

CORRESPONDENCE

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Runway 9/27 Reconstruction: Phase 3

Duluth International Airport (DLH)

Project Newsletter #2

Introduction

This is the 2nd weekly newsletter for Phase 3 of the Runway 9/27 Reconstruction project at the Duluth International Airport (DLH). The purpose of the weekly newsletters will be to provide updates throughout the project regarding construction impacts, runway closures, temporary runway conditions, and other information as needed. Earlier versions of the newsletters will be made available upon request. In addition to the newsletters, there will be weekly tenant updates via a 15-minute GoTo meeting hosted by SEH. The first one will be held Tuesday, May 28th, at 12:30PM. The log in and call information will be provided by Blaine Peterson, Director of Operations.

Runway 9/27 Construction Progress

The official start to Phase 3A on Monday, May 20th began with the closure of Taxiway A, followed by paint removals, barricade and traffic control installations, pavement demolition, and continued batch plant preparation. The pavement removed from the west portion of Taxiway A was extremely thick, including nearly two feet of bituminous. The millings from the removals are being hauled to the batch plant site and reused as a base material for the plant.

Taxiway A removals:



Batch plant preparation:



Runway/Taxiway Operations - Phase 3A

Runway 9/27 and Runway 3/21 will be open full length for the duration of Phase 3A. Taxiway closures consist of Taxiway A east of Taxiway A5.

Next Week Preview: May 26th - June 1st

Upon the completion of removals for Taxiway A, the work expected to take place will include continued grading, laying pavement base layers, drainage installations, and electrical installations.

Schedule Updates

Through the first week of construction, Phase 3A of the project has remained generally on schedule despite the rainy weather. Depending on weather or unforeseen conditions, the sub-phases are as follows:

Phase 3A: Taxiway A work (May 20th - June 18th)

Phase 3B: Runway 27 Displaced Threshold Setup (June 17th - 19th)

Phase 3C: Runway 9/27 and Taxiway A5 (June 24th - August 22nd)

Phase 3D: Removal of Displaced Threshold (August 26th - 28th)

Phase 3E: Sawcut Grooving (October 1st - 12th)

For immediate information on the current airfield status, always check current NOTAM's before you fly.

Project Contacts:

Duluth Airport Authority

Director of Operations
Blaine Peterson
218.625.7767 (Office)
bpeterson@duluthairport.com

Short Elliot Hendrickson, Inc.

Project Manager
Benita Crow, PE (MN, WI)
651.919.6677 (Cell)
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Project Engineer
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**DULUTH
INTERNATIONAL
AIRPORT**

Travel Globally. Fly Locally.



Duluth International Airport
(218) 727-2968
daa@duluthairport.com

Thanks for being part of the DLH community!



Runway 9/27 Reconstruction: Phase 3

Duluth International Airport (DLH)

Project Newsletter #3

Introduction

This is the 3rd weekly newsletter for Phase 3 of the Runway 9/27 Reconstruction project at the Duluth International Airport (DLH). The purpose of the weekly newsletters will be to provide updates throughout the project regarding construction impacts, runway closures, temporary runway conditions, and other information as needed. Earlier versions of the newsletters will be made available upon request. In addition to the newsletters, there will be weekly tenant updates via a 15-minute GoTo meeting hosted by SEH. The next one will be held Tuesday, June 4th, at 12:30PM. The log in and call information can be obtained at the end of this newsletter.

Runway 9/27 Construction Progress

With the beautiful weather this week, the contractor was able to make good progress on Phase 3A work items. The week started with final grading and compaction on the existing subgrade, as well as the installation of the Taxiway A in-pavement centerline light electrical conduit. Items installed later in the week included geotextile fabric, aggregate base, as well as drainage structures and pipe near the new Taxiway A5 location. Aggregate base will continue to be installed, compacted, and tested heading into the weekend.

Conduit installation:



Geotextile fabric installation:



Runway/Taxiway Operations - Phase 3A

Runway 9/27 and Runway 3/21 will be open full length for the duration of Phase 3A. Taxiway closures consist of Taxiway A east of Taxiway A5.

Next Week Preview: June 2nd - June 8th

After the placement of the crushed aggregate base, a cement treated base will be installed early next week. Also slated to take place is electrical work, and a potential for concrete paving happening later next week.

Schedule Updates

Through the first week of construction, Phase 3A of the project has remained generally on schedule, with the exception of a couple of rain days last week. The contractor is confident that this time will be made up during the course of Phase 3A. Depending on weather or unforeseen conditions, the sub-phases are as follows:

Phase 3A: Taxiway A work (May 20th - June 18th)

Phase 3B: Runway 27 Displaced Threshold Setup (June 17th - 19th)

Phase 3C: Runway 9/27 and Taxiway A5 (June 24th - August 22nd)

Phase 3D: Removal of Displaced Threshold (August 26th - 28th)

Phase 3E: Sawcut Grooving (October 1st - 12th)

For immediate information on the current airfield status, always check current NOTAM's before you fly.

Weekly Tenant Update: Tuesday, June 4th, 2019 at 12:30PM

GoTo meeting link:

<https://global.gotomeeting.com/join/502718693>

Call information:

612.284.1533 (Toll Free: 855.838.6933)

Audio Conference Room Number: 3

Passcode: 369#

Project Contacts:

Duluth Airport Authority

Director of Operations

Blaine Peterson

218.625.7767 (Office)

bpeterson@duluthairport.com

Short Elliot Hendrickson, Inc.

Project Manager

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From: Blaine Peterson <bpeterson@duluthairport.com>
Sent: Friday, June 7, 2019 9:01 AM
To: Mary Ann Wittkop
Subject: Subscription Mail: Weekly Construction Newsletter #4

Thanks for being part of the DLH community!



Runway 9/27 Reconstruction: Phase 3

Duluth International Airport (DLH)

Project Newsletter #4

Introduction

This is the 4th weekly newsletter for Phase 3 of the Runway 9/27 Reconstruction project at the Duluth International Airport (DLH). The purpose of the weekly newsletters will be to provide updates throughout the project regarding construction impacts, runway closures, temporary runway conditions, and other information as needed. Earlier versions of the newsletters will be made available upon request. In addition to the newsletters, there will be weekly tenant updates via a 15-minute GoTo meeting hosted by SEH. The next one will be held Tuesday, June 11th, at 12:30PM. The log in and call information can be obtained at the end of this newsletter.

Runway 9/27 Construction Progress

This week of construction began with the final grading of the aggregate base, as well as finishing the drainage structure and pipe installations underneath the future location of Taxiway A5. Starting near the end of the week, cement treated base (CTB), the next layer of the pavement structure, has been placed. Electrical installations have taken place throughout the week, including sign replacements and conduit installation.

Proposed Taxiway H sign installation:



Cement treated base (CTB) installation:



Runway/Taxiway Operations - Phase 3A

Runway 9/27 and Runway 3/21 will be open full length for the duration of Phase 3A. Taxiway closures consist of Taxiway A east of Taxiway A5.

Next Week Preview: June 10th - June 16th

The next week will primarily include concrete paving in the Phase 3A area on Taxiway A. Also potentially taking place is shoulder work, electrical installations, and sawing concrete joints.

Schedule Updates

The project has progressed generally on schedule through the first few weeks of construction. The contractor remains confident that they will meet the milestones below. Depending on weather or unforeseen conditions, the sub-phases are as follows:

Phase 3A: Taxiway A work (May 20th - June 18th)

Phase 3B: Runway 27 Displaced Threshold Setup (June 17th - 19th, Runway 9/27 closed)

Phase 3C: Runway 9/27 and Taxiway A5 (June 20th - August 22nd)

Phase 3D: Removal of Displaced Threshold (August 26th - 28th)

Phase 3E: Sawcut Grooving (October 1st - 12th)

For immediate information on the current airfield status, always check current NOTAM's before you fly.

