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70' EJ CKTO CP ØUO CVVGTU'

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**VERO BEACH AIRPORT COMMISSION MINUTES**  
**Friday, December 6, 2019 – 9:30 a.m.**  
**City Hall, Council Chambers, Vero Beach, Florida**

**PRESENT:** Chairman, Barbara Drndak; Vice Chairman, Arthur Hodge; Members: Carole Jean Jordan, Melvin Wood, Louis Vocelle, Jr., Alternate Member #1, Mary Wood and Alternate Member #2, John Calcagno **Also Present:** Airport Director, Eric Menger; Assistant City Attorney, Karen Emerson and Deputy City Clerk, Sherri Philo

**1. CALL TO ORDER**

Today's meeting was called to order at 9:30 a.m. and the Deputy City Clerk performed the roll call.

**2. ELECTION OF OFFICERS**

**A) Chairman**

**Mr. Vocelle nominated Mrs. Barbara Drndak for Chairman of the Airport Commission. Mr. Wood seconded the nomination.**

**There were no other nominations.**

**Mrs. Drndak was unanimously appointed Chairman of the Airport Commission.**

**B) Vice Chairman**

**Mr. Hodge nominated Mr. Buck Vocelle for Vice Chairman of the Airport Commission. Mr. Wood seconded the nomination.**

**There were no other nominations.**

**Mr. Vocelle was unanimously appointed Vice Chairman of the Airport Commission.**

**3. APPROVAL OF MINUTES**

**A) October 4, 2019**

Mrs. Drndak referred to the minutes of the October 4, 2019 Airport Commission meeting. She noted that Mr. Phillip "Patello" should be Mr. Phillip "*Vitello*."

**Mr. Vocelle made a motion to approve the minutes of the October 4, 2019 Airport Commission meeting as amended. Mr. Hodge seconded the motion and it passed unanimously.**

**4. PUBLIC COMMENT**

None

**5. NEW BUSINESS**

**A) FDOT Pavement Management Program – Hanson Professional Services, Inc.**

Mr. Eric Menger, Airport Director, reported Mr. Blake Swafford, Vice President of Hanson Professional Service, Inc., is present for today's meeting to give a presentation regarding a report that was done by the Department of Transportation (DOT), as well as some of the paving conditions they have at the Airport.

Mr. Blake Swafford, Vice President of Hanson Professional Services, Inc., gave a Power Point Presentation (attached to the original minutes).

Mrs. Drndak asked Mr. Menger to discuss doing a public/private partnership for some of the ramp space where the lessees will need to come up with some of the funding.

Mr. Menger reported that even though they might be able to receive a grant, they might have to turn over some of the apron projects to the private sector to pay for the matched portion of the grant.

**6. OLD BUSINESS**

**A) Girard Equipment**

Mr. Menger reported that they are getting very close in reaching an agreement with Girard Equipment to lease the old Transmission and Distribution building at Airport West. He briefly went over the Appraisal Report of the Net Market Rental of the building with the Commission members (on file in the City Clerk's office).

**B) MRO Hangar/Midfield Development**

Mr. Menger gave a brief update on the Midfield Development of the MRO Hanger. He showed on the screen a concept for how they want to build the area out near Taxiway Echo with three (3) proposed hangars (attached to the original minutes). Staff feels the proposed hangars will bring in a lot of revenue. He said they have been speaking with a few entities who are interested in being a part of this, such as Sheltair and JP Aviation.

Mr. Wood said conceptually, one of the things that he sees is that the more infrastructure they can get on the field it will attract others to come to Vero Beach and build at the Airport.

Mr. Menger said in order to keep building at the midfield, they are going to have to raise the height of the tower, relocate the tower, or both. He said the tower is 100% funded by the Federal Government and it took a three (3) year lobbying effort to get their current tower.

Mr. Wood said that he would like to see the City Council become more familiar with what is going on at the Airport.

Mrs. Drndak reported that she recently attended a City Council meeting where they pulled an item from their agenda, which was about funding and Elite Airways. She said that the Airport Commission would be holding a special meeting about this issue.

Mr. Wood suggested that the Planning and Development Director and the Finance Director take a tour of the Airport. He felt this might enhance the ability of them approving a lot of the Airport requisitions.

