



November 8, 2019

County of Newberry

**Request for Proposal # 2019-19
Flight School Operator at the Newberry County Airport**

Proposals are due December 10, 2019 no later than 3:00 PM, Local Time

**PLEASE NOTE THE VENDOR IS ULTIMATELY RESPONSIBLE FOR VERIFYING THEY HAVE RECEIVED
ANY/ALL ADDENDA PRIOR TO THE PROPOSAL OPENING**

Proposal Submittal Form

<p>NEWBERRY COUNTY, SOUTH CAROLINA</p>	<div data-bbox="1101 310 1318 529" data-label="Image">The seal of Newberry County, South Carolina, featuring a central figure holding a scale and a sword, surrounded by the text "COUNTY OF NEWBERRY" and "SOUTH CAROLINA".</div> <p data-bbox="846 548 1356 695">Mail to: Newberry County Purchasing Attn: Crystal Waldrop, CPPB Post Office Box 156 Newberry, SC 29108</p> <p data-bbox="841 732 1341 915">Hand Carry to: Newberry County Courthouse Annex Attn: Crystal Waldrop, CPPB 1309 College Street Newberry, SC 29108</p> <p data-bbox="959 995 1409 1031">TELEPHONE NO. (803) 321-1420</p>
<p data-bbox="277 548 651 653">REQUEST FOR PROPOSAL PROPOSAL NUMBER: 2019-19</p> <p data-bbox="123 657 802 730">Flight School Operator at the Newberry County Airport</p> <p data-bbox="159 768 760 842">Proposals will be accepted until 3:00 p.m. December 10, 2019</p>	

VENDOR NAME: _____

VENDOR ADDRESS: _____

CITY-STATE-ZIP: _____

MAILING ADDRESS: _____
(If different from above)

TELEPHONE NO. (____) _____ FAX NO. (____) _____

FEDERAL ID NO. _____

I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this proposal and verify that I am authorized to sign this proposal for the proposer. I further stat that the company affiliated with this proposal currently complies with all applicable federal and state laws and directives relative to non-discriminatory practices in employment.

SIGNATURE _____ PRINTED NAME _____

Newberry County is currently soliciting proposals from qualified firms to operate a non-exclusive flight training school at the Newberry County Airport.

Each proposal shall specify every item as set forth in the attached scope of work. Any and all exceptions must be clearly stated in the proposal. Failure to set forth any item in the scope of work without taking exception may be grounds for rejection. The county reserves the right to reject any and all proposals and to waive any irregularity or informality in any proposal or in the Request for Proposal (RFP) process, as long as, in the judgement of the County, such action will not negate fair competition and will permit proper comparative evaluation of the proposals submitted.

This RFP is posted on the Newberry County website at www.newberrycounty.net/departments/purchasing. Any changes, additions or deletions to this RFP will be in the form of written addenda issued by the County Purchasing Director. Any addenda will be posted on the website. Prospective proposers must check the website for addenda or other relevant new information during the response period. The County is not responsible for the failure of any prospective proposer to receive such addenda. All addenda so issued shall become part of this solicitation.

Questions regarding this RFP shall be directed to Crystal Waldrop, Purchasing Director, at 803-321-1420 or via email at cwaldrop@newberrycounty.net.

The deadline for submitting questions is December 3, 2019 by 5:00 p.m.

All submittals will become public once they have been opened unless the responders deem the information to be proprietary or confidential. All confidential or proprietary pages must be stated as such on each page of the response.

General Provisions

1. All proposals, consisting of four (4) hard copies and must be received by mail, carrier or hand delivered no later than 3:00 p.m. on December 10, 2019. Late proposals will not be considered and will be returned, unopened. Proposals will remain sealed and secured until the stated date and time for proposal opening.
2. All correspondence should be direct to:

Newberry County
Attn: Crystal Waldrop, CPPB
PO Box 156
Newberry SC 29108
(803) 321-1420
cwaldrop@newberrycounty.net

Faxed or emailed submissions will not be accepted as an appropriate response to this RFP.

3. All costs incurred in the preparation and submission of proposals and related documentation will be at the expense of the proposer.
4. Proposals must be submitted in a sealed envelope. The exterior of the envelope must reference the solicitation name, number and the proposer's name and address.
5. Selection of a successful proposer will be accomplished as described herein.
6. This RFP does not constitute an offer to enter into a contract agreement.
7. The County reserves the option to accept or reject any or all proposals, wholly or in part, received by reason of this request, and make more than one award, or no award, as in the best interest of the County.
8. All documents submitted to the County in response to this RFP will become the exclusive property of the County.
9. All proposals shall remain firm for ninety, (90) days following the closing date for receipt of proposals.
10. The County reserves the right to award the contract to the firm who presents the proposal which in the judgement of the County, best accomplishes the desired results, and shall include, but not be limited to, a consideration of the proposed rent structure.
11. Should the proposer intend to subcontract any part of the work specified, name(s) and address(es) of sub-proposer(s) must be provided in the proposal submittal. The successful proposer shall be responsible for the sub-proposer(s) full compliance with the requirements of this scope of work.
12. Corrections or withdrawals of inadvertently erroneous proposals before opening, or cancellation of awards of contracts based on such proposal mistakes may be permitted where appropriate. Mistakes discovered before opening may be modified or proposals withdrawn by written notice received in the office of the Purchasing Director prior to the time of opening.

