreement

After considerable discussion with county officials, I believe it is necessary to discuss the status of the Amended and Restated Joint Powers Agreement ("JPA"). In this memo, I will summarize the recent developments and outline various key issues. At the conclusion of Monday's meeting, I will be asking for direction on how to proceed.

On December 6, 2010, the City and County conducted a joint meeting, during which time there seemed to be general consensus with the draft presented to the joint participants. On December 13, 2010, we discussed a draft which was developed following the joint meeting. A copy of the December 13, 2010, draft is enclosed as Attachment No. 1. That draft was forwarded to the county commissioners. On January 11, 2011, Commissioner McCleary forwarded a draft to the City. A copy of the January 11, 2011, draft is enclosed as Attachment No. 2. The County suggested numerous revisions. Some of the suggested revisions were relatively minor, while some were quite substantial. For example, the more substantial suggested revisions are:

1. Section 7.5(C). The County suggests deleting the language which outlined the City's responsibilities for redevelopment of the existing airport.
2. Section 7.8(A). The County is suggesting a termination of the JPA once the existing airport closes or the replacement airport opens.
3. Section 7.8(B). The County is suggesting the parties agree in the future to prohibit the continuation of the existing airport as a nonconforming use and to pursue disposition of existing airport.

I have made numerous changes to the County's January 11, 2011, draft. A copy of my suggested draft and a proposed cover letter are enclosed as Attachment No. 3.¹ Explanations for some of the proposed revisions are found in the draft JPA and in the attached cover letter.

¹ This draft also includes language suggested by Len Harlig. I spoke with Len, Rick Baird, Peter Kirsch and Tim Graves about the suggested revisions to the recitals and for the most part, incorporated the changes in the JPA.

Mayor Rick Davis
Hailey City Council Members
February 28, 2011
Page 2

In discussing this draft with individual council members, several issues were identified. The most significant issue was whether the delineation of "joint decision matters" found in Section 7.5(B) was potentially missing important powers involving the existing airport. You can see that many of the powers listed in Section 4.1 are not necessarily included in the specific list of "joint decision matters". Another issue is whether the language about the City's responsibilities should be in the recital portion of the JPA.

I would like guidance on what to present to the County Commissioners. On one hand, we could present a draft which resembles the draft in Attachment No. 3. If we elected to proceed with such a draft, I would recommend the revision to Section 7.5(A) as shown by the following underlined and stricken language:

A. In addition to those powers and limitations set forth in Article IV Section 4.2, ~~above,~~ the Authority shall make no decision with respect to a Joint Decision Matter, as defined in this section until or unless the matter shall have been submitted for a vote to the full seven (7) member Authority Board, subject to the quorum and voting requirements of Sections 7.4 and 7.6.

This revised language should make it clear that Hailey can exercise all of the powers under Section 4.1 for each of the specific "joint decision matters."

On the other hand, we could present an entirely different draft which recognizes Hailey's authority to participate in any and all decisions which involve the existing airport. Instead of attempting to delineate each and every matter which we think may be important to Hailey, we could revise Section 7.5(B) and simply recognize that Hailey can participate in any decision or matter involving the Existing Airport.

On Monday, I intend to outline the recent discussions and attempt to identify the salient issues and related arguments. Please contact me in advance of the meeting if you have any questions or suggestions.

ATTACHMENT NO. 1

CITY'S DRAFT (12-13-10)

AGENDA ITEM SUMMARY

DATE: 12/13/2010

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Amended and Restated Joint Powers Agreement

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am attaching a proposed clean and redlined version of the Amended and Restated Joint Powers Agreement. The revisions which have been proposed after last Monday's meeting are shown in the redlined version

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

| | | | |
|----------------------|------------------------------|----------------|--------------|
| ___ City Attorney | ___ Clerk / Finance Director | ___ Engineer | ___ Building |
| ___ Library | ___ Planning | ___ Fire Dept. | _____ |
| ___ Safety Committee | ___ P & Z Commission | ___ Police | _____ |
| ___ Streets | ___ Public Works, Parks | ___ Mayor | _____ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss the proposed Amended and Restated Joint Powers Agreement and provide guidance on any suggested revision.

FOLLOW-UP REMARKS:

AMENDED AND RESTATED JOINT POWERS AGREEMENT

Friedman Memorial Airport Authority

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT ("Agreement") is made effective upon its execution between BLAINE COUNTY, a political subdivision of the State of Idaho (the "County"), and THE CITY OF HAILEY, an Idaho municipal corporation located within the County (the "City").

RECITALS

WHEREAS, the County and the City entered into a Joint Powers Agreement dated May 16, 1994 (the "1994 Agreement") which 1994 Agreement has been amended on several occasions; and

WHEREAS, the County and the City have jointly operated and are currently jointly operating, an airport known as the Friedman Memorial Airport located within the City and County (the "Existing Airport"); and

WHEREAS, the Existing Airport is of critical importance to the economy of the County and the City, and, as pressure for use of the Existing Airport reaches the physical limits of the Existing Airport, the County and the City have decided to seek a replacement site for Existing Airport facilities away from urban populations rather than expanding the Existing Airport; and

WHEREAS the Existing Airport operates under a temporary waiver of FAA airport design standards and, the Existing Airport cannot comply with those standards without expanding the Existing Airport; and

WHEREAS, the County and the City have agreed not to expand the Existing Airport; and

WHEREAS, the County and the City seek the highest quality and safest airport possible within the physical limits imposed by the geography of the Existing Airport location; and

WHEREAS, Idaho Code Section 67-2328 expressly authorizes public entities to create a separate legal or administrative entity to exercise powers possessed by the public agencies creating such entity; and

WHEREAS, the County and the City have determined that it is in the best interests of the County and the City, and their inhabitants, to continue managing and operating the Existing Airport under the Authority while reconstituting the Board of the Authority during the time that the County and City are seeking a replacement site for the Existing Airport facilities; and

WHEREAS, a Replacement Airport is being planned to be located in the County and it is the intent of the parties that the Existing Airport will permanently be closed and sold when the Replacement Airport is operational; and

WHEREAS, the City and County previously agreed in a July 6, 2010 Agreement for Development of Replacement Airport and Redevelopment of Friedman Memorial Airport to transition to a restructured governing board, which will be accomplished by this Agreement; and

WHEREAS, the County and the City accordingly wish to amend and restate pertinent provisions of the 1994 Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree:

ARTICLE I

DEFINITIONS, PURPOSE, AND AUTHORITY

Section 1.1: DEFINITIONS

For purposes of this Agreement, the following terms shall have the following definitions:

Agreement means this Amended and Restated Joint Powers Agreement, dated as of the execution date.

Authority means the Friedman Memorial Airport Authority created under Section 3.1 of this Agreement.

Board means the Board of Commissioners of the Authority, created under Section 3.2 and reconstituted under Section 7 of this Agreement.

City means the City of Hailey, Blaine County, Idaho.

City Council means the City Council of the City.

Commercial means regularly-scheduled airline activities.

County means Blaine County, Idaho.

Existing Airport means the Friedman Memorial Airport, located in the City and County.

FAA means the Federal Aviation Administration of the U.S. Department of Transportation.

Friedman Grant Property means the real property conveyed by deed recorded in Book 128, page 213, records of the County Recorder, Blaine County, Idaho, to the City by Leon Friedman, et al., for airport purposes.

Master Plan means the Friedman Memorial Airport Master Plan Update, 1991, or its successor.

Replacement Airport means the airport currently being planned to be located outside the city limits of the City and that, when operational, will replace the Existing Airport.

Section 1.2: PURPOSE

The purpose of this Agreement is (1) to amend and restate pertinent provisions of the 1994 Agreement creating an Authority for the management and operation of airport activity in the County, including the Existing Airport, (2) to eliminate safety deviations without expanding the impact of the Existing Airport on the adjacent community, (3) to implement the Master Plan; and (4) to plan for, establish, and operate the Replacement Airport

Section 1.3: AUTHORITY

This Agreement is entered into under the authority of Title 21, Chapter 4, and Sections 67-2326 through 67-2333, Idaho Code.

ARTICLE II

DURATION, AMENDMENT, AND TERMINATION

Section 2.1: DURATION

The term of this Agreement shall commence May 16, 1994 and terminate on December 31, 2020, unless earlier terminated in accordance with Section 2.3 below.

Section 2.2: AMENDMENT

The County and the City reserve the right to amend this Agreement at any time by written agreement between the County and the City, provided, that no amendment shall violate or impair any then-existing contractual obligation relating to the Existing Airport or the Replacement Airport.

Section 2.3: TERMINATION

The County and City reserve the right to terminate this Agreement, by mutual written agreement between the County and the City, at any time prior to its stated termination date. In the event of such termination, or upon the stated expiration hereof, any then-existing valid contractual obligations of the Authority shall become joint obligations of the County and City, unless the obligations are assigned or transferred consistent with Section 6.1(H) hereof.

ARTICLE III

CREATION OF AIRPORT AUTHORITY

Section 3.1: AIRPORT AUTHORITY

There is hereby created a separate administrative entity, pursuant to Section 67-2328, Idaho Code, to be known as the Friedman Memorial Airport Authority (the "Authority"). The Authority shall be a public entity of the State of Idaho with the powers set forth in this Agreement.

Section 3.2: GOVERNING BOARD

Except as provided in Article VII below, the Authority shall be governed by a board of commissioners (the "Board") consisting of five (5) members, to be appointed as follows: two (2) members shall be appointed by the County. Two (2) members shall be appointed by the City. The members so appointed may, but need not, be members of the governing board of the appointing entity. One (1) member shall be appointed by unanimous vote of the four thus appointed. Members shall initially be compensated at a salary of \$200 per month, and shall be reimbursed for their actual, documented expenses under such rules and procedures as the Board may establish. Commencing one (1) year after the initial organization of the Board, the Board may annually establish the compensation for its members; provided, that the City and County, by joint action of their respective governing bodies taken within thirty (30) days after such action by the Board, may veto any increase in compensation. The effect of such veto shall be to maintain the current compensation in force and effect.

Section 3.3: TERMS OF OFFICE

Of the members of the Board appointed by the County and the City, one (1) shall be appointed to a one-year term, and one (1) shall be appointed to a two-year term, commencing on June 1st of the year of their appointment. Thereafter, members shall be appointed to two-year terms. The member appointed by the four members of the Board (the "Independent Member") shall serve a two-year term commencing on the date of appointment of the year of appointment. Any member may be removed by the entity originally appointing such member, except the Independent Member, who may be removed only by the unanimous vote of the remaining Board members. Any vacancy shall be filled by the entity which originally appointed such member to fill the unexpired term.

Section 3.4: OFFICERS

The Board shall designate one (1) of its members as Chairman, one (1) as vice-chairman, one (1) as secretary, and shall appoint a treasurer who need not be a member of the Board, any of whom may be removed in the manner provided in the bylaws of the Board. The Board may appoint other officers as it deems necessary.

Section 3.5: BYLAWS, MEETINGS

The Board shall adopt bylaws for its own operation and shall establish such regular meeting dates (which shall not be less frequent than monthly) and times as it shall deem necessary. Any four (4) members shall constitute a quorum, and a majority of the quorum present shall be sufficient to take any action. Regular and special meetings of the Board shall be conducted in compliance with Sections 67-2340 through 67-2347, Idaho Code.

