

City of Kalispell Post Office Box 1997 - Kalispell, Montana 59903 Telephone: (406) 758-7701 Fax: (406) 758-7758

MEMORANDUM

To:	Mayor Johnson and City Council
From:	Doug Russell, City Manager DR
Re:	Management of Kalispell City Airport with User Group
Meeting Date:	December 4, 2017

BACKGROUND: During the approval of the South Kalispell Urban Renewal Plan Update, the Council was approached by users of the Kalispell City Airport requesting consideration of turning the responsibility of managing and maintaining the facility to a user's association. Council agreed to consider this option and provided guidance to staff related to working with the user group on a possible framework for how this could work.

City staff and representatives of the airport have worked on a lease agreement that would remove the financial liability from the city associated with either closing the facility and buying out remaining leases, or the financial liability in maintaining the facility and making necessary capital improvements by contracting for management and maintenance responsibilities to an independent association.

Highlights of the Draft Lease Agreement are as follows:

- 1- The airport would continue under the current operational guidelines
- 2- Existing hangar leases with the City would be cancelled, with the User Group Association developing new leases with hangar owners
- 3- The current assets in the Airport Enterprise Fund would be provided to the User Group
- 4- The User Group would make improvements to the facility as outlined in the Master Plan (as part of the lease agreement) using a combination of User Group funding and Tax Increment Financing for new infrastructure. These improvements would include:
 - a. repairs to the taxiway (including widening one taxiway by about 4 feet for safety purposes)
 - b. Make available space for additional hangars, T hangars, and business locations on the airport grounds for potential future revenue
 - c. Improvements in airplane parking, preparation areas, and traffic flow
- 5- 30 year term, (20 years initial term with extension based on performance criteria) with an option for an additional 10 year extension

Council has held three work sessions in the review and drafting of this agreement, including last Monday, November 27.

Should the City Council elect to approve the proposed agreement, the User Group will need to complete their organizational documents and prepare new ground leases for hangar owners, etc., that conform to the provisions in the proposed lease agreement. As such, it is recommended that after Council adoption of the proposed lease agreement, the User Group has 120 days to effectuate the lease agreement, otherwise the Council action would be void.

RECOMMENDATION: It is recommended that Council adopt the Resolution 5848, authorizing the City Manager to enter into the lease agreement with the Airport Users Group, and provide the Users Group 120 days to effectuate the agreement.

ATTACHMENTS: Resolution 5848 Proposed Lease Agreement with Master Plan

RESOLUTION NO. 5848

A RESOLUTION APPROVING THE FORM OF LEASE AGREEMENT BETWEEN THE CITY OF KALISPELL AND THE KALISPELL AIRPORT USERS GROUP AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE ON BEHALF OF THE CITY WITHIN 120 DAYS IF CERTAIN CONDITIONS ARE MET.

- WHEREAS, the City of Kalispell owns and operates a municipal airport that is located within the South Kalispell Urban Renewal District and South Kalispell Tax Increment Financing District; and
- WHEREAS, in the process of considering and approving the most recent South Kalispell Urban Renewal Plan Update the City Council voiced its consent to consider transferring the management and maintenance of the airport facilities to a users group by means of granting a leasehold; and
- WHEREAS, city staff and representative users of the airport have negotiated the terms of a lease agreement that would relieve the city of the financial liabilities associated with either closing the facility and buying out remaining leases, as well as the financial obligations of maintaining the facility and making necessary capital improvements to the facility; and
- WHEREAS, the city council considered and discussed the terms of a leasehold in three work sessions, including, most recently, a work session on Monday, November 27, 2017; and
- WHEREAS, the city council finds that the draft lease, attached hereto as Exhibit "A", is acceptable, prudent and in the best interests of its city residents and visitors.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KALISPELL, MONTANA, AS FOLLOWS:

- **SECTION 1.** The City Manager is hereby authorized, on behalf of the city, within 120 days, to enter into a lease agreement in the form of the lease agreement attached hereto as Exhibit "A" if the following conditions are met:
 - a) the users group must have established itself as a legal entity with the State of Montana; and
 - b) the users group must have all ground leases, conforming to the provisions required by the lease agreement approved herein, prepared and approved by the hangar owners for execution concurrently with the lease agreement approved herein.