After opening, no changes in proposal prices or other provisions of proposals prejudicial to the interest of the County or fair competition shall be permitted. In lieu of correction, a successful proposer alleging a material mistake of fact may be permitted to withdraw its package if the mistake is evident, or if the proposer submits evidence, which clearly and convincingly demonstrates that a mistake was made.

All decisions to permit corrections or withdrawals of proposals or to cancel awards or contracts based on mistakes will be supported by the written determination of the Purchasing Director.

13. If it becomes necessary to revise any part of this proposal package, a written addendum will be provided to all proposers. The County is not bound by any oral representations, clarifications, or changes made to the written scope by County employees, unless such clarification or change is provided to the proposers in written addendum form from the Purchasing Director. Proposers will be required to acknowledge receipt of the addenda (if applicable) in their sealed proposal. The proposer may provide an initialed copy of each addendum or initial the appropriate are on the pricing page of the solicitation. Failure to acknowledge receipt of the addenda (when applicable) will render submissions incomplete. **It is the proposer's responsibility to ensure that they have received all addenda.**
14. During the evaluation of proposals, the County reserves the right to request clarification of proposal packages and to request the submission of references, if deemed necessary for a complete evaluation of responses. Award will be made to the most responsive and responsible proposer whose proposal meets the County's needs according to the criteria designated in this solicitation. The determination of the most responsive and responsible proposer may involve all or some of the following factors: prices, conformity to the scope of work, financial ability to meet the contract, previous performance, facilities and equipment, experience, terms of payment, compatibility as required, other cost and other objective and accountable factors, if any. The County shall be the sole judge of the factors and will make the award in the best interest of the Newberry County Airport.
15. Proposers may be disqualified, and rejection of proposals may be recommended by the Selection Committee for any (but not limited to) of the following reasons:
 - a. Receipt after the time limit for receiving proposals as stated in this solicitation
 - b. Any irregularities contrary to the General Provisions or proposal scope
 - c. Unbalanced unit price or extensions
 - d. Unbalanced value of items
 - e. Failure to use the proper forms furnished by the County
 - f. Failure to complete the proposal properly and in the format specified by the County
 - g. Omission of warranty, product literature, samples, acknowledgement of addenda or other items required to be included with proposal
 - h. Failure to properly sign forms
16. All proposers will comply with all Federal, State and local laws and ordinances, relative to conducting business in Newberry County.
17. By signing and submitting this proposal, proposer declares that its agents, officers or employees have not directly or indirectly entered into any agreements, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this solicitation.
18. The successful proposer agrees, by entering into any contract, to defend, indemnify and hold the County harmless from any and all causes of action or claims of damages arising out of or under this contract.

19. Disadvantaged Business Enterprises (minority or women owned businesses) will be afforded full opportunity to submit proposals in response to this solicitation and will not be discriminated against on the grounds of race, color, creed, sex or national origin in consideration for an award. It is the policy of the County that disadvantaged business enterprises and minority businesses have an opportunity to participate at all levels of contracting in the performance of County contracts to the extent practical and consistent with the efficient performance of the contract.
20. The successful proposer will comply with all Federal and State requirements concerning fair employment and employment of physically challenged, and concerning the treatment of all employees, and will not discriminate between or among them by reason of race , color, age, religion, sex, national origin or physical handicap.
21. During the evaluation of responses, the County reserves the right to request a site visit by the proposer. The site visit shall be at the expense of the proposer. Proposers who cannot comply with the request shall be deemed non-responsive.
22. Any contract awarded pursuant to this RFQ will incorporate the requirements and scope contained in this RFP. All information presented in a proposer's proposal will be considered binding upon selection of the successful proposer, unless otherwise modified and agreed to by the County during subsequent negotiations. The successful proposer is expected to execute a Use and Lease Agreement similar to that in Appendix B. The sample agreement is for reference to the anticipated terms and conditions governing the County and the successful proposer. The proposer must take exception in their proposal to any section of the attached draft agreement they cannot agree with. Failure to do so will be deemed as acceptance by the proposer to the terms spelled out in the sample agreement. The County reserves the right, in its sole discretion, to add, delete, modify or negotiate additional terms and conditions to the sample contract agreement. Prior to submitting a proposal, it is advised that proposers read the County insurance and indemnification requirements in the attached sample lease agreement. The selected proposer will be asked to provide evidence that the County insurance requirements have been met. See Appendix B – Sample County Agreement.
23. The parties agree that this RFP and subsequent agreements shall be governed by and interpreted in accordance with the substantive laws of the State of South Carolina, without regard to conflicts of laws rules. Any and all actions with respect to matters arising out of or under this RFP or any subsequent contract may be adjudicated only in a court of competent jurisdiction in Newberry County, SC and the proposer waives any and all objections to the personal jurisdiction of such courts.

