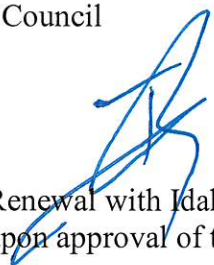


#17

## MEMORANDUM

TO: Brian C. Blad, Mayor; Members of the City Council  
FROM: Ian Johnson, Deputy City Attorney  
RE: Lease Agreement Renewal with Idaho Star  
DATE: January 20, 2023



I have reviewed the above-referenced Lease Agreement Renewal with Idaho Star and approved it for review by the City Council and Mayor's signature upon approval of the Council.

If you have any questions, please feel free to contact me.

#17

CITY COUNCIL REGULAR MEETING  
FEBRUARY 2, 2023  
AIRPORT LEASE AGREEMENT AND RESOLUTION  
EXECUTIVE SUMMARY

Idaho STAR leases approximately 5,896 square feet of property upon which they have a trailer used for motorcycle safety training. The lease is expiring and they would like to continue leasing the property so a new lease agreement is needed. The new lease will be for a five-year period at a rental rate of \$124.40 per month. The rate will be increased annually at least by the amount of the CPI for the previous year with a full rate review in 2026 and every five years thereafter.

RESOLUTION NO. 2023-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POCATELLO, A MUNICIPAL CORPORATION OF IDAHO, APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF POCATELLO AND COLLEGE OF SOUTHERN IDAHO AND ITS IDAHO STAR MOTORCYCLE SAFETY PROGRAM. FOR THE LEASE OF CERTAIN REAL PROPERTY; DECLARING THE PROPERTY NOT NEEDED FOR CITY PURPOSES; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST SAID LEASE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pocatello (“City”) is the owner of certain lands located in Power County, Idaho, commonly known and designated as the Pocatello Regional Airport, which property is subject to certain covenants and restrictions imposed under the Surplus Property Act of 1944; and

WHEREAS, the Lessee desires to lease certain land at the Pocatello Regional Airport for the purpose of operating an office and conducting motorcycle safety classroom training in a 12x60 foot trailer; and

WHEREAS, the City Council has determined that leasing the subject property pursuant to the terms of the attached Lease Agreement is appropriate and is in the best interest of the citizens of Pocatello.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF POCATELLO AS FOLLOWS:

1. The Lease Agreement attached hereto and made a part hereof is hereby approved both as to form and content.
2. The Mayor and City Clerk are authorized to respectively execute and attest said Lease Agreement for and on behalf of the City of Pocatello.
3. This Resolution shall be in full force and effect immediately upon its adoption and approval.

RESOLVED this 2nd day of February, 2023.

CITY OF POCA TELLO, a municipal  
corporation of Idaho

\_\_\_\_\_  
BRIAN C. BLAD, Mayor

ATTEST:

\_\_\_\_\_  
KONNI R. KENDELL, City Clerk

**GROUND LEASE AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF POCATELLO, a municipal corporation of Idaho, hereinafter referred to as “LESSOR”, and COLLEGE OF SOUTHERN IDAHO and its IDAHO STAR MOTORCYCLE SAFETY PROGRAM, 3500 West Chinden Blvd, Boise, Idaho 83714, hereinafter referred to as “LESSEE”:

WITNESSETH:

WHEREAS, Lessor is the owner of certain lands located in Power County, Idaho, commonly known and designated as the Pocatello Regional Airport, which property is subject to certain covenants and restrictions imposed under the Surplus Property Act of 1944; and

WHEREAS, Lessee desires to lease the hereinafter described land at the Pocatello Regional Airport for the purposes of operating an office and conducting motorcycle safety classroom training in a 12x60 trailer.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the Parties agree as follows:

**I. PREMISES**

Lessor leases to Lessee the following described real property located at 1955 Boeing Road, Pocatello, Idaho, as depicted on Exhibit “A” attached hereto and incorporated herein.

**II. TERM**

This Lease shall be for a five (5) year period, commencing with February 2, 2023, and ending with February 1, 2028.