PASSED AND APPROVED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF THE CITY OF KALISPELL, THIS <u>4TH</u> DAY OF <u>DECEMBER</u>, 2017.

Mark Johnson Mayor

ATTEST:

Aimee Brunckhorst, CMC City Clerk

EXHIBIT "A"

Return to: City Clerk P.O. Box 1997 Kalispell, MT 59903

KALISPELL MUNICIPAL AIRPORT LEASE AND AGREEMENT TO ASSIGN

THIS KALISPELL MUNICIPAL AIRPORT LEASE AND AGREEMENT TO ASSIGN, made and entered into as of the _____ day of ______, 2017, hereinafter referred to as the "Airport Lease", by and between the City of Kalispell, Montana, a Municipal Corporation, hereinafter referred to as LESSOR and ASSIGNOR, and the Kalispell Airport Association, a Montana Corporation, hereinafter referred to as LESSEE and ASSIGNEE,

WITNESSETH:

For and in consideration of the mutual covenants and promises and other good and valuable consideration hereinafter set forth, the parties hereto agree as follows:

- 1. <u>PROPERTY</u>: LESSOR hereby leases to LESSEE and LESSEE hereby leases and hires from LESSOR those certain premises and all appurtenances thereto situated in Kalispell, Flathead County, Montana, as described in Exhibit "A" attached hereto and incorporated fully herein by this reference.
- 2. <u>TERM</u>: TO HAVE AND TO HOLD the above rented premises during the full term of twenty (20) years, which term shall begin upon the date above written and shall terminate upon the expiration of said full twenty-year term, unless extended as hereinafter provided. The lease may be extended for an additional ten (10) years at the conclusion of the twenty (20) year term if the improvements in 5.b are completed and the runway has been reconstructed or has received a mill and overlay. An additional ten (10) year extension may be granted at the end of the term upon the agreement of both parties. Said extension must be approved no later than twelve (12) months prior to the expiration
- 3. <u>LESSEE CONSIDERATION/AIRPORT MANAGEMENT</u>: As consideration for this Airport Lease, LESSEE shall provide all management services for the operations of the airport for the term of this lease and any extensions made thereto. LESSEE agrees that it will be solely responsible for the airport management and hereby indemnifies the LESSOR for any damages proven by any third party, which proximately and directly arise out of such management as determined by a court of competent jurisdiction or by mutual agreement between the complainant and LESSEE. The LESSOR shall maintain the obligation of codifying the Standard Operating Procedures of the Airport and shall duly consider the input

of the LESSEE in any amendments to such existing standards.