PROPOSAL FORMAT

A qualifying proposal must address all the following points:

1. **Cover Letter**
2. **Business Plan:** Failure to submit a complete plan described below will result in a package being Determined as non-responsive and removed from consideration.
 - a. Executive Summary
 - b. Company Description
 - c. Market Analysis
 - d. Organization and Management
 - e. Marketing
 - f. Financial Ability
 - g. Financial Projections
3. **Firm Qualifications**
 - a. Type of organization, size, professional registration and affiliations
 - b. Names and qualifications of personnel
 - c. Qualifications of consultants, sub-proposers, or joint venture firm, if appropriate
 - d. References including name, address and phone number of individual to contact for referral

A. SCOPE OF WORK

1. Proposer shall provide flight training to Newberry County Airport customers in a manner consistent with the County minimum requirements for Airport Aeronautical Services presented in Appendix A and this RFP. There are no existing flight schools at the airport.
2. Contract term is for an initial three (3) years with extension terms negotiable. Such terms will be dependent on the proposer's financial investment in the operation.
3. All flight training shall be provided from a mutually agreed upon location on the airport property. Conducting classroom operations from an off-airport location is expressly prohibited.
4. Proposer shall hire, train, supervise and direct qualified instructors for flight training and pre and post flight ground training as it relates to flight operations and aircraft utilization. All flight instructors shall possess the appropriate aeronautical certificates and ratings and shall meet all Federal requirements for instruction.
5. In addition to aircraft requirements in the Minimum Requirements, one aircraft must be equipped for instrument flight training.

6. Operator shall ensure that all aircraft, devices and equipment utilized in the flight program are maintained in good and safe working order which meet or exceed FAA safety standards.
7. Proposer must specifically address how they will approach the creation of a flight school at the Newberry County Airport. These specifics should include any capital development of existing real property on the airport, or improvements to be made to existing facilities. Included should be the proposer's philosophy in corporate management and how it will grow the business with timelines.
8. This RFP, as well as the successful proposer's submission shall be incorporated into the final lease agreement.

B. MINIMUM REQUIREMENTS

1. Demonstrable experience by operator's management team in operating a flight school.
2. Ability to meet Minimum Requirements and additional requirements of this RFP.
3. Financial ability to operate flight school for the initial term in accordance with the proposal.
4. Operator and staff meet criteria required by the Transportation Security Administration (TSA).

C. BASIS OF AWARD

It is the County's intent to select a qualified firm that exhibits proactive leadership and good planning and management practices. Particular importance will be the ability of the successful firm to provide the necessary services to the community in the safest and most efficient manner.

The County will also consider the capital investment and the compensation package of the proposal.

The award of the contract will be based on criteria and guidelines established by the County. The award will be made after a careful evaluation by the selection committee and will be based on the selection criteria; the proposer's demonstrated competence as well as the best interests of the County and community.

D. ADDENDA

Any addenda to this RFP will be posted to the County's website under the purchasing link. It will be the sole Responsibility of the proposer to obtain all addenda.

Questions presented by proposers will be compiled into an addendum and posted to the website. Relevancy of Questions will be at the sole discretion of the County.

E. SELECTION PROCESS

1. Initial Review: Packages will be reviewed to determine if they meet the Proposal Format criteria and were submitted on time. Complete packages will move forward in the process. Proposals will be logged in at the due date and time and only the names of the proposers will be made public.

2. **Scope and Minimum Qualifications Review:** Completed packages will be reviewed by a Selection Committee for overall qualifications, if the proposer addressed the Scope of Work outlined in section A above and met the intent of the RFP. Proposal packages will be given a weighted score by each member of the Selection Committee. Committee scores will be combined to create a ranking of proposers.
3. At the discretion of the Selection Committee, an on-site interview with finalists may be required. Discussions may be conducted for the purpose of clarification and a full understanding of the requirements.
4. **Contract negotiation:** Once a potential successful candidate has been identified by the Selection Committee, the Administrator will begin negotiations using the Use and Lease Agreement in Appendix C as a basis for the negotiation. Should negotiations fail with the highest ranked proposer, the Selection Committee may, at its own discretion move to the next highest ranked proposer or close the RFP.

F. CONTACT PERSON

The contact person for the solicitation will be the Purchasing Director. Interested firms shall not contact other County staff with questions or suggestions regarding this RFP without first contacting Crystal Waldrop.

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Appendix – A
Newberry County Airport Minimum Requirements for Flight Instruction

GENERAL PROVISIONS

No person shall establish or engage in any business or commercial activity on the airport unless that person has been assigned a fixed place of business on the airport and has obtained from the County either a written agreement, lease or permit to conduct such activity. As such, no business entity other than a current lessee or permittee shall sell or publicly solicit the sale of merchandise, conduct or operate a business or service for hire or compensation, or advertise or solicit business or utilize airport land area under the jurisdiction of the County except under the provisions of this section, and in accordance with established County policy and procedure, as well as the adopted Airport Rules and Regulations.

All proposers requesting to do business with the County are required to submit a complete proposal as defined herein or respond to an officially issued Request for Proposal. Incomplete proposals will not be reviewed. Proposers are expected to pay any applicable fees at the time of submission.