### **III. PURPOSE**

The premises described herein shall be used by the Lessee solely for the purpose of operating an office and conducting motorcycle safety classroom training in a 12x60 trailer. No other use of the demised premises is permitted, including residential use of the trailer.

### **IV. RENTAL**

For the first year of the lease term, commencing February 2, 2023 and terminating February 1, 2024, Lessee shall pay to Lessor the sum of One Hundred Twenty-Four dollars and Four cents (\$124.04) per month. For each succeeding year, the rental rate shall increase by an amount not less than that of the Western Consumer Price Index for the previous year. The rental rate will be reassessed based on a current airport appraisal or airport rental rate comparison in 2026, then once every five (5) years thereafter. The rental payment shall be made on or before the 5th day of each month during the term of this Lease and shall be paid to the City of Pocatello at the office of the Airport Manager, Pocatello Regional Airport, Power County, Idaho.

Late Charges and Interest: Lessee acknowledges that a late payment of rent from Lessee to Lessor will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to ascertain. Such costs include, without limitation, processing and accounting charges. Therefore, if any installment of rent due from Lessee is not received when due, Lessee shall pay to Lessor the additional sum of \$50.00 as a late charge. The Parties agree this late charge is not a penalty but represents a fair and reasonable estimate of the costs Lessor will incur by reason of a late payment by Lessee. The acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent Lessor from exercising any of the other rights and remedies available to Lessor. The payment of said late charge shall be required to cure the default occurring by reason

of the failure of Lessee to timely pay a rental installment. All amounts not paid by Lessee when due shall bear interest at the rate of eighteen percent (18%) annual percentage rate.

#### **V. EXAMINATION OF PREMISES**

Lessee has inspected the aforescribed premises and accepts the same "as is." Lessor makes no warranties, express or implied, concerning the property and Lessee in executing this Lease is relying upon its own judgment, information, and inspection of the leased premises. Lessee hereby acknowledges that it is accepting the leased premises from the City subject to any and all physical conditions of the premises. Lessee further affirms that the City, its agents, employees, and/or attorneys have not made nor has Lessee relied upon any representation, warranty, or promise with respect to the leased premises or any other subject matter of this Lease Agreement except as expressly set forth in this Agreement, including without limitation, any warranties or representations expressed or implied as the general plan designation, zoning, value, use tax status or physical conditions of the leased premises or improvements thereon, or any part thereof, including, but not limited to the flood elevations, drainage patterns and soil and subsoil compositions and compaction level, and other conditions at the leased premises, or the existence or non-existence of toxic or hazardous materials on or under the premises, or as to the accuracy of any boundary survey or other survey or any soils reports or other plans or report therefore.

#### **VI. WASTE**

Lessee covenants that it will not commit or allow others to commit waste on the premises.

#### **VII. MAINTENANCE OF FACILITY**

Lessee shall keep and maintain the leased premises and all improvements of any kind in good and substantial repair and condition, and shall make all necessary repairs and alterations

thereto. Lessee shall provide proper containers for trash and garbage, and shall keep the leased premises free and clear of rubbish, debris and litter at all times. All roadways or other paved/asphalt areas within the demised premises shall be maintained by Lessee at Lessee's expense. Lessor shall have the right to enter upon and inspect said premises, but shall attempt to make such inspections at a mutually agreeable time.

### **VIII. UTILITIES**

Lessee shall promptly pay any charges for electricity, telephone, and all other charges for utilities which may be furnished to the leased premises at Lessee's order or with Lessee's consent. Provided, however, that no water or sewer connection shall be made. Lessee shall provide porta-potties for the location at its expense.

### **IX. NO SUBLEASE OR ASSIGNMENT**

Lessee shall not directly or indirectly assign, transfer or encumber any of the rights in or to this Lease or any interest herein, nor any improvements made to the premises, without the express written consent of Lessor. Lessee acknowledges that Lessor has the right to require termination of this Lease and the execution of a new Lease on the part of a prospective sublessee or assignee rather than consenting to any sublease or assignment and Lessee agrees to so inform any interested party.

