

LICENSE AGREEMENT

THIS Agreement made this 18th day of November, 2017, between the CITY OF PRESCOTT, a municipal corporation of the State of Arizona, hereinafter designated "Licensor", and Atlas Material Testing Technology, LLC., hereinafter designated "Licensee". The parties agree as follows:

RECITALS The parties recite and declare:

- A. Licensor is the owner of an airport known as Ernest A. Love Field at Prescott, Yavapai County, Arizona, together with the improvements located thereon, referred to as the "Airport".
- B. Licensee is engaged in the business of providing weather exposure testing and desire to use City facilities in the support of the Licensee's business activities.
- C. Licensor is willing to allow Licensee to use a portion of the Airport together with such rights and privileges as are set forth in this Agreement.

In consideration of the above recitals, the terms and covenants of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

AGREEMENT

A. Description of Property. Licensor hereby grants to Licensee the exclusive use of that portion of the Airport owned by Licensor at Ernest A. Love Field, Prescott, Arizona, as shown on Exhibit "A", and described as follows: approximately 1,000 square feet of land.

At the commencement of the term, Licensee shall accept the premises and fixtures in their existing condition. No representations, statements or warranties, express or implied, have been made by or on behalf of the Licensor as to the condition thereof. In no event shall the Licensor be liable for any defect in such property or any limitations on its use.

B. Right of Ingress/Egress. Licensee and its employees shall have the right of ingress to and egress from the premises. Such right shall also extend to persons or organizations supplying materials or furnishing services to Licensee, to include vehicles, machinery, and equipment reasonably required by such persons or organizations. The above described rights of ingress and egress shall be exercised only in accord with Airport Rules, Regulations and Guidelines which are in effect and as may be amended from time to time.

C. Use of Premises. Licensee covenants and agrees to use the licensed premises for weather testing, as permitted by the occupancy permit, activities and for no other purpose without the prior written permission of the Airport Manager

D. License Payment; Payment Adjustment; Demand.

E. License Payment. Upon execution of this agreement, Licensee shall pay monthly to Licensor the sum of thirty seven dollars and fifty cents (\$37.50), plus any applicable taxes and the maintenance cost of one hundred twenty two dollars and zero cents (\$122.00) for maintenance of the area.

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Payments shall be due and payable in advance of the first day of each month prior to the month to which it applies. Failure to pay the amount of the monthly payment by the twentieth (20<sup>th</sup>) day of the month in which it is due shall be grounds for termination of this Agreement provided Licensor has given Licensee written notice of its intent to terminate and ten (10) days opportunity to cure. This fee shall be in addition to any commercial landings fees.

F. Late Charge. Any payment not received by the twentieth (20<sup>th</sup>) day of the month in which it is due shall result in a late charge of 1.5% per month of the amount due.

G. License Payment Adjustments. Any adjustments to license payments shall only be made after 30 days notice to Licensee of said increase.

H. Demand. Demand for license payments shall not need to be made at any time, on the premises or elsewhere, and Licensee shall pay the license payments without demand being made therefore. Without waiver of this provision, it is the common practice for Licensor to bill its account receivables on a monthly basis. Nevertheless, the terms of this subparagraph govern over any terms contained on such bill.

I. Duration. Subject to earlier termination as provided in this Agreement, the term of this Agreement shall be month-to-month, commencing on November 18, 2017 to December 31, 2022. The term shall be month to month and may be cancelled at any time by either party with 30 days written notice.

J. Peaceable Enjoyment. Licensor covenants to keep Licensee in peaceable possession and enjoyment of the premises during the term of this Agreement.

K. INDEMNIFICATION. In exchange for being allowed to use the Property, Licensee hereby agrees to completely release, forever discharge and hold harmless, defend and indemnify the Licensor, its owners, members, officers, agents and employees, from and against any and all claims, damages, harm, liability or causes of action of any kind (including real and/or personal property) arising out of or relating in any way to its use of the Property, except for the intentionally wrongful or grossly negligent act(s) of the City.

L. Sub-License or Assignment. Licensee may not sub-license or assign the premises without the express written consent of the Licensor. Licensee acknowledges that this Agreement is a mere license to use of Licensor's property. Licensee acknowledges and agrees that it has no rights in real property under this License Agreement.