ARTICLE IV

POWERS OF THE BOARD

Section 4.1: POWERS

In addition to any other powers set forth in this Agreement, the Board of the Authority shall have and may exercise the following powers in the name of the Authority with respect to the Existing Airport and the Replacement Airport:

1. To sue and be sued in its own name.
2. To adopt an official seal and alter the same at pleasure.
3. To authorize any action by motion, resolution, or other official action.
4. To promulgate and adopt all necessary rules and regulations for the management and control of airport property including, but not limited to, landing and takeoff areas (including runways and landing strips for aircraft); taxiway areas for aircraft; passenger and cargo ramp areas and facilities; aircraft parking areas and facilities; facilities for the purpose of controlling or assisting landings, takeoffs, and other movements of aircraft using the airport, including, without limitation, control towers, flood lights, landing lights, beacons, signals, radio aids, and other conveniences and aids to operation, navigation, or ground control of aircraft; automobile parking; airport terminal; aircraft tie-downs and hangars; hours and days of operation and all rules and regulations necessary for the safe, effective, and efficient operation of all airport facilities.
5. To order, direct, superintend, and manage all repairs, alterations, and improvements.
6. To lease land from the County and the City and to acquire, construct, or lease buildings, structures, facilities, and equipment as it may deem necessary to fulfill its duties. Such lease arrangements are not to exceed ten dollars (\$10) per year. Real property may not be conveyed or disposed of except by lease not exceeding twenty (20) years, except for conveyance to the County and/or the City in conformance with Paragraph 4.2(D) of this Agreement.
7. To acquire in the name of the Authority, by gift or purchase, or by lease, such personal property as it may deem necessary in connection with the improvement, extension, enlargement, or operation of airport facilities, and to sell, convey, lease, or dispose of any personal property, in accordance with the statutory requirements applicable to counties, upon such terms and conditions and for such consideration as the Board deems appropriate.
8. To enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the airport, the state and any of its agencies or instrumentalities, any corporation or person, public or private, any municipality, and any political or governmental subdivision, within or without the state, and to cooperate with any one (1) or more of them in acquiring, constructing, operating, or maintaining the airport.
9. To receive moneys and property from the County or the City and to receive gifts, grants, and donations of money or property from any person or entity, to expend or utilize the same for the purposes of the Authority, to deposit moneys in accordance with the public depository laws of the state, and to invest moneys of the Authority in investments permitted under Sections 67-1210 and 67-1210A, Idaho Code.

10. To borrow money and incur indebtedness, not exceeding the budgeted revenues and expenses for the then-current fiscal year of the Authority, and to evidence the same by notes, warrants, or other evidence of indebtedness.

11. To manage, control and supervise all the business and affairs of the airport.

12. To hire an airport manager and necessary employees, who shall serve at the pleasure of the Board. Compensation for the airport manager shall be fixed annually by the Board during the normal budget process.

13. To retain and compensate agents, engineers, and consultants.

14. To retain or employ regular legal counsel, and to retain such special legal counsel as may be deemed necessary.

15. To fix, periodically increase or decrease, and collect rates, fees, tolls, or charges for the use or availability of the facilities of the airport.

16. To maintain civil actions for the abatement of any violation of any of the Authority's rules, regulations, or standards.

17. To insure airport property and to enter into contracts for insurance, including, but not limited to, liability insurance.

18. To maintain and administer recordkeeping and management functions.

19. To exercise all or any part or combination of the powers set forth in this Agreement, and to do all things necessary or incidental to the proper operation of this Agreement.

20. Except as provided in Section 7.5, to take such actions as necessary to plan, secure approvals for, construct and operate the Replacement Airport on a site outside the city limits of the City, and to dispose of the site of the Existing Airport.

Section 4.2: LIMITATIONS ON POWERS

A. Nothing in the foregoing enumerations of powers shall be construed as authorizing the Board (1) to create any legal, contractual, fiscal, or tort obligation binding upon the County or the City, or (2) to incur any indebtedness or liability in excess of the limits or authority provided by state law and the state Constitution.

B. The Authority shall have no power to levy or cause to be levied any taxes or to require the County or the City to levy any taxes.

C. The operation of the Existing Airport by the Authority shall be subject to existing leases, rights, contracts, assurances, and privileges heretofore granted by the City and County.

D. All land owned by the County or the City (except the Friedman Grant Property), or by the County and City jointly, and devoted to use for the Existing Airport as of the date of this Agreement (as depicted on Exhibit A to the approved Airport Layout Plan for the Existing Airport), shall be conveyed to the Authority for the use and benefit of the Existing Airport. Any land hereafter acquired for Existing Airport purposes shall, to the extent consistent with FAA regulations, be acquired by, and title thereto shall be held in the name of, the Authority. Land for the Replacement Airport shall be acquired in the name of the Authority.

E. All buildings, improvements, facilities, equipment, and personal property now in use on the Existing Airport shall be conveyed by the County and the City to the Authority for the use and benefit of the Existing Airport, and the title thereto shall be held by the Authority. If this Agreement is terminated, title to all buildings, improvements, facilities, equipment, and personal property in use on the Existing Airport shall vest jointly in the County and the City. Title to all buildings, improvements, facilities, equipment, and personal property to be used for the Replacement Airport shall be held by the Authority.

F. In addition to the foregoing limitations, the Authority shall be bound and limited by the covenants and restrictions set forth in Article VI of this Agreement and the limitations set forth in Article VII of this Agreement.

ARTICLE V

FINANCE AND BUDGET

Section 5.1: ANNUAL BUDGET

The fiscal year of the Authority shall commence on October 1 of each year and shall end on September 30 of the following year. The Board shall prepare a preliminary annual budget for each fiscal year, showing the anticipated revenues and expenditures, which budget shall be adopted as set forth hereinafter. If the preliminary budget provides for a revenue request from the County or the City, the preliminary budget shall be certified to the County or the City prior to the publication of the preliminary budget of the County and the City. Nothing herein shall be construed as obligating the County or the City to grant such revenue request.

On or before the first Tuesday in August, there shall be held at a time and place determined by the Board a meeting and public hearing upon the proposed budget of the Authority. Notice of the meeting and public hearing shall be published in a newspaper of general circulation in the County in one (1) issue thereof. The place, hour, and day of such hearing shall be specified in said notice, as well as the place where such budget may be examined prior to such hearing. A summary of such proposed budget shall be published with and as a part of the publication of such notice of hearing in substantially the form required in section 31-1604, Idaho Code. On or before August 15 of each year, a budget for the Authority shall be approved by the Board.

Section 5.2: AIRPORT FUNDS

The Authority shall establish such fund or funds for the deposit and expenditure of airport moneys as it deems necessary or appropriate, consistent with generally accepted municipal

accounting practices, and shall provide for the manner of expenditure of funds. All moneys held in airport funds by the County shall be transferred to the funds of the Authority. The Board shall require the annual audit of all airport funds by an independent auditor and shall provide copies of each annual audit to the County and the City.

ARTICLE VI

COVENANTS AND RESTRICTIONS

Section 6.1: The Authority shall comply with the following covenants and restrictions regarding operation of the Existing Airport. All capitalized terms shall have the meanings assigned thereto in the Master Plan, except as otherwise defined in this Agreement. The covenants and restrictions concerning airport operations shall not apply to a Replacement Airport.

A. There shall be no expansion of the land base of the Existing Airport beyond what has been established by the Master Plan.

B. Commercial airline activity shall be permitted to remain at current levels and increases in the number and frequency of such flights shall be accommodated within the other limitations contained herein and as delineated by the Master Plan.

C. Aviation activities (as defined in the Master Plan) will be requested to observe a curfew between 11:00 P.M. and 6:00 A.M. Additional restrictions to operations, based on Part 150, City ordinances, and airport planning activities initiated prior to promulgation of Part 161, may be imposed on decibels and hours of operation.

D. The number of tie-downs available for locally based tiedowns shall be a minimum of 66, at Master Plan completion, provided that the current number of transient tie-downs shall not be reduced.

E. The Design Aircraft Classification shall remain the equivalent of a B III level or its successor aircraft (as such terms are defined in the Master Plan).

F. To the extent possible, consistent with FAA regulations, landings from, or take-offs to, the north shall be restricted.

G. The Authority shall obtain and maintain property damage and comprehensive liability insurance in amounts sufficient to protect the airport property and to insure the County, the City, and the airport against tort and other damage claims. The amount of insurance shall be subject to approval annually by the County and the City, which approval shall not unreasonably be withheld.

H. No later than January 1, 2012, the Authority, in cooperation with the City and the County, will take actions as appropriate to secure approval from the Federal Aviation Administration for the transfer to the Authority of any grant assurance obligations to the Federal Aviation Administration incurred by the City in connection with the operation and development of the Existing Airport. As part of such transfer of obligations, the Authority agrees to accept the

City's existing grant obligations with regard to the Existing Airport. In addition, the Authority agrees to accept future grant assurance obligations with regard to the Replacement Airport. The Authority, City and County agree that as part of the acceptance by the Authority of any past or future grant assurances, the City will to the extent allowed by law be released from any and all of its obligations associated with the grant assurances.

I. The City and the County commit to sell their real property interests in the Existing Airport site in a manner that ensures that an airport cannot continue to operate on the Existing Airport site as a non-conforming use after the opening of the Replacement Airport, and will file appropriate affidavits of withdrawn use in a manner consistent with Idaho Code § 67-65-38.

ARTICLE VII

POWERS AND OPERATION DURING PLANNING FOR A REPLACEMENT AIRPORT

Section 7.1 PLANNING PERIOD

Notwithstanding anything to the contrary in this Agreement, this Article VII shall apply from the date of execution of this Agreement until the Conclusion of Planning, as defined in section 7.7.

Section 7.2 GOVERNING BOARD; VOTING

The Board shall be reconstituted to consist of the following members: the three (3) County Commissioners of the County; three (3) members to be appointed by the City Council; and one (1) member to be appointed by unanimous vote of the other six (6) Board members (the "Independent Member"). The three County Commissioner members shall be voting members. The three City members and the Independent Member shall be full participating members in all deliberations and matters that come before the Board but shall be non-voting members except as provided in this Article.

Section 7.3 TERMS OF OFFICE

The members of the Board that are County Commissioners shall serve during the period that they are serving as County Commissioners. The members of the Board that are appointed by the City Council shall serve for such period as may be determined by the City Council from time to time. The Independent Member shall serve a two-year term commencing on January 1 of the year of appointment. Any member may be removed by the entity originally appointing such member, except the Independent Member, who may be removed only by the unanimous vote of the remaining Board members. Any vacancy shall be filled by the entity which originally appointed such member.

Section 7.4 QUORUM

For all decisions except Joint Decision Matters, a quorum shall include at least two (2) County Commission members of the Board. Any member in attendance at a meeting, regardless of their voting status, shall be entitled to fully participate in the discussions and deliberations of

any matter that comes before the Board. A quorum for Joint Decision Matters shall consist of least two (2) City members of the Board and at least two (2) County Commission members of the Board.