The standards prescribed in the following section are intended to provide definition to the various types and levels of service that may be engaged on the Airport. Prospective tenants are advised that additional operating requirements are outlined in the Airport Rules & Regulations. As previously stated herein these two documents are used in concert with each other as well as other regulatory documents to establish minimum standards and procedures for business activities on the Airport. Should these Minimum Standards be in conflict with the Airport Rules and Regulations, Airport Certification Manual or Airport Security Program, or an existing lease the provisions of the conflicting document shall take precedence over these Minimum Standards; however, a provision of this document being overruled by another regulatory document does not negate any other provisions herein.

The standards for space prescribed herein apply to each service separately, e.g. a provider of flight instruction and aircraft maintenance would provide the total square footage of the two standards combined. Proposers wanting to provide multiple services utilizing the same square footage are required to submit a plan with their proposal for cross-utilization of spaces for consideration.

Although the specific aeronautical activities addressed in the sections below require use of airport facilities will be secured by a leasehold interest.

- A. Please indicate the lease term you desire for your project to be viable.
- B. Also indicate your willingness to offset the rental amount by providing additional FBO services as landscape/facilities maintenance. Fuel farm maintenance and any other duties you would be willing to provide.
- C. Payment of equivalent fees, including percentage of gross revenue where applicable, and provision of equivalent insurance and other guarantees which may be required of on-airport businesses under the airport schedule of rates and fees currently in force at that time.

FLIGHT INSTRUCTION

Definition

A Flight Instructor Operator engages in instruction pilots in dual and solo flight training, in fixed and/or rotary wing aircraft, and provides such related ground school instruction as is necessary for preparation to taking a written examination and flight check ride for the category or categories of pilots' licenses and ratings involved.

Minimum Standards

A Flight Instruction Operator shall:

1. Have available for use in flight training, either owned or under written lease to operator, properly certificated airworthy aircraft, one of which must be equipped for instrument flight instruction.
2. Have, on a full-time basis, at least one flight instructor who has been properly certificated by the FAA to provide the type of training offered.
3. Maintain all current certificates and ratings, as required by the FAA for flight instruction.
4. Offer, at least, training for the Private Pilot license and other advanced ratings.
5. Provide for adequate facilities or arrangements for storing, parking, servicing, and repairing all its aircraft.
6. Provide restrooms or otherwise dictated by local jurisdiction code with office space including classroom facilities for training.
7. Provide public telephone on premises.
8. Provide suitable auto access and parking for customers and employees.

Appendix – B

SAMPLE AGREEMENT

STATE OF SOUTH
CAROLINA;
NEWBERRY COUNTY AIRPORT:

USE AND LEASE AGREEMENT
NEWBERRY COUNTY AIRPORT

This Use and Lease Agreement is made and entered into this ____ day of _____, 20, by and between the County of Newberry, (hereinafter “Landlord”), and _____ doing business as _____ (hereinafter “Tenant”).

WHEREAS, the Landlord owns and operates the Newberry County Airport; and

WHEREAS, Tenant wishes to operate a flight school at the Newberry County Airport, and

WHEREAS, Landlord is willing to lease a portion of Airport property for the purpose of conducting the subject commercial aeronautical activity identified above, consistent with this Lease, and

NOW THEREFORE, County and Tenant hereby mutually covenant and agree as follows:

1. **PREMISES.** Landlord hereby authorizes Tenant, subject to the terms, conditions and covenants hereinafter set forth, the non-exclusive right to operate a flight school commercial aeronautical activity at the Newberry County Airport. Said premises shall consist of:
 - a. (Land or building)
 - b. (Aircraft parking)
 - c. (Vehicle parking)
2. **COMMENCEMENT AND TERM.** This Permit shall be for _____, commencing on the date that this lease is executed. As a condition precedent to this Permit becoming effective, Tenant shall submit copies of evidence of insurance, additional insured endorsement, and all insurance policies required by *Paragraphs 17* of this contract.
3. **RENEWAL.** If Tenant is not in default in the payment of rent or in the performance of any term, covenant or condition of the Lease, Lease will automatically renew for an additional one- month period upon the same terms and conditions as set forth herein.