Weekly Tenant Update: Tuesday, June 11th, 2019 at 12:30PM

GoTo meeting link:

<https://global.gotomeeting.com/join/502718693>

Call information:

612.284.1533 (Toll Free: 855.838.6933)

Audio Conference Room Number: 3

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III



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Monthly Construction Project Progress Report DULUTH INTERNATIONAL AIRPORT Runway 9/27 Reconstruction, Phase 3 Report #1 - June 10, 2019



Project Overview

Project Owner	Duluth International Airport / DAA	Grant #	AIP 3-27-0024-62-18
Construction Manager/Company	Shafer Contracting Co.	Engineer Point of Contact/Company	Benita Crow, SEH

Financial Overview

Construction

Source	%	Funds (\$)
FAA	87.7	9,518,390
MnDOT	9.9	1,077,598
DAA		
City		
Other	2.4	262,564

*Includes Funding for Change Orders

Original Project Budget (Construction):	\$10,858,553
Value of Change Orders (Construction):	
Original Project Budget (Engineering):	\$1,142,300
Total Project Budget:	\$12,000,853
Current Project Expenditures (Construction):	\$460,411
Current Change Orders (Construction):	
Current Project Expenditures (Engineering):	\$171,345
Total Project Expenditures:	\$631,756

Engineering

Source	%	Funds (\$)
FAA	87.7	1,002,547
MnDOT	9.9	111,394
DAA		
City		
Other	2.4	28,359

Percent Complete: 15%

Overall Budget Status:

Budget Variance Explanation:

Construction Operational Progress

Schedule Status: Approximately one week behind schedule Start Date: May 20, 2019 End Date:

Percent Complete: 15%

Schedule Variance Explanation: Road restrictions were delayed due to the cold spring weather conditions so the project started approximately one week later than anticipated.

Major Progress in Past 30 Days	Phase 3A – excavation, stormsewer, aggregate base and cement treated base	Upcoming Progress in Next 30 Days	Concrete pavement for Phase 3A, completion of Phase 3B (installation of displaced threshold) and initiation of Phase 3C
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Monthly Construction Project Progress Report

Safety and Security Overview

Impacts to Airport Operations in Past 30 Days	Runway 9/27 and Runway 3/21 have normal operations. Taxiway A east of Taxiway A5 is closed	Impacts to Airport Operations in Next 30 Days	Runway 9/27 closure for Phase 3B Runway 9/27 displaced threshold and Runway 3/21 closure for Phase 3C
Safety Issues	N/A	Security Issues	N/A

Project Notes

- No specific notes or issues to report

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OLD BUSINESS

*updated

Duluth Airport Authority
Kernz & Kompany
Duluth Air & Aviation Expo
Air Show and Exhibition Agreement

Terms:

- *Up to 3 Air Shows in 3 years starting in 2021

Background:

- *Kern & Kompany puts on the Duluth Air & Aviation Expo at DLH that has become an annual event in recent years
- DAA property and equipment is used for airfield access, parking, staging, volunteering, vendors & aircraft parking
- DAA staff assists with security, Air Show set up, operations during Air Show and post Air Show clean up

Agreement Overview:

- *Fee structure was changed to combine the Pre Show Fee, Post Show Fee & Parking Fee into one Air Show Fee
- *Language was added to Section 3 "Permitted Dates & Hours" to include TFR (Temporary Flight Restriction) times. TFR & NOTAM (Notices to Airmen) were also added to the definitions.
- Airport improvement language was added to protect future construction projects the DAA may need to schedule. DAA will make every effort to work with the Air Show to accommodate Air Show schedule as it always has
- Any marketing between Air Show and Authority will be governed by separate agreement and not part of Air Show agreement

Why were the changes in key terms needed/wanted?

- Current agreement was set to expire after 2020 Air Show
- DAA wanted protection of construction project schedules to prevent any delays in projects or funding that may need to be scheduled during the summer months
- Rate increase provision was added to make sure DAA staff time devoted to Air Show was reimbursed
- To eliminate confusion and operation credits the provision for marketing to be held in a separate agreement was added

**DULUTH AIRPORT AUTHORITY
KERNZ & KOMPANY, INC.
DULUTH AIR & AVIATION EXPO
AIR SHOW AND EXHIBITION AGREEMENT**

This Agreement, entered into this ____ day of _____, 2019, between the DULUTH AIRPORT AUTHORITY, hereinafter referred to as "Authority", and KERNZ & KOMPANY, INC., a Corporation under the laws of the State of Minnesota and DULUTH AIR & AVIATION EXPO, an unincorporated association, jointly and severally, both and each of which are hereinafter referred to as "Kernz."

THE PARTIES acknowledge the following:

Authority is a public body charged with the operation of Duluth International Airport, located in the County of St. Louis, State of Minnesota, and with the promotion of aviation in the area; and Kernz has among its objectives the general promotion of aviation in the area; and Kernz is desirous of promoting major events consisting of Air Shows and Exhibitions at the Duluth International Airport, the initial one which is anticipated to be held in the summer of 2021, although the parties acknowledge that this time may change; each individual event jointly hereinafter referred to as "the Air Show and Exhibition"; and

Authority is desirous of cooperating with Kernz under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

**SECTION 1
DEFINITIONS**

The following terms, as used in this Agreement, shall have the meanings as ascribed to them hereunder.

- A. Airport: shall mean Duluth International Airport located in the City of Duluth, County of St. Louis, State of Minnesota as identified in Exhibit A.
- B. Air Show: shall mean a public entertainment event involving the exhibiting of flying skills by various persons and entities under the control of Kernz occurring on the Airport and in the air space over and adjacent to the Airport.
- C. Common Facilities: shall refer to those public portions of the Airport not under lease to any specific tenant or subtenant to which members of the general public have access.
- D. Consent or Approval of Authority and of Executive Director: where this Agreement calls for the consent or approval of the Authority, the same

shall be in the form of a resolution approved by the Authority as provided by law; where the consent or approval of the Executive Director is required, the same shall be evidenced by a written document dated and signed by the Executive Director or his designee.

- E. Exhibition: shall mean the static display of aircraft and of equipment and paraphernalia related to aviation, together with support facilities therefor, such as concessions, sanitary facilities and emergency medical facilities.
- F. Licensed Premises: shall refer to those airside and landside premises licensed to the use of Kernz for Exhibition and Air Show purposes as shown on Exhibit B hereto.
- G. Leasehold Improvements: shall refer collectively to all items located on and within the Licensed Premises provided or purchased by Kernz including but not limited to any structures together with any decorations, partitions, wiring, lighting and plumbing fixtures, piping, finished ceilings, ventilation ductwork, grills, floors and wall coverings, heaters, cabinets, lockers, sinks, counters, chairs, other furniture and signs.
- H. Notices to Airmen (NOTAM): A NOTAM is a notice containing information (not known sufficiently in advance to publicize by other means) concerning the establishment, condition, or change in any component (facility, service, or procedure of, or hazard in the National Airspace System) the timely knowledge of which is essential to personnel concerned with flight operations.
- I. Temporary Flight Restriction (TFR): is a type of Notices to Airmen (NOTAM). A TFR defines an area restricted to air travel due to a hazardous condition, a special event, or a general warning for the entire Federal Aviation Administration airspace.