- 4. <u>USE OF LEASED PREMISES</u>: LESSEE shall use the leased premises for the sole purpose of operating a general aviation airport and such other business activities as are commonly accessory to a general aviation airport. LESSEE agrees to observe all material federal, state and municipal laws and regulations (and specifically the Standard Operating Procedures of the Airport) as apply to a general aviation airport including those related to human and equal rights as are currently in effect or as may come into effect in the future. LESSEE shall notify LESSOR within fourteen (14) days of becoming aware of any breach. LESSEE shall not be deemed to be in default of or noncompliance with any federal, state or municipal law and/or regulation, if such noncompliance existed prior to the execution of this Airport Lease. In the event that LESSOR believes that a breach or default on the part of LESSEE is or has transpired, LESSOR shall give LESSEE shall have ninety (90) days to remedy such breach or default after delivery of said notice, with the exception of conditions that pose an immediate threat to health and safety, which shall be remedied as soon as possible.
- 5. <u>MAINTENANCE AND REPAIR OF PREMISES</u>: LESSEE agrees to maintain the abovedescribed premises in a condition as near as is practicable to the condition of the property at the time of the execution of this Airport Lease and to return said property to LESSOR at the expiration of said lease in said condition, reasonable wear and tear and damage excepted. In the event LESSEE refuses or neglects to keep the above-mentioned premises in such order and condition hereinabove mentioned, LESSOR shall have, after first giving ninety (90) days written notice to repair, the right to declare this lease null and void and of no further force and effect.
 - a. Stormwater Regulations: LESSOR is mandated by the federal and state governments to monitor and enforce the Stormwater MS4 Standards within the city limits of Kalispell. Because of the extensive acreage of the property, it is essential that the LESSEE closely cooperate with the LESSOR to assure that the Stormwater MS4 Standards are maintained. For this reason, the LESSEE shall meet with the LESSOR for a training session on an annual basis so that compliance may be maintained. The LESSEE shall submit its project stormwater compliance plans to the LESSOR prior to commencement of any improvement projects. The LESSEE agrees to remain in full compliance with the MS4 Stormwater Standards. LESSEE shall not be deemed to be in default of or noncompliance with the said MS4 Stormwater Standards, if such noncompliance existed prior to the execution of this Airport Lease, but LESSEE shall, in good faith, cooperate with the LESSOR to gain compliance for such pre-existing noncompliance.
 - b. *Capital Investment*: LESSOR and LESSEE agree to the completion of a Capital Investment Master Plan as set forth in Exhibit B. Projects will be completed by the LESSEE with funds reimbursed upon receipt of appropriate documentation and according to the sources and amounts identified in Exhibit B. Projects intended to be funded in part with tax increment funds must be completed or under contract prior to the expiration of the respective Tax Increment District on June 30, 2020. Future projects may be added to the Master Plan upon mutual agreement of the parties.

- 6. <u>LESSOR'S ACCESS TO AIRPORT</u>: For the purpose of maintaining public utilities and accessing and inspecting city owned properties, the LESSOR requires daily access to the Airport. In the event that maintenance activities are required that would disrupt airport operations, the LESSOR shall provide reasonable written notice to LESSEE. The written notice shall outline the nature, purpose, access dates, and areas affected on the Airport.
- 7. <u>EXISTING AND FUTURE GROUND LEASES</u>: LESSOR, as owner and current operator of the airport, is obligated under certain Ground Leases that presently encumber the airport. LESSOR agrees, as additional consideration given in this Airport Lease, that upon release of the LESSOR by the Ground Lease Lessees from its Ground Lease obligations, the LESSEE shall enter into an airport lease agreement(s) with those Ground Lease Lessees.
 - a. Two of the leased hangars are owned by the City. These leases shall remain on month to month terms.
 - b. The airport lease agreements with the Ground Lease Lessees will further allow the LESSEE to collect fees from the Ground Lease Lessees that are commensurate with the existing Ground Leases, the term of which shall, in no event, extend beyond the term of this Municipal Airport Lease. The new lease agreement must further contain the following clause: "In the event that this lease is terminated the leasehold shall transfer to the City of Kalispell, as Lessor, and shall convert to a month to month tenancy. The City of Kalispell shall be under no obligation to continue to operate the airport. In the event the City of Kalispell determines thereafter to close the airport, twelve (12) months notice shall be given to lessees of the airport. Lessees shall have the right to remove those improvements they own, but shall do so within the twelve (12) months from notice of the airports discontinuance and shall leave the premises in a restored condition, except that any pavement shall be left. Improvements left on the airport property thereafter shall then become the property of the City of Kalispell without further action on the part of the City."
 - c. In the event the airport is abandoned as the result of a voter initiative, this lease shall terminate. Lease agreement with the Ground Lease Lessees must also contain the following clause: "This lease shall terminate immediately upon abandonment of the airport as a result of a voter initiative. If the Ground Lease Lessee elects not to remove the improvements as set forth above, the CITY shall pay to the Ground Lease Lessee the fair market value of their leasehold improvements situated on the airport at the then existing usage. The fair market value of the improvements at the then existing usage shall be determined as follows:

The City and the Ground Lease Lessee shall each hire, at their own expense, an appraiser to determine the fair market value of the improvements on the leased site and owned by the Ground Lease Lessees at the then existing usage. If the two (2) appraisals do not differ by more than three percent (3%), the fair market value of the improvements shall be the average of the two (2) appraisals. If there is a difference of more than three percent (3%) between the two (2) appraisals, the first two (2) appraisers shall select a third appraiser who shall appraise the fair market value of the improvements at the then existing usage. The parties shall equally share the expense of the third appraiser. The average of the three (3) appraisals shall determine the fair market value of the improvements at the then existing usage. The City shall pay the fair market value of the improvements at the then existing usage to the Ground Lessee within (60) days of the date of determination of the fair market value as set forth above."