M. Licensor's Right of Entry. Licensee shall permit Licensor, acting through and under the supervision of the Airport Manager, to have access to and to enter the licensed premises at all reasonable and necessary times to inspect the premises and in order to exercise any right or power reserved to Licensor under the terms and provisions of this Agreement, or under the rules and regulations of the Airport, as they may be amended from time to time. Licensor shall notify Licensee prior to entry, if feasible, except in the case of an actual emergency.

N. Licensee Responsibilities.

1. Licensee shall comply with all state, federal and local statutes, ordinances, rules and regulations that are applicable to Licensee's occupation and for use of the premises.

2. Licensee shall provide for and supply at its expense all electrical, water, telephone, sewer, trash and janitorial services with respect to buildings and facilities used by Licensee.

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3. **INSURANCE:** Licensee and subcontractors of Licensee shall procure and maintain during the term of this License, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work and permitted activities hereunder by the Licensee, his/her/its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this License and in no way limit the indemnity covenants contained in this License.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Licensee from liabilities that might arise out of the performance of the work under this License by the Licensee, his/her/its agents, representatives, employees, or subcontractors. Licensee is free to purchase such additional insurance as may be determined necessary.

a. **Additional Insurance Requirements:** The policies shall include, or be endorsed to include, the following provisions:

1) On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits required by this License.

2) The Licensee's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

b. **Notice of Cancellation:** With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

c. **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott Risk Management Division

d. **Verification of Coverage:** Licensee shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this License. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this License must be in effect at or prior to commencement of work and permitted acts under this License and remain in effect for the duration of the License. Failure to maintain the insurance policies as required by this License or to provide evidence of renewal is a material breach of contract/License.

All certificates required by this License shall be sent directly to the Airport Manager at 6546 Crystal Lane, Prescott, AZ 86301. The City License number shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this License at any time.

e. **Insurance Requirements -** Licensee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a following form basis.

f. **Commercial General Liability – Occurrence Form:**

The policy shall include bodily injury, property damage, personal injury, broad form contractual liability coverage.

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- General Aggregate \$ 2,000,000
- Products – Completed Operations Aggregate \$ 1,000,000
- Personal and Advertising Injury \$ 1,000,000
- Each Occurrence \$ 1,000,000
- Fire Legal Liability (Damage to Rented Premises) \$ 100,000

The policy shall be endorsed to include the following additional insured language: "The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of, the Licensee".

g. Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Licensee."

h. Worker's Compensation and Employer's Liability:

- Workers' Compensation Statutory
- Employer's Liability
- Each Accident - \$1,000,000
- Disease – each employee - \$1,000,000
- Disease – policy limit - \$1,000,000

i. All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS Section 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

j. Prior to commencing work under this License, the Licensee shall provide City with evidence that it is either a "self-insured employer" or a "carrier insured employer" for Workers' Compensation as required by ARS 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

4. Licensee shall surrender the premises upon the cancellation or termination of the Agreement herein or renewal thereof in the same condition as received, ordinary wear and tear excepted. Licensee shall at its sole expense, repair any damage to the premises occasioned by the removal of its trade fixtures, furnishings and equipment, which shall include the patching and filling of holes, painting of walls and repair of any structural, architectural or visual damage.

5. Licensee agrees to repair or replace without delay and at its sole cost, expense and risk, any and all portions of the licensed premises that may be damaged by theft, burglary, vandalism or by premises that may be damaged by theft malicious mischief. Such repairs and replacements shall be made promptly, as and when necessary. All repairs and replacements shall be in quality and class at least equal to the original work. On default of the Licensee in making such repairs and replacements, Licensor may, but shall not be required to, make such repairs and replacements, chargeable to the Licensee's account, and the expense thereof shall constitute and be collectable as additional rent.

6. Licensee shall at all times comply with all applicable federal grant compliance requirements as more particularly set forth in Exhibit "B", attached hereto and made a part hereof.

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7. Licensee shall provide and maintain at licensee's expense all outdoor signs related to advertising Licensee's business activity. The location, color, size and design of outdoor signs must be approved in advance by the Licensor.

8. Licensee shall fully maintain the improvements to the area as identified in the attached Exhibit "A." Ground maintenance will be provided by the airport for \$122.00 (One hundred twenty two dollars and zero cents) per month.

O. Licensor Responsibility. The responsibility of the Licensor under this Agreement shall be that specified in this agreement.