4. COMPENSATION. Tenant shall pay to the Landlord, without deduction or setoff, at Landlord's address as hereinafter stated, or at such other place as Landlord may designate in writing, _____ on the first day of each calendar month.
5. RENTAL ADJUSTMENTS. On _____ the monthly basic rental which was payable for the immediately preceding period shall be adjusted either up or down by an amount equal to the product of (i) the monthly basic rent for the period just ended multiplied by (ii) the difference expressed as a percentage between the Consumer Price Index as herein below defined for the month of December of the calendar year just ended and the Consumer Price Index published for the month of December, 2015. The monthly rental so adjusted shall become the adjusted monthly basic rental. "Consumer Price Index", shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (1984=100) issued by the U.S. Bureau of Labor Statistics. If the Consumer Price Index published by the U.S. Bureau of Labor Statistics is discontinued, then the Consumer Price Index published by the Department of Commerce shall be used (with proper adjustment); and if the U.S. Department of Commerce Index is discontinued, the Lessor and Lessee shall, in good faith, agree on a suitable substitute. In no event shall the Lessor receive an amount less than the initial monthly rental.
6. USE OF PREMISES. Tenant is granted use of the Premises for the sole purpose of operating a commercial flight school as described herein;
 - a. Tenant shall adhere to any applicable FAA regulations, and/or rules, laws and ordinances and shall conduct all parachute operations in accordance therewith. Tenant will also adhere to any subsequent FAA regulations, and/or rules, laws and ordinances that may be promulgated during the period in which the permit is in force.
 - b. Tenant shall adhere to all terms of their response to the County's Request for Proposal (RFP) for Flight School Operator. Said response as well as the RFP itself is incorporated herein in their entirety.
 - c. Tenant shall not use or permit the Premises to be used in whole or in part during the term of this Permit for any purpose other than as set forth herein, without the prior written consent of the Airport Director ("Director"), or Director's designee, first had and obtained.
 - d. Tenant shall have the non-exclusive right for general use, with others, of all Public Airport Facilities and improvements which are now or may hereafter be connected with or appurtenant to the Airport, except as hereinafter provided, to be used by Tenant for the purposes herein granted. For the purposes of this Permit, "Public Airport Facilities" shall

include all necessary landing area appurtenances including, but not limited to, approach areas, runways, taxiways, roadways, sidewalks, navigational and avocational aids, lighting facilities or other public facilities appurtenant to the Airport.

e. The right of ingress and egress from the Premises over and across public roadways serving the Airport for Tenant, its agents, employees, servants, patrons and invitees, suppliers of services and furnishers of materials. Said right shall be subject to such ordinances, rules, and regulations imposed by appropriate government agencies having jurisdiction now or may hereafter have application to the Airport.

f. Tenant covenants and agrees that Tenant will not, under any circumstances, perform automotive repair work on any portion of the Premises.

g. No permanent signs, names, or placards shall be inscribed, painted or affixed upon the Premises, or improvements thereon, without prior written consent of Director, or Director's designee.

h. Tenant shall have the right and duty to manage, operate and control the Premises in a first class manner and to do all things necessary in the exercise of such management, operation and control subject to the regulations and policies of the County, and in accordance with the terms and conditions set forth in this Permit. Tenant shall not commit or suffer to be committed on the Premises any nuisance, unlawful act or waste and Tenant agrees to take all reasonable precautions to protect the Premises from damage, theft, vandalism and other such hazards and liabilities.

i. Tenant shall not use Premises for any commercial activity other than the activity described in this Permit, unless approved in advance and in writing by the Director or Director's designee.

j. Tenant hereby waives any and all claims against County for damages to any property of Tenant from any cause arising at any time.

k. Vehicular parking by Tenant, its officers, agents, employees, licensees, suppliers or subcontractors shall be restricted to such areas at Airport as are designated by the Director, or Director's designee.

l. Tenant agrees to cooperate with the County on issues arising on the airport effecting community relations. This cooperation may include, among other issues, the development, implementation, and compliance with aircraft noise abatement procedures.

m. Aircraft operated in the flight school activities must be owned or leased by Tenant. Tenant at all times and at its own cost and expense shall have all its owned or operated commercial aircraft maintained in good operating order and free from known mechanical defects. Said aircraft shall be kept in a clean, neat, and attractive condition inside and out. The method and arrangement for operating on the Airport, including but limited to the parking of aircraft, shall be subject to the review and approval of Airport Director (Director). The County shall at all times have final authority to designate the aprons, ramps, taxiways, runways, roadways, terminal, and common use areas at Airport to be utilized by Tenant in connection with its operation.

n. Automobile operations on the Air Operation Area ("AOA") are prohibited.

7. MAINTENANCE. Tenant at its own expense shall, at all times, maintain the Premises in good repair, and shall not, at any time, commit or suffer to be committed any waste, nuisance or unlawful act on the Premises or other County property. Should Tenant fail or neglect to make repairs or perform maintenance deemed necessary by the Director, or Director's designee, County may, after written notice to Tenant, make said repair and charge Tenant for the full cost of said repair, plus an eight percent (8%) overhead fee, which shall be reimbursed to the County upon written demand.
8. ALTERATIONS. Tenant shall not alter, repair, or change the Premises in any way without the prior written consent of the Director, or Director's designee, and then only upon such terms and conditions as may be required and approved by the Director, or Director's designee. Additionally, any alterations or improvements proposed must be permitted by (if necessary) and in compliance with any and all local, state and federal rules and regulations.
9. ASSIGNMENT AND SUB-LEASE. Tenant may not assign this Lease or sub-lease the premises or any part thereof without the expressed approval of the County first had and obtained.
10. UTILITIES. All utilities shall be sole responsibility and at the sole expense of the Tenant.
11. RIGHT OF ENTRY: The County through its assigned Airport Director shall have access to and the right to enter upon the Premises at any reasonable time, and to take such action therein as may be required for the protection of persons or Airport property, at the expense of Tenant.
12. RULES: The Commission reserves the right at any time to make such rules and regulations pertaining to the Premises operations and use thereof which shall serve to protect the health, safety, and welfare of the public, protects the Airport as a physical asset, and for the safety of air taxi

operations mandated by the Federal Aviation Administration (FAA). Tenant hereby agrees to strictly comply therewith and Tenant shall immediately correct any items noted which are deemed unacceptable or in need of correction.

