

JOINT AIRPORT BOARD AGREEMENT

WHEREAS, the ~~Cities-City~~ of Red Lodge, ~~Montana~~ -and ~~the Town of~~ Bridger, Montana, hereinafter jointly referred to as "~~Cities~~Municipalities," and the County of Carbon, Montana, hereinafter referred to as "County," have agreed to the establishment of a joint City-County airport board ("Joint Board") for the management of the existing airports located within the bounds of the City of Red Lodge and the Town of Bridger ("Airports") via this Joint Airport Board Agreement ("Agreement"); and

~~AND~~-WHEREAS, such joint arrangement seems the most desirable means for furnishing airport service to the ~~Cities~~Municipalities and County; and

~~AND~~-WHEREAS, such an arrangement is authorized by Part 2, Chapter 10, Title 67, Montana Code Annotated; and

~~AND~~-WHEREAS, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous agreements, negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1. The above recitals are incorporated into the terms of this Agreement.

1. The ~~Cities~~Municipalities and County agree each with the other to jointly participate as hereinafter provided in the maintenance, operation, and improvement of the airports hereinafter described.
2. CONTRIBUTIONSTO EXPENSES. The ~~Cities~~Municipalities and County shall levy and contribute equal mills for payment of the expenses of construction, improvement, equipment, maintenance, and the operation of such airport.
3. JOINT AIRPORT BOARD. The Joint Board shall consist of seven members as follows: Two members appointed by the Red Lodge City Council; two members appointed by the Bridger City Council; and three members appointed by the Board of County Commissioners of the County. The appointed members shall serve for terms of three years. Both original and successive appointees shall serve until their successors are appointed and qualified. Vacancies shall be filled for the unexpired portion of the term by the appropriate appointing body. Members shall serve without compensation. The Joint Board shall choose one of its members as chairman and shall select a secretary who may or may not be a member.

All meetings of the Joint Board shall be conducted in accordance with Roberts Rules of Order or other generally accepted parliamentary procedure rules.

All meetings of the Joint Board shall comply with Montana's Open Meeting Law as required by MCA 2-3- 201, et. seq.

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4. POWERS OF THE BOARD. The Joint Board, except as hereinafter provided, shall be solely responsible for operating the Airports, and related thereto shall have the power and authority to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police the Airports subject to this Agreement. ~~acquire necessary property to, establish, construct, enlarge, improve, maintain, equip, operate and regulate the airport and other air navigation facilities and airport protection privileges to be jointly acquired, controlled and operated under this Agreement.~~ The Joint Board may exercise on behalf of the County and Cities/Municipalities all the powers of each granted by Chapter 10, Title 67, Montana Code Annotated, and all other applicable laws, both state and federal, except as otherwise provided in this Agreement. Rules and regulations may be proposed by the Joint Board but shall be enacted only by the Cities/Municipalities and County as provided by Montana Code. No real property and no airport, other air navigation facility, or air protection privilege acquired under this Agreement shall be disposed of by the Board by sale, lease or otherwise except by authority of both the Cities/Municipalities and County; but the Joint Board may lease space, area or improvements and grant concessions on airports for aeronautical purposes, or purposes incidental thereto, subject to the provisions of Section 67-10-205, Montana Code Annotated.

The forms of hangar lease agreements for the Cities/Municipalities are attached hereto as Exhibits A ~~and B respectively~~ and shall be used without modification by the Airport Joint Board unless the applicable Municipality whose real property is burdened by such lease approves modifications in writing. ~~All Leases and Lessees shall obey all FAA regulations.~~

5. REAL PROPERTY. The Cities/Municipalities of Red Lodge and Bridger, and the County of Carbon are presently the owners of the real property as defined in Schedules Exhibits B and C, and D attached hereto ~~as the latest Certificates of Survey on record with the Clerk and Recorder,~~ which said real property, together with all improvements erected thereon, presently constitute the Airports which ~~is~~ are the subject of this Agreement. The parties acknowledge that improvements on said properties have been accomplished via funding from the Joint Board and its predecessors. ~~However,~~ All such real property and improvements shall be under the supervision and control of the Joint Airport Board in accordance with the terms of this Agreement. No real property, airport, restricted landing area or air protection privilege shall be acquired, and no condemnation proceedings shall be instituted, except after authority to do so has been granted in each individual case by the Cities/Municipalities and County. Condemnation proceedings shall be instituted in the names of the Cities/Municipalities and County jointly. Real property acquired under this Agreement shall be held by the Cities/Municipalities and County as tenants in common. The Cities/Municipalities and the County shall own respective interests in ~~the any~~ property acquired hereunder based upon each party's actual contribution toward the cost thereof. The parties acknowledge that the then-existing Joint Board, under the predecessor to this Agreement, entered into certain leases of the Real Property subject to this Agreement, and all parties ratify and extend all such leases under the terms of said leases.