SECTION 2 PREMISES

A. Licensed Premises

Authority does hereby grant to Kernz a non-exclusive license to use the Licensed Premises as shown on Exhibit B as may be amended from time to time by the Executive Director, attached hereto and made a part hereof solely for the purpose of conducting the Air Show and Exhibition under the terms and conditions of this Agreement. At all times the Licensed Premises are subject to the oversight and control of the Authority. In the event that the Executive Director amends the Licensed Premises, the Authority will advise Kernz in writing a minimum one hundred twenty (120) days prior to the commencement of the Air Show and Exhibition and provide an amended Exhibit B which shall be substituted as part of the Agreement not requiring an amendment.

B. Early Access

In the event that Kernz desires to have early access to the Licensed Premises, it may submit a written request to the Executive Director to approve such early access outlining the specific area to be included, the desired timeline, and the

rationale for the request. The granting of such early access shall be in writing at the sole discretion of the Executive Director and upon such terms and conditions as the Director shall prescribe. Any right of early access so granted shall be limited by the specific request and will not apply to any subsequent event, if any.

C. Common Facilities

In addition to the foregoing, Authority does hereby grant to Kernz and to its members and customers non-exclusive access to the Common Facilities.

D. Limited Rights Granted

The rights granted hereunder to Kernz shall be limited to the use of the Licensed Premises only and shall not extend to any other part of the Airport without the prior written approval of the Executive Director. Subject to Paragraph E below, during the dates referred to in Section 3, Kernz shall have an affirmative obligation to prevent members of the general public from entering the following portions of the Airport: 1) tenant hangars, leased buildings, or leased sites unless so allowed by the tenant and the Authority under a sublease approved in writing by the Authority; and 2) the Airport Operation Area (AOA), except that portion of the Licensed Premises in the AOA.

E. Public Access

No act or omission of Kernz, or their sub-licensees or agents, shall inhibit free public access including access by Airport tenants to the Common Facilities, Main Terminal Building, the existing parking lot adjacent to the Main Terminal Building, or private or DAA leased property which is accessed by roads in and around the Licensed Premises.

F. Authority Access

Kernz shall provide access to the Licensed Premises to the Executive Director and designees, and Airport tenants and employees and contractors as needed to perform typical business activities during the dates of any Air Show and Exhibition covered by this Agreement. No person or activity shall impair Authority's employees and vehicles easy access to the Snow Removal Equipment building, the electrical vault, or the airfield operations area as shown on Exhibit B.

G. Improvements

Air Show shall not in any way impact improvements Authority has scheduled on taxiways and runways. Authority has right to schedule improvements to taxiways and runways as needed and will provide Air Show with as much advanced notice as possible. Every effort will be made to work with the Air Show to accommodate Air Show schedule.

SECTION 3 PERMITTED DATES AND HOURS

This Agreement shall remain in effect for a maximum of three (3) Exhibition and Air Shows commencing January 1, 2021 and shall terminate no later than December 31, 2023 or until the third Exhibition and Air Show is completed, whichever is earlier. The dates and hours of the Exhibition and Air Shows including all TFR times shall be

requested in writing by Kernz and approved in advance in writing by the Executive Director at least ten (10) months prior to the event. In the event said times need to be adjusted, in advance, Kernz shall request approval in writing from the Executive Director. Approval will not be unreasonably withheld. In addition, the Executive Director shall have the sole discretion to temporarily interrupt the Air Show at any time in order to accommodate the operations of commercial air service at the Airport, and to deal with emergency conditions which might arise during said show.

SECTION 4 KERNZ RESPONSIBILITY FOR SHOW AND EXHIBIT

It is understood between the parties hereto that, subject to the specific provisions of this Agreement, the operation and staging of the Air Show and Exhibition, together with all related activities, is the sole obligation of Kernz and not that of Authority, and that any undertaking not specifically assumed by Authority pursuant to this Agreement shall be solely that of Kernz; provided, however, nothing in this Agreement shall be deemed to be for the benefit of any third party, or to impose any obligation upon Authority or Kernz of any kind whatsoever with regard to any third party.

Kernz shall be permitted to sublease or rent out a reasonable amount of space on the Licensed Premises and labeled as the Vendor Area on Exhibit B, to lawful and appropriate vendors, concessionaires or other business ventures subject to mutual agreement of both Authority and Kernz. Upon request, it shall be the responsibility of Kernz to provide written information to the Executive Director verifying that each vendor, concessionaire, or business sub-lessee possesses a valid City of Duluth and State of Minnesota Sales Tax Permit before allowing for the set up or subsequent sales activities of any such sub-lessees. Kernz shall provide evidence to the Executive Director that all vendors, concessionaires or business ventures meet all minimum St. Louis County Health Department requirements and all other requirements as may be required by any applicable laws, codes, or ordinances, in force at the Air Show and Exhibition.

SECTION 5 CONSTRUCTION ON LICENSED PREMISES

A. In General

In the exercising of this Agreement and the granting of the rights to Kernz hereunder, Kernz is not authorized to undertake any construction upon the Licensed Premises, unless approved in advance in writing by the Executive Director. In the event that construction is desired by Kernz, Kernz shall submit a written request to the Executive Director identifying in detail the desired construction to be done, whether the construction is temporary or permanent, the timeline for the construction, reversion rights and/or a demolition and restoration program, and the cost and funding source for the construction and/or restoration/demolition. The Executive Director's prior written approval must be obtained before work proceeds. Failure to do so will be grounds for termination of this Agreement. The Executive Director shall have the right and sole discretion,

to deny approval or condition approval of the requested construction upon the imposition of restrictions and limitations upon Kernz, persons operating under its license, and any contractors or subcontractors doing work pursuant thereto. The Executive Director's review shall include code compliance, plan approval, insurance and bonding requirements, and progress reports. All expenses involved in any approved construction shall be the sole responsibility of Kernz and not of the Authority including but not limited to any costs related to relocating the threshold on Runway 3 and any fencing adjustments or security necessary for purposes of providing additional parking spaces by south end of approach to Runway 3.

B. Hole Drilling, Excavation Prohibited

Kernz acknowledges that there exists at a number of locations on the Airport, including upon the Licensed Premises, unmarked underground utilities at locations not known to anyone other than Authority which pose a hazard to persons or equipment drilling holes, placing stakes, or doing other excavation work on the Licensed Premises, contact with which could lead to personal injury or death. Therefore, no excavation of any kind, including, but not limited to, hole drilling or stake placing shall be permitted on the Licensed Premises by Kernz or any officer, agent, contractor, or employee of Kernz without the prior written approval of the Executive Director. Prior to any penetrations, Kernz is responsible, at its sole expense, of locating all such utilities and the marking of the location and size of said excavation or hole on the surface of the ground must be visually identified to confirm that it does not conflict with any identified utility location prior to penetrating the surface.

SECTION 6 FORTY-FIVE DAY SUBMITTALS

Not later than forty-five (45) days prior to the Air Show and Exhibition, Kernz shall have submitted, or cause to be submitted, to the Executive Director the materials described in this Section in a form acceptable to the Executive Director, which materials shall be subject to the Executive Director's written approval. In the event that the Executive Director shall determine, at the Executive Director's sole discretion, that the materials submitted are inadequate in form or content to evidence the compliance with the requirements of this Section, the Executive Director shall promptly notify Kernz in writing of the same. Kernz shall thereafter have five (5) days to submit materials in compliance with these requirements. In the event that the Kernz fails to respond to said notice, or responds with materials which continue to be non-compliant, the Executive Director shall notify Kernz of said noncompliance and thereafter may, at Executive Director's sole option, may execute the Authority's rights under the provisions of Section 12 of this Agreement. The foregoing approval procedure shall be likewise applicable to any subsequent events operated under this Agreement. Likewise, in the event of any change to any of the information contained in said submittals after their approval but prior to the Air Show and Exhibition, such modifications shall likewise be submitted to the Executive Director for his approval under this same process.