### **X. INDEMNIFICATION**

Lessee agrees that it will at all times maintain Worker's Compensation coverage for the benefit of its employees, and adequate liability and property damage insurance as specified in Section XI covering the activities of Lessee, its agents, servants and employees, on the leased premises.



Lessee further agrees to defend, indemnify, and save Lessor, its agents, employees and public officials, harmless from any and all claims or causes of action of any nature whatsoever arising out of the activities and operations of Lessee, its agents, servants, invitees, officers, and employees, in connection with this Lease, or the use in common with others of the Pocatello Regional Airport.

## **XI. INSURANCE**

In order to effectuate the foregoing indemnification provisions, Lessee shall maintain insurance coverage as follows:

A. Lessee shall purchase a comprehensive liability insurance policy in the amount of \$500,000 combined single limit to indemnify Lessor from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. Lessor shall be named as an additional insured or be acknowledged by Lessee's insurance carrier as a covered entity under the terms of said policy. Moreover, the Lessee is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with Lessee without first giving Lessor, City of Pocatello, at least thirty (30) days written notice.

B. If applicable, Lessee shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.

C. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to or at the time of execution of this Lease Agreement. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Article X "Indemnification." The Lessee's failure to maintain insurance shall be a basis for immediate termination of this lease.

## **XII. DISCHARGE OF LIENS**

Lessee agrees to pay when due all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with Lessee's consent to be furnished to or for Lessee in, upon or about the premises herein leased, which may be secured by any mechanic's, materialman's or other lien against the premises herein leased or Lessor's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due. Provided however, Lessee may in good faith contest any mechanic's or other lien filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest. In any event, Lessee agrees to defend and indemnify the Lessor for any such claim and/or lien.

## **XIII. RELEASE AND RELINQUISHMENT**

Notwithstanding the terms of Article II above, either party may, at any time, terminate this Lease Agreement upon giving 60 days written notice to the other party. Thereupon, neither Lessee nor Lessor shall have further liability or responsibility to perform under this Lease Agreement except for the payment of monies due under Section IV herein up to and including the date of termination, and except for the disposition of any appurtenances provided for in Section XIV herein. In the event Lessor terminates this Lease Agreement during any lease term, Lessor shall reimburse Lessee the unearned portion of the rental paid by Lessee on a pro-rata basis to the effective date of the termination.

## **XIV. TERMINATION**

On the termination date of this lease Lessee shall forthwith surrender possession of the leased premises, in good condition, reasonable wear and tear excepted. Thereupon any

appurtenances and improvements constructed or installed thereon under this lease shall be forthwith removed by Lessee, including fixtures at the option of Lessor. In so doing, Lessee shall ensure that any remaining equipment and furnishings are not damaged but are left as they would have been without such removal.

In the event Lessee does not remove the improvements within thirty (30) days of the termination date, unless a written agreement to the contrary has been executed by Lessee and Lessor, Lessee shall forfeit all of its right, title, and interest in and to said appurtenances, and fixtures, which shall thereupon become the property of the Lessor City as if conveyed by separate instrument without any recompense, payment, or reimbursement of any kind to Lessee.

#### **XV. STATUTES, ORDINANCES, RULES AND REGULATIONS**

Lessee, for itself, its employees, agents, successors and assigns, expressly agrees to obey all applicable laws and regulations of the United States, including regulations of the State of Idaho, of Power County, and of the City of Pocatello, as well as the rules and regulations of the Pocatello Regional Airport. Lessee further agrees to conform to the requirements of the Airport Master Plan and those agreements between the United States and the City of Pocatello pertaining to the Pocatello Regional Airport.

#### **XVI. DEFAULT**

A. Failure of Lessee to pay rent on or before its due date or any other charge within ten (10) days after it is due shall constitute default.