6. **BUDGET.** The Joint Board shall, each year prior to July-September 1, prepare a budget for the ensuing fiscal year and shall set forth the following:
  - A. Estimated revenues, divided as follows:
    1. Federal and state grants;
    2. Contributions from CitiesMunicipalities;
    3. Contributions from County;
    4. Earnings from concessions, leases and charges made for the use of airport facilities; and
    5. Miscellaneous revenues.
  - B. Estimated expenditures, divided as follows:
    1. Personnel services;
    2. Services other than personnel ;
    3. Supplies and materials;
    4. Equipment;
    5. Real estate and improvements;
    6. Debt service; and
    7. Miscellaneous expenditures.

Such budget shall be submitted not later than July-October 1 to the CitiesMunicipalities and the County. The budget shall be for the information of the CitiesMunicipalities and County to assist in their financial planning and action by the CitiesMunicipalities and County. The final decisions of the CitiesMunicipalities and County as to the requested contributions shall be reported back to the Joint Board which shall adjust the budget, if necessary. If either the CitiesMunicipalities or the County fixes its contribution at less than the amount requested by the Joint Board, the contribution of the other shall be decreased proportionately, unless the latter shall decide to pay a larger portion of the total contribution than is required by the Agreement. The expenditure allowances as so finally adjusted and approved shall control the year's spending program, except that excess revenues received may be spent upon the approval of the Joint Board. The Joint Board shall not itself levy taxes or borrow money, and it shall not approve claims or incur any obligations for expenditure, unless there is unencumbered cash to the credit of the Joint Board with which to pay the same.

7. **FINANCES.** For the purpose of providing the Joint Board with monies for the necessary expenditures in carrying out the provisions of this Agreement, a ~~joint~~ fund shall be created and maintained into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any federal, state, or other contributions or loans, and the revenues obtained from the joint ownership, control and operations of any airport or air navigation facility under the jurisdiction of the Joint Board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the Joint Board, subject to the limitations of law and the provisions of this Agreement.

8. REPORTS. The Joint Board shall, as soon as ~~possible-practicable~~ after the end of each fiscal year, prepare and present to the CitiesMunicipalities and County a summary of actual revenue, expenses, leases signed, and a copy of all of the minutes of the Joint Board. The Joint Board shall also prepare and present to federal and state officials such reports as may be required by law, regulation or contract.

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9. TERMINATION. This Agreement shall be in full force and effect for the term of five years, ~~and shall terminate at that time if a party provides until terminated by~~ written notice ~~from either party~~ to the other ~~party-parties~~ at least ~~thirty-one hundred twenty~~ days prior to the expiration of ~~the five year term~~. ~~Absent such termination, after the five-year term, this Agreement shall continue in full force and effect unless and until a party provides written notice to the other parties of termination, which termination shall not be effective for at least one hundred twenty days thereafter. any such period.~~ Termination by the Municipalities may only be accomplished via a majority vote, after notice, of a terminating City's council. Termination by the County may only be accomplished via a majority vote, after notice, of the Board of County Commissioners. Notwithstanding termination, the powers of the Joint Board under this Agreement shall continue to the extent reasonably necessary to maintain and operate the Airports until the final disposition and distribution under paragraph 10 ~~is accomplished of the property-~~ acquired under this Agreement.

10. DISPOSITION OF PROPERTY UPON AFTER TERMINATION. As soon as practicable after termination of this Agreement, the CitiesMunicipalities and County shall reach an agreement regarding the disposal and distribution of ~~dispose of~~ all improvements made and property acquired under the Agreement, ~~including as well as~~ surplus funds, in any manner they shall then agree upon. All property shall be valued as of the date of the termination, and all improvements shall be valued based upon the present value of such improvement. All improvements and property which are fixtures upon the real property of either City shall constitute items for which the applicable City receiving such improvement shall be liable to repay the other parties their proportionate share.

