


4. Airport statistics – SEP & OCT 2017 (If available) (Materials presented at meeting.)
Title, Order

Authorizing Execution of an Easement Agreement (Lease No. DTFAEN-17-L-00174) between the City of Bangor and the United States of America - FAA Radar Facility.

Summary

The United States currently operates an ASR radar facility on property at Bangor International Airport near the military training facility located off Hildreth Street; and

The FAA wishes to make charges to its power for the facility and has need for the installation of 3 utility poles to be owned and maintained by the Government, for an underground power line easement, and for access on City property right-of-way easement to support their ASR radar antenna tower located on airport property.

This Order, if approved, will authorize a 10 year easement agreement between the City of Bangor and the United States of America - FAA.

Committee Action

Committee: Airport Committee
Action: Recommend for passage
Meeting Date: 11/14/2017
For: 
Against:

Staff Comments & Approvals

City Manager
City Solicitor
Finance Director

Introduced for: Consent
Authorizing Execution of an Easement Agreement (Lease No. DTFAEN-17-L-00174) between the City of Bangor and the United States of America - FAA Radar Facility.

WHEREAS, The City of Bangor is the owner of the Bangor International Airport; and

WHEREAS, United States currently operates an ASR radar facility on property at Bangor International Airport near the military training facility located off Hildreth Street; and

WHEREAS, FAA wishes to make charges to its power for the facility and has need for the installation of 3 utility poles to be owned and maintained by the Government, for an under ground power line easement, and for access on City property right-of-way easement to support their ASR radar antenna tower located on airport property; and

WHEREAS, the United States has requested a 10 year easement agreement between the City of Bangor and the United States of America - FAA.

Now Therefore, Be it Ordered by the City Council of the City of Bangor that,

Catherine M. Conlow, City Manager, is hereby authorized on behalf of the City of Bangor to execute an easement agreement between the City of Bangor and the United States of America - FAA for utility and road access to the United States ASR facility for a period of ten years. Said agreement shall be in a final form as approved by the City Solicitor.
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

LAND LEASE ON AIRPORT

Lease No: DTFAEN-17-L-00174

Geographical Location: BANGOR, ME - ASR

THIS LEASE is hereby entered into by THE CITY OF BANGOR whose address is City Hall, Bangor, ME 04401 hereinafter referred to as the Grantor and the United States of America, herein after referred to as the Government. This lease shall become effective when it is fully executed by all parties. The terms and provisions of this lease, and the conditions herein, bind the Grantor and the Grantor’s administrators, successors, and assigns.

WITNESSETH: The parties hereto, for the consideration hereinafter mentioned covenant and agree as follows: The Government has a need for 3 utility poles owned and maintained by the Government, for an underground power line easement, airport access right-of-way easement, and restrictive easement as described in Exhibit “A” attached hereto and made a part hereof:

NOW, THEREFORE: The parties hereto for the consideration hereinafter mentioned, covenant and agree as follows:

1. Restrictive Easement Against Construction: The City shall not construct nor allow to be constructed any structure in the area contained within a circle whose center is at the ASR radar antenna tower with Maine State Coordinates N 354.800, E 411.895, and whose radius is 1,500 feet; without the express permission of the Government.

2. Utilities Easement: The City grants to the Government the right to install a power line cable within 50 feet of the centerline of the existing radar access road. The line will begin at an existing United States Air Force’s power line on the City’s property and run approximately 600 feet to the Government’s ASR facility as shown on a sketch, which is attached hereto and made a part hereof as Exhibit “A”.

3. Utility Poles: In conjunction with the installation of the power line cable, the Government shall have the right to install 3 new utility poles on the City’s property, as depicted on Exhibit “A”.

4. Access Road Right-of-Way Easement: The Government shall have the right to use the City’s radar access road for ingress and egress to and from the Government’s ASR facility.

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A. Together with a right-of-way for ingress to and egress from the premises; (For Government Employees, their Agents and Assigns) a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over said lands and adjoining lands of the Lessor, as shown on Exhibit A attached hereto to the ASR radar antenna tower.

B. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of the electric power and/or telecommunication lines to the ASR radar antenna tower.

C. And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased necessary for the power and/or telecommunications lines, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government.