- d. This Airport Lease shall not be effective and enforceable unless simultaneously with the execution of this Agreement, or as near thereafter as is practicable, the LESSOR and each of the Ground Lease Lessees shall execute an agreement that extinguishes the existing Ground Leases and all nontax obligations of the parties thereunder, but that permits the continuing land use of the existing Ground Leases. LESSEE shall have full authority to negotiate and enter into a fee/lease schedule and related Ground Lease agreements with the Ground Lease Lessees with terms that are, in all ways, otherwise consistent with this Agreement.
- 8. <u>RED EAGLE LEASE AND MANAGEMENT AGREEMENTS</u>: LESSOR shall also release Red Eagle from its current lease and management obligations under an agreement in which Red Eagle agrees to release LESSOR from any and all obligations contained within those lease and management agreements. LESSOR shall continue to own the property upon which Red Eagle operates, but after the release of the said lease between LESSOR and Red Eagle, LESSEE and Red Eagle shall enter into a lease that permits the continuing land use in accordance with the terms of the prior lease referenced herein and with a fee schedule that is commensurate with the terms of the said prior lease.

In the event the airport is abandoned as the result of a voter initiative, the lease shall terminate and the LESSOR will pay to the Red Eagle the fair value of the remaining term of the lease. The parties agree that they shall each obtain the opinion of an independent appraiser to evaluate the value of the remaining lease and negotiate a final value. The LESSOR agrees that the fair value of the remaining term of the lease should be valued as if the airport had not been abandoned. Any decrease in the value of the lease because of the abandonment shall not be considered by either the LESSOR's or Red Eagles' independent appraisers. If the parties cannot agree upon the value, they agree to arbitrate the result, as set forth in the parties' lease and be bound by the arbitrator's decision.

- 9. <u>ASSIGNMENT OF HILTON GARDEN INN GROUND LEASE</u>: LESSOR shall assign all of its rights and obligations to LESSEE of the Ground Lease that exists between the LESSOR and the Hilton Garden Inn. This assignment shall revert to the LESSOR in the event of the termination of this agreement.
- 10. ZONING AND BUSINESS STANDARDS: The LESSEE shall have the management

prerogative to institute business standards for airport related activities that shall be enforceable by the LESSEE so long as the standards are referenced in the ground leases.