B. Failure of Lessee to comply with any term or condition or to fulfill or comply with any obligation of this Lease, other than as specified in subparagraph A above, within thirty (30) days after written notice by Lessor specifying the nature of the default with reasonable particularity, shall constitute default. If the default is of a nature that it cannot be cured within

the said thirty (30) day period, Lessee may, within said period, present a plan, in writing, to the Airport Manager that provides a schedule in which Lessee will be able to cure the default. If the Lessee's plan is approved by the Airport Manager, Lessee's default will be held in abeyance so long as the Lessee thereafter proceeds with reasonable diligence, in good faith and is able to meet the plan's deadlines, then the default shall be deemed cured.

C. The following shall constitute default by insolvency: 1) Insolvency of Lessee; 2) An assignment by Lessee for the benefit of creditors; 3) The filing by Lessee of a voluntary Petition in Bankruptcy; 4) An adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; 5) The filing of an involuntary Petition of Bankruptcy and failure of the Lessee to secure dismissal of the Petition within thirty (30) days after filing; and 6) Attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy or execution within ten (10) days.

## **XVII. REMEDIES IN DEFAULT**

In the event of default, the Lessor, at its option, may terminate this Lease. In the event of a Termination on Default, Lessor shall be entitled to recover the reasonable costs of reentry and re-letting, including, without limitation, the costs of any cleanup, refurbishing, removal of Lessee's property and fixtures or any other expense occasioned by Lessee's failure to quit the premises upon termination and to leave them in the required condition, and any attorney fees, court costs, brokerage commissions and advertising costs, along with the loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured. The remedies afforded the Lessor in this section shall not be exclusive but shall be cumulative, and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease Agreement.

## **XVIII. HAZARDOUS MATERIALS**

"Hazardous Material" means any use or activity involving any substance which would cause (1) the leased premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the leased premises within the ambit of, the Resource Conservation and Recovery Act of 1976, or any similar federal or state law or local ordinance or any other environmental law, (2) a release or threatened release of hazardous waste from the leased premises within the ambit of, the Comprehensive Environmental response, Compensation and Liability Act of 1980, or any similar federal or state law or ordinance or any other environmental law, or (3) the discharge of pollutants or effluent into the air or any emissions, which would require a permit under the Federal Water Pollution Control Act, or the Clean Air Act, or any similar federal or state law or local ordinance or other environmental law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to or imposing liability or standards on conduct concerning any hazardous material.

Lessee expressly assumes the risk and responsibility for any hazardous material that is brought to, place upon, or created upon the premises by Lessee or is agents, servants, invitees, officers, or employees during the term of this Lease Agreement or any prior lease terms, hereafter located on the leased premises, and hold harmless the City, its officers, employees, representatives, agents, and successors from and against any and all judgments, claims expenses, causes of action, damages, liability (including reasonable attorneys' fees and costs) (1) including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of hazardous materials on the leased premises, and (2)

including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on the leased premises.

#### **XIX. SIGNS**

Lessee shall have the right to install or cause to be installed appropriate signs on the leased premises. The cost of such installations and operations shall be borne by Lessee. Lessee shall not erect, install, operate or cause, nor permit to be erected, installed, or operated upon the premises herein, any sign or other advertising device without first having obtained Lessor's written consent thereto as to size, construction, location, general appearance, and adherence to Pocatello Municipal Code.

#### **XX. MISCELLANEOUS**

A. TAXES AND FEES. In the event the State of Idaho, Power County, or any State or local agency imposes a property tax or any substitute therefore on the demised premises, and/or the leasehold, Lessee shall pay the tax promptly when due.

B. NON-DISCRIMINATION. Lessee, for himself, his personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the grounds of race, color, sex, age, sexual orientation, gender identity, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, age, sexual orientation, gender

identity, or national origin shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the premises in compliance with all other requirements imposed or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the nondiscrimination covenants contained herein, Lessor shall have the right to terminate the lease, and to reenter and repossess said land and facilities thereon, and hold the same as if said lease had never been made or issued; provided, however, that Lessee allegedly in breach shall have the right to contest said alleged breach under applicable Federal Aviation Administration procedures, and any sanctions under or termination of the lease shall be withheld pending completion of such procedures.