- A. Physical Operating Plan
Kernz shall submit a complete written operating plan for each Air Show and Exhibition performed under this Agreement setting forth the character, nature, and location of all physical facilities and personnel related to the presentation of the Air Show and Exhibition. This shall include but not be limited to the following: a parking plan; a busing plan; an entry and exit plan; a ticket sale plan including ticket price and ticket collection location plan; a sanitary facilities location plan; a medical aid station location plan; a trash receptacle location plan; an Exhibition area plan; a concession areas plan; and a security and evacuation plan. Following the initial Air Show and Exhibition, the Authority reserves the right to restrict parking on the airfield for any subsequent Air Show and Exhibition operated under this Agreement.
- B. List of Events
Kernz shall submit a tentative list of the Air Show event, and provide new updated changes as they occur prior to the Air Show. Kernz shall submit a final list of events which are to be part of the Air Show a minimum of twenty (20) days prior to the Air Show. Said list shall include the name of each performing entity, the nature and character of their performance, the duration of each performance, and a schedule indicating the beginning and ending of each such performance. However, the events and acts may be subject to change and notice may not be given of last minute changes.
- C. FAA Approvals
Kernz shall provide written evidence satisfactory to the Executive Director that all approvals needed for the Air Show and Exhibition from the Federal Aviation Administration of the United States, which will be required for said Air Show and Exhibition, have been received.
- D. Insurance
Kernz shall have presented evidence satisfactory to the Executive Director that the insurance required pursuant to Section 11 below has been secured and is in force.
- E. Peace Officers
Kernz shall present written proof that it has secured commitments for the services of at least two (2) peace officers licensed as such by the State of Minnesota and an additional number of trained private security personnel deemed sufficient by the Executive Director to assist Kernz in providing security, crowd control, and traffic control for all hours when the Air Show or Exhibition or both are open to the public.
- F. Medical Facilities
Kernz shall submit a plan for the provision of medical services on the Licensed Premises at all hours when the Air Show or Exhibition are open to the public. Such plans shall set forth the physical facilities to be used and shall also include provision for at least one emergency medical technician to be on duty at all such hours and shall further provide that at least two emergency medical technicians and one ambulance licensed by the State of Minnesota shall be present on the Licensed Premises from at least one hour prior to the Air Show until at least one

hour after the Air Show.

G. Kernz Personnel

Kernz shall present written evidence that the number of personnel or outside volunteers, or a combination thereof, will be sufficient to provide all manpower deemed by the Executive Director to be necessary to provide services reasonably necessary to ensure the safety of the general public and of the Airport and to ensure an organized experience for all members of the general public coming to view the Air Show and Exhibition. Kernz shall further present evidence that such personnel have been trained in all skills reasonably necessary to the provision of service in the particular area in which they will be working.

H. Responsible Party Designation

Kernz agrees that it will designate one person to be responsible for the provision of services in each of the particular areas specified below; said person shall be deemed to be the Kernz contact person within those areas of responsibility on the dates of the Air Show and Exhibition, and such person shall be present at all times when the Air Show and Exhibition are open to the public, except in the event of circumstances beyond the control of that person, in which case Kernz shall immediately designate in writing to the Executive Director a replacement responsible person in those areas of responsibility.

1. Security and crowd control
2. Vehicle traffic control
3. Non-exhibition hours security
4. Revenue control
5. Air Show control officer
6. Parking/transportation
7. Clean-up and logistics

I. Sanitation Facilities

Kernz shall present written proof that it has contracted for a sufficient number of satellite toilet facilities to meet the requirements of the St. Louis County Health Department, together with proof of arrangements for their erection and removal from the Licensed Premises; provided, however, that the parties hereby agree that the number of said satellite facilities shall not be less than forty (40) and shall comply with the St. Louis County Health Department requirements.

SECTION 7 TWENTY DAYS BEFORE AIR SHOW

On or immediately before twenty (20) calendar days before the Air Show, Kernz shall secure and transmit a written report reflecting a current estimate of projected attendance at the Air Show and Exhibition, and all supporting documentation for said estimate. Based on said information, the Executive Director, at his sole discretion, may require the provision of amended physical operating plans, amended insurance and amended provision of police officers, medical facilities, personnel and sanitary facilities for the Air Show and Exhibition as set forth in Sections 6 above, which personnel or

facilities or both, Kernz agrees to provide for the days of the Air Show and Exhibition. Additionally, on or before twenty (20) calendar days before the Air Show, Kernz shall submit to the Executive Director the sworn affidavits regarding sublicensed activities as required in Section 13 B below.

SECTION 8 AIR SHOW AND EXHIBIT DAYS

A. Control by Executive Director

Regardless of any other provision of this Agreement, it is agreed between the parties that the Executive Director shall have the right to demand Operator to alter the Air Show And Exhibition if any aspect of the Air Show, the Exhibition, the Licensed Premises, and crowd and revenue control if the impact prevents the Authority from meeting the needs of scheduled air carriers, military operations, chartered air carriers, or to protect the Airport, the viewing public, the flying public or the public in general. In that event, the Executive Director may require modifications or additions to the requirements of this Agreement and Kernz shall agree to and to comply with said modifications or additions. Powers granted pursuant to this paragraph shall not be unreasonably exercised.

B. Cleanup During Show

During the Air Show and Exhibition and each evening following the Air Show and Exhibition Kernz shall cause to have the Licensed Premises cleaned to include the emptying trash containers, replacing substantially filled satellite toilet facilities with unused ones, and generally picking up loose refuse and trash from the Licensed Premises.

SECTION 9 POST SHOW CLEANUP

A. Immediate Cleanup

Immediately following the conclusion of the Air Show and Exhibition Kernz shall cause all trash and refuse containers on the Licensed Premises placed there for the Air Show and Exhibition to be removed, all loose trash and refuse on the Licensed Premises to be picked up and removed therefrom, and all satellite portable toilet facilities to be marshaled for pickup at a location approved by the Executive Director. Furthermore, Kernz shall cause all other materials, structures, facilities, and any other things of any kind whatsoever placed on the Licensed Premises to be removed therefrom within two (2) calendar days following the event, unless the improvement was authorized and the Executive Director requires that it remain pursuant to Section 4 above, or unless an extension of time is granted by the Executive Director in writing, and the Licensed Premises returned to the same condition that they were in prior to the Air Show and Exhibition.

B. Removal of Portable Toilet Facilities

Within one (1) calendar day following each Air Show and Exhibition, Kernz shall

have caused all satellite portable toilet facilities to have been removed from the Licensed Premises, unless an extension of time is granted by the Executive Director in writing.

C. Weather Related Extensions

Requests for extension of the timeframes set forth in Paragraphs A and B above due to weather conditions shall be favorably considered by the Executive Director due to potential safety concerns.

D. Failure to Perform Post-show Cleanup

In the event that Kernz shall fail to perform post-show cleanup required by this Section within two (2) calendar days following completion of the Air Show and Exhibition pursuant to Paragraph A above, or within one (1) calendar day following the completion of the Air Show and Exhibition pursuant to Paragraph B above, the Executive Director may promptly employ persons or contractors to perform said work and Kernz hereby agrees to promptly reimburse Authority for all costs so incurred plus an administrative fee of fifteen percent (15%). To assure compliance with the provision, Kernz shall furnish to Authority a performance security bond or substitute approved by the Executive Director in the amount of five thousand dollars (\$5,000.00) at least thirty days prior to the event date. Once all of the obligations of Contractor contained in this Agreement are satisfactorily completed at the discretion of the Executive Director, the performance security bond will be returned.