5. TERM (AUG-02):
To have and to hold, for the term commencing on October 1, 2018 and continuing through September 30, 2028 inclusive.

6. HOLDOVER (AUG-13):
If, after the expiration of the lease, the Government shall retain possession of the premises, the lease shall continue in force and effect on a month-to-month basis. Rent shall be paid in accordance with the terms of the lease, in arrears on a prorated basis, at the rate paid during the lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquire the property in fee or vacated the premises.

7. CONSIDERATION: For and in consideration of the benefit of Bangor International Airport and the general public using same, the City grants to the Government all rights, terms and conditions stated herein at no cost.

8. The Federal Aviation Administration (FAA) agrees to remediate at its sole cost, all hazardous substance contamination on the premises covered by this Agreement, that is found to have occurred as a direct result of the installation, operation and/or maintenance of the power conduits. The City agrees to remediate any and all other hazardous substance contamination found on the premises covered by this Agreement. The City also agrees to save and hold the FAA harmless for any and all cost, liabilities and/or claims by third parties that arise out of hazardous contamination found on the premises covered by this Agreement not directly attributable to the installation, operation and/or maintenance of the power conduits.
Nothing in this Agreement shall be deemed to relieve the Government or any of its agencies, excluding the FAA, including the Department of Defense, of any statutory or other liability of responsibility with respect to hazardous substance contamination arising out of use or occupancy of the subject premises by the Government or any of its agencies excluding the FAA, prior to April 28, 1969. Nothing in this Agreement shall be deemed to constitute an acceptance of liability or responsibility with respect to such contamination on the part of the City. Nothing in this Agreement shall be deemed to constitute a waiver in whole or part of any claims or rights of the City with respect to such contamination under the Defense Environmental Restoration Program or other provision of Federal or State law.

9. INTERFERENCE WITH GOVERNMENT OPERATIONS (OCT-96):
The Lessor agrees not to erect or allow to be erected any structure or obstruction of whatsoever kind or nature within the leased area that may interfere with the proper operation of the facilities installed by the Government under the terms of this Lease unless consent hereto shall first be secured from the Government in writing.

10. FUNDING RESPONSIBILITY FOR GOVERNMENT FACILITIES (OCT-96):
The parties acknowledge that there are no existing facilities of Lessor in the leased area nor does Lessor have any intent to locate facilities in the leased area. In the event that any relocation, replacement, or modification of any existing or future government facilities covered by the Lease during its term or any renewal thereof made necessary by airport improvements or changes within the leased area which in the Government's opinion interfere with the technical and/or operational characteristics of the Government facilities will be at the expense of the Lessor, except when such improvements or changes are made at the written request of the Government. In the event such relocations, replacements, or modifications are necessitated due to causes not attributable to either the Lessor or the Government, funding responsibility shall be determined by the Government.

11. QUIET ENJOYMENT (OCT-96):
The Lessor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.

12. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (JAN-14):
A. Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-

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operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

13. NOTIFICATION OF CHANGE OF LAND TITLE (AUG-02): If the Lessor sells or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting said demised premises, they shall immediately notify the Government, in writing, of any such transfer or conveyance affecting the demised premises within 30 calendar days after completion of the "change in property rights". Concurrent with the written notification, the Lessor shall provide the Government copies of the legal document(s) (acceptable to local authorities) for transferring and or conveying the property rights.
14. NOTICES (OCT-96):
All notices/correspondence shall be in writing, reference the lease number, and be addressed as follows:

TO THE GRANTOR

The City of Bangor
City Hall
Bangor, ME 04401

TO THE GOVERNMENT

Federal Aviation Administration
New England Region, ALO620-BOS
1200 District Avenue
Burlington, MA 01803
Attention: Realty Contracting Officer

15. CONTRACT DISPUTES (Nov. 03)
   A. All contract disputes and arising under or related to this lease contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A Lessor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

   B. All Contract Disputes shall be in writing and shall be filed at the following address:

Office of Dispute Resolution for Acquisition, AGC-70,
Federal Aviation Administration,
800 Independence Ave, S.W.,
Room 323,
Washington, DC 20591,
Telephone: (202) 267-3290,
Facsimile: (202) 267-3720

   C. A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the lease contract claim involved. A contract dispute is considered to be filed on the date it is received by the ODRA.