P. Improvements. Improvements, excluding trade fixtures and equipment, including additions, changes and other improvements shall not be constructed or placed upon the demised premises without the prior written consent of Licensor. All additions, changes and other improvements erected or placed on the demised premises shall remain thereon and shall not be removed therefrom, and at the cancellation/termination of this Agreement, all such improvements shall become the property of Licensor, free and clear of all encumbrances or liens whatsoever. Licensor reserves the right to enforce this provision beyond the cancellation/termination of this Agreement. All improvements shall be made in accordance with applicable codes and laws.

Q. Maintenance. Licensee shall, to the reasonable satisfaction of the Airport Manager, keep and maintain the Premises and all improvements on the Premises in good condition and repair and in a safe, clean and sanitary condition. Licensee shall provide containers on the Premises for trash, garbage and waste, if required. The Airport Manager may issue and Licensee shall comply with any written reasonable directive regarding the type, location, and screening of trash containers maintained by Licensee outside any building on the Premises.

R. Nonsubordination. The interest of Licensor in this License, the property, or facility shall never be subordinated to any other interest.

S. Licensee shall, at its own expense, comply with all applicable state, federal and local statutes, ordinances, rules, regulations, orders and requirements in effect during the duration or any part of the duration hereof regulating the use by the Licensee of the premises.

T. Licensee shall not install, operate or maintain on the licensed property any electrical equipment which will overload the electrical system therein or any part thereof, beyond its reasonable capacity for proper and safe operation as determined by Licensor.

U. Disadvantaged Business Enterprise (DBE) Assurances.

1. Policy. It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirement of 49 CFR Part 23 apply to this Agreement.

2. DBE Obligation. The Licensor agrees to insure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance on contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the Licensor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to insure that disadvantaged business

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enterprises have the maximum opportunity to compete for and perform contracts. The Licensor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

V. Notices. Any notices required under this Agreement shall be deemed sufficient if made in writing and sent by mail to either party at the following addresses:

Licensor: City of Prescott  
City Clerk  
201 South Cortez  
Prescott, Arizona 86303

with a copy to: Airport Manager  
6546 Crystal Lane  
Prescott, Arizona 86301

Licensee: Atlas Materials Testing Technology, LLC  
ATTN: Amanda M. Florendo  
45601 N. 47<sup>th</sup> Avenue  
Phoenix, AZ 85087

W. Modification. This License Agreement contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing, signed by the parties.

X. Terms Binding on Successors and Assigns. The covenants, conditions and terms of this Agreement shall extend to and be binding upon the Licensor and Licensee, their heirs, personal representatives and assigns, if any.

Y. Notice of Lien and Statutory Applicability.

1. It is expressly agreed by and between the parties that this Agreement is subject to the provisions of Title 33, Chapter 3, Article 4 of the Arizona Revised Statutes.

2. Licensor shall have a possessory lien from the expiration of any applicable cure period after due to unpaid rent.

3. It is expressly agreed by and between the parties that this Agreement is subject to the provisions of Title 33, Chapter 7, and Article 7 of the Arizona Revised Statutes.

Z. Personal Interest. Licensee warrants that it did not collude with any other party or parties for the purpose of preventing any other bid for this Agreement being made.

AA. Attorney Fees; Costs. In the event of any litigation or other proceeding concerning this Agreement, each party is responsible for its own attorneys' fees and costs, regardless of the outcome of the litigation.

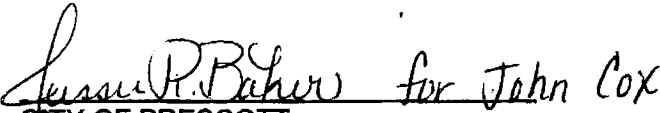
BB. Conflict of Interest. Pursuant to A.R.S. 38-511, the City of Prescott may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Prescott is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. In the event of the foregoing, the City of Prescott

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further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this contract on behalf of the City of Prescott from any other party to the contract, arising as a result of this contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

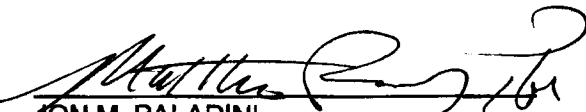
LICENSOR:

  
CITY OF PRESCOTT  
John E. Cox, Airport Manager

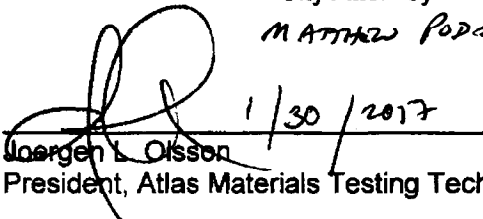
ATTEST:

