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City Council Agenda Item

Meeting of December 1, 2015

TO: The Honorable Mayor and Members of the City Council

FROM: James R. O'Connor, City Manager

DATE: November 20, 2015

SUBJECT: Agreement between the City of Vero Beach and United States of America

REQUESTED BY: City Manager/Airport Director

The following is requested as it relates to the above-referenced agenda item:

Request Council review and approval based on the attached documentation.

No action required. (Information only)

MEMORANDUM

TO: James R. O'Connor, City Manager
VIA: Wayne R. Coment, City Attorney *WRC*
FROM: Ericson W. Menger, Airport Director *EWM*
DATE: November 19, 2015
SUBJECT: **AGREEMENT BETWEEN THE CITY OF VERO BEACH AND UNITED STATES OF AMERICA**

Attached are 3 copies of a License Agreement between the City of Vero Beach and the United States of America, Transportation Security Administration (TSA) for non-exclusive use of airport property.

BACKGROUND:

Elite Airways, LLC, has announced non-stop scheduled air service between Vero Beach and Newark. The City approved, and the contractor has nearly completed, the necessary modifications to the airport terminal building to accommodate this service. Part of the terminal modifications are necessary to meet space, security, and electrical requirements given to staff by TSA.

TSA has provided a standard agreement that it uses with local governments. The agreement was slightly modified by City staff to meet our requirements and approved by TSA and our City Attorney's office.

ANALYSIS:

Strengths: Airline service will begin December 10, 2015, pending a final inspection by the Department of Homeland Security, Transportation Security Administration (TSA).

Weaknesses: No direct revenue is received by the Airport from this agreement, as required by the TSA.

Opportunities: TSA provides its equipment and personnel (federal employees) at no charge to the City (airport).

Threats: Without TSA-approved equipment and personnel, scheduled airline service cannot proceed.

RECOMMENDATION:

Staff respectfully request that this item be placed on the December 1, 2015, City Council Agenda, recommending approval of the proposed License Agreement with TSA.

EWM/lr

Attachments

cc: Airport Commission Members (via email/US mail)
City Manager's Office (via email)
Finance Department (via email)

LICENSE AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
CITY OF VERO BEACH

THIS License Agreement (“LICENSE”) is made and entered into on this ____ day of _____, 201__ (“Effective Date”) by and between CITY OF VERO BEACH, (“City”) and the United States of America, acting through the Transportation Security Administration (“TSA”), together referred to as the “Parties.”

1.0 AUTHORITY

1.1 The TSA enters into this LICENSE under the authority of the Aviation and Transportation Security Act of 2001 (“ATSA”), Pub. L. 107-71. Under the terms of ATSA, TSA is required to deploy federal security screeners, Federal Security Managers, federal security personnel, and federal law enforcement officers to conduct screening of all passengers, property, and baggage at all airports, and to establish a program to screen cargo and ensure perimeter access security at all such airports. In order to carry out this statutory mandate, it is necessary for TSA to use certain airport space and facilities defined under federal law as “necessary security checkpoints.” TSA has specific statutory authority under 49 U.S.C. §§ 106(m) and 114(m) to enter into this LICENSE.

1.2 City enters into this LICENSE as owner and operator of the Vero Beach Regional Airport (“Airport”).

2.0 PURPOSE

This LICENSE establishes TSA’s use of the security checkpoints TSA needs to conduct baggage and passenger screening under the requirements of ATSA and other applicable federal laws. In order to improve airport security in a manner that meets the requirements of ATSA, it is necessary for TSA to use existing checkpoint space, and, in some cases, to expand checkpoint space.

3.0 USE OF PROPERTY

3.1 City of Vero Beach is the owner and operator of that certain airport known as Vero Beach Regional Airport, located in the county of Indian River, State of Florida, and having an address at 3400 Cherokee Drive, Vero Beach, Florida 32960 (“Property”).

3.2 This LICENSE covers the use of space that TSA reasonably believes is necessary for passenger and baggage screening operations. The specific areas covered by this LICENSE (which are referred to herein as “Space”) are set out on Exhibit 1 attached hereto. The Space may be expanded or altered, and Exhibit 1 amended accordingly, at the written request of TSA and upon the written approval of City, such approval not to be unreasonably withheld, conditioned or delayed. If City does not provide such approval, TSA may proceed pursuant to its legal authority to provide security at airport checkpoints. In addition, temporary additions to and deletions from the Space, or temporary adjustments thereto, may be made at the verbal request of the TSA. TSA’s use and occupancy of other areas at the Property, such as Federal Security Managers and staff offices, and other areas not deemed necessary checkpoint space, has been or will be obtained through a separate lease agreement between City and the U.S. General Services Administration, acting on behalf of TSA.