13. **LAWS**: It is understood and agreed that general control over the Airport and all flying activities in connection therewith are vested by law to the Newberry County Airport acting by and through its employees appointed by the County. In the general operation of any activities conducted under the terms of this Permit, Tenant agrees to comply with all rules and regulations adopted by County for the use and operation of the Airport which are not in conflict with the terms of this Permit.

Tenant shall, at its sole cost and expense, comply with all the requirements of all local, municipal, County, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal and County ordinances and State and Federal statutes, rules and regulations now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether the County be a party thereto or not, that Tenant has violated any such ordinance, statute, rule or regulation in the use of the Premises shall be conclusive of the fact as between the County and Tenant.

14. **RESTRICTIONS AND RESERVATIONS**: The rights granted Tenant herein are subject to the right of the County to develop, maintain, improve and operate the Airport and its facilities as it sees fit, in a nondiscriminatory manner, without interference by Tenant. This Permit shall be subordinate and subject to the provisions of any existing or future agreements between the County and the United States. This Permit is subject to the rights the United States Government now or may hereafter have or acquire affecting the control, operation, regulation and taking over of the Airport.

15. **INDEMNIFICATION**: Tenant shall defend, indemnify and hold harmless the County, its officers, agents, and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or in connection with the acts or omissions relating to the performance of any obligation or duty provided for or relating (directly or indirectly) to this Permit, the tenancy created under this Permit, or the Premises hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, including claims or losses that involve pollution found on the premises after the Permit has expired and when the pollution may be attributed to the Tenant's

actions. However, this indemnification will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers, agents, and employees.

It is the intent of the parties to provide the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Permit and the remaining language shall be given full force and effect.

16. INSURANCE:

The following policies shall be maintained with insurers authorized to do business in the State of South Carolina, and shall be issued under forms of policies acceptable to the County:

A. Property Insurance: Tenant shall keep insured with insurance companies acceptable to County all leasehold improvements to the extent of not less than one hundred percent (100%) of the full insurable replacement value against all risks of direct physical loss, provided however, that nothing herein shall require Tenant to procure earthquake, flood insurance or insurance against any other risk which is not obtainable on reasonable economic terms.

Tenant shall forward to the County certificates and policies of required insurance issued by the insurance underwriters evidencing the existence of valid policies, which certificates shall state the coverage will not be amended so as to decrease the protection below the requirements specified nor be subject to cancellation without at least thirty (30) days prior written notice to County. Such insurance coverages shall in no way limit the liability of the Tenant for replacement of improvements. Tenant shall be responsible for procurement and maintenance of required insurance at its sole cost and expense.

- Approval of the insurance by County shall not relieve or decrease the extent to which Tenant may be held responsible for payment of damages resulting from its operations. If Tenant does not keep the required insurance in full force and effect, County may immediately terminate this Permit or take out the necessary insurance and pay the premium and the repayment thereof shall be demanded as part of the rental and payment due on such on the next day upon which rent becomes due.

B. Liability Insurance: Tenant shall procure from insurance underwriters reasonably satisfactory to the County a standard form policy or policies of insurance protecting both Tenant and County against public liability and property damage in the single limit amount of at least \$2,000,000 per occurrence with a \$2,000,000 aggregate to include a waiver of subrogation. Tenant

shall furnish such comprehensive or broad form policies providing combined single limit liability for bodily injury or death and property damage. Coverage shall be as follows:

- (1) Commercial General Liability
 - a. Commercial Form
 - b. Contractual Liability
 - c. Personal Injury Liability
 - d. Independent Contractors working for Tenant (if required)
 - e. Hangar Keeper's Liability (if non-owned aircraft are housed in hangars).

Said Hangar Keeper's Liability coverage shall be for an Amount no less than the exposure created by Tenant's operations with a minimum coverage of at least \$500,000 per loss to include a waiver of subrogation.

- (2) Automobile Liability (as required)

- a. Owned
- b. Non-owned
- c. Hired Vehicles

- (3) Premises Liability which must clearly and comprehensively be defined to include the entirety of the Airport property.

Policy limits shall be no less than \$2,000,000 combined single limit for each occurrence.

The providing of the above insurance coverage shall in no way limit the liability of the operator. Any policy shall contain an endorsement naming the County of Newberry Airport and its officers, employees, and agents as additional insureds. Tenant's insurance will operate as primary insurance and no other insurance affected by the County will be called upon to contribute to a loss. Tenant shall file certified copies of insurance policies with County.

Tenant shall furnish to the County a certificate from the insurance carrier showing insurance covering this Permit to be in full force and effect as a condition precedent to this Permit becoming effective. Such insurance certificates shall specifically state that no changes in coverages provided and no cancellation of the policies shall be made without at least thirty (30) days advance notice to County.