  
DANA R. DeLONG  
City Clerk

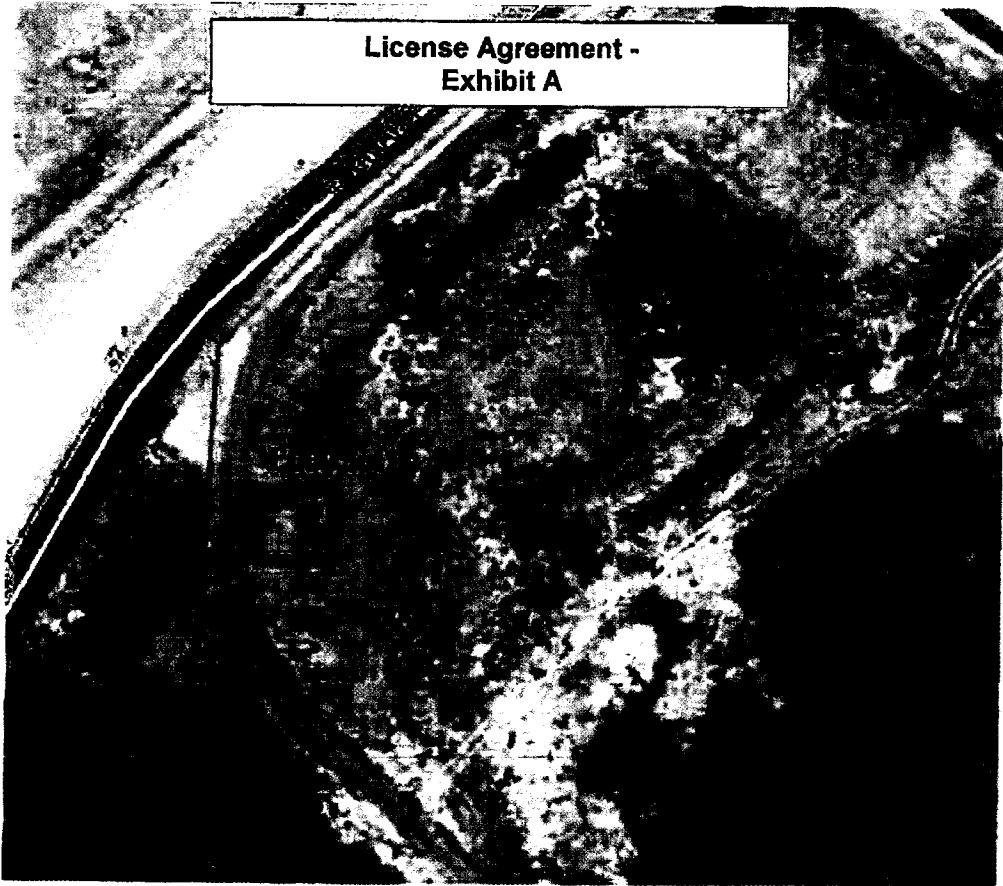
APPROVED AS TO FORM:

  
JON M. PALADINI  
City Attorney  
MATTHEW PODRACHY, Esq.

LICENSEE:

  
1/30/2017  
Joergen L. Olsson  
President, Atlas Materials Testing Technology, LLC.

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**Exhibit "B"**  
**Federal Provisions**

1. The LICENSEE, for himself, his heirs, 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, in the event facilities are constructed, maintained, or otherwise operated on the said property described in the Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefit, the LICENSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, 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.
2. The LICENSEE, for himself, his personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby convey and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise 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, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the LICENSEE shall use the premises in compliance with all other requirements imposed by 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.
3. That in the event of breach of any of the above nondiscrimination covenants, the CITY shall have the right to terminate the Agreement and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR, Part 21 are followed and completed including expiration of appeal rights.
4. LICENSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the LICENSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
5. Noncompliance with Provision 4 above shall constitute a material breach thereof and in the event of such noncompliance, the CITY shall have the right to terminate this Agreement and the estate hereby created without liability therefore or at the election of the CITY or the United States either or both said Governments shall have the right to judicially enforce said provisions.
6. LICENSEE agrees that it shall insert the above five provisions in any Agreement by which said LICENSEE grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein leased.