Section 7.5 LIMITATIONS ON MANNER OF EXERCISING POWERS

- A. In addition to those limitations set forth in Section 4.2, above, the Authority shall have no power with respect to a Joint Decision Matter, as defined in this section until or unless the matter shall have been submitted for a vote to the seven (7) member Board, and a majority of the City and the County members have concurred in the action pursuant to Section 7.6.
- B. "Joint Decision Matter" shall be defined to mean a decision to –
1. Sell or enter into a contract to sell any real estate on the Existing Airport and all decisions incidental thereto consistent with section 6.1(I) and the need for expeditious action to fulfill the purposes of Section 6.1(I).
 2. Accept a grant from the Federal Aviation Administration for planning or construction at the Existing Airport.
 3. Enter into a contract with a consultant whose responsibilities include planning for redevelopment of the Existing Airport site.
 4. Forward to the City a recommended plan for the redevelopment of the Existing Airport site, consistent with the principles set forth in section 7.5(C).
 5. Exercise authority on personnel matters pursuant to section 4.1(12) and any decisions incidental to the hiring, firing, discipline and compensation of employees that are appropriately within the purview of the Board.
 6. Authorize funding for, or implementation of, safety improvements at the Existing Airport.
 7. Authorize funding for, or implementation of, environmental remediation at the Existing Airport site.
 8. Operate and regulate activities at the Existing Airport consistent with Sections 4.1(4), (5), (11) and (15), hereof.
- C. Pursuant to the July 6, 2010 Agreement for Development of Replacement Airport and Redevelopment of Friedman Memorial Airport, the City has primary responsibility for (i) addressing land ownership issues and developing the strategy for redeveloping the Existing Airport site as a unified redevelopment effort; (ii) negotiating with the Friedman family interests; (iii) public outreach to develop a master plan for redevelopment of the Existing Airport site; (iv) preparing a master plan for redevelopment; (v) issuing all of the permits and City authorizations necessary to comply with the City's development regulations for redevelopment of the Existing

Airport; and (vi) implementing the master plan and determining the phasing and timing of the development.

Section 7.6 MATTERS REQUIRING JOINT DECISION

In the event that the Board wishes to consider a resolution, motion or other action that is a Joint Decision Matter, the agenda for the meeting at which the matter is to be considered shall so indicate. All Board members in attendance shall be entitled to vote on a Joint Decision Matter. Joint Decision Matters can be approved only by a majority consisting of at least two (2) City members of the Board and at least two (2) County Commission members of the Board.

Section 7.7 CONCLUSION OF PLANNING

This Article VII shall be deemed to have been rescinded upon the first of the following events:

- A. Ten (10) days after the recording of a deed conveying the last parcel of Existing Airport real property to a third party; or one (1) year after execution of an irrevocable purchase and sale agreement for the last parcel of the Existing Airport property, whichever event is earlier.
- B. Ten (10) days after the Board has voted to terminate all efforts to relocate the Existing Airport to a new site.
- C. Seven (7) years following issuance of a Record of Decision by the Federal Aviation Administration approving the relocation of the Existing Airport to a new site.
- D. Upon mutual consent of the City Council and the County Commission pursuant to Section 2.3.

Section 7.8 BOARD MEMBERSHIP AFTER PLANNING HAS CONCLUDED

- A. If this Article VII has been rescinded pursuant to Section 7.7(A), the non-voting members of the Board shall be deemed to have resigned from the Authority with no further action required. At such time, the County shall proceed to operate the Replacement Airport as it deems appropriate, which may include (but are not limited to) the County's assumption of duties and obligations of the Authority, delegation of duties to a newly constituted entity consisting of a broad representation of County citizens or termination of this Agreement, all at the sole discretion of the County.
- B. If this Article VII has been rescinded pursuant to Section 7.7(B), Section 7.7(C) or Section 7.7(D), membership on the Board shall revert to that described in Article III.

ARTICLE VIII MISCELLANEOUS

Section 8.1: TERMINATION OF PRIOR AGREEMENTS

All prior agreements relating to the joint operation of the Existing Airport, including, but not limited to, the agreement between the City and the County entered into on or about December 30, 1985, as amended by the addendum to agreement dated June 27, 1988, are hereby terminated. Nothing herein shall be construed as impairing any existing contract obligations, all of which obligations shall continue in force and effect in accordance with their terms as obligations of the Authority.

Section 8.2: ENFORCEMENT OF RULES AND REGULATIONS

In addition to the Board's powers to enforce Existing Airport rules and regulations by civil action, the City may, by ordinance, provide that the violation of any such rule or regulation shall be a misdemeanor and may provide for the enforcement of the same.

Section 8.3: INVALIDITY

If any section of this Agreement is declared invalid by a court of competent jurisdiction, or if the FAA refuses to honor this Agreement or any portion thereof, either party may terminate this Agreement within 60 days of such declaration of invalidity by written notice to the other party.

Section 8.4: EFFECTIVE DATE

The Agreement shall be in full force and effect from and after the date on which the last party executes this Agreement.

BLAINE COUNTY, IDAHO

By _____
Chairman

Commissioner

Commissioner

BLAINE COUNTY CLERK

By: _____

CITY OF HAILEY
Blaine County, Idaho

By _____
Mayor

ATTEST:

City Clerk

Approved By:

AUTHORITY

By _____

Tom Bowman, Chairman

ATTACHMENT NO. 2
COUNTY'S DRAFT (1-11-11)

AMENDED AND RESTATED JOINT POWERS AGREEMENT

Friedman Memorial Airport Authority

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT ("Agreement") is made effective upon its execution between BLAINE COUNTY, a political subdivision of the State of Idaho (the "County"), and THE CITY OF HAILEY, an Idaho municipal corporation located within the County (the "City").

RECITALS

WHEREAS, the County and the City entered into a Joint Powers Agreement dated May 16, 1994 (the "1994 Agreement") which 1994 Agreement has been amended on several occasions; and

WHEREAS, the County and the City have jointly operated and are currently jointly operating, an airport known as the Friedman Memorial Airport located within the City and County (the "Existing Airport"); and

WHEREAS, the Existing Airport is of critical importance to the economy of the County and the City, and, as pressure for use of the Existing Airport reaches the physical limits of the Existing Airport, the County and the City have decided to seek a replacement site for Existing Airport facilities away from urban populations rather than expanding the Existing Airport; and

WHEREAS the Existing Airport operates under a temporary waiver of FAA airport design standards and, the Existing Airport cannot comply with those standards without expanding the Existing Airport; and

WHEREAS, the Existing Airport cannot permanently comply with FAA design standards without significantly expanding the Existing Airport; and

WHEREAS, the County and the City shall not have agreed not to expand the Existing Airport; and

WHEREAS, the County and the City seek the highest quality and safest airport possible within the physical limits imposed by the geography of the Existing Airport location; and

~~WHEREAS the Existing Airport operates under a temporary waiver of FAA safety standards and, because FAA has concluded that there are no technological fixes available at the site of the Existing Airport, the airport must be relocated in an expeditious fashion, and;~~

WHEREAS, Idaho Code Section 67-2328 expressly authorizes public entities to create a separate legal or administrative entity to exercise powers possessed by the public agencies creating such entity; and

WHEREAS, the County and the City have determined that it is in the best interests of the County and the City, and their inhabitants, to continue managing and operating the Existing Airport under the Authority while reconstituting the Board of the Authority during the time that the County and City are seeking a replacement site for the Existing Airport facilities; and

WHEREAS, a Replacement Airport is being planned to be located in the County and it is the intent of the parties that the Existing Airport will permanently be closed and sold when the Replacement Airport is operational; and

WHEREAS, the City and County previously agreed in ~~the~~ a July 6, 2010 Agreement for Development of Replacement Airport and Redevelopment of Friedman Memorial Airport to transition to a restructured governing board, which will be accomplished by this Agreement; and

WHEREAS, the County and the City accordingly wish to amend their prior agreements, while restating pertinent provisions of their prior agreements;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree:

ARTICLE I

DEFINITIONS, PURPOSE, AND AUTHORITY

Section 1.1: DEFINITIONS

For purposes of this Agreement, the following terms shall have the following definitions:

Agreement means this Amended and Restated Joint Powers Agreement, dated as of the execution date.

Authority means the Friedman Memorial Airport Authority created under Section 3.1 of this Agreement.

Authority Board means the Board of Commissioners of the Authority, created under Section 3.2 and reconstituted under Section 7 of this Agreement.

County Commissioners means the three member Board of County Commissioners for Blaine County, Idaho.

City means the City of Hailey, Blaine County, Idaho.

City Council means the City Council of the City.

Commercial means regularly-scheduled airline activities.

County means Blaine County, Idaho.

Existing Airport means the Friedman Memorial Airport, located in the City and County.

FAA means the Federal Aviation Administration of the U.S. Department of Transportation.

~~Friedman Grant Property means the real property conveyed to the City by Leon Friedman, et al., by quitclaim deed dated December 28, 1931, and recorded as Instrument No. 68355, Records of Blaine County, Idaho, and particularly described as Tax Lot No. 41 in the NW ¼ Section 15, and the SW ¼ of SW1 ¼ of Section 10, and Tax Lot No. 1122 in the NE ¼ of the SW ¼ and NW ¼ of SE ¼ of Section 15, in Twp. 2 North of Range 18 E.B.M., all situate in Blaine County, Idaho.~~

Friedman Grant Property means the real property conveyed by deed recorded in Book 128, page 213, records of the County Recorder, Blaine County, Idaho, to the City by Leon Friedman, et al., for airport purposes.

Master Plan means the Friedman Memorial Airport Master Plan Update, 1991, or its successor.

Replacement Airport means the airport currently being planned to be located outside the city limits of the City and that, when operational, will replace the Existing Airport.

Section 1.2: PURPOSE

The purpose of this Agreement is (1) to amend and restate pertinent provisions of the 1994 Agreement creating an Authority for the management and operation of certain airport activity in the County, including the Existing Airport, (2) to eliminate safety deviations without expanding the impact of the Existing Airport on the adjacent community, (3) to implement the Master Plan; and (4) to plan for, establish, and operate the Replacement Airport

Section 1.3: AUTHORITY

This Agreement is entered into under the authority of Title 21, Chapter 4, and Sections 67-2326 through 67-2333, Idaho Code.

ARTICLE II

DURATION, AMENDMENT, AND TERMINATION

Section 2.1: DURATION

The term of this Agreement shall commence May 16, 1994 and terminate on December 31, 2020, unless earlier terminated in accordance with Section 2.3 below.

Section 2.2: AMENDMENT

The County and the City reserve the right to amend this Agreement at any time by written agreement between the County and the City, provided, that no amendment shall violate or impair any then-existing contractual obligation relating to the Existing Airport or the Replacement Airport.

Section 2.3: TERMINATION

The County and City reserve the right to terminate this Agreement, by mutual written agreement between the County and the City, at any time prior to its stated termination date. In the event of such termination, or upon the stated expiration hereof, any then-existing valid contractual obligations of the Authority shall become joint obligations of the County and City, unless the obligations are assigned or transferred consistent with Section 6.1(H) hereof.

ARTICLE III

CREATION OF AIRPORT AUTHORITY

Section 3.1: AIRPORT AUTHORITY

There is hereby created a separate administrative entity, pursuant to Section 67-2328, Idaho Code, to be known as the Friedman Memorial Airport Authority (the "Authority"). The Authority shall be a public entity of the State of Idaho with the powers set forth in this Agreement.