- 11. <u>THROUGH-THE-FENCE OPERATIONS:</u> Although the Federal Aviation Administration does not allow new through-the-fence operations to become established on FAA funded airports, the City is not currently receiving or applying for any such funding. The standing Kalispell Municipal Airport Operating Procedures defines "through-the-fence" operations but otherwise has no restrictions against them. Therefore the approval by the LESSOR of the Capital Investment Master Plan submitted by the LESSEE that includes new through-the-fence operations shall be deemed an approval by both parties to such operations.
- 12. <u>UTILITIES</u>: During the entire term of this Airport Lease, LESSEE shall timely pay for required utilities serving the leased premises, including, but not limited to, electrical, gas, telephone, water, sewer and garbage services.
- 13. <u>COST OF OPERATION</u>: All costs of operation including the cost or providing supplies, equipment, tools, labor and other such items and the entire cost of maintaining and operating the general aviation airport and other appurtenances shall be the sole responsibility of LESSEE.
- 14. <u>COMMERCIAL, USER AND OTHER FEES</u>: A Schedule of Fees shall be established by LESSEE on an annual basis and provided by LESSEE to LESSOR prior to the first day of July of each year of this Lease. This Schedule shall be advisory to the LESSOR only and shall not require LESSOR's approval. LESSEE, in its sole discretion, may from year to year, during the term of this Airport Lease, increase or decrease its Schedule of Fees.
- 15. <u>LESSEE'S FINANCIAL REPORTS</u>: Annually, on or before the 30th day of June, LESSEE shall present to LESSOR, for review, a copy of LESSEE's annual financial report completed in accordance with generally accepted accounting principles. The LESSEE's financial records will be subject to an audit conducted by, and at the option of, the LESSOR (internal staff or contract auditor). The cost of such audit shall be paid by the LESSOR.
- 16. LESSEE'S LIABILITY INSURANCE: LESSEE shall obtain and keep in full force and effect during the term of this lease, full general liability insurance in the amount Seven Hundred Fifty Thousand Dollars (\$750,000.00) per occurrence and One Million Five Hundred Thousand Dollars (\$1,500,000.00) aggregate with a company licensed to do business in the State of Montana with a minimum of "A.M. Best Rating" of A-, VI; said policy of insurance shall name LESSOR as additional named insured and be written on a "primary—noncontributory basis." In the event the Montana legislature increases the limitations on government liability for damages in tort LESSEE agrees to increase its liability coverage accordingly. LESSOR shall be furnished with a certificate that such insurance is in force and the same shall provide for reasonable notification to LESSOR prior to the same being canceled. LESSEE agrees to hold LESSOR harmless from any and all liability of any nature, whatsoever, arising from or out of LESSEE's possession, use, maintenance, improvement or occupancy of the property herein described; LESSEE further agrees to defend, with legal counsel acceptable to LESSOR, and indemnify the LESSOR against any

action brought against LESSOR arising out of LESSEE's possession, use maintenance, improvement or occupancy of said property, including but not limited to any tort or other noncriminal legal, equitable or administrative action, whether groundless or otherwise, arising out of an alleged act or omission occurring during the term of this lease, at LESSEE's expense. Notwithstanding any provision in this paragraph to the contrary, the indemnity and defense provisions set forth herein shall not apply to any claims or demands made by any party after the execution of this Airport Lease, if such claim or demand arises out of or as a result of any breach, noncompliance, damage or injury that is alleged to have occurred, existed or arisen prior to the execution of this Airport Lease, even if such claim is brought after the execution of the same.

- 17. <u>FIRE INSURANCE</u>: During the full term of this lease, LESSOR shall maintain fire insurance adequate to cover replacement costs on the improvements owned by LESSOR on said premises. Should the premises, during the term of this Airport Lease, suffer damages which are covered by said fire insurance policy, LESSOR agrees to utilize all insurance reimbursements therefore, toward rebuilding or repairing the damaged premises, or toward providing comparable replacement facilities. The contents of buildings and fixtures located on the premises shall be insured by LESSEE and shall be in such amounts as to assure replacement. The parties mutually agree as to waiver of subrogation rights each with the other.
- 18. DEFAULT AND BANKRUPTCY: In the event that:
 - a. LESSEE shall commit a material default in the observance or performance of any term of LESSEE's covenants, agreements, or obligations hereunder and such material default shall not be corrected within ninety (90) days after written notice thereof; or
 - b. LESSEE shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of LESSEE's property for the benefit of creditors;

LESSOR shall have the right thereafter, when such default continues, to re-enter and take complete possession of the leased premises, according to law, and to declare the term of this Airport Lease ended, and to remove LESSEE's effects, without prejudice. If LESSEE shall default, after reasonable notice thereof, in observance or performance of any material conditions or covenants on LESSEE's part to be observed or performed by virtue of any of the provisions in any article of this Airport Lease, LESSOR, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of LESSEE. The parties hereby agree that in the event of material default, the LESSOR is under no obligation to maintain the use of the property as an airport facility, is released from all legal liability to any airport user, and may convert the property to any other legal use by proper execution of legal process.