7. The LICENSEE assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LICENSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by the Subpart. The LICENSEE assures that it will require that its covered suborganizations provide assurances to the LICENSEE that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effort.
8. The CITY reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the LICENSEE and without interference or hindrance.
9. The CITY reserves the right, but shall not be obligated to the maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the LICENSEE in this regard.
10. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreements between CITY and the United States, relative to the development, operation or maintenance of the airport.
11. There is hereby reserved to the CITY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein rented. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on Ernest A. Love Field, Prescott Municipal Airport.
12. LICENSEE Agrees to be responsible for and comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the rented premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.
13. The LICENSEE by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land rented hereunder above a height as determined by the application of the most restrictive requirements of Title 14 CFR Part 77. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land rented hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the LICENSEE.
14. The LICENSEE by accepting this Agreement agrees for itself, its successors and assigns that it will not make use of the rented premises in any manner which might interfere with the taxiing, landing and taking off of aircraft from Ernest A. Love Field, Prescott Municipal Airport, or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby rented and cause the abatement of such interference at the expense of the LICENSEE.

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15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103 (e) and 47107(a)(4).
16. This Agreement and all the provisions hereof shall be subject to whatever right the United States government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.
17. The LICENSEE will conform to airport, Federal Aviation Administration, and Transportation Security Administration safety and security rules and regulations regarding the use of the airport including but not limited to use of the airport operations areas, runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport: and will be subject to penalties as prescribed by the airport for violation of the airport safety and security requirements.

# CONTRACT TRACKING SHEET



**CONTRACT NO:** 2017-243

For Contract Review –

**1<sup>st</sup> Step:** City Clerk will assign a contract number (if Council action is required, get number first and include in Council Agenda Memo)

**2<sup>nd</sup> Step:** Route Contract and applicable documents through Legal Department

\*\*\* Certificate of Liability/Insurance **MUST** be attached. Please include the expiration date.

**PROCESS NOTE:** The Legal Department **MUST** review all IGAs, Easements, Lease Property Acquisition and Development Agreements as well as all Contracts. Must be reviewed and signed off by both Risk Manager & Legal Department prior to any action taken.

*Please fill out this form completely or it will be returned to you prior to review, approval, or scanning in OnBase. If a response is not applicable, please use "N/A" - Do Not Leave Any Blanks.*

Type (check one):

- Contract
- Change Order/Modification (How many change orders are connected to this contract? \_\_\_\_\_)  
**ORIGINAL CONTRACT NO:** \_\_\_\_\_ **for this change order**
- Amendment (How many amendments are connected to this contract? \_\_\_\_\_)  
**ORIGINAL CONTRACT NO:** \_\_\_\_\_ **for this amendment**
- IGA
- General Services
- Professional Services
- Lease/Property Acquisition
- Development Agreement
- License Agreement
- Other: please specify: \_\_\_\_\_  Construction  Easement

**IDENTIFYING INFORMATION:** (Please fill in each field)

Requesting Dept., Contact Name, Ext. #:  
 Airport, Jessie Baker, 1152  
 Contractor or Vendor Name, Address, Tel. No.:  
 Atlas Materials Testing (Customer No. 17905)  
 45601 N. 47<sup>TH</sup> Ave.  
 Phoenix, AZ 85027  
 Project Name  
 Atlas Materials Testing License Agreement  
**Ord/Res No:** \_\_\_\_\_ if applicable

Brief Summary of the Services to be provided:  
 License Agreement for New Space  
**Terms:**  
 Start: 2/1/2017 Expire:  
 Contract Amount: \$ 159.50  
 Does contract require Council approval?  Yes  No  
 Scheduled Council Date: N/A  
 Does document need to be recorded  Yes  No

ADDITIONAL COMMENTS/INSTRUCTIONS? \_\_\_\_\_

**INSURANCE & BONDS**

None Required

Insurance Certificate:	<input type="checkbox"/> Attached	_____ Initial	Date: _____ Exp. Date _____
Bid Bond:	<input type="checkbox"/> Attached	_____ Initial	Date: _____
Performance Bond:	<input type="checkbox"/> Attached	_____ Initial	Date: _____
Payment Bond:	<input type="checkbox"/> Attached	_____ Initial	Date: _____

**FINAL REVIEW AND APPROVAL:** Please initial

<input type="checkbox"/> Legal: _____	Date: _____	Contracts/Procured Services
<input type="checkbox"/> Risk Mgmt: _____	Date: _____	Contracts and Certificates
<input type="checkbox"/> City Manager: _____	Date: _____	when required

*City Clerk's Office Use*