In the event that the County's insurance carrier decreases the limits of liability below \$50 million, County shall have the right to immediately terminate this permit without prior notice.

C. Construction and Installation: Before commencing any improvement, equipment, installation, modification or alteration on or about the Premises, Tenant shall require that its contractors or subcontractors procure and maintain insurance during the life of such construction or installation contract which will protect the subcontractor(s), Tenant, and County for limits as described herein below.

Tenant shall maintain in full force and effect for the duration of the construction of the improvement, modification, alteration, installation of equipment, bodily and personal injury insurance, including death resulting therefrom, and property damage insurance with an insurance carrier satisfactory to County. This liability insurance shall include, but not be limited to, protection against claims arising from bodily injury, including death resulting therefrom, and damage to property, resulting from any act or occurrence arising out of Tenant's operations in the performance of this Permit, including, without limitation, acts involving vehicles. The amount of insurance shall not be less than the following:

Single limit coverage applying to bodily and personal injury liability and property damage or a combination thereof, in an amount not less than \$1,000,000.00 to include a waiver of subrogation.

Tenant shall either (1) require each of Tenant's subcontractors to procure and to maintain during the life of any subcontract, bodily and personal injury liability and property damage insurance of the type and in the same amounts as specified above, or (2) insure the activities of Tenant's subcontractors in Tenant's own policy.

The following provisions shall apply on all required policies in this paragraph:

- (1) If the insurance policy covers on an "accident" basis it must be changed to "occurrence".
- (2) The policy must cover personal injury as well as bodily injury.
- (3) Broad form property damage liability must be afforded.

Newberry County Airport must be named as an additional insured under the coverage afforded with respect to the work being performed under the contract. The County's officials, officers, directors, employees, and agents shall also be included as additional insureds.

(4) An endorsement shall be attached which states that the coverage is primary insurance and that no other insurance maintained by the County shall be called upon to contribute to a loss covered by this policy effected by Tenant.

(5) Thirty (30) days' notice of change or cancellation shall be afforded to the County.

(6) Contractual liability coverage either on a blanket basis or by identifying this Permit within a contractual liability endorsement.

D. Workers Compensation and Employers Liability Insurance

If Tenant has one or more employees, Tenant shall be required to maintain Worker's Compensation and Employer's Liability insurance with limits of at least statutory requirements and shall furnish to the County a certificate of insurance from the insurance carrier showing such insurance to be in full force and effect

E. Effect of Failure or Refusal: If Tenant fails or refuses to procure or maintain the insurance required by this contract, or fails or refuses to furnish the County with the certifications as required herein, the County shall have the right, at its option, with notice to Tenant to forthwith immediately suspend this Agreement. Upon notice of such suspension, Tenant shall have fifteen (15) days to provide documentation that Tenant has and maintains insurance required by this contract. Failure to provide such documentation will result in the automatic termination of this Agreement for cause at the end of the fifteenth day without further notice to Tenant.

17. HAZARDOUS MATERIALS: Tenant shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, UREA formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "TOXIC SUBSTANCES" under such laws, ordinance or regulations (collectively, "Hazardous Materials").

Tenant shall, except in the event of the County's sole negligence, indemnify, defend, protect, and hold the County, each of the County's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

A. The presence in, on, under or about the Premises or discharge in or from the premises of any Hazardous Materials or Tenant's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials, to, in, on, under, about or from the Premises, or

B. Tenant's failure to comply with any Hazardous Materials Law. Tenant's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in

connection therewith caused by Tenant and shall survive the expiration or earlier termination of

the term of the Contract. For purposes of the release and indemnity provisions hereof, any acts or omissions of the County, or by employees, agents, assignees, Contractors or sub-Contractors of County or others acting for or on behalf of County (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to County.

18. WAIVER: Tenant hereby waives any and all claims for damages that may be caused by the County in re-entering and taking possession of the Premises, and all claims for damages that may result from the destruction of or injury to the Premises thereby, and all claims for damages to or loss of such property belonging to Tenant as may be in or upon the Premises at the time of such re-entering. Tenant hereby also waives any and all claims against the County for loss or damages to any property of Tenant from any cause arising at any time.

ASSIGNMENT OR SALE: This Permit is of a personal nature and Tenant shall not assign, sublet, mortgage, pledge or otherwise transfer this Permit, either voluntarily or by operation of law, in whole or in part, without the prior written consent of the Landlord, in each instance. Said consent by Landlord shall not be unreasonably withheld. If Tenant assigns or subleases said Permit without the prior written consent of the Landlord, then said sublease or assignment shall, at the option of Landlord, immediately cease and terminate.

19. REPAIR AND SURRENDER: Tenant hereby accepts the Premises in as-is condition and agrees to surrender possession of and restore the Premises unto the County in the same condition as received upon termination of this Permit. Tenant further agrees to promptly repair any and all damage caused by Tenant in the use of the Premises.