C. SUBORDINATION. This Lease shall be subordinate to the provisions of any existing or future agreement between the Lessor and the United States relative to the operation and maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

D. MERGER. This writing represents the entire Agreement between the parties. No prior promises, representations or agreements, written or oral, shall amend, change or add to any of the express provisions herein.

E. SECTION CAPTIONS. The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of the Lease.

F. CONSTRUCTION. This Agreement shall be construed pursuant to the laws of the State of Idaho. The parties agree that no construction of this Agreement shall be made in a Court of competent jurisdiction against the interests of any party to the Agreement on the basis that the party had primary responsibility for drafting the Agreement.

G. JURISDICTION AND VENUE. Any action or proceeding to enforce the provisions of this Lease Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

H. ENTIRE AGREEMENT. This instrument constitutes the sole and only agreement between Lessor and Lessee respecting the demised premises, the leasing of said premises to Lessee, or the lease term herein provided and correctly sets forth the obligations of Lessor and Lessee to each other as of its date. No prior promises, representations, or agreements, written or oral, shall amend, change or add to any of the expressed provisions herein contained. This agreement can only be modified or amended in writing upon the mutual agreement of the parties hereto.

I. THIRD-PARTY GOVERNMENTAL AGENCIES. Lessee acknowledges and agrees to immediately provide Lessor with a copy of any written correspondence or verbal and/or written demands provided to Lessee regarding the leased demise by any third-party governmental agency including, but not an exhaustive list, any county, local taxing district or any Tribal authority. Moreover, Lessee shall not enter into any written agreement with any third-party governmental agency regarding the Leased Premises or Lessee's operations thereon without first obtaining Lessor's written consent to do so.

J. CORPORATE AUTHORITY. Any individual or individuals executing the within document on behalf of any corporation which is a party hereto, hereby acknowledge and



represent that he, she, or they have the power and authority to so bind the corporate authority, and that such authority was conferred by an act of the Board of Directors of such corporate authority, unless the binding of any such corporation is within the power of the person or persons executing this document on such corporation's behalf. In the event that the party or parties executing this document on behalf of any corporate party hereto, do not have authority to so bind the corporation for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

K. SEVERABILITY. If any provision of this Agreement shall be held or made invalid by a court decision, statute or rule, or shall be otherwise rendered invalid, the remainder of this Agreement shall not be affected thereby.

#### **XXI. NOTICES**

All notices under this Lease Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

LESSOR:                      City of Pocatello  
   Attn: Legal Dept.  
   P.O. Box 4169  
   Pocatello, ID 83205

LESSEE:                      Sunshine Beer, Director  
   Idaho STAR Motorcycle Safety Program  
   3500 West Chinden Blvd  
   Boise, ID 83714

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United State Post Office.

**XXII. ATTORNEYS FEES UPON BREACH**

In the event it becomes necessary for either party to enforce the terms of this agreement, the prevailing party shall be awarded by a sum which will reasonably compensate it for the attorney's fees and costs incurred by such party to enforce the terms of this agreement. In the event attorney fees are awarded by a Court of law, the parties agree that a reasonable rate for attorney fees is \$150.00 per hour.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their authorized representatives the date and year first above written.

CITY OF POCA TELLO, a municipal corporation  
of Idaho

\_\_\_\_\_  
BRIAN C. BLAD, Mayor

ATTEST:

\_\_\_\_\_  
KONNI R. KENDELL, City Clerk

Lessee:  
COLLEGE OF SOTHERN IDAHO

By \_\_\_\_\_  
JEFF HARMON, Vice President of  
Administration

STATE OF IDAHO            )  
                                      :SS  
County of Bannock         )

On this \_\_\_ day of February, 2023, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Konni R. Kendell, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, a municipal corporation of Idaho, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing in: Pocatello, Idaho  
My Commission Expires: \_\_\_\_\_

STATE OF IDAHO            )  
                                      :SS  
County of Ada                )

On this \_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the State, personally appeared Jeff Harmon, Vice President of Administration and authorized agent of College of Southern Idaho, known to me to be the person who executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing in: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_