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10. If no agreement as to disposition and distribution is reached within three months after termination of this Agreement, the existing Joint Board shall, in addition to its continued powers to maintain and operate the Airports, constitute an advisory board to the Municipalities and the County on as to the disposition and distribution of the airport property, improvements, and funds. The Joint Board shall, as soon as possible, prepare and recommend to the CitiesMunicipalities and County a complete plan for the disposition and distribution of all improvements, property, and funds acquired under this Agreement, and such plan shall provide for the continuation of the use of the property as a public airport, if practicable. Upon-After notice of termination of this Agreement, and in the absence of another arrangement mutually agreed upon, after available Airport Board funds have been utilized, each party shall assume the payment of debts and liabilities incurred by the Joint

Board in the same proportion as it is required to contribute to the expenses thereof under paragraph 2. To the extent the parties cannot reach an agreement as to disposition and distribution, the parties shall follow the procedures in Paragraph 11 below.

11. DISPUTE RESOLUTION. The Parties agree that the laws of the State of Montana govern this Agreement. The Parties agree that venue for any litigation brought under or regarding the terms of this Agreement shall be the Montana Twenty Second Judicial District Court, is proper within the courts of Carbon County, Montana. If a dispute arises between the parties and either another party or the Joint Board under or regarding the terms of this Agreement, the Parties, through a representative(s) with authority to settle a dispute, shall meet and attempt to negotiate a resolution of the dispute in good faith no later than ten-twenty business days after a party provides written notice to the other parties of a claimed the dispute arises. If negotiations fail, the Parties may unanimously agree to utilize a third-party mediator to negotiate any dispute, and in which circumstance the parties shall equally share the costs of the mediator, or any other cost share the parties may agree to, or alternatively a party may institute litigation file suit.
12. ENFORCEMENT. Specific performance of the provisions of this Agreement may be enforced against either party by the other party.
13. AMENDMENTS. This Agreement may be amended in any particular by following the procedure used for the adoption of the Agreement.

IN WITNESS, WHEREOF, the Cities-City of Red Lodge and the Town of Bridger have caused this Agreement to be signed by its Mayor and Clerk and sealed with the seal of the City, and the County of Carbon has caused this Agreement to be signed by the Chairman of the Board of County Commissioners and the County Clerk and Recorder and sealed with the official seal of the County.

DATED this \_\_\_ day of \_\_\_\_\_, 20\_\_

**CITY OF RED LODGE**

By MAYOR \_\_\_\_\_

By CLERK \_\_\_\_\_

**TOWN OF BRIDGER**

By MAYOR \_\_\_\_\_

By CLERK \_\_\_\_\_

**COUNTY OF CARBON**

By BOARD OF COMMISSIONERS \_\_\_\_\_

By CLERK AND RECORDER \_\_\_\_\_

**EXHIBIT A**

**LEASE**

This Lease, made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by and between the Carbon County Joint Airport Board ("**Board**"), a duly qualified and acting board in the County of Carbon, State of Montana, herein referred to as "Lessor" and \_\_\_\_\_, herein referred to as "Lessee",

For good consideration, the parties agree as follows:

**PREMISES**

Lessor hereby leases to the Lessee premises described as follows:

Airport hangar site number \_\_\_\_, containing \_\_\_\_\_ sq. ft. of encumbered area, located on the \_\_\_\_\_ Airport, owned by the \_\_\_\_\_, and administrated by the ~~CARBON COUNTY JOINT AIRPORT BOARD~~**Board**.

**RENTS**

Lessee agrees to pay an annual rent for the above described premises at the rate of \$.0.10 per square foot of encumbered area. Total annual rent is \$\_\_\_\_\_. Rent shall be due and payable in advance on January 1 of each year. Leases entered into at a date other than January 1, shall be pro-rated for that year and remainder of payments shall be due January 1 thereafter.

The lease rate may be reviewed annually by the ~~airport board~~**Board** during their regularly scheduled budget meeting. The rate may be adjusted, at the sole discretion of the ~~airport board~~**Board**, based on the Western Consumer Price Index, surveys, and local factors.

**REPRESENTATION AND WARRANTIES**

Lessee accepts the premises "as is". No representation, statement or warranty, expressed or implied, has been made by or on behalf of Lessor as to the condition of the premises. In no event shall Lessor be liable for any defect in the premises or for any limitation on its use. Lessee accepts the premises without recourse to Lessor as to the title thereto.