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The full text of the Contract Dispute clause is incorporated by reference. Upon request the full text will be provided by the RECO.

16. PROTEST (NOV-03)
   A. Protests concerning Federal Aviation Administration Screening Information Requests (SIRs) or awards of lease contracts shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A protester may seek review of a final FAA decision only after its administrative remedies have been exhausted.
   B. Offerors initially should attempt to resolve any issues concerning potential protests with the Real Estate Contracting Officer.
   C. Protests shall be in writing and shall be filed at:

Office of Dispute Resolution for Acquisition, AGC-70,
Federal Aviation Administration,
800 Independence Ave, S.W.,
Room 323,
Washington, DC 20591,
Telephone: (202) 267-3290,
Facsimile: (202) 267-3720

At the same time as filing the protest with the ODRA, the protester shall serve a copy of the protest on the Real Estate Contracting Officer (RECO).

D. A protest is considered to be filed on the date it is received by the ODRA and shall be filed:
   (i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or
   (ii) If the protester has requested a post-award debriefing from the RECO, not later than five (5) business days after the date on which the RECO holds that debriefing.

The full text of the Protest clause is incorporated by reference. Upon request the full text will be provided by the RECO.

17. ANTI-KICKBACK (OCT-96):
The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States Government or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.
18. COVENANT AGAINST CONTINGENT FEES (AUG-02):
The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

19. OFFICIALS NOT TO BENEFIT (OCT-96):
No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

20. NON-RESTORATION (OCT-96):
It is hereby agreed between the parties, that upon termination of its occupancy, the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property which is the subject matter of this lease.

21. EXAMINATION OF RECORDS (AUG-02):
The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative from either shall, until 3 years after final payment under this contract have access to and the right to examine any of the Lessor’s directly pertinent books, documents, paper, or other records involving transactions related to this contract.

22. LEASE SUCCESSION (AUG-02):
This Lease supersedes Agreement No. DTFAEN-11-A-00003 and all other previous agreements between the parties for the leased property described in this document.
23. SIGNATURE BLOCK (AUG-02):

IN WITNESS WHEREOF, the parties hereto have signed their names:
LESSEE:

_________________________________________ Date: ________________
(Signature)
(Official Title)

UNITED STATES OF AMERICA:

_________________________________________ Date: ________________
(Signature)
(Official Title)

CORPORATE ACKNOWLEDGMENT

I, _______________________________________, certify that I am the ________________

_________________________________________
(State, County, Municipality or other Authority)

named in the foregoing agreement, that __________________________ who signed Lease No. DTFAEN-17-L-00174 on behalf of __________________________ was then

_____________________________ of said __________________________ that said agreement was duly

Signed for in behalf of said __________________________ by authority of its governing body

and is within the scope of its powers.

_________________________________________ (Corporate Seal)

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Title, Order

Authorizing the City Manager to execute an amendment to the lease agreement between the City of Bangor and Stellar Partners, Inc. at Bangor International Airport (BGR).

Summary

This Order authorizes an amendment to the current lease agreement between the City of Bangor and Stellar Partners, Inc. Stellar Partners operates Bangor News & Gifts, which is a “Gift Shop” for the sale of books, magazines, newspapers and souvenirs at Bangor International Airport.

If approved, this amendment allows for the execution of a one year extension. All other terms and conditions remain the same. This lease amendment will be in final form as approved by City Legal.

Committee Action

Committee: Airport Committee  
Meeting Date: 11/14/2017 
Action: Recommend for passage  
For:  
Against:

Staff Comments & Approvals

Staff recommends approval.

Introduced for:  Consent
Authorizing the City Manager to execute an amendment to the lease agreement between the City of Bangor and Stellar Partners, Inc. at Bangor International Airport (BGR).