SECTION 10 PAYMENTS TO AUTHORITY

Kernz hereby agrees to pay Authority for the rights and privileges granted hereunder as follows:

A. Air Show Fee

Kernz shall pay a fee in the amount of Thirty five thousand seven hundred twenty dollars (\$35,720) to Authority. Five thousand dollars (\$5,000) of the Air Show Fee shall be paid no later than thirty (30) calendar days prior to the Air Show and Exhibition. The remaining balance of Thirty thousand seven hundred and twenty dollars (\$30,720) shall be due upon execution of each Air Show and Exhibition.

The Air Show Fee shall be adjusted annually by the increase in Authority union employee wages according to the current Local 66 A.F.S.C.M.E. Minnesota Council 5 Union Contract for said year of Air Show and Exhibition.

B. Airfield Vehicle Parking Fee

Included as part of the Air Show Fee stated above, for each Air Show and Exhibition completed under this Agreement Kernz shall pay to the Authority a flat fee of One thousand six hundred dollars (\$1,600.00) for the use of the parking area on the airfield near runway 321 for public parking of vehicles as identified as part of the Licensed Premises on Exhibit B. If the airfield parking area is not used by Air Show, One thousand six hundred dollars (\$1,600) will be deducted from the Air Show Fee.

- C. Fee for Failure to Maintain
In the event that Kernz fails to keep the Licensed Premises in a neat, clean, orderly, and sanitary condition and the Executive Director has issued a written notice of such deficiency and provided a reasonable cure period as determined solely by the Executive Director, Authority may itself clean or cause to be cleaned those portions of the Licensed Premises not so kept, and Kernz agrees to reimburse Authority for the direct and indirect costs incurred by Authority for the performance of said work plus a fifteen percent (15%) administrative fee, due and payable upon receipt.
- D. Fee for Repair and Replacement
Kernz shall promptly repair or replace any property of the Authority lost, destroyed, or damaged by its operations hereunder. If Kernz fails to promptly repair or replace such property following written notice by the Executive Director of such deficiency and a reasonable cure period as determined solely by the Executive Director, Authority may repair or replace it and Kernz agrees to reimburse for the direct and indirect costs incurred by Authority for such repair or replacement plus a fifteen percent (15%) administrative fee, due and payable upon receipt.
- E. Fee for Unpaid Licenses, Fees, Taxes, and Assessments
Kernz hereby agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever which arise because of, or in the course of, any operations covered by this Agreement during the term hereof. Should Kernz fail to pay such amounts following written notice of such deficiency and a reasonable cure period as determined solely by the Executive Director, it is expressly agreed that Authority may pay the same on behalf of Kernz, and Kernz agrees to reimburse Authority for said amounts paid plus a fifteen percent (15%) administrative fee due and payable upon receipt.
- F. Late Fee
Any sums not paid to Authority when due shall bear interest at the rate of the lesser of eighteen percent (18%) per annum or the maximum rate allowable by law from the date due until paid.
- G. Payment Obligations Unconditional
The obligations of Kernz to pay any amounts due to Authority under this Agreement in accordance with the terms hereof shall be absolute and unconditional, irrespective of any defense or rights of set off, recoupment or counterclaim which may at any time be available against Authority. Such payments shall be due without notice or demand therefor except as specifically provided for herein.
- H. Marketing Agreement
Any marketing for the Air Show in conjunction with the Authority shall be governed by separate agreement.

SECTION 11
DEFENSE, INDEMNITY, INSURANCE, WARRANTIES AND GUARANTY

A. Defense and Indemnity

Kernz hereby agrees to defend, indemnify and hold harmless the Authority and the City of Duluth and their officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of Authority or of Kernz, for any damages, including those existing by reason of the death of or injury to persons or the loss or damage to property or any other claim or cause of action arising out of Kernz's use of or occupancy of or operations at the Airport, and on ten (10) days' written notice from Authority, Kernz will appear and defend all lawsuits against Authority of the City or any of the aforesaid parties arising out of such injuries or damages. This provision applies to response costs for environmental damages, or threatened damage, caused in any part by Kernz's use or occupancy of the Licensed Premises.

B. Insurance

To effectuate the purposes and provide the Authority with protections described hereinabove, Kernz, Inc. agrees that it will at its own expense keep in force and effect during the term of this Agreement insurance policies of the type and in the amounts listed below or its reasonable equivalent as approved by the Authority's attorney. All liability policies shall name the Authority and the City of Duluth as additional insureds thereunder and shall contain a provision that thirty (30) days' advance notice in writing shall be given to the Authority prior to termination, cancellation or modification of such insurance and failure to give such notice shall render any such changes in such policy or coverage ineffective against the City and the Authority. Certified copies of the policies or a certificate or certificates evidencing the existence thereof or binders shall be delivered to Authority as provided for in Paragraph D of Section 6 above. In the event any binder is delivered it shall be replaced within fifteen (15) days by a certified copy of the policy, or certificate. To the extent that the "Accord" form of certificate is used, the words endeavor to shall be stricken from the notification provisions. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) – or equivalent, as approved by the Authority's Attorney.

1. Commercial General Liability Insurance, including Contractual, Premises and Operations and Products Liability coverage in the amount of \$5,000,000 per occurrence for personal injury and \$5,000,000 per occurrence for damage to property. Completed Operations in the amount of \$1,500,000 per occurrence.
2. Owned, non-owned and hired vehicles in limits of not less than \$2,000,000 combined single limit or \$2,000,000 bodily injury per occurrence; \$2,000,000 per occurrence.
3. Hangar Keepers Liability Insurance in limits of at least

\$500,000/\$1,500,000 if the Air Show and Exhibition stores aircraft at the Airport.

4. Additionally, Kernz shall maintain Worker's Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law.
 5. If Kernz is providing air taxi service of any kind, Aircraft Liability Insurance in limits of not less than \$1,000,000 and Aircraft Passenger Liability Insurance in limits of not less than \$100,000 for each passenger seat. All insurance required in this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.
- C. Kernz's Liability
It is understood that the specified amounts of insurance stated herein shall in no way limit the liability of Kernz under this Section.
- D. Waiver of Claims
Kernz waives all claims and causes of action against Authority, its officers, agents, servants or employees for any failure of Authority to properly maintain, operate and manage the Airport at all times in a safe manner resulting from any reason or cause of any kind whatsoever; provided, however, in the event that the Executive Director shall take over control of any aspect of the Air Show, the Exhibition, the Licensed Premises, crowd control, or revenue control, the provisions of this Paragraph shall not apply to any claims arising out of such assumption of control.
- E. Premises As Is
Kernz hereby agrees and acknowledges that it has examined the Licensed Premises and knows their condition and accepts the same as is without any warranties of any kind whatsoever, expressed or implied, from Authority as to the fitness of the facilities for the purposes of holding the Air Show and Exhibition.
- F. Increased Coverages
The Authority reserves the right to require Kernz to increase the coverages set forth above and to provide evidence of such increased insurance coverage to the extent that the liability limits as provided in Minnesota Statutes Section 466.04 are increased.

SECTION 12

DEFAULT, TERMINATION AND PERSONAL GUARANTIES

- A. Rights Upon Default
In the event of a default by Kernz under the Agreement, the Authority shall give written notice of said default to Kernz unless said default occurs during an Exhibition and Airshow in which event the notice may be verbal notice followed by written notice. If at any time Kernz shall be in default, as defined in this Section, with regard to the requirements of this Agreement, it shall be lawful for the Authority to, and the Authority may at its discretion at any time thereafter:

1. Terminate this Agreement upon written notice in the manner hereinafter provided for and refuse to allow Kernz to have access to the Licensed Premises.
2. During the period of set up, Exhibition and Airshow, and post show clean up, assert sole control over the Licensed Premises, including but not limited to the Airfield, and require that Kernz immediately leave the Licensed Premises.
3. Have and exercise any and all other rights and remedies including injunctive relief, ejectment or summary proceedings for a lawful detainer, and any or all legal and equitable remedies, actions and proceedings.