**TERMS**

Notwithstanding the date of execution of this agreement, the term of this lease shall be TWENTY years, commencing the FIRST day of January, \_\_\_\_\_, and ending on the THIRTY-FIRST day of December, \_\_\_\_\_, both dates inclusive, unless sooner renewed or terminated as herein provided.

### TERMINATION

Subject to the option to renew provision hereinafter set forth, at the expiration of the lease or any extension or renewal thereof, Lessee shall peaceably surrender the premises to Lessor, and Lessee shall remove all of its property therefrom as herein after provided. If Lessee remains in possession of the premises after the expiration of either the original term or any extended term, such possession shall be as a month to month tenancy, rent shall be payable at the same rate as that in effect during the last year of the preceding term divided by twelve (12), and the provisions of this lease shall be applicable.

### OPTION TO RENEW

Lessee shall have the right to renew this lease for like terms of Twenty years provided, however, that he shall first give written notice of such intention to each renewal at least thirty (30) days prior to the expiration hereof.

### POSSESSION

Lessee shall be entitled to possession of the premises commencing \_\_\_\_\_, \_\_\_\_.

### USE OF PREMISES

Lessee shall use the premises for the purpose of aircraft storage, maintenance and activities related thereto, permission must be obtained from the ~~Airport~~ Board for any other use. Lessee shall not use or knowingly permit any part of the premises to be used for any unlawful purpose.

It is agreed by and between the parties hereto that the Lessee shall have the right to use the landing areas, runways, taxiways, parking areas, navigation site and terminal facilities of the said ~~Red Lodge Airport~~ Board, issued pursuant thereto, and shall have a general use of all public airport facilities and improvements which are now or may during the term of this lease be developed by the ~~Airport~~ Board.

### SNOW REMOVAL

Lessee agrees that snow removal from Lessee's hangar to the taxiway, if Lessee desires the same, shall be performed at Lessee's expense with such assistance from the Lessor, in its sole discretion, as personnel, equipment and time permit. A snow removal fee, not to exceed \$30.00 per year, may be assessed for clearing the common taxi and ramp areas.

### COMPLIANCE WITH LAW

Lessee, at its sole expense, shall comply with all laws, orders, ordinances and regulations



of Federal, State and local authorities, and with any direction of any public officer, pursuant to law, which shall impose any duty upon Lessee with respect to the premises. Lessee, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this lease, or for the making of repairs, alterations, improvements, or additions and Lessor, where necessary, will join with Lessee in applying for all such permits or licenses.

#### INSPECTION OF PREMISES

The Lessor, through its designated representatives, shall have access to the leased premises, including the hangar building of the Lessee, at reasonable hours and with due notice first being given, for the purpose of examining and inspecting said premises for such purposes as are necessary or incidental to the performance of its obligations under this lease or in the exercise of its governmental or airport functions

#### UTILITIES

Lessee shall contract for, in its own name, and pay all charges for, all utility services including gas, electricity, heat, power, water and telephone service used, rendered or supplied upon or in connection with Lessee's occupation or use of the premises, and shall indemnify Lessor against any liability or damages on such account. Except when due to the negligence of Lessor, Lessor shall not be liable for any failure of utilities upon the premises, for injury to persons or damage to property resulting from steam, gas, electricity, water, rain or snow which may flow or leak from any part of the premises, or from any pipes, appliances or plumbing works from any place: or for interference with any easement, however caused.

#### DEFAULT

If the Lessee shall fail in the performance of any covenant of condition herein for more than 20 days after written notice of such failure to Lessee or Lessee's successors or assigns, than at Lessor's election, this lease shall become null and void and Lessor shall have the right to re-enter and take full and absolute possession of the premise and to retain all rental payments as liquidated damages without any obligation to repay the same or any part thereof to the Lessee, subject, however, to the right of the Lessee to remove his property therefrom and hereinafter set forth.

#### NON-WAIVER OF BREACH

Any waiver by Lessor of a breach of this lease shall not be construed as a waiver of any subsequent breach.

#### ALTERATIONS AND IMPROVEMENTS

Any alteration, addition, or improvement, including buildings or other structures, made by the Lessee and any fixtures installed as part thereof except trade fixtures, shall at Lessor's

option become the property of Lessor upon the expiration or other sooner termination of this lease; provided however that Lessee shall have the right to remove such fixtures, alterations, additions, or other improvements at Lessee's expense upon termination of this lease, all as hereinafter provided.