3.3 The ATSA authorizes TSA to acquire real property by purchase, lease, condemnation, or otherwise. This LICENSE shall not be considered a waiver of any rights that TSA may assert under ATSA with respect to the

acquisition of property, nor with respect to TSA's authority to enter onto any Airport property to address security concerns; nor shall this LICENSE waive any rights that the City may assert in connection with such acquisition.

3.4 City provides the Space to TSA in "AS IS" condition as of the Effective Date of this LICENSE.

4.0 NO RENT

Pursuant to Section 511 of the Department of Homeland Security Appropriations Act, 2005, Pub. Law 108-334, 118 Stat. 1298 (October 18, 2004), City agrees to provide use of the Space at no cost to TSA as a part of its obligation to comply with a security program and in recognition of the benefits that TSA's security function provides to City, passengers and others entering airport property. City reserves the right to impose rental charges for the Space if federal law requires TSA to pay rent for checkpoint space in the future.

5.0 TERM; AMENDMENTS AND MODIFICATIONS

5.1 This LICENSE shall commence on the Effective Date and shall continue for one (1) year or so long as federal law requires TSA to perform screening functions at the Airport, whichever is sooner. Except as provided in Section 5.3, on each anniversary of the Effective Date (the "Rollover Date"), the LICENSE shall be automatically renewed for an additional one (1) year. The term of this LICENSE shall consist of the first and each additional year, if any, during which this LICENSE is in effect (the "Term").

5.2 City shall provide the Federal Security Director ("FSD") and the FSD designated point of contact ("Field POC") with written notification and, if and to the extent requested by the FSD and/or the Field POC, supporting documentation with respect to any proposed amendment to this LICENSE no later than sixty (60) days prior to the desired effective date of such amendment. Notwithstanding the foregoing, amendments to this LICENSE shall be effective only when agreed to in writing by a TSA Contracting Officer. City expressly acknowledges and understands that application of the preceding sentence means, among others, that any increase in the periodic reimbursement amount to be paid to City pursuant to this LICENSE shall be effective no earlier than the date the increase in the periodic reimbursement amount is agreed to in writing by a TSA Contracting Officer.

5.3 Either Party may terminate this LICENSE by providing written notice. Such notification must be provided no later than sixty (60) days prior to such termination.

6.0 TSA'S OPERATIONAL ACTIVITIES AT AIRPORT

6.1 City hereby agrees that TSA has the following rights and privileges:

6.1.1 The right to use the Space in connection with its screening and security operations at the Property, including but not limited to the right to establish and use security checkpoints, to place and operate screening equipment, to screen passengers and their property, baggage, and cargo and to perform such other activities and locate such other equipment as TSA deems necessary for TSA to perform its passenger and baggage screening function under federal law.

6.1.2 The right to install, operate, maintain, repair, remove, and store equipment necessary for TSA's operations within the Space. TSA agrees to give notice to City and coordinate their screening activities with City whenever possible. To the extent required under federal law, TSA's contractor will obtain all state and local permits required to perform any work under this paragraph.

6.1.3 The right to refuse additions, improvements, modifications, revisions or other alterations within the Space by City, including the installation of fixtures and placement of personal property, that TSA reasonably believes may interfere with TSA's use of the Space.

6.1.4 The right of TSA employees, agents, and contractors to freely access and use the Space in connection with TSA's performance of its security operations at the Property, including, without limitation, the right to perform inspections of any services provided by City to TSA.

6.1.5 City will provide TSA employee parking spaces according to its customary, non-discriminatory practices for employees of other governmental entities, including payment of applicable fees, if any. Such practices and fees shall be set out in a separate agreement between the Parties.

6.2 TSA is responsible for its own telecommunications services; however, TSA may adhere to City policy on Shared Tenant Services and utilize the telephone line service of the Shared Tenant Services System provided by City upon payment of any applicable charges pursuant to a separate agreement between City and TSA.

6.3 TSA agrees to coordinate with City so as to not overload the electrical, plumbing, or HVAC systems associated with the Space. TSA will not install or caused to be installed equipment or machinery that will place a load upon any floor exceeding the floor load per square foot area which such floor was designed to carry.