Section 3.2: GOVERNING BOARD

Except as provided in Article VII below, the Authority shall be governed by a board of commissioners (the "Authority Board") consisting of five (5) members, to be appointed as follows: two (2) members shall be appointed by the County. Two (2) members shall be appointed by the City. The members so appointed may, but need not, be members of the governing board of the appointing entity. One (1) member shall be appointed by unanimous vote of the four thus appointed. Members shall initially be compensated at a salary of \$200 per month, and shall be reimbursed for their actual, documented expenses under such rules and procedures as the Authority Board may establish. Commencing one (1) year after the initial organization of the Authority Board, the Authority Board may annually establish the compensation for its members; provided, that the City and County, by joint action of their respective governing bodies taken within thirty (30) days after such action by the Authority Board, may veto any increase in compensation. The effect of such veto shall be to maintain the current compensation in force and effect.

Section 3.3: TERMS OF OFFICE

Of the members of the Authority Board appointed by the County and the City, one (1) shall be appointed to a one-year term, and one (1) shall be appointed to a two-year term, commencing on June 1st of the year of their appointment. Thereafter, members shall be appointed to two-year terms. The member appointed by the four members of the Authority

Board (the "Independent Member") shall serve a two-year term commencing on the date of appointment of the year of appointment. Any member may be removed by the entity originally appointing such member, except the Independent Member, who may be removed only by the unanimous vote of the remaining Authority Board members. Any vacancy shall be filled by the entity which originally appointed such member to fill the unexpired term.

Section 3.4: OFFICERS

The Authority Board shall designate one (1) of its members as Chairman, one (1) as vice-chairman, one (1) as secretary, and shall appoint a treasurer who need not be a member of the Authority Board, any of whom may be removed in the manner provided in the bylaws of the Authority Board. The Authority Board may appoint other officers as it deems necessary.

Section 3.5: BYLAWS, MEETINGS

The Authority Board shall adopt bylaws for its own operation and shall establish such regular meeting dates (which shall not be less frequent than monthly) and times as it shall deem necessary. Any four (4) members shall constitute a quorum, and a majority of the quorum present shall be sufficient to take any action. Regular and special meetings of the Authority Board shall be conducted in compliance with Sections 67-2340 through 67-2347, Idaho Code.

ARTICLE IV

POWERS OF THE AUTHORITY

Section 4.1: POWERS

In addition to any other powers set forth in this Agreement, the Authority Board of the Authority shall have and may exercise the following powers in the name of the Authority with respect to the Existing Airport and the Replacement Airport:

1. To sue and be sued in its own name.
2. To adopt an official seal and alter the same at pleasure.
3. To authorize any action by motion, resolution, or other official action.
4. To promulgate and adopt all necessary rules and regulations for the management and control of airport property including, but not limited to, landing and takeoff areas (including runways and landing strips for aircraft); taxiway areas for aircraft; passenger and cargo ramp areas and facilities; aircraft parking areas and facilities; facilities for the purpose of controlling or assisting landings, takeoffs, and other movements of aircraft using the airport, including, without limitation, control towers, flood lights, landing lights, beacons, signals, radio aids, and other conveniences and aids to operation, navigation, or ground control of aircraft; automobile parking; airport terminal; aircraft tie-downs and hangars; hours and days of operation and all rules and regulations necessary for the safe, effective, and efficient operation of all airport facilities.

5. To order, direct, superintend, and manage all repairs, alterations, and improvements.
6. To lease land from the County and the City and to acquire, construct, or lease buildings, structures, facilities, and equipment as it may deem necessary to fulfill its duties. Such lease arrangements are not to exceed ten dollars (\$10) per year. Real and personal property shall be conveyed or disposed in conformance with Paragraph 4.2(D), and (E) of this Agreement.
7. To acquire in the name of the Authority, by gift or purchase, or by lease, such personal property as it may deem necessary in connection with the improvement, extension, enlargement, or operation of airport facilities, and to sell, convey, lease, or dispose of any personal property, in accordance with the statutory requirements applicable to counties, upon such terms and conditions and for such consideration as the Authority Board deems appropriate.
8. To enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the airport, the state and any of its agencies or instrumentalities, any corporation or person, public or private, any municipality, and any political or governmental subdivision, within or without the state, and to cooperate with any one (1) or more of them in acquiring, constructing, operating, or maintaining the airport.
9. To receive moneys and property from the County or the City and to receive gifts, grants, and donations of money or property from any person or entity, to expend or utilize the same for the purposes of the Authority, to deposit moneys in accordance with the public depository laws of the state, and to invest moneys of the Authority in investments permitted under Sections 67-1210 and 67-1210A, Idaho Code.
10. To borrow money and incur indebtedness, not exceeding the budgeted revenues and expenses for the then-current fiscal year of the Authority, and not exceeding any Constitutional limitations or limitations of state law, and to evidence the same by notes, warrants, or other evidence of indebtedness.
11. To manage, control and supervise all the business and affairs of the airport.
12. To hire an airport manager and necessary employees, who shall serve at the pleasure of the Authority Board. Compensation for the airport manager shall be fixed annually by the Board during the normal budget process.
13. To retain and compensate agents, engineers, and consultants.
14. To retain or employ regular legal counsel, and to retain such special legal counsel as may be deemed necessary.
15. To fix, periodically increase or decrease, and collect rates, fees, tolls, or charges for the use or availability of the facilities of the airport.
16. To maintain civil actions for the abatement of any violation of any of the Authority's rules, regulations, or standards.

17. To insure airport property and to enter into contracts for insurance, including, but not limited to, liability insurance.

18. To maintain and administer recordkeeping and management functions.

19. To exercise all or any part or combination of the powers set forth in this Agreement, and to do all things necessary or incidental to the proper operation of this Agreement.

20. Except as provided in Section 7.5, to take such actions as necessary to plan, secure approvals for, construct and operate the Replacement Airport on a site outside the city limits of the City and to remediate and dispose of the site of the Existing Airport.

Section 4.2: LIMITATIONS ON POWERS

A. Nothing in the foregoing enumerations of powers shall be construed as authorizing the Authority Board (1) to create any legal, contractual, fiscal, or tort obligation binding upon the County or the City, or (2) to incur any indebtedness or liability in excess of the limits or authority provided by state law and the state Constitution.

B. The Authority shall have no power to levy or cause to be levied any taxes or to require the County or the City to levy any taxes.

C. The operation of the Existing Airport by the Authority shall be subject to existing leases, rights, contracts, assurances, and privileges heretofore granted by the City and County.

~~D. All land owned by the County or the City (except the Friedman Grant Property owned by the City and land purchased by the City in 1941), or by the County and City jointly, and devoted to use for the Existing Airport as of the date of this Agreement, shall be conveyed to the joint ownership of the County and the City as tenants in common. All Existing Airport property, including the Friedman Grant Property, shall be leased by the County and/or the City to the Authority for the use and benefit of the Existing Airport. Such lease arrangements are not to exceed ten dollars per year (\$10). The Authority shall not acquire or hold title to land for the Existing Airport except by lease from the County and/or the City. Any land hereafter acquired for Existing Airport purposes shall be held in the name of, the County and the City jointly, as tenants in common, for the use and benefit of the Existing Airport and leased to the Authority for airport purposes. Upon termination of this Agreement, said lease or leases shall terminate unless sooner terminated. Land for the Replacement Airport shall be acquired in the name of the Authority.~~

D. All land owned by the County or the City (except the Friedman Grant Property), or by the County and City jointly, and devoted to use for the Existing Airport as of the date of this Agreement (as depicted on Exhibit A to the approved Airport Layout Plan for the Existing Airport), shall be conveyed to the Authority for the use and benefit of the Existing Airport. Any land hereafter acquired for Existing Airport purposes shall, to the extent consistent with FAA regulations, be acquired by, and title thereto shall be held in the name of, the Authority. Land for the Replacement Airport shall be acquired in the name of the Authority. The Authority may convey or dispose of land at both Existing Airport and/or the Replacement Airport in a manner

that facilitates the permanent closure of the Existing Airport, as well as the construction and funding of the Replacement Airport.

~~E. All buildings, improvements, facilities, equipment, and personal property now in use on the Existing Airport shall be conveyed by the County and the City to the Authority for the use and benefit of the Existing Airport, and the title thereto shall be held by the Authority. If this Agreement is terminated, title to all buildings, improvements, facilities, equipment, and personal property in use on the Existing Airport shall vest jointly in the County and the City. Title to all buildings, improvements, facilities, equipment, and personal property to be used for the Replacement Airport shall be held by the Authority.~~

E. All buildings, improvements, facilities, equipment, and personal property now in use on the Existing Airport shall be conveyed by the County and the City to the Authority for the use and benefit of the Existing Airport, and the title thereto shall be held by the Authority. Upon termination of this Agreement, title to all buildings, improvements, facilities, equipment, and personal property in use on the Existing Airport shall vest jointly in the County and the City. All buildings, improvements, facilities, equipment, and personal property to be used for the Replacement Airport shall be conveyed to the Authority upon the opening of the Replacement Airport. The Authority may convey or dispose of all buildings, improvements, facilities, equipment, and personal property at both the Existing Airport and/or the Replacement Airport in a manner that facilitates the permanent closure of the Existing Airport, as well as the construction and funding of the Replacement Airport.

F. In addition to the foregoing limitations, the Authority shall be bound and limited by the covenants and restrictions set forth in Article VI of this Agreement and the limitations set forth in Article VII of this Agreement.

ARTICLE V

FINANCE AND BUDGET

Section 5.1: ANNUAL BUDGET

The fiscal year of the Authority shall commence on October 1 of each year and shall end on September 30 of the following year. The Authority Board shall prepare a preliminary annual budget for each fiscal year, showing the anticipated revenues and expenditures, which budget shall be adopted as set forth hereinafter. If the preliminary budget provides for a revenue request from the County or the City, the preliminary budget shall be certified to the County or the City prior to the publication of the preliminary budget of the County and the City. Nothing herein shall be construed as obligating the County or the City to grant such revenue request.

On or before the first Tuesday in August, annually, there shall be held at a time and place determined by the Board a meeting and public hearing upon the proposed budget of the Authority. Notice of the meeting and public hearing shall be published in a newspaper of general circulation in the County in one (1) issue thereof. The place, hour, and day of such hearing shall be specified in said notice, as well as the place where such budget may be examined prior to such hearing. A summary of such proposed budget shall be published with and as a part of the publication of such notice of hearing in substantially the form required in

section 31-1604, Idaho Code. On or before August 15 of each year, a budget for the Authority shall be approved by the Authority Board.

Section 5.2: AIRPORT FUNDS

The Authority shall establish such fund or funds for the deposit and expenditure of airport moneys as it deems necessary or appropriate, consistent with generally accepted municipal accounting practices, and shall provide for the manner of expenditure of funds. All moneys held in airport funds by the County or the City shall be transferred to the funds of the Authority. The Authority Board shall require the annual audit of all airport funds by an independent auditor and shall provide copies of each annual audit to the County and the City.

ARTICLE VI

COVENANTS AND RESTRICTIONS

Section 6.1: The Authority shall comply with the following covenants and restrictions regarding operation of the Existing Airport. All capitalized terms shall have the meanings assigned thereto in the Master Plan, except as otherwise defined in this Agreement. The covenants and restrictions concerning airport operations shall not apply to the Replacement Airport.

A. There shall be no expansion of the land base of the Existing Airport beyond what has been established by the Master Plan.