WHEREAS, the City of Bangor, Maine is the owner of an airport located in Bangor, County of Penobscot, State of Maine, commonly known as Bangor International Airport; and

WHEREAS, on January 1, 2016, the City of Bangor and Stellar Partners, Inc. entered into an agreement to lease certain premises at the Airport for purposes of operating a “Gift Shop” for the sale of books, magazines, newspapers and souvenirs; and

WHEREAS, both parties wish to amend the Lease by extending its term one additional year; and

Now Therefore, Be it Ordered by the City Council of the City of Bangor that,

Catherine M. Conlow, City Manager, is hereby authorized on behalf of the City of Bangor to execute the lease amendment with Stellar Partners, Inc. to provide for the one year extension.
SECOND AMENDMENT TO INDENTURE OF LEASE

THIS SECOND AMENDMENT TO INDENTURE OF LEASE is made this ___ day of _____________, 2017, by and between:

THE CITY OF BANGOR, a body both politic and corporate duly organized and existing under and by virtue of the laws of the State of Maine and being located in the County of Penobscot, State of Maine (hereinafter sometimes referred to as the “Owner”)

AND

STELLAR PARTNERS, INC., a body corporate, duly organized and existing under and by virtue of the laws of the State of Florida, and having a place of business at Bangor International Airport in said Bangor, County of Penobscot, State of Maine (“Concessionaire” or “Lessee”)

WITNESSETH:

WHEREAS, Owner owns and operates an airport, commonly known as Bangor International Airport (hereinafter sometimes referred to as the “Airport”) situated in the City of Bangor, County of Penobscot, State of Maine; and

WHEREAS, by an Indenture of Lease executed January 1, 2016, as amended by that certain First Amendment to Indenture of Lease dated January 10, 2017 (the “Lease”), City agreed to lease certain premises at the Airport for purposes of operating a “Gift Shop” for the sale of books, magazines, newspapers and souvenirs as described in the Lease for the Lessee under certain conditions and covenants set forth in that Agreement; and

WHEREAS, both parties wish to amend the Lease by extending its term one additional year;

NOW, THEREFORE, the parties do mutually agree as follows:

ARTICLE II: TERM

That Article II of the Lease is deleted and replaced with the following:

To have and to hold the demised premises as described herein for a term of three (3) years commencing January 1, 2016 and terminating on December 31, 2018. The Parties agree that there shall be one (1) option to renew the Lease for a one (1) year period on the same terms and conditions provided that both parties agree to the extension. The option may only be exercised in the year before the Lease is due to expire, provided that Lessee is not in default of the
terms and conditions of this Lease at the time the Parties exercise an option to renew.

EXCEPT for the foregoing, the Lease dated January 1, 2016 and amended January 10, 2017 will remain in full force and effect in all other respects between the undersigned.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

CITY OF BANGOR

_________________________ By ____________________________
Witness
Catherine M. Conlow
City Manager

STELLAR PARTNERS, INC.

_________________________ By ____________________________
Witness
Susan Stackhouse Bosquez
President
CITY COUNCIL ACTION

Council Meeting Date: 11/27/2017

Item No: 

Responsible Dept: Airport  

Requested Action: Order  

Map/Lot: N/A

Title, Order

Authorizing carry forward funding in the amount of $35,000 from the FY 2017 Airport budget.

Summary

This Order will authorize the carry forward of $35,000 of FY 2017 Airport funds for the airline incentive program. If approved, these funds will be used, along with the FY 2018 funds, to provide advertising and marketing assistance for the expanded United Airlines service to Newark. In 2011, the City Council adopted and implemented the proposed air service incentive program, whereby the airport is able to provide financial and marketing incentives to air carriers that are considering expanding air service to the region. This policy is in compliance with FAA guidelines. The announcement of this expanded service was at the end of FY 2017, which did not allow the airport to utilize these funds, therefore staff is recommending that these funds be carried forward to FY 2018.

Committee Action

Committee: Airport Committee  

Action:  

Meeting Date: 11/14/2017  

For:  

Against:  

Staff Comments & Approvals

Staff recommends approval.

__________________________  
City Manager

__________________________  
City Solicitor

__________________________  
Finance Director

Introduced for: Consent
Authorizing carry forward funding in the amount of $35,000 from the FY 2017 Airport budget.

Be it Ordered by the City Council of the City of Bangor that,

The Finance Director is authorized to carry forward $35,000 from the FY 2017 Airport budget to be used for the air service incentive program.