#### LESSOR'S RIGHT TO REMOVE IMPROVEMENTS

Upon expiration of this lease, whether by forfeiture or otherwise, Lessee shall have the right to remove all improvements placed upon said premises within ninety days (weather permitting) provided that such removal shall leave said premises in at least as good a condition as the same are now in. It is further agreed that if the Lessor, it's successors and assigns, should at any time sell said premises, or the facility should cease to operate as an approved airport, Lessee shall enjoy a pre-emptive right to purchase the lease premises, but this provision is entered into without representation by the Lessor of its authority or power to affect such sale.

#### SEPTIC AND SEWER

It is understood by both parties of this agreement that there shall be no septic or sewer systems introduced into this location. These systems include such things as drain field and holding tanks. Sewer systems will be allowed on an individual basis when city sewer system becomes available.

#### ASSIGNMENT AND SUBLETTING

Lessee shall not assign, mortgage, or encumber this lease, not sublet or permit premises or any part thereof to be used by others without the prior written consent of Lessor, which consent shall not be reasonably withheld. If, without consent, this lease is assigned, or if the premises or any part thereof is sublet, or occupied by anybody other than the Lessee, Lessor may at its election, collect rent from the assignee, subtenant, or occupant and apply the net amount collected to the rent due. No such assignment, subletting, occupancy or collections shall be deemed a waiver of this covenant or the acceptance of the assignee, subtenant or by the Lessee of the covenants in this lease. The consent by Lessor to an assignment or subletting shall not be construed to relieve Lessee from obtaining the consent in writing of Lessor to any further assignment or subletting, nor shall the Lessee be relieved from the rental obligations imposed upon him hereunder.

#### NON-LIABILITY OF LESSOR

Lessor shall not be liable for injury or damage to persons or property occurring within or upon the lease premises unless caused by or resulting from the negligence of Lessor or Lessor's agents, servants, or employees in the operation or maintenance of the premises.

#### INDEMNIFICATION

Lessee shall indemnify Lessor against all liabilities, expenses and losses incurred by Lessor as a result of failure by Lessee to perform any covenant required to be performed by Lessee hereunder, and accident, injury or damage which shall happen in or about the premises or appurtenance, or on adjoining roadways or sidewalks or resulting from the condition, maintenance or operation of the premises; failure to comply with any requirements of any governmental authority; and any mechanic's lien, or security agreement, filed against the premises as a result of Lessee's action. Lessee's liability for indemnification under this section shall be reduced by the amount of any insurance coverage for such liability.

REPAIR AND MAINTENANCE

Lessee shall not cause or permit any waste or damage to the premises. Lessee shall during the term of this lease and any renewal or extension thereof, at its sole expense, keep the premises as now constituted as well as all improvements, alterations and additions made thereto, in good repair and safe condition.

NOTICE

Any notice under this lease must be in writing and must be sent by registered or certified mail, return receipt requested, to the addresses provided by the parties as follows:

Lessor: Carbon County Joint Airport Board  
P. O. Box 868  
Red Lodge, MT 59068

Lessee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice by registered or certified mail, shall be given by either party to the other party of change of address for purpose of this section.

Either party may from time to time designate by notice give to the other by registered or certified mail a change of address for purposes of this section. Any notice shall be deemed to have been given at the time it is duly deposited in any United States Post Office.

SEVERABILITY

If any provision of this lease shall be declared invalid or unenforceable, the remainder of the lease shall continue in full force and effect.

COST AND ATTORNEY FEES

It is agreed that in any litigation arising out of this agreement that the prevailing party shall

be entitled to recover from the other party, in addition to the cost and disbursements allowed by statute, a reasonable attorney's fee as fixed by the court.

BINDING EFFECT

This lease shall inure to the benefit of, and shall be binding upon the personal representatives, successors, heirs and assigns of the parties.

IN WITNESS THEREOF, the parties have read, considered and signed this lease on the date indicated.