B. Commercial airline activity shall be permitted to remain at current levels and increases in the number and frequency of such flights shall be accommodated within the other limitations contained herein and as delineated by the Master Plan.

C. Aviation activities (as defined in the Master Plan) will be requested to observe a curfew between 11:00 P.M. and 6:00 A.M. Additional restrictions to operations, based on Part 150, City ordinances, and airport planning activities initiated prior to promulgation of Part 161, may be imposed on decibels and hours of operation.

D. The number of tie-downs available for locally based tiedowns shall be a minimum of 66, at Master Plan completion, provided that the current number of transient tie-downs shall not be reduced.

E. The Design Aircraft Classification shall remain the equivalent of a B III level or its successor aircraft (as such terms are defined in the Master Plan).

F. To the extent possible, consistent with FAA regulations, landings from, or take-offs to, the north shall be restricted.

G. The Authority shall obtain and maintain property damage and comprehensive liability insurance in amounts sufficient to protect the airport property and to insure the County, the City, and the airport against tort and other damage claims. The amount of insurance shall be

subject to approval annually by the County and the City, which approval shall not unreasonably be withheld.

H. No later than January 1, 2012, the Authority, in cooperation with the City and the County, will take actions as appropriate to secure approval from the Federal Aviation Administration for the transfer to the Authority of any grant assurance obligations to the Federal Aviation Administration incurred by the City and by the County in connection with the operation and development of the Existing Airport. As part of such transfer of obligations, the Authority agrees to accept the City's and the County's existing grant obligations pursuant to any ~~agreements with the Federal Aviation Administration~~ with regard to the Existing Airport. In addition, the Authority agrees to accept the future grant assurance obligations with regard to the Replacement Airport, pursuant to any agreement with the FAA related to the operation and development of the Replacement Airport. The Authority, City and County agree that as part of the acceptance by the Authority of any past or future grant assurances, the City and the County will to the extent allowed by law be released from any and all of its their obligations associated with the grant assurances.

~~I. The City and the County commit to sell their real property interests in the Existing Airport site in a manner that ensures that an airport cannot continue to operate on the Existing Airport site as a non-conforming use after the opening of the Replacement Airport, and will file appropriate affidavits of withdrawn use in a manner consistent with Idaho Code § 67-65-38.~~

ARTICLE VII

POWERS AND OPERATION DURING PLANNING FOR A REPLACEMENT AIRPORT

Section 7.1 PLANNING PERIOD

Notwithstanding anything to the contrary in this Agreement, this Article VII shall apply from the date of execution of this Agreement until the Conclusion of Planning, as defined in section 7.7.

Section 7.2 GOVERNING BOARD; VOTING

The Authority Board shall be reconstituted to consist of the following members: the three (3) County Commissioners of the County; three (3) members to be appointed by the City Council; and one (1) member to be appointed by unanimous vote of the other six (6) Authority Board members (the "Independent Member"). The three County Commissioner members shall be voting members. The three City members and the Independent Member shall be full participating members in all deliberations and matters that come before the Authority Board but shall be non-voting members except as provided in this Article.

Section 7.3 TERMS OF OFFICE

The members of the Authority Board that are County Commissioners shall serve during the period that they are serving as County Commissioners. The members of the Authority Board that are appointed by the City Council shall serve for such period as may be determined by the

City Council from time to time. The Independent Member shall serve a two-year term commencing on January 1 of the year of appointment. Any member may be removed, and any vacancy filled, by the entity originally appointing such member, except the Independent Member, who may be removed only by the unanimous vote of the remaining Authority Board members. ~~Any vacancy shall be filled by the entity which originally appointed such member.~~

Section 7.4 QUORUM

A quorum ~~For all decisions to conduct business, except Joint Decision Matters, a quorum shall include~~ consist of at least two (2) County Commissioner members of the Authority Board. Any member in attendance at a meeting, regardless of their voting status, shall be entitled to fully participate fully in the discussions and deliberations of any matter that comes before the Authority Board. For Joint Decision Matters, a quorum shall consist of at least two (2) City members of the Authority Board and at least two (2) County Commissioner members of the Authority Board.

Section 7.5 LIMITATIONS ON MANNER OF EXERCISING POWERS

- A. In addition to those limitations set forth in Section 4.2, above, the Authority shall make no decision with respect to a Joint Decision Matter, as defined in this section until or unless the matter shall have been submitted for a vote to the full seven (7) member Authority Board, subject to the quorum and voting requirements of Sections 7.4 and 7.6.
- B. "Joint Decision Matter" shall be defined to mean a decision to –
1. Sell or enter into a contract to sell any real estate on the Existing Airport and all decisions incidental thereto consistent with section 6.1(I) and the need for expeditious action to fulfill the purposes of Section 6.1(I).
 2. Accept a grant from the Federal Aviation Administration for planning or construction at the Existing Airport.
 3. Enter into a contract with a consultant whose responsibilities include planning for redevelopment of the Existing Airport site.
 4. Forward to the City a recommended plan for the redevelopment of the Existing Airport site, consistent with the principles set forth in section 7.5(C).
 5. Exercise authority on personnel matters pursuant to section 4.1(12) and any decisions incidental to the hiring, firing, discipline and compensation of employees that are appropriately within the purview of the Authority Board.
 6. Authorize funding for, or implementation of, safety improvements at the Existing Airport.
 7. Authorize funding for, or implementation of, environmental remediation and closure at the Existing Airport site.

8. Operate and regulate activities at the Existing Airport consistent with Sections 4.1(4), (5), (11) and (15), hereof.

~~C. Pursuant to the July 6, 2010 Agreement for Development of Replacement Airport and Redevelopment of Friedman Memorial Airport, the City has primary responsibility for (i) addressing land ownership issues and developing the strategy for redeveloping the Existing Airport site as a unified redevelopment effort; (ii) negotiating with the Friedman family interests; (iii) public outreach to develop a master plan for redevelopment of the Existing Airport site; (iv) preparing a master plan for redevelopment; (v) issuing all of the permits and City authorizations necessary to comply with the City's development regulations for redevelopment of the Existing Airport; and (vi) implementing the master plan and determining the phasing and timing of the development.~~

Section 7.6 MATTERS REQUIRING JOINT DECISION

In the event that the Authority Board wishes to consider a resolution, motion or other action that is a Joint Decision Matter, the agenda for the meeting at which the matter is to be considered shall so indicate. All Authority Board members in attendance shall be entitled to vote on a Joint Decision Matter. Joint Decision Matters can be approved only by a majority consisting of at least two (2) City members of the Authority Board and at least two (2) County Commissioner members of the Authority Board.

Section 7.7 CONCLUSION OF PLANNING

This Article VII shall be deemed to have been rescinded upon the first of the following events:

~~A. Ten (10) days after the recording of a deed conveying the last parcel of Existing Airport real property to a third party; or one (1) year after execution of an irrevocable purchase and sale agreement for the last parcel of the Existing Airport property, whichever event is earlier.~~

B.A. Ten (10) days after the Authority Board has voted to terminate all efforts to relocate the Existing Airport to a new site. Such a determination will not be treated as a Joint Decision Matter.

~~C. Seven (7) years following issuance of a Record of Decision by the Federal Aviation Administration approving the relocation of the Existing Airport to a new site.~~

~~D.B. Upon mutual consent of the City Council and the County Commission pursuant to Section 2.3.~~

If this Article VII is rescinded pursuant to this Section, membership on the Authority Board shall revert to that described in Article III.

~~Section 7.8 BOARD MEMBERSHIP AFTER PLANNING HAS CONCLUDED~~

~~A. If this Article VII has been rescinded pursuant to Section 7.7(A), the non-voting members of the Board shall be deemed to have resigned from the Authority with no~~

further action required. At such time, the County shall proceed to operate the Replacement Airport as it deems appropriate, which may include (but are not limited to) the County's assumption of duties and obligations of the Authority, delegation of duties to a newly constituted entity consisting of a broad representation of County citizens or termination of this Agreement, all at the sole discretion of the County.

~~B. If this Article VII has been rescinded pursuant to Section 7.7(B), Section 7.7(C) or Section 7.7 (D), membership on the Board shall revert to that described in Article III.~~

Section 7.8 TERMINATION OF AGREEMENT IN CONNECTION WITH OPENING OF REPLACEMENT AIRPORT

A. This Agreement shall be terminated ten (10) days after (1) the date on which the FAA notifies the Authority that the Replacement Airport is open for air traffic; or (2) ten (10) days after the FAA notifies the Authority that the Existing Airport has been permanently closed to air traffic, whichever is later.

B. Prior to termination of this Agreement, the County and the City will enter into a separate agreement that, among other topics:

(1) requires the City and County to do all things necessary to ensure that once the Existing Airport is closed, airport use at the Existing Airport will not be allowed to continue as a nonconforming use, which includes, but is not limited to, preparing and filing the appropriate affidavits of withdrawn use in a manner consistent with Idaho Code § 67-6538; and

(2) obligates the City, the County and the Authority to pursue disposition of any remaining Existing Airport land parcels and other property in an orderly and expeditious manner that facilitates financing of the Replacement Airport.

C. Upon termination of this Agreement, the County shall proceed to operate the Replacement Airport, as appropriate, either by assuming all the duties and obligations of the Authority, which may include appointing new members broadly representing the community at large; or, by transferring airport sponsorship to Blaine County.

ARTICLE VIII MISCELLANEOUS

Section 8.1: TERMINATION OF PRIOR AGREEMENTS

All prior agreements relating to the joint operation of the Existing Airport, ~~including, but not limited to, the agreement between the City and the County entered into on or about December 30, 1985, as amended by the addendum to agreement dated June 27, 1988,~~ are hereby terminated and superseded by this Agreement. Nothing herein shall be construed as impairing any existing contract obligations, all of which obligations shall continue in force and effect in accordance with their terms as obligations of the Authority.

Section 8.2: ENFORCEMENT OF RULES AND REGULATIONS

In addition to the Authority Board's powers to enforce Existing Airport rules and regulations by civil action, the City may, by ordinance, provide that the violation of any such rule or regulation shall be a misdemeanor and may provide for the enforcement of the same.

Section 8.3: INVALIDITY

If any section of this Agreement is declared invalid by a court of competent jurisdiction, or if the FAA refuses to honor this Agreement or any portion thereof, either party may terminate this Agreement within 60 days of such declaration of invalidity by written notice to the other party.

Section 8.4: EFFECTIVE DATE

The Agreement shall be in full force and effect from and after the date on which the last party executes this Agreement.

BLAINE COUNTY, IDAHO

By _____
Chairman

Commissioner

Commissioner

BLAINE COUNTY CLERK

By: _____

CITY OF HAILEY
Blaine County, Idaho

By _____
Mayor

ATTEST:

City Clerk

Approved By:

AUTHORITY

By _____
Tom Bowman, Chairman

ATTACHMENT NO. 3
POTENTIAL DRAFT

DRAFT

February 24, 2011

Commissioner Angenie McCleary, Chairman
Commissioner Tom Bowman, Vice-Chair
Commissioner Larry Schoen
Blaine County Board of County Commissioners
206 1st Avenue South, Suite 300
Hailey, Idaho 83333
HAND DELIVERED

Dear Commissioners:

The City of Hailey has received and reviewed the County's proposed draft of the Amended and Restated Joint Powers Agreement ("JPA"), which Chairman McCleary sent to Hailey officials on January 11, 2011. Since that time, I have closely worked with Tim Graves on language revisions. The Hailey Mayor and City Council have reviewed and commented on the County's suggested draft. I am enclosing a proposed revised JPA which takes into account the comments from city officials and your attorney. In the redlined version of the enclosed JPA, I have provided comments which explain and/or justify the particular revision. In this letter, I will generally summarize the more significant revisions and the explanation and/or justification for those revisions.