B. Default Defined

For the purposes of this Section only, Default shall be defined when any of the following circumstances exist:

1. Kernz fails to abide by any of the terms or conditions of this Agreement.
2. If a petition for reorganization of Kernz or its arrangements of its unsecured debts shall be filed.
3. If Kernz shall be adjudicated bankrupt.
4. If a receiver or trustee of Kernz's property shall be appointed by any court.
5. If Kernz shall make a general assignment for the benefit of creditors.
6. If all of the interests of Kernz and its property shall be taken by garnishment, attachment, execution or other process of law.

C. Authority Assumption of Control

In the event that Kernz shall fail to perform any of its obligations pursuant to Sections 6, 7, 8 and 9 of this Agreement within the periods of time required by those Sections, Authority shall have the option, but not the obligation, of performing or causing to be performed through third parties those obligations of those Sections with respect to which Kernz is in default. In the event that Authority exercises this option, Kernz hereby agrees to reimburse Authority for all direct and indirect costs incurred by Authority in so curing the default of Kernz plus a sum equal to twenty-five percent (25%) of all such costs for Authority's overhead in so curing said default.

D. Remedies Cumulative

All rights and remedies of the Authority pursuant to this Agreement shall be deemed to be cumulative and not exclusive.

E. Nonwaiver

Any waiver of any breach of covenants herein contained to be kept and performed by Kernz shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent Authority from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

F. Attorneys' Fees and Costs

In the event that Authority shall prevail in any action or suit or proceeding brought by Authority to collect any sum due or to become due hereunder or any portion thereof or to take possession of the Licensed Premises or to enforce compliance with this Agreement or for the failure to observe any covenant of this Agreement, Kernz hereby agrees to pay Authority its reasonable attorneys' fees and costs in

such action, suit or proceeding.

SECTION 13 ASSIGNMENT AND SUBLICENSING

A. Assignment in General

Kernz shall not assign or transfer in whole or in part in any manner this Agreement or sell or transfer any interest herein or permit the foregoing to become transferred by operation of law or otherwise or do or suffer any acts to be done whereby the same may be or becomes assigned in whole or in part unless the written consent of the Authority in its sole discretion is first obtained in each and every case of such assignment or transfer as shall from time to time occur or be desired, except as set forth in Paragraph B below. It is expressly agreed by the parties that a change in the ownership of a controlling share of stock in Kernz, if any, shall be deemed to be as assignment hereunder. It is further expressly agreed by Kernz that in the event permission is granted by Authority as herein provided, any assignee or sub-licensee shall be required to assume and agree to perform the covenants of this Agreement and notwithstanding any such assignment, Kernz shall be and remain liable for the payment of all sums hereunder and the performance of all covenants and conditions of this Agreement.

B. Sub-licensing

It is expressly agreed between the parties that Kernz shall have the right to sublicense activities related to the Air Show and Exhibition including to but not limited to concessions, exhibitions, solicitations for charitable purposes, and other related activities. Kernz shall ensure that all such agreement shall be in compliance with the terms and conditions of this Agreement, and shall submit to the Executive Director for each such agreement a sworn affidavit to that effect on or before twenty (20) calendar days before the Air Show as set forth in Section 7 above.

SECTION 14 SIGNS AND ADVERTISING

Kernz shall not erect, install or operate, or cause or permit to be erected, installed, or operated any signs on the Licensed Premises without the consent of the Executive Director, and all costs associated with such installation and restoration shall be borne solely by Kernz or its sub-licensees. Kernz shall not use Authority's name, logo, mark in any advertising or sign, nor shall it represent that Authority is involved in producing or sponsoring the event without its written consent.

SECTION 15 OBEY LAWS, RULES AND REGULATIONS

Kernz agrees to observe and comply with all laws, ordinances, rules and regulations of

the United States of America, State of Minnesota, City of Duluth and their respective agencies which are applicable to the activities at the Airport and further agrees to observe and comply with all Airport rules and regulations in existence as of the execution of this Agreement and which may, from time to time, be promulgated by the United States of America, State of Minnesota, City of Duluth and Authority governing the conduct on and operations at the Airport and the use of its facilities as administered by the Executive Director. Kernz agrees to contact in writing the immediate bordering governing entities impacted by the Air Show with copies to the Executive Director including but not limited to City of Hermantown, Canosia Township, and City of Rice Lake to determine if there are any issues associated with the operation of the Air Show that may negatively affect their communities. Copies of responses from the bordering entities shall be provided to the Executive Director within 48 hours of receipt by Kernz of the same. If any resident has to evacuate their home during the Air Show, Kernz must make arrangements in advance to accommodate such residents. Such contact will take place in a timely manner and a report made to Authority with the results of inquiry no later than six (6) months prior to the Air Show and Exhibition. Further, Kernz agrees that it will fulfill its responsibilities pursuant to the Airport Security Plan approved by the Federal Aviation Administration and any amendments thereto.

SECTION 16 CIVIL RIGHTS ASSURANCES

Kernz for itself, its personal representatives, successors in interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the license to use the Licensed Premises that:

- A. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination in the use of said facilities.
- B. That in the construction of any improvements on, over or under such land, and in the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
- C. That Kernz shall use the premises in compliance with all requirements imposed by or pursuant to Title 49 Code Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of Department of Transportation - Effectuation Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

SECTION 17 GOVERNMENT COMMITMENTS

This Agreement shall be subordinated to the provisions of any existing or future agreement between the Authority and United States of America or the State of Minnesota with regard to the operation or maintenance of the Airport, execution of which has been or may be required as a written precedent to the expenditure of Federal

or State funds for the development or maintenance of the Airport.

SECTION 18
INDEPENDENT CONTRACTOR

Kernz hereby warrants and represents that in the performance of its obligations under this Agreement it is acting solely as an independent contractor and in no way, directly or indirectly, is it acting as agent for Authority. Kernz further agrees that any and all members and employees of Kernz, or other persons while engaged in the performance of any services required of Kernz under this Agreement, shall not be considered employees of Authority, and any and all claims which may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said members or employees or other persons while so engaged, and any and all claims made by third parties as a consequence of any act or omission on the part of Kernz or of its members, agents and employees or any other persons, while so engaged in any services provided to rendered herein, shall in no way be the obligation or responsibility of Authority.

SECTION 19
NOTICES

All notices provided for herein to be given by one party to the other shall be deemed to have been given by depositing written notice in the United States mail addressed to said party at the address set forth below:

To Authority:	Duluth Airport Authority Duluth International Airport 4701 Grinden Drive Duluth, Minnesota 55811 Attn: Tom Werner, Executive Director
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To Kernz, Inc.:	Kernz & Kompany, Inc. 2110 West 1st Street Duluth, MN 55806
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To Duluth Air & Aviation Expo:	Duluth Air & Aviation Expo 2110 West 1 st Street Duluth, MN 55806
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SECTION 20
GOVERNING LAW

This Agreement shall be governed by the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in the court located is St. Louis County, Minnesota. However, litigation in Federal Courts involving

the parties shall be in the appropriate federal court in the State of Minnesota.

SECTION 21
JOINT AND SEVERAL LIABILITY

Kernz & Kompany, Inc. and Duluth Air & Aviation Expo are jointly and severally liable for all obligations under this Agreement.