\_\_\_\_\_  
Carbon County Joint Airport Board

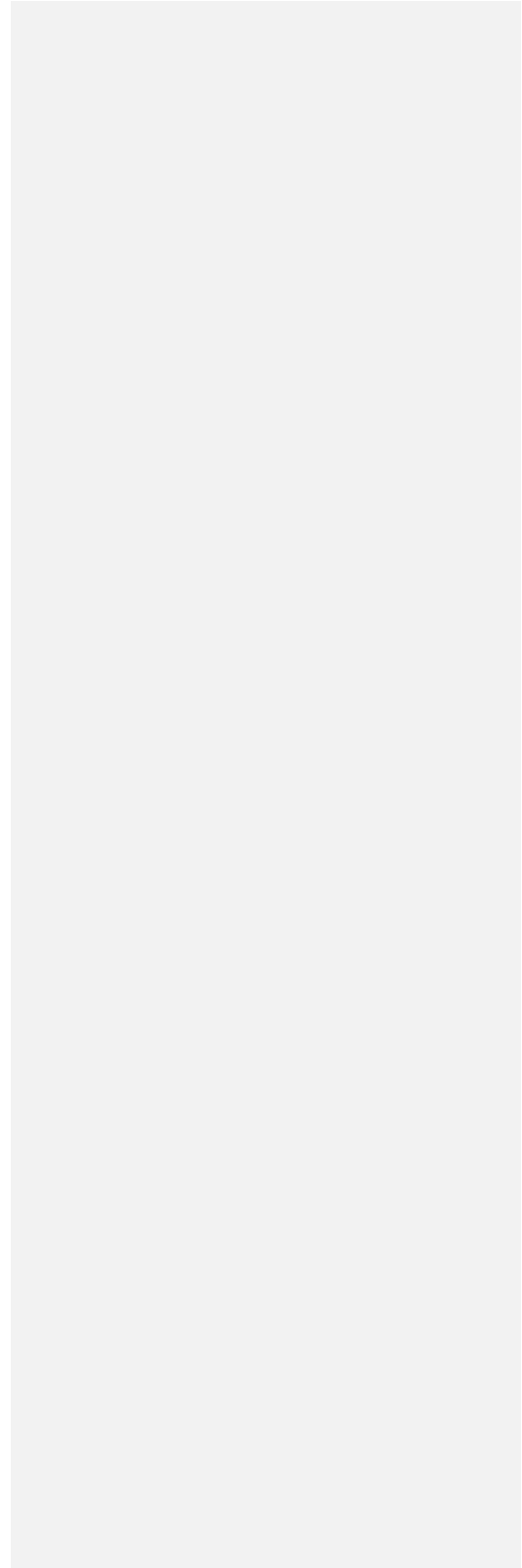
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Lessee