1. Recitals.

- a. Third Recital, p. 1. I have learned from Angenie and Tim that Len Harlig desires a revision to this recital. Hailey supports this revision.
- b. Fourth Recital, p. 1. Again, I have learned from Angenie and Tim that Len Harlig suggested revisions to this recital. After receiving input from Peter Kirsch and Rick Baird, Hailey supports the revision.
- c. Twelfth Recital, p. 2. This language was found in a prior draft suggested by Hailey and simply restates the parties' prior agreement. Through the negotiation process, the parties have learned that the prior agreements are often forgotten. This language is now and more appropriately found in the recitals, not in the agreement portion of the document.

- d. Thirteenth Recital, p. 2. This revision is suggested to promote accuracy and state that only the prior joint powers agreements are amended. Stated differently, the prior agreements, such as the July, 2010, Agreement will remain in full force and effect.
2. Termination and Procedural Rules. There are several reasons for the proposed change to Section 2.3 and Article VII. First, Hailey wishes to avoid potential ambiguity between two provisions by consolidating the language. It is important to read the revisions to Section 2.3 in conjunction with the City's suggestion to eliminate the County's proposed Section 7.8. The proposed Section 7.8 created termination provisions for the entire JPA in an Article that is designed to address the Authority Board's operations during the planning of the Replacement Airport, not designed to address termination of the JPA. To avoid potential ambiguity in the future, Hailey suggests that we consolidate the termination provisions.

Second, in an effort to promote clarity, Hailey is suggesting that the termination provisions be detailed in Section 2.3(A) before closure of the Existing Airport and in Section 2.3(B) after closure of the Existing Airport.

Third and perhaps most importantly, Hailey believes the termination of the JPA should be triggered by the sale of the property at the Existing Airport, or by the mutual consent of the parties, whichever is soonest. The City believes, as a property owner, it should maintain some control over the use and disposition of the property. The County has suggested that the JPA be terminated upon closure of the Existing Airport. In speaking with County representatives, there appears to be several reasons for the County's position. The County has expressed that a) it may take a long time to sell the parcels, b) Hailey should not have the right to fully participate in the Authority Board discussions during the period it takes to sell the parcels, and c) the County may want to appoint non-elected officials as a county representative. In the attached draft, I have suggested language in Sections 7.2, 7.3, 7.4 and 7.5 which hopefully ameliorates the County's expressed concerns. With this language, Hailey will have a very limited role in the Authority Board's operations and the County will have greater flexibility in the governance of the Replacement Airport.

I would also point out that by allowing the operation of the JPA until the sale of the Existing Airport property, the County will have even further protection and flexibility. The County has expressed a desire to allow a separate entity to own and manage the Replacement Airport. But, as you know, the state law has not provided the County with an alternative, such as a county airport authority. Allowing the continuation of the present airport authority will give the County more time to obtain enabling legislation so a county airport authority can be authorized.

Lastly, please note that the County's language in Section 7.8(C) has been transferred to Section 2.3(C).

3. Non-Conforming Use. The language in Section 6.1(I) is a combination of Hailey's previously suggested language and the County's language found in Section 7.8(B)(2). Hailey believes the language about nonconforming use is extremely important for safety and financial reasons. From a safety perspective, it is important to relocate all aviation uses from the population center of Hailey. From a financial perspective, it is critical to consolidate both commercial and general aviation uses at the new airport. Section 6.1(I) solves the problem created by Section 7.8(B), which contemplated agreeing in the future to address nonconforming uses and sale of properties. Section 7.8(B) was an agreement to agree in the future, which is unenforceable under Idaho law. Section 6.1(I) solves this problem by now agreeing how to handle the nonconforming use issue and sale of properties.
4. Joint Decision Matters. Hailey is suggesting a clarification of Sections 7.5(B)(7) and (9). This language is designed to clarify what is meant by "closure" of the Existing Airport. In addition, Hailey is suggesting a bifurcation of the County's proposed language in Section 7.5(B)(7) because of the language in Section 7.4.

We look forward to your cooperation going forward. Thank you.

Sincerely,

Ned Williamson

cc: Hailey Mayor and City Council

AMENDED AND RESTATED JOINT POWERS AGREEMENT

Friedman Memorial Airport Authority

THIS AMENDED AND RESTATED JOINT POWERS AGREEMENT ("Agreement") is made effective upon its execution between BLAINE COUNTY, a political subdivision of the State of Idaho (the "County"), and THE CITY OF HAILEY, an Idaho municipal corporation located within the County (the "City").

RECITALS

WHEREAS, the County and the City entered into a Joint Powers Agreement dated May 16, 1994 (the "1994 Agreement") which 1994 Agreement has been amended on several occasions; and

WHEREAS, the County and the City have jointly operated and are currently jointly operating, an airport known as the Friedman Memorial Airport located within the City and County (the "Existing Airport"); and

WHEREAS, ~~the Existing Airport is of critical importance to the economy of the County and the City and, as pressure for use of the Existing Airport reaches the physical limits of the Existing Airport, the County and the City have, since the adoption of the Master Plan, decided to seek a replacement site for Existing Airport facilities away from urban populations rather than expanding the Existing Airport; and~~

~~WHEREAS the Existing Airport operates under a temporary operating procedure, revocable at any time and created waiver of FAA to accommodate airport design standards certain aircraft while a Replacement Airport is pursued; and, the Existing Airport cannot comply with C-III design those standards without expanding the Existing Airport; and~~

Comment [A1]: These revisions have been suggested by Leri Harlig and Hailey concurs.

WHEREAS, the Existing Airport cannot permanently comply with FAA design standards without significantly expanding the Existing Airport; and

WHEREAS, the County and the City have agreed not to expand the Existing Airport; and

WHEREAS, the County and the City seek the highest quality and safest airport possible within the physical limits imposed by the geography of the Existing Airport location; and

WHEREAS, Idaho Code Section 67-2328 expressly authorizes public entities to create a separate legal or administrative entity to exercise powers possessed by the public agencies creating such entity; and

WHEREAS, the County and the City have determined that it is in the best interests of the County and the City, and their inhabitants, to continue managing and operating the Existing Airport under the Authority while reconstituting the Board of the Authority during the time that the County and City are seeking a replacement site for the Existing Airport facilities; and

WHEREAS, a Replacement Airport is being planned to be located in the County and it is the intent of the parties that the Existing Airport will permanently be closed and sold when the Replacement Airport is operational; and

WHEREAS, the City and County previously agreed in a July 6, 2010 Agreement for Development of Replacement Airport and Redevelopment of Friedman Memorial Airport to transition to a restructured governing board, which will be accomplished by this Agreement; and

~~WHEREAS, pursuant to the July 6, 2010 Agreement for Development of Replacement Airport and Redevelopment of Friedman Memorial Airport, the City has primary responsibility for (i) addressing land ownership issues and developing the strategy for redeveloping the Existing Airport site as a unified redevelopment effort; (ii) negotiating with the Friedman family interests; (iii) public outreach to develop a master plan for redevelopment of the Existing Airport site; (iv) preparing a master plan for redevelopment; (v) issuing all of the permits and City authorizations necessary to comply with the City's development regulations for redevelopment of the Existing Airport; and (vi) implementing the master plan and determining the phasing and timing of the development; and~~

WHEREAS, the County and the City accordingly wish to amend their prior ~~joint powers agreements, while restating pertinent provisions of their prior joint powers agreements;~~

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree:

ARTICLE I

DEFINITIONS, PURPOSE, AND AUTHORITY

Section 1.1: DEFINITIONS

For purposes of this Agreement, the following terms shall have the following definitions:

Agreement means this Amended and Restated Joint Powers Agreement, dated as of the execution date.

Authority means the Friedman Memorial Airport Authority created under Section 3.1 of this Agreement.

Authority Board means the Board of Commissioners of the Authority, created under Section 3.2 and reconstituted under Section 7 of this Agreement.

~~County Commissioners means the three member Board of County Commissioners for Blaine County, Idaho.~~

City means the City of Hailey, Blaine County, Idaho.

City Council means the City Council of the City.

Comment [A2]: This language was found in a prior draft suggested by Hailey and simply restates the parties' prior agreement. Through the negotiation process, the parties have learned that the prior agreements may be forgotten. This language is more appropriately found in the recitals, not in the agreement portion of the document.

Comment [A3]: This language is suggested to specify joint powers agreements, not other agreements such as MOUs.

Comment [A4]: The definition of "County Commissioners" is inserted in the proper alphabetical sequence.

Commercial means regularly-scheduled airline activities.

County means Blaine County, Idaho.

County Commissioners means the three member Board of County Commissioners for Blaine County, Idaho.

Existing Airport means the Friedman Memorial Airport, located in the City and County.

FAA means the Federal Aviation Administration of the U.S. Department of Transportation.

Friedman Grant Property means the real property conveyed by deed recorded in Book 128, page 213, records of the County Recorder, Blaine County, Idaho, to the City by Leon Friedman, et al., for airport purposes.

Master Plan means the Friedman Memorial Airport Master Plan Update, 1991, or its successor.

Replacement Airport means the airport currently being planned to be located outside the city limits of the City and that, when operational, will replace the Existing Airport.

Section 1.2: PURPOSE

The purpose of this Agreement is (1) to amend and restate pertinent provisions of the 1994 Agreement creating an Authority for the management and operation of certain airport activity in the County, including the Existing Airport, (2) to eliminate safety deviations without expanding the impact of the Existing Airport on the adjacent community, (3) to implement the Master Plan; and (4) to plan for, establish, and operate the Replacement Airport.

Section 1.3: AUTHORITY

This Agreement is entered into under the authority of Title 21, Chapter 4, and Sections 67-2326 through 67-2333, Idaho Code.

ARTICLE II

DURATION, AMENDMENT, AND TERMINATION

Section 2.1: DURATION

The term of this Agreement shall commence May 16, 1994 and terminate on December 31, 2020, unless earlier terminated in accordance with Section 2.3 below.

Section 2.2: AMENDMENT

The County and the City reserve the right to amend this Agreement at any time by written agreement between the County and the City, provided, that no amendment shall violate or impair any then-existing contractual obligation relating to the Existing Airport or the Replacement Airport.

Section 2.3: TERMINATION

A. Before Closure of Existing Airport. The County and City reserve the right to terminate this Agreement, by mutual written agreement between the County and the City, at any time prior to its stated termination date. In the event of such termination, or upon the stated expiration hereof, any then-existing valid contractual obligations of the Authority shall become joint obligations of the County and City, unless the obligations are assigned or transferred consistent with Section 6.1(H) hereof.

B. After Closure of Existing Airport. Following notification by FAA that the Existing Airport has been permanently closed to all air traffic, this Agreement shall be terminated 1) either ten days after the recording of a deed conveying the last parcel of Existing Airport real property to a third party, or one year after execution of an irrevocable purchase and sale agreement for the last parcel of the Existing Airport property, whichever event is earlier, or 2) by mutual written agreement between the County and the City, at any time prior to its stated termination date, whichever is sooner.