SECTION 22
AMENDMENTS

Any amendment to this agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

SECTION 23
WAIVER

Any waiver by any party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

SECTION 24
SEVERABILITY

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

SECTION 25
ENTIRE AGREEMENT

This Agreement, including all attachments, constitutes the entire Agreement between Authority, Kernz and Duluth Air & Aviation Expo and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

Acknowledgment:

On _____, 2019 appeared before me Ryan Kern, the President of Kernz & Kompany, Inc, and _____, the _____ of Duluth Air and Aviation Expo and executed this agreement.

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RS&H

RS&H, Inc.
3333 Alford Approach Road, Suite A
Bridle, Minnesota 55419
218-722-1327 FAX 218-722-1322
www.rsandh.com

**DULUTH
INTERNATIONAL
AIRPORT
AIRPORT
LAYOUT PLAN**

CONSULTANTS

REVISIONS	
NO.	DESCRIPTION DATE

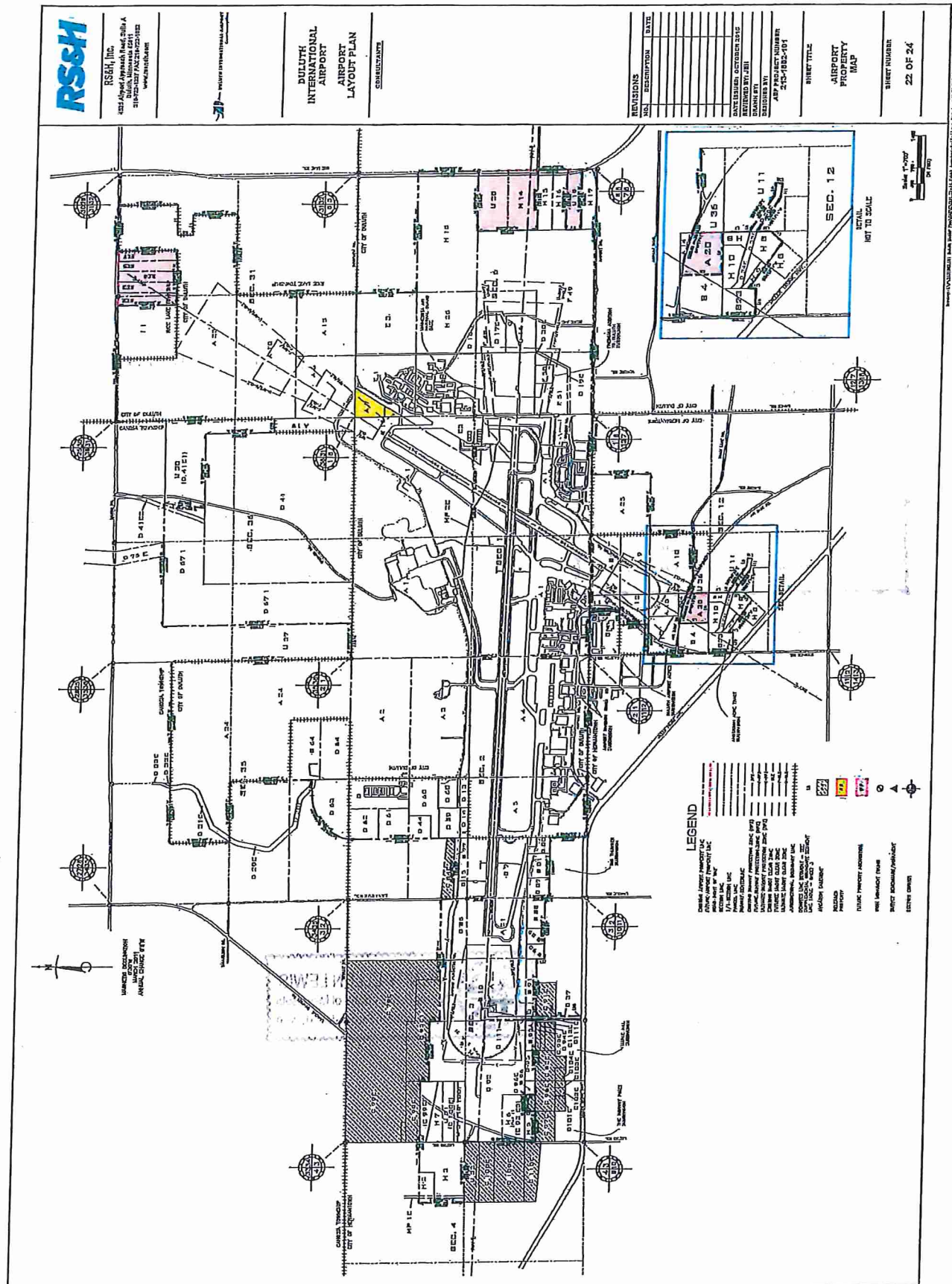
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INDEX TITLE

**AIRPORT
PROPERTY
MAP**

SHEET NUMBER

22 DE 94





NEW BUSINESS

~~1211~~ A

RESOLUTION AUTHORIZING LAKE SUPERIOR COLLEGE TO SUBLEASE ITS CITY OWNED HANGAR PROPERTY AT DULUTH INTERNATIONAL AIRPORT TO KERNZ & KOMPANY, INC. FOR USE AT YEAR 2019 DULUTH AIRSHOW

RESOLVED, by the Duluth Airport Authority (DAA) that the proper DAA officials are hereby authorized to execute and approve the Facilities Use Agreement between the State of Minnesota, by and through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of Lake Superior College, and Kernz & Kompany, Inc. a corporation under the laws of the State of Minnesota.

Approved by the Duluth Airport Authority this 18th day of June 2019

ATTEST:

Executive Director

STATEMENT OF PURPOSE: Pursuant to its lease agreement with the Duluth Airport Authority, Lake Superior College must obtain written authorization to sublease its leased space. This resolution authorizes Lake Superior College to sublease hangar and parking space at the Duluth International Airport for zero dollars to Kernz & Kompany, Inc. for the short duration and limited purpose of 2019 Duluth Airshow operations.

~~III~~ B

RESOLUTION to Award a Contract to Northland Constructors of Duluth, Inc

TERMS:

- Length of Agreement
 - Duration of Sky Harbor Runway Realignment Phase 3 project
- Amount:
 - \$3,113,750

ARGUEMENT OVERVIEW (CONTEXT):

This is an agreement between the DAA and Northland Constructors of Duluth, Inc. to complete the final phase of the Runway Realignment project at Sky Harbor. The final phase is expected to transpire over two construction seasons, Fall of 2019 for dirt work and Spring of 2020 for paving operations.

I recommend approving this resolution.

Prepared by: Blaine Peterson

STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is by and between the Duluth Airport Authority
(Owner) and Northland Constructors of Duluth, Inc. (Contractor).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: 2019 Runway Realignment – Phase 3.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Runway Realignment – Phase 3.

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Short Elliott Hendrickson Inc. (SEH®)
- 3.02 The Owner has retained SEH (Engineer) to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

- A. The Work will be substantially completed within 75 working days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions no later than June 1, 2020.

4.03 *Milestones*

- A. Parts of the Work shall be substantially completed on or before the following Milestone(s):
1. Open new runway 15-33 [30 working days after existing runway 14-32 is closed]

4.04 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$3,500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 - a. Liquidated damages will be enforced to ensure the completion of future work that shall commence the following summer at the Airport. The Sky Harbor Airport is currently running on a temporary airport licensure from MnDOT Aeronautics. Further delays to this project could have great impacts to tenants and businesses at the airport.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
- B. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.05 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item as indicated in Contractor's Bid.