Date \_\_\_\_\_

| Attachment B

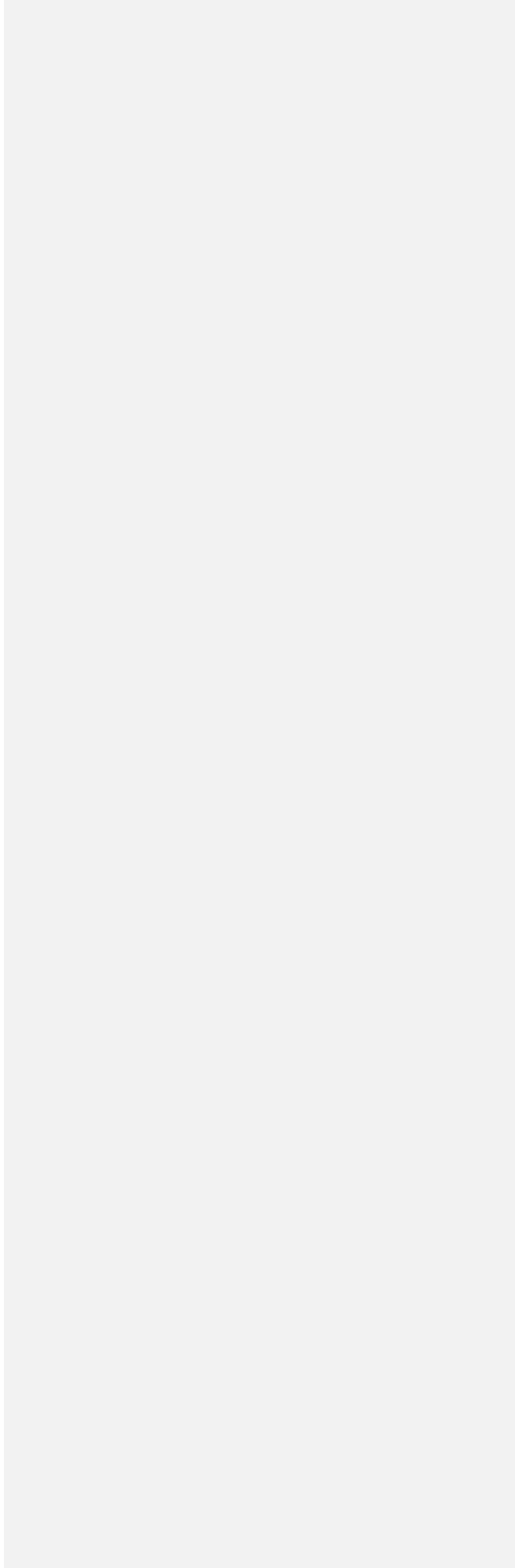
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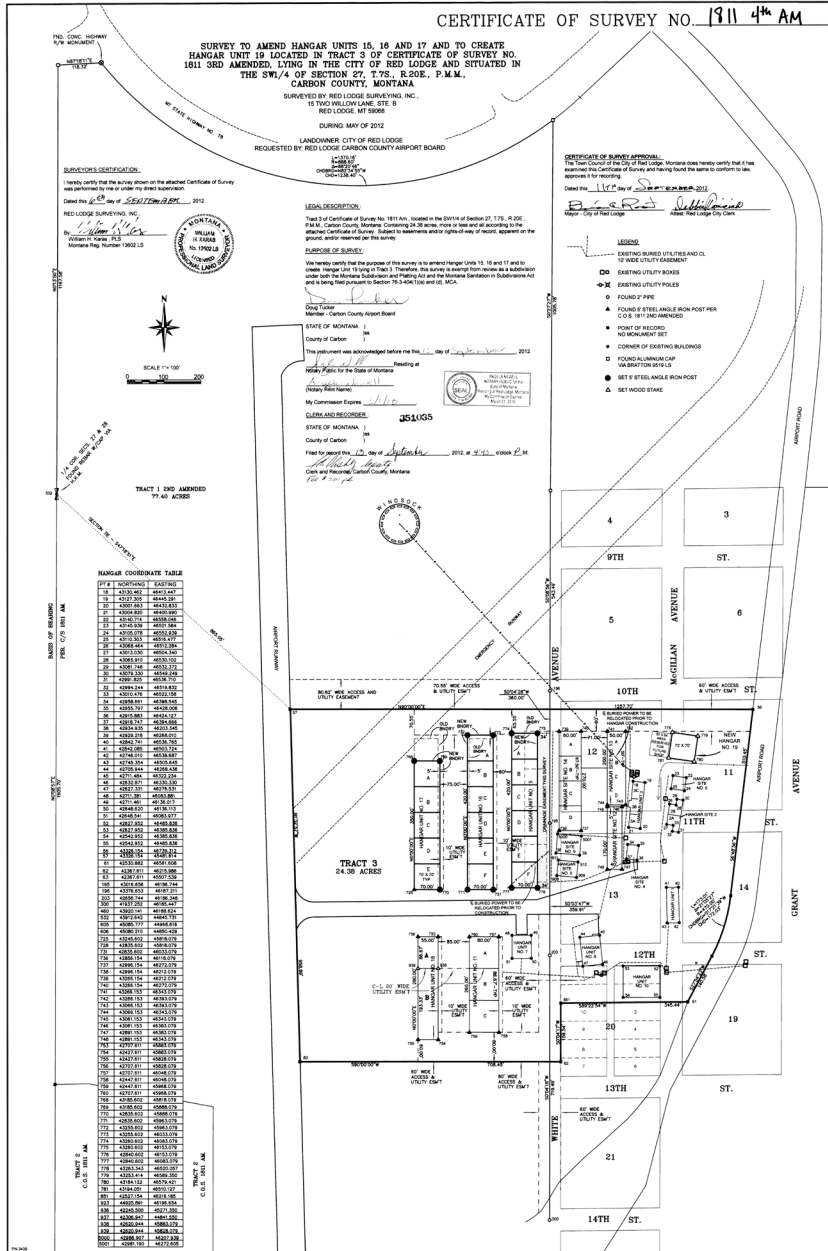


Attachment G

**EXHIBIT B**

[Insert legal description for all property subject to Red Lodge Airport]





Attachment D—

EXHIBIT C