C. Authority's Successor. Upon termination of this Agreement, the County shall proceed to operate the Replacement Airport, as appropriate, either by assuming all the duties and obligations of the Authority, which may include appointing new members broadly representing the community at large, or by transferring airport sponsorship to Blaine County.

Comment [A5]: This section is now categorized into termination before and after closure of the Existing Airport.

Comment [A6]: The conditions of termination remain the same before closure.

Comment [A7]: Much of the language about termination found in Section 7.8 of the County's draft has been relocated to Section 2.3. Placement of the termination language in Section 2.3 may help avoid confusion and ambiguity. The justification for the City's language is detailed in the attached letter.

Comment [A8]: Subparagraph C is the County's language previously found in Section 7.8(C).

ARTICLE III

CREATION OF AIRPORT AUTHORITY

Section 3.1: AIRPORT AUTHORITY

There is hereby created a separate administrative entity, pursuant to Section 67-2328, Idaho Code, to be known as the Friedman Memorial Airport Authority (the "Authority"). The Authority shall be a public entity of the State of Idaho with the powers set forth in this Agreement.

Section 3.2: GOVERNING BOARD

Except as provided in Article VII below, the Authority shall be governed by a board of commissioners (the "Authority Board") consisting of five (5) members, to be appointed as follows: two (2) members shall be appointed by the County. Two (2) members shall be appointed by the City. The members so appointed may, but need not, be members of the governing board of the appointing entity. One (1) member shall be appointed by unanimous vote of the four thus appointed. Members shall initially be compensated at a salary of \$200 per

month, and shall be reimbursed for their actual, documented expenses under such rules and procedures as the Authority Board may establish. Commencing one (1) year after the initial organization of the Authority Board, the Authority Board may annually establish the compensation for its members; provided, that the City and County, by joint action of their respective governing bodies taken within thirty (30) days after such action by the Authority Board, may veto any increase in compensation. The effect of such veto shall be to maintain the current compensation in force and effect.

Section 3.3: TERMS OF OFFICE

Of the members of the Authority Board appointed by the County and the City, one (1) shall be appointed to a one-year term, and one (1) shall be appointed to a two-year term, commencing on June 1st of the year of their appointment. Thereafter, members shall be appointed to two-year terms. The member appointed by the four members of the Authority Board (the "Independent Member") shall serve a two-year term commencing on the date of appointment of the year of appointment. Any member may be removed by the entity originally appointing such member, except the Independent Member, who may be removed only by the unanimous vote of the remaining Authority Board members. Any vacancy shall be filled by the entity which originally appointed such member to fill the unexpired term.

Section 3.4: OFFICERS

The Authority Board shall designate one (1) of its members as Chairman, one (1) as vice-chairman, one (1) as secretary, and shall appoint a treasurer who need not be a member of the Authority Board, any of whom may be removed in the manner provided in the bylaws of the Authority Board. The Authority Board may appoint other officers as it deems necessary.

Section 3.5: BYLAWS, MEETINGS

The Authority Board shall adopt bylaws for its own operation and shall establish such regular meeting dates (which shall not be less frequent than monthly) and times as it shall deem necessary. Any four (4) members shall constitute a quorum, and a majority of the quorum present shall be sufficient to take any action. Regular and special meetings of the Authority Board shall be conducted in compliance with Sections 67-2340 through 67-2347, Idaho Code.

ARTICLE IV

POWERS OF THE AUTHORITY

Section 4.1: POWERS

In addition to any other powers set forth in this Agreement, the Authority Board of the Authority shall have and may exercise the following powers in the name of the Authority with respect to the Existing Airport and the Replacement Airport:

1. To sue and be sued in its own name.
2. To adopt an official seal and alter the same at pleasure.

3. To authorize any action by motion, resolution, or other official action.
4. To promulgate and adopt all necessary rules and regulations for the management and control of airport property including, but not limited to, landing and takeoff areas (including runways and landing strips for aircraft); taxiway areas for aircraft; passenger and cargo ramp areas and facilities; aircraft parking areas and facilities; facilities for the purpose of controlling or assisting landings, takeoffs, and other movements of aircraft using the airport, including, without limitation, control towers, flood lights, landing lights, beacons, signals, radio aids, and other conveniences and aids to operation, navigation, or ground control of aircraft; automobile parking; airport terminal; aircraft tie-downs and hangars; hours and days of operation and all rules and regulations necessary for the safe, effective, and efficient operation of all airport facilities.
5. To order, direct, superintend, and manage all repairs, alterations, and improvements.
6. To lease land from the County and the City and to acquire, construct, or lease buildings, structures, facilities, and equipment as it may deem necessary to fulfill its duties. Such lease arrangements are not to exceed ten dollars (\$10) per year. Real and personal property shall be conveyed or disposed in conformance with Paragraphs 4.2(D), and (E) of this Agreement.
7. To acquire in the name of the Authority, by gift or purchase, or by lease, such personal property as it may deem necessary in connection with the improvement, extension, enlargement, or operation of airport facilities, and to sell, convey, lease, or dispose of any personal property, in accordance with the statutory requirements applicable to counties, upon such terms and conditions and for such consideration as the Authority Board deems appropriate.
8. To enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the airport, the state and any of its agencies or instrumentalities, any corporation or person, public or private, any municipality, and any political or governmental subdivision, within or without the state, and to cooperate with any one (1) or more of them in acquiring, constructing, operating, or maintaining the airport.
9. To receive moneys and property from the County or the City and to receive gifts, grants, and donations of money or property from any person or entity, to expend or utilize the same for the purposes of the Authority, to deposit moneys in accordance with the public depository laws of the state, and to invest moneys of the Authority in investments permitted under Sections 67-1210 and 67-1210A, Idaho Code.
10. To borrow money and incur indebtedness, not exceeding the budgeted revenues and expenses for the then-current fiscal year of the Authority, and not exceeding any Constitutional limitations or limitations of state law, and to evidence the same by notes, warrants, or other evidence of indebtedness.
11. To manage, control and supervise all the business and affairs of the airport.

12. To hire an airport manager and necessary employees, who shall serve at the pleasure of the Authority Board. Compensation for the airport manager shall be fixed annually by the Board during the normal budget process.

13. To retain and compensate agents, engineers, and consultants.

14. To retain or employ regular legal counsel, and to retain such special legal counsel as may be deemed necessary.

15. To fix, periodically increase or decrease, and collect rates, fees, tolls, or charges for the use or availability of the facilities of the airport.

16. To maintain civil actions for the abatement of any violation of any of the Authority's rules, regulations, or standards.

17. To insure airport property and to enter into contracts for insurance, including, but not limited to, liability insurance.

18. To maintain and administer recordkeeping and management functions.

19. To exercise all or any part or combination of the powers set forth in this Agreement, and to do all things necessary or incidental to the proper operation of this Agreement.

20. Except as provided in Section 7.5, to take such actions as necessary to plan, secure approvals for, construct and operate the Replacement Airport on a site outside the city limits of the City and to remediate and dispose of the site of the Existing Airport.

Section 4.2: LIMITATIONS ON POWERS

A. Nothing in the foregoing enumerations of powers shall be construed as authorizing the Authority Board (1) to create any legal, contractual, fiscal, or tort obligation binding upon the County or the City, or (2) to incur any indebtedness or liability in excess of the limits or authority provided by state law and the state Constitution.

B. The Authority shall have no power to levy or cause to be levied any taxes or to require the County or the City to levy any taxes.

C. The operation of the Existing Airport by the Authority shall be subject to existing leases, rights, contracts, assurances, and privileges heretofore granted by the City and County.

D. All land owned by the County or the City (except the Friedman Grant Property), or by the County and City jointly, and devoted to use for the Existing Airport as of the date of this Agreement (as depicted on attached Exhibit A, Airport Property Map, dated August 11, 2010), shall be conveyed to the Authority for the use and benefit of the Existing Airport. Any land hereafter acquired for Existing Airport purposes shall, to the extent consistent with FAA regulations, be acquired by, and title thereto shall be held in the name of, the Authority. Land for the Replacement Airport shall be acquired in the name of the Authority. The Authority may convey or dispose of land at both Existing Airport and/or the Replacement Airport in a manner

Comment [A9]: Need to attach an Exhibit A

that facilitates the permanent closure of the Existing Airport, as well as the construction and funding of the Replacement Airport.

E. All buildings, improvements, facilities, equipment, and personal property now in use on the Existing Airport shall be conveyed by the County and the City to the Authority for the use and benefit of the Existing Airport, and the title thereto shall be held by the Authority. The Authority may convey or dispose of all buildings, improvements, facilities, equipment, and personal property at both the Existing Airport and/or the Replacement Airport in a manner that facilitates the permanent closure of the Existing Airport, as well as the construction and funding of the Replacement Airport.

F. In addition to the foregoing limitations, the Authority shall be bound and limited by the covenants and restrictions set forth in Article VI of this Agreement and the limitations set forth in Article VII of this Agreement.

ARTICLE V

FINANCE AND BUDGET

Section 5.1: ANNUAL BUDGET

The fiscal year of the Authority shall commence on October 1 of each year and shall end on September 30 of the following year. The Authority Board shall prepare a preliminary annual budget for each fiscal year, showing the anticipated revenues and expenditures, which budget shall be adopted as set forth hereinafter. If the preliminary budget provides for a revenue request from the County or the City, the preliminary budget shall be certified to the County or the City prior to the publication of the preliminary budget of the County and the City. Nothing herein shall be construed as obligating the County or the City to grant such revenue request.

On or before the first Tuesday in August, annually, there shall be held at a time and place determined by the Board a meeting and public hearing upon the proposed budget of the Authority. Notice of the meeting and public hearing shall be published in a newspaper of general circulation in the County in one (1) issue thereof. The place, hour, and day of such hearing shall be specified in said notice, as well as the place where such budget may be examined prior to such hearing. A summary of such proposed budget shall be published with and as a part of the publication of such notice of hearing in substantially the form required in section 31-1604, Idaho Code. On or before August 15 of each year, a budget for the Authority shall be approved by the Authority Board.

Section 5.2: AIRPORT FUNDS

The Authority shall establish such fund or funds for the deposit and expenditure of airport moneys as it deems necessary or appropriate, consistent with generally accepted municipal accounting practices, and shall provide for the manner of expenditure of funds. All moneys held in airport funds by the County or the City shall be transferred to the funds of the Authority. The Authority Board shall require the annual audit of all airport funds by an independent auditor and shall provide copies of each annual audit to the County and the City.

ARTICLE VI

COVENANTS AND RESTRICTIONS

Section 6.1: The Authority shall comply with the following covenants and restrictions regarding operation of the Existing Airport. All capitalized terms shall have the meanings assigned thereto in the Master Plan, except as otherwise defined in this Agreement. The covenants and restrictions concerning airport operations shall not apply to the Replacement Airport.

A. There shall be no expansion of the land base of the Existing Airport beyond what has been established by the Master Plan.

B. Commercial airline activity shall be permitted to remain at current levels and increases in the number and frequency of such flights shall be accommodated within the other limitations contained herein and as delineated by the Master Plan.