19. <u>NOTICE</u>: No notice from LESSOR to LESSEE relating to the leased premises or the occupancy thereof, shall be deemed duly served unless personally served upon or mailed to LESSEE, registered or certified mail, return receipt requested, postage prepaid, and addressed to LESSEE at its address as follows:

Kalispell Airport Users Group Post Office Box Kalispell, Montana 59903

Any notice from LESSEE to LESSOR relating to the leased premises or the occupancy thereof, shall be deemed duly served, if personally served upon or if mailed to LESSOR by registered or certified mail, return receipt requested, postage prepaid, and addressed to LESSOR at the address as follows:

Manager City of Kalispell 201 First Avenue East Kalispell, Montana 59903-1997

- 20. <u>TIME OF ESSENCE AND BINDING EFFECT</u>: It is mutually agreed by and between the parties hereto that the time of payment shall be an essential part of this Airport Lease, and that all of the covenants and agreements herein contained shall extend to and be binding upon the parties hereto, and their successors and assigns.
- 21. <u>FORCE MAJEURE</u>. LESSEE's obligations under this Airport Lease shall be suspended and excused, and the time periods set forth herein shall be extended, while LESSEE is prevented or substantially hindered or restricted, by an Event of Force Majeure, from conducting or performing its obligations hereunder. The term "*Event of Force Majeure*" means any of the following, whether actual or potential: strikes, lock outs or other labor disturbances; delays in transportation; the inability to secure labor or materials in the open market; acts of God or the elements; inclement or adverse weather, conditions attributable to acts of war, terrorism or civil disturbances; acts or failures to act of LESSOR; the effect of any Laws; the failure of a governmental authority to issue any permit, entitlement, approval or authorization within sixty (60) days after LESSEE submits an application for the same; or any other matter or condition beyond the reasonable control of LESSEE.
- 22. <u>CONSTRUCTION, INTERPRETATION AND MODIFICATION OF AIRPORT LEASE</u>. This Airport Lease, including any Exhibits attached hereto, contains the entire agreement between the parties in connection with any matter mentioned herein, and all prior or contemporaneous agreements, understandings and representations are merged herein and superseded hereby. Should any provision of this Airport Lease be held to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by such holding. This Airport Lease shall not be interpreted as creating any partnership or other relationship between the parties, other than that of landlord and tenant. Any rule of construction to the effect that ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this Airport Lease and is hereby waived. No waiver by a party of any term or provision hereof shall be deemed a waiver of any other term or provision, and any waiver of rights hereunder must be in writing to be effective. This Airport Lease shall be governed by and interpreted in accordance with the laws of the state of

Montana. The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa, whenever the context so requires. The terms "include", "includes" and "including", as used herein, are without limitation. Captions and headings used herein are for convenience of reference only and do not affect the scope, meaning or intent hereof. This Airport Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument. This Airport Lease may not be amended or modified unless and except such modifications or amendments are made in writing and executed by all parties hereto.

23. <u>QUIET ENJOYMENT</u>. During the entire term of this Airport Lease, (a) LESSEE shall have peaceful and quiet enjoyment of the leased premises, without hindrance or interruption by LESSOR and (b) LESSOR shall protect and defend the right, title and interest of LESSEE hereunder from any other rights, interests, title and claims of or by any person.

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

ATTEST:

Doug Russell City Manager

ATTEST:

City Clerk

KALISPELL AIRPORT ASSOCIATION

Association Secretary

Aimee Brunckhorst, CMC

President

CITY OF KALISPELL

STATE OF MONTANA)) ss. County of Flathead)

On this _____ day of _____, 2017, before me, a Notary Public for the State of Montana, personally appeared **Doug Russell** and **Aimee Brunckhorst**, respectively, proved to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they each executed the same in their respective authorized capacities as City Manager and City Clerk of the **City of Kalispell**.

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

SEAL

Printed Name:	
NOTARY PUB	LIC for the State of Montana
Residing at:	
My Commission	n expires:

STATE OF MONTANA)) ss. County of Flathead)

On this _____ day of ______, 2017, before me, a Notary Public for the State of Montana, personally appeared ______ and _____ and proved to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they each executed the same in their respective authorized capacities as President and Secretary of the **Kalispell Airport Association**, a Montana not for profit corporation.

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

SEAL

Printed Name:______ NOTARY PUBLIC for the State of Montana Residing at:______ My Commission expires:

<u>Exhibit A</u>

Exhibit A providing the legal description of the airport boundaries will be furnished prior to signature.