In the event Tenant fails to vacate the Premises upon termination of this Permit, Tenant hereby waives any and all claims for damages that may be caused by the County in taking possession of said Premises, and all claims for damages that may result from the destruction of or injury in the taking the Premises, and all claims for damages to or loss of such property belonging to Tenant as may be in or upon the Premises. The County shall not be responsible to Tenant for any loss of property however occurring. Should Tenant fail to remove or dispose of Tenant's materials, equipment and improvements as herein provided, Director may dispose of same at Tenant's expense, and Tenant shall reimburse the County for said expenses upon demand.

20. TERMINATION: In addition to other remedies described herein, in the event Tenant fails to comply with any term or condition hereof, the Director may terminate this Permit by giving Tenant thirty (30) days written notice thereof; provided that no waiver by the County of any failure by Tenant to comply with any term or condition of this Permit shall be construed to be a waiver by the County of any similar or other failure by Tenant to comply with any term or condition of this Permit.

21. NOTICES: All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States Mail, postage prepaid and addressed as follows:

To Tenant at:

To County at: Newberry County
 PO Box 156
 Newberry, SC 29108
 Attn: County Administrator

22. VENUE: This Permit has been executed and delivered in the State of South Carolina and the validity, enforceability and interpretation of any of the clauses of this Permit shall be determined and governed by the laws of the State of South Carolina. The duties and obligations of the parties created hereunder are performable in Newberry, Georgia and as such shall be the venue for any action or proceeding that may be brought or arise out of, in connection with, or by reason of this Permit.

23. FORCE MAJEURE: Neither the County nor Tenant shall be deemed in violation of this Permit if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage or any other circumstances for which it is not responsible or which are not within its control. At any time should the aforementioned occurrences, or any occurrence, necessitate the closing of the Premises, Tenant shall have no recourse by law to the County for losses incurred.

24. NON-DISCRIMINATION: Tenant will not discriminate against any person or class of persons by reason of race, color, creed or national origin in the use of the Premises or any use of the facilities provided for the public within the Premises.

25. INDEPENDENT CONTRACTOR STATUS: Tenant enters this Permit solely and exclusively as independent contractor and only in that capacity and not as a partner, employee or agent of Commission. There are no rights granted or implied to Tenant other than as expressed herein.

26. PROVISIONS DEEMED COVENANTS AND CONDITIONS: The parties hereto agree that all of the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions were used in each instance, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

27. SEVERABILITY: The invalidity of any provision of this Permit shall not affect the validity or enforceability of any other provision of this Permit.

28. ASSUMPTION OF RISKS: Tenant represents that Tenant has inspected said Airport and Premises, and all facilities thereupon and in connection therewith, and that Tenant accepts the condition of same and fully assumes all risks incidental to the use thereof. The County shall not be liable to Tenant for any damages or injuries to the property or person, or to the agents, employees, customers, or business visitors of Tenant, which may result from hidden, latent or other dangerous conditions upon said Airport, building or Premises, or which may result from the negligence of the County, its agents, officers or employees, or which may result from any condition of fire, earthquake, flood, rainfall, or escape of water from any channel, regardless of the cause thereof.
29. ENTIRE AGREEMENT AND MODIFICATIONS: This Permit embodies the whole agreement between the parties hereto as it pertains to the subject real property and there are no promised terms, conditions, or obligations referring to the subject matter hereof, other than as contained herein. Any alterations, changes or modifications to this Permit must be in writing and executed by both Tenant and the County.
30. DAM AGE BY FIRE OR OTHER CASUALTY. If the premises are materially damaged or rendered untenable by fire or other casualty, the term of this Lease shall expire on the day of such casualty as if the date thereof were the date herein originally specified for the expiration of the term.
31. REPOSSESSION, RELETTING. Whenever Landlord has recovered possession of the premises by reason of Tenant's default, Landlord may cause them to be redecorated, altered, or otherwise changed or prepared for reletting. Landlord may also re-let the premises as Tenant's agent or otherwise for a term or terms to expire prior to, at the same time as, or subsequent to, the original expiration date of this Lease, and receive all rents therefor. Landlord shall apply such rent as follows: first to the payment of any expenses it has occurred in connection with the recovery of possession and expenses of reletting, including reasonable legal fees; and then to the payment of damages equal to the rent hereunder and to the expenses of performance of the other covenants of the Tenant as provided herein. Tenant shall, whether or not Landlord has relet, pay the Landlord's damages equal to the rent and other sums the Tenant has agreed herein to pay, less any net proceeds of the reletting, as ascertained from time to time.
32. CUM ULATIVE REMEDIES. Landlord's remedies hereunder are in addition to any remedy allowed by law.
33. STRICT PERFORMANCE, WAIVER. The failure of either party to insist on the strict performance of any term, covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waiver of such term, covenant, condition or option in any other instance.

34. WRITTEN MODIFICATION. This lease cannot be changed or terminated orally, but only by an instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

WITNESSES:

CONTRACTOR

By: _____

Its: _____

COUNTY OF NEWBERRY

By: _____

Wayne Adams
County Administrator

ATTEST: _____

Susan Fellers, Clerk to Council