The Bid Prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

The Estimated Total of All Unit Price Work (Base Bid) is: \$ 3,113,750.00

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Subject to the provisions of SC-15.01.C, Owner shall make monthly progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications of Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract:
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract:
 - a. 95 percent of Work completed (with the balance being retainage).
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

6.04 *Interest*

All amounts not paid when due shall bear interest at the rate of 5 percent per annum.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of the following:
1. Addenda (numbers 00 00 11, inclusive).
 2. This Agreement (pages 00 52 00-1 to 00 52 00-6, inclusive).
 3. Performance Bond (Document 00 61 13).
 4. Payment Bond (Document 00 61 14).
 5. General Conditions (pages 00 72 00-1 to 00 72 00-65, inclusive).
 6. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-9, inclusive).
 7. Specifications as listed in the table of contents of the Project Manual.
 8. Drawings consisting of 37 sheets with each sheet bearing the following general title:
2019 Runway Realignment – Phase 3.
 9. Exhibits to this Agreement (enumerated as follows).
 - a. Contractor's Bid (Document 00 41 00).
 - b. Documentation submitted by Contractor prior to Notice of Award
 - c. Certificate of Insurance.
 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.

- b. Field Order(s).
 - c. Work Change Directive(s).
 - d. Change Order(s).
- B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 8 – REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- 1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - 2. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - 5. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
 - 6. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - 7. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - 8. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
 - 9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
 - 10. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 9 – MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Contract).

OWNER:

Duluth Airport Authority

By: _____

Title: _____

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for Giving Notices:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement).

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

CONTRACTOR:

By: _____

Title: _____

[CORPORATE SEAL]

Attest: _____

Title: _____

Address for Giving Notices:

License No. _____
(Where Applicable)

Agent for service of process: _____

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

END OF DOCUMENT



RESOLUTION *accept Purchase Order quotation from Boreal Natives*

TERMS:

- Length of Agreement
 - Multiyear mitigation monitoring – 2020 -2023.
- Amount:
 - \$34,490

ARGUEMENT OVERVIEW (CONTEXT):

This is an agreement between the DAA and Boreal Natives to collect, furnish, and install native vegetation as well as manage invasive species as part of the mitigation package for the Sky Harbor Airport runway relocation project.

I recommend approving this resolution.

Prepared by: Blaine Peterson



Building a Better World
for All of Us®

MEMORANDUM

TO: Blaine Peterson, Director of Operations
FROM: Natalie White, SEH Biologist
DATE: June 11, 2019
RE: Native Vegetation Purchase Order Recommendation
SEH No. DULAI 135245 14.00

On May 28, 2019, SEH solicited bids for a purchase order to collect, furnish, and install native vegetation as well as manage invasive species as part of the mitigation package for the Sky Harbor Airport runway relocation project. The purchase order quote form (bid form) was distributed via email to three (3) qualified native vegetation contractors, with a required response date of June 10, 2019. All three contractors: Prairie Restorations/Boreal Natives, Cardno, and Minnesota Native Landscapes, have adequate prior experience and capabilities to conduct the work.

Responses to the purchase order request were received from two of the three contractors (bid forms attached). The third contractor, Minnesota Native Landscapes, did not provide a bid by the deadline.

Of the two contractors that responded, the low bidder is Boreal Natives, with a bid price of \$34,490. Because both of the responsive contractors were qualified to perform the work, we recommend selection of the low bidder based on cost.

The low bid from Boreal Natives is significantly lower in price than the other bidder. The likely reasons for the low cost are:

- Boreal Natives has a facility in Cloquet, approximately 20 miles from the Airport. The local facility significantly reduces mobilization costs.
- Boreal Natives is familiar with collecting plants from species in the region, and may have more certainty of successful plant transplantation.

Therefore, we believe that Boreal Natives offers the best value for the native plant installation and invasive plant management needs of the DAA. We recommend accepting the bid from Boreal Natives for \$34,490.

nw

Attachments: Bid Forms

z:\aeld\dulai\135245\2-proj-mgmt\25-cost-est\2019 native veg poldraft memo recommendation to daa board.docx

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 418 West Superior Street, Suite 200, Duluth, MN 55802-1512
SEH is 100% employee-owned | sehinc.com | 218.279.3000 | 888.722.0547 | 888.908.8166 fax

Purchase Order Quote Form (Bid Form)

Sky Harbor Airport

Runway Realignment

Native Vegetation Establishment and Maintenance

Item No.	Description	Unit	Est. Quantity	Bid Unit Price	Bid Price
1	Aquatic Plant Material Collection	LS	1	\$ <u>6500</u>	\$ <u>6500</u>
2	Aquatic Plant Material Transplantation	Each	500	\$ <u>3.50</u>	\$ <u>1750</u>
3	Emergent Plant Installation	Each	200	\$ <u>3.00</u>	\$ <u>600</u>
4	Herbivore Protection	LS	1	\$ <u>2400</u>	\$ <u>2400</u>
5	Invasive Plant Management	Acre	33.2	\$ <u>700</u>	\$ <u>23,240</u>
				TOTAL:	\$ <u>34,490</u>

Attachments:

- 1 – Purchase Order Requirements, Terms and Conditions
- 2 – 006113 Performance Bond
- 3 – 006114 Payment Bond
- 4 – Plant Collection and Installation Specification
- 5 – Invasive Plant Species Management Specification
- 6 – Figure 1: Plant Collection Locations
- 7 – Figure 2: Plant Installation Location
- 8 – Figure 3: Invasive Plant Management

Please send your quotes to:

SEH

Attn. Natalie White

418 W Superior Street, Suite 200

Duluth, MN 55802

(218) 279.3003

By signing this form the contractor agrees to:

Submit all quotes by Monday, June 10, 2019.

Contractor has fully reviewed purchase order requirements and attachments.

Contractor agrees to honor the above stated pricing until September 3, 2019.

Signed: [Signature] Date: 6/10/19Title: SITE MANAGERRepresenting: PRAIRIE RESTORATIONSContractor's attachments/conditions (if any):

Purchase Order Quote Form (Bid Form)

Sky Harbor Airport

Runway Realignment

Native Vegetation Establishment and Maintenance

Item No.	Description	Unit	Est. Quantity	Bid Unit Price	Bid Price
1	Aquatic Plant Material Collection	LS	1	\$ 2,480.00	\$ 2,480.00
2	Aquatic Plant Material Transplantation	Each	500	\$ 3.89	\$ 1,945.00
3	Emergent Plant Installation	Each	200	\$ 8.22	\$ 1,644.00
4	Herbivore Protection	LS	1	\$ 2,070.00	\$ 2,070.00
5	Invasive Plant Management	Acre	33.2	\$ 3,508.00	\$ 116,465.60
				TOTAL:	\$ 124,604.60

Attachments:

1 – Purchase Order Requirements, Terms and Conditions

2 – 006113 Performance Bond

3 – 006114 Payment Bond

4 – Plant Collection and Installation Specification

5 – Invasive Plant Species Management Specification

6 – Figure 1: Plant Collection Locations

7 – Figure 2: Plant Installation Location

8 – Figure 3: Invasive Plant Management

Please send your quotes to:

SEH

Attn. Natalie White

418 W Superior Street, Suite 200

Duluth, MN 55802

(218) 279.3003

By signing this form the contractor agrees to:

Submit all quotes by Monday, June 10, 2019.

Contractor has fully reviewed purchase order requirements and attachments.

Contractor agrees to honor the above stated pricing until September 3, 2019.

Signed: *Jay St. Aubin* Date: 6/10/19Title: Business Unit LeaderRepresenting: Cardno, Inc.

Contractor's attachments/conditions (if any):

N/A