6.4 City will maintain and keep in good repair the Space, including electrical, plumbing, and HVAC systems.

6.5 With the prior consent of TSA, such consent not to be unreasonably withheld, City may enter the Space used by TSA for the performance of City's obligations under federal law or other lawful purpose. Notwithstanding the foregoing, City will comply with all applicable federal security requirements (including badging and maintenance of sterile area) and will use its best efforts to minimize the disruption of TSA operations.

7.0 LIABILITY

TSA's liability for operations on the Property shall be in accordance with federal law. TSA, as an instrument of the federal government has sovereign immunity. However, under the Federal Tort Claims Act ("FTCA"), 28 C.F.R. pt 14 (2002), sovereign immunity is waived with respect to certain torts. Under the FTCA, airports, passengers and other aggrieved parties may pursue a claim against TSA for damage to or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of an employee of TSA while acting within the scope of employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The foregoing shall not be deemed to extend TSA's liability beyond that existing under the FTCA or to preclude TSA from using any defense available at law or equity.

8.0 PAYMENTS

8.1 The Parties hereby agree to the following:

8.1.1 City may, in its sole discretion, install separate meters (the "Equipment Meters") measuring electrical consumption by TSA equipment located in the Space ("TSA Electrical Usage"). Airport hereby certifies that, if installed, the Equipment Meters measure only TSA Electrical Usage. Upon receipt of City's invoice for TSA Electrical Usage, TSA shall remit payment for TSA Electrical Usage to City. The invoice must be submitted directly to the Field POC for payment not more than thirty (30) days in arrears and shall contain metered electrical charges determined in accordance with this Section 8.1.1. Notwithstanding the foregoing, if at any point during the Term of this LICENSE TSA determines that the Equipment Meters also measure non-TSA electrical usage, then TSA reserves the right, solely in its discretion, to pay only a percentage of the utility charge based on the percentage of the utility consumption that TSA determines is TSA Electrical Usage, to pay City for utility consumption based upon a fixed rate of TSA's reasonable selection, or to reject utility payment for the period in question in the event appropriated funds are no longer available.

8.1.2 City shall provide janitorial and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Space at a level generally consistent with the janitorial standards for space throughout the Airport terminal building. Notwithstanding the foregoing, TSA may enter into contracts with third parties for janitorial and cleaning services, in which case, upon notice from TSA of having entered into such third party contract(s), City shall be relieved of its obligation to provide such services under this Section 8.1.2. In the event that City chooses to cease providing janitorial and cleaning services and supplies under this Section 8.1.2, Airport must give notice to TSA at least ninety (90) days prior to such cessation.

8.2 TSA may pay any charges due under this LICENSE by electronic funds transfer, check, or other means. Any charges due under this LICENSE shall be due in arrears and, to the extent appropriated funds are available, shall be paid within thirty (30) days of TSA's receipt of a Proper Invoice from City. Unless otherwise indicated herein, a Proper Invoice shall mean an invoice that is submitted to the Coast Guard Finance Center ("FINCEN") using any one or more of the methods and addresses indicated below, and contemporaneously transmitted for informational purposes to the Federal Security Director's designated Point of Contact, (A) after completion of service but not more than ninety (90) days in arrears; (B) in substantially the form of invoice provided separately to Airport; and (C) that includes the following: (i) contract number, (ii) period of service, and (iii) charges calculated in accordance with City's standard policy.

Invoices shall be e-mailed, faxed or sent via U.S. mail to FINCEN at the following addresses:

Email: FIN-SMB-TSAINVOICES@uscg.mil
Fax (addressed to TSA Invoices): 757-413-7314

U.S. Mail:
TSA Commercial Invoices
USCG Finance Center
P.O. Box 4111
Chesapeake, VA 23327-4111

If City has established Electronic Fund Transfer ("EFT") with FINCEN, City may receive payments under the same EFT document. City shall attach a copy of the EFT document to invoices to ensure payment is applied correctly. City's failure to submit a Proper Invoice within one (1) year of completion of service for any period of service may, in the sole discretion of TSA, result in delay of payment, reduction of payment, or no payment in the event appropriated funds are no longer available. TSA shall have the right to audit utility charges in accordance with the cost principles for state, local and Indian tribal governments contained in Office of Management and Budget Circular A-87, as revised.

9.0 IMPROVEMENTS OR ALTERATIONS

9.1 TSA shall have the right to make such additions, improvements, modifications, revisions or other alterations within the Space as are necessary for required security operations at the Property. To the extent required under federal law, TSA's contractors will abide by state and local permitting requirements when making alterations to the Space. City shall use its best efforts to support TSA in obtaining required permits in a timely fashion so as to minimize delay.