C. Aviation activities (as defined in the Master Plan) will be requested to observe a curfew between 11:00 P.M. and 6:00 A.M. Additional restrictions to operations, based on Part 150, City ordinances, and airport planning activities initiated prior to promulgation of Part 161, may be imposed on decibels and hours of operation.

D. The number of tie-downs available for locally based tiedowns shall be a minimum of 66, at Master Plan completion, provided that the current number of transient tie-downs shall not be reduced.

E. The Design Aircraft Classification shall remain the equivalent of a B III level or its successor aircraft (as such terms are defined in the Master Plan).

F. To the extent possible, consistent with FAA regulations, landings from, or take-offs to, the north shall be restricted.

G. The Authority shall obtain and maintain property damage and comprehensive liability insurance in amounts sufficient to protect the airport property and to insure the County, the City, and the airport against tort and other damage claims. The amount of insurance shall be subject to approval annually by the County and the City, which approval shall not unreasonably be withheld.

H. No later than January 1, 2012, the Authority, in cooperation with the City and the County, will take actions as appropriate to secure approval from the Federal Aviation Administration for the transfer to the Authority of any grant assurance obligations to the Federal Aviation Administration incurred by the City and by the County in connection with the operation and development of the Existing Airport. As part of such transfer of obligations, the Authority agrees to accept the City's and the County's existing grant obligations with regard to the Existing Airport. In addition, the Authority agrees to accept the future grant assurance obligations with regard to the Replacement Airport. The Authority, City and County agree that as part of the acceptance by the Authority of any past or future grant assurances, the City and the County will

to the extent allowed by law be released from any and all of their obligations associated with the grant assurances.

The City and the County commit to sell their real property interests in the Existing Airport site in a manner that ensures that an airport cannot continue to operate on the Existing Airport site as a non-conforming use after the opening of the Replacement Airport, and will file appropriate affidavits of withdrawn use in a manner consistent with Idaho Code § 67-6538, and commit to convey title to the real and personal property at the Existing Airport to be held by the Authority as described in Sections 4.2(D) and (E) in an orderly and expeditious manner to facilitate financing of the Replacement Airport.

ARTICLE VII

POWERS AND OPERATION
DURING PLANNING FOR A REPLACEMENT AIRPORT

Section 7.1 PLANNING PERIOD

Notwithstanding anything to the contrary in this Agreement, this Article VII shall apply from the date of execution of this Agreement until the Conclusion of Planning, as defined in Section 7.7.

Section 7.2 GOVERNING BOARD; VOTING

Except as otherwise provided herein, the Authority Board shall be reconstituted to consist of the following members: the three (3) County Commissioners of the County, three (3) members to be appointed by the City Council, and one (1) member to be appointed by unanimous vote of the other six (6) Authority Board members (the "Independent Member"). Following notification by FAA that the Existing Airport has been permanently closed to all air traffic, the County may, in its sole discretion, appoint Authority Board members who are not County Commissioners. The three County Commissioner members shall be voting members. Except as provided in this Article, the three City members and the Independent Member shall be full participating members in all deliberations and matters that come before the Authority Board but shall be non-voting members except as provided in this Article.

Section 7.3 TERMS OF OFFICE

The members of the Authority Board that are County Commissioners shall serve during the period that they are serving as County Commissioners. The members of the Authority Board that are appointed by the City Council or the County Commissioners shall serve for such period as may be determined by the City Council or the County Commissioners, as the case may be, from time to time. The Independent Member shall serve a two-year term commencing on January 1 of the year of appointment. Any member may be removed, and any vacancy filled, by the entity originally appointing such member, except the Independent Member, who may be removed only by the unanimous vote of the remaining Authority Board members.

Section 7.4 QUORUM/PARTICIPATION

Comment [A10]: This language is a combination of language which Hailey previously suggested and the County's language found in Section 7.8(B)(2). Hailey believes the language about nonconforming use is extremely important for safety and financial reasons. From a safety perspective, it is important to relocate all aviation uses from the population center of Hailey. From a financial perspective, it is critical to consolidate both commercial and general aviation uses at the new airport. Section 6.1(f) solves the problem created by Section 7.8(B), which contemplated agreeing in the future to address nonconforming uses and sale of properties. Section 7.8(B) was an agreement to agree in the future, which is unenforceable under Idaho law. Section 6.1(f) solves this problem by now agreeing how to handle the nonconforming use issue and sale of properties.

Comment [A11]: This language allows the County Commissioners flexibility after closure of the Existing Airport to appoint county representatives to the Authority Board.

Comment [A12]: This language recognizes that County appointees will be treated in a similar fashion as City appointees.

~~A. A quorum for all decisions to conduct business, except Joint Decision Matters in this Section, shall consist of at least two (2) County Commissioner members of the Authority Board. For Joint Decision Matters before permanent closure of the Existing Airport and Joint Decision Matters involving decisions described in Sections 7.5(B)(1) and (7) after permanent closure of the Existing Airport, a quorum shall consist of least two (2) City members of the Authority Board and at least two (2) County Commissioner members of the Authority Board.~~

~~A-B. Except as otherwise provided herein, any member in attendance at a meeting, regardless of their voting status, shall be entitled to participate fully in the discussions and deliberations of any matter that comes before the Authority Board. Following notification by FAA that the Existing Airport has been permanently closed to all air traffic, the City members and the Independent Member of the Authority Board shall not be entitled to participate as an Authority Board member in the discussions and deliberations of any matter that comes before the Authority Board except for decisions described in Sections 7.5(B)(1) and (7).~~

Comment [A13]: This language is designed to limit the participation of City members to real property issues at the Existing Airport which remain after closure of the Existing Airport.

Section 7.5 LIMITATIONS ON MANNER OF EXERCISING POWERS

A. In addition to those limitations set forth in Section 4.2, above, the Authority shall make no decision with respect to a Joint Decision Matter, as defined in this section until or unless the matter shall have been submitted for a vote to the full seven (7) member Authority Board, subject to the quorum and voting requirements of Sections 7.4 and 7.6.

B. "Joint Decision Matter" shall be defined to mean a decision to --

1. Sell or enter into a contract to sell any real estate on the Existing Airport and all decisions incidental thereto consistent with section 6.1(I) and the need for expeditious action to fulfill the purposes of Section 6.1(I).
2. Accept a grant from the Federal Aviation Administration for planning or construction at the Existing Airport.
3. Enter into a contract with a consultant whose responsibilities include planning for redevelopment of the Existing Airport site.
4. Forward to the City a recommended plan for the redevelopment of the Existing Airport site, consistent with the principles set forth in section 7.5(C).
5. Exercise authority on personnel matters pursuant to section 4.1(12) and any decisions incidental to the hiring, firing, discipline and compensation of employees that are appropriately within the purview of the Authority Board.
6. Authorize funding for, or implementation of, safety improvements at the Existing Airport.
7. ~~Authorize funding for, or implementation of, environmental remediation, demolition and site preparation and closure at the Existing Airport site.~~

8. Operate and regulate activities at the Existing Airport consistent with Sections 4.1(4), (5), (11) and (15), hereof.

9. Authorize funding for, or implementation of, closure of air traffic at the Existing Airport.

Section 7.6 MATTERS REQUIRING JOINT DECISION

In the event that the Authority Board wishes to consider a resolution, motion or other action that is a Joint Decision Matter, the agenda for the meeting at which the matter is to be considered shall so indicate. All Authority Board members in attendance shall be entitled to vote on a Joint Decision Matter. Joint Decision Matters can be approved only by a majority consisting of at least two (2) City members of the Authority Board and at least two (2) County Commissioner members of the Authority Board.

Section 7.7 CONCLUSION OF PLANNING

This Article VII shall be deemed to have been rescinded upon ~~the Conclusion of Planning~~ which is defined as the first of the following events:

A. Ten (10) days after the Authority Board has voted to terminate all efforts to relocate the Existing Airport to a new site. Such a determination will not be treated as a Joint Decision Matter.

B. Upon mutual consent of the City and the County pursuant to Section 2.3

If this Article VII is rescinded pursuant to this Section, membership on the Authority Board shall revert to that described in Article III.

Section 7.8 TERMINATION OF AGREEMENT IN CONNECTION WITH OPENING OF REPLACEMENT AIRPORT

A. This Agreement shall be terminated ten (10) days after (1) the date on which the FAA notifies the Authority that the Replacement Airport is open for air traffic, or (2) ten (10) days after the FAA notifies the Authority that the Existing Airport has been permanently closed to air traffic, whichever is later.

B. Prior to termination of this Agreement, the County and the City will enter into a separate agreement that, among other topics:

(1) requires the City and County to do all things necessary to ensure that once the Existing Airport is closed, airport use at the Existing Airport will not be allowed to continue as a nonconforming use, which includes, but is not limited to, preparing and filing the appropriate affidavits of withdrawn use in a manner consistent with Idaho Code § 67-6538; and

Comment [A14]: This language is designed to clarify what is meant by "closure of the Existing Airport." The bifurcation of the previous 7.5(B)(7) is also tied to the language in Section 7.4.

Comment [A15]: The lead-in sentence was modified because Section 7.7 refers to the definition of Conclusion of Planning.

Comment [A16]: The language is modified to delete the reference to the termination provisions in Section 2.3 because Section 7.7 addresses rescission of Article VII, not termination of the entire Agreement.

~~(2) obligates the City, the County and the Authority to pursue disposition of any remaining Existing Airport land parcels and other property in an orderly and expeditious manner that facilitates financing of the Replacement Airport.~~

~~C. Upon termination of this Agreement, the County shall proceed to operate the Replacement Airport, as appropriate, either by assuming all the duties and obligations of the Authority, which may include appointing new members broadly representing the community at large, or, by transferring airport sponsorship to Blaine County.~~

Comment [A17]: 1. This language is deleted and replaced in different locations of the agreement.

ARTICLE VIII

MISCELLANEOUS

Section 8.1: TERMINATION OF PRIOR AGREEMENTS

All prior ~~joint powers~~ agreements relating to the joint operation of the Existing Airport are hereby terminated and superseded by this Agreement. Nothing herein shall be construed as impairing any existing contract obligations, all of which obligations shall continue in force and effect in accordance with their terms as obligations of the Authority.

Comment [A18]: 3. This language is suggested to specify joint powers agreements, not other agreements such as MOUs.

Section 8.2: ENFORCEMENT OF RULES AND REGULATIONS

In addition to the Authority Board's powers to enforce Existing Airport rules and regulations by civil action, the City may, by ordinance, provide that the violation of any such rule or regulation shall be a misdemeanor and may provide for the enforcement of the same.

Section 8.3: INVALIDITY

If any section of this Agreement is declared invalid by a court of competent jurisdiction, or if the FAA refuses to honor this Agreement or any portion thereof, either party may terminate this Agreement within 60 days of such declaration of invalidity by written notice to the other party.

Section 8.4: EFFECTIVE DATE

The Agreement shall be in full force and effect from and after the date on which the last party executes this Agreement.

BLAINE COUNTY, IDAHO

By _____
Angenie McCleary, Chairman

Tom Bowman, Commissioner

Larry Schoen, Commissioner

BLAINE COUNTY CLERK

By: _____

CITY OF HAILEY
Blaine County, Idaho

By Richard L. Davis, Mayor

ATTEST:

City Clerk

Approved By:

AUTHORITY

By Tom Bowman, Chairman