9.2 TSA shall, whenever possible, notify City in advance when any additions, improvements, modifications, revisions or other alterations to the Space are planned, and shall coordinate such alterations with City. In addition, upon completion, TSA will allow City to inspect the same and will provide an updated set of working drawings showing the current as-built condition of the Space. City will safeguard such as-built drawings from unauthorized access or disclosure as Sensitive Security Information in accordance with the requirements of 49 C.F.R. part 1520.

9.3 Any and all furniture and equipment or other personal property placed or installed within the Space by TSA shall, at TSA's option, remain personal property, notwithstanding the fact that it may be affixed or attached to the Space, and shall remain the property of TSA during the term of this LICENSE and, at TSA's option, be removable by TSA at any time from the Space.

10.0 GOVERNING LAW

Federal law governs this LICENSE. City shall comply with all federal, state and local laws applicable to Airport as owner of the Property. TSA will comply with all federal, state and local laws applicable to and enforceable against TSA under federal law, provided that nothing in this LICENSE shall be construed as a waiver of any sovereign immunity of the TSA. City is required by the terms of certain grant assurances entered into with the Federal Aviation Administration to include certain clauses in all contracts. TSA shall be bound by those clauses to the degree required by federal law.

11.0 DISPUTE RESOLUTION

When possible, disputes will be resolved by informal discussions between the appropriate City representative and TSA. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by submission of the dispute to the TSA Assistant Secretary or his/her designee for resolution. The parties agree that the Assistant Secretary's decision shall be final and not subject to judicial or administrative review and shall be enforceable and binding on the parties.

12.0 SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

This LICENSE shall bind, and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns.

13.0 SEVERABILITY

In the event any term, covenant, condition or provision of this LICENSE is held by any court or tribunal of competent jurisdiction to be invalid or in conflict with any law, rule, order or regulation of the Federal Aviation Administration or TSA, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained.

14.0 NOTICES

Any notice, demand, request, consent, or approval that either Party may or is required to give the other, shall be in writing, and shall be either personally delivered or sent by first class mail, postage prepaid, addressed as follows:

To Airport:

Airport Director
Vero Beach Regional Airport
P.O. Box 1389
3400 Cherokee Drive
Vero Beach, FL 32961

with copy to:

To TSA:

Contracting Officer
TSA - 25
601 South 12th Street
Arlington, VA 20598

with copy to:

City Attorney
P.O. Box 1389
Vero Beach, FL 32961

FSD/Field POC

15.0 INTEGRATED AGREEMENT

This LICENSE, upon execution, contains the entire agreement of the parties as to the Space, and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this LICENSE as to the terms of use of the Space. There may exist other agreements between the Parties as to other matters, which are not affected by this LICENSE and are not included within this integration clause.

16.0 WAIVER

No failure by either Party to insist upon the strict performance of any provision of this LICENSE or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial compensation (if applicable) or other performance by either Party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

17.0 COUNTERPARTS

This agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have entered into this LICENSE by their duly authorized officers the day and year first above written.

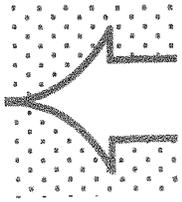
For
TSA

By: _____
Name: _____
Contracting Office

For
City
(see separate page)

ATTEST:

CITY OF VERO BEACH:



Tammy K. Vock
City Clerk

Jay Kramer
Mayor

Date: _____

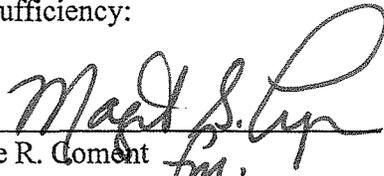
STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing License Agreement for Use of City Real Property was acknowledged before me this _____ day of _____ 2015 by Jay Kramer, as Mayor and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both known to me.

NOTARY PUBLIC

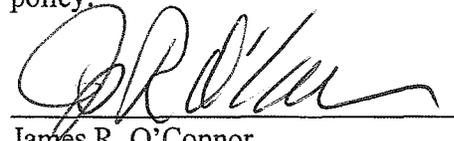
Print name:
Commission No.
My Commission Expires:

Approved as to form and
legal sufficiency:



Wayne R. Comert
City Attorney

Approved as conforming to municipal
policy:



James R. O'Connor
City Manager

Approved as to technical requirements:



Ericson W. Menger
Airport Director

EXHIBIT 1