#### **C) U.S. Customs at the Vero Beach Regional Airport**

Mr. Menger showed on the screen a copy of the letter that former Mayor Val Zudans sent to the U.S. Customs and Border Protection regarding the possibility of Corporate Air, Inc. to construct and operate a U.S. Customs and Border Protection User Fee Facility at the Airport (attached to the original minutes).

#### **D) Airport Revenue – Florida Statute Chapter 332**

Mr. Menger reported that staff would be proposing a pavement management program so they can rehabilitate, rejuvenate, etc., the pavement in the next five (5) to 10 years. He showed on the screen a colored legend of what needs to be done, which was included in the FDOT Report (attached to the original minutes). He briefly went over the legend with the Commission members. He reported that the area that Flight Safety leases, as well as the area of Paris Air, and the southern portion of Corporate Air and Barnhouse, are all going to need to be redone and the Airport is going to have a hard time coming up with the funding to match the grants. Therefore, although staff will still seek grant funding for these projects, they will probably be looking at the private sector to match the grants.

Mr. Wood asked how does Flight Safety feel about this.

Mr. Menger said that he has not discussed this with them yet. He said that he has a meeting with them next week and this will be one of the topics for discussion.

Mr. Wood asked is it possible to have a Representative from Flight Safety and Paris Air to attend an Airport Commission meeting.

Mr. Menger briefly went over the draft Priority Projects: FY 2020-2024 wants and needs with the Commission members (attached to the original minutes). He noted that staff has not reviewed this with the City Manager or the Finance Director.

Mr. Calcagno said that Mr. Wood is correct in requesting that Flight Safety attend an Airport Commission meeting and tell them what their intentions are. He said that he would be most concerned with Flight Safety's willingness or ability to pay the matching grants, versus the other tenants they have.

Mr. Menger reported that staff is fighting legislatively the change from 80/20 funding to 50/50 funding. He spoke with Representative Grall and Representative Mayfield's office and they have drafted a Bill to be considered to be filed in January. He gave the Commission members what staff sent to the State Representatives on this issue (attached to the original minutes). He explained that staff is trying to change the law to allow the Airport to be able to retain the 80/20 match for at least five (5) years.

Mr. Calcagno said it was his understanding that roughly around July of 2020, they would be going to the 50/50 funding.

Mr. Menger said that is correct.

Mr. Calcagno said that is primarily a result of the 2018 calendar year of enplanements going to 11,000. In hindsight, they would probably have been better off raising some type of a fee on Elite Airways to incentivize them to keep the enplanements under 10,000. He said in the event something doesn't happen legislatively, they are going to have to generate revenue and Elite Airways should share the burden.

Mr. Menger reported that the License Agreement should be signed by Elite Airways today, which quadruples their fees. Their new fees would be in the neighborhood of \$38,000 a year, which is not that much, but the License Agreement does allow staff to add additional fees during the term of the Agreement as long as it meets the terms of the Agreement. He said it probably would not cover the overall costs.

Mrs. Drndak said that even if they drop below 10,000 enplanements, they would not be able to go back to the 80/20 funding. She explained that they would have to drop down to 2,500 enplanements to get back to the 80/20 funding. Therefore, it is not just a matter of dropping down to 10,000 enplanements anymore.

Mr. Menger felt it was a huge benefit to the community to have the airline. He said tourism is very important so this is a plus to the community, but it is a financial negative to the Airport. He

said there are a lot of communities that have a consortium where they put together funding to assist in funding the needs for an airline so they can have the tourism benefit. This community does not do that. This community says the Airport needs to handle it and the Airport is having a difficult time handling it because of the costs involved.

Mr. Vocelle asked if the Chamber of Commerce could help.

Mr. Menger said the Chamber of Commerce does help with general marketing, which focuses on tourism. He said when it comes to writing a check, he doesn't know of any entity that would step up to the plate. He said if Elite Airways were to leave, that doesn't mean another airline won't want to step in. He said their decision at that point would be can they prevent it or would they want to prevent it. He would like to know if the Commission feels that he should continue to push for airline service because he doesn't believe there is support to do that.

Mr. Calcagno asked Mr. Menger to provide the Commission with a one (1) page summary projecting out a few years of the cost to the Airport in having Elite Airways.

Mr. Vocelle asked how are the other airports handling this situation.

Mr. Menger said both Melbourne and Gainesville have been very supportive of their efforts. He reported that Representative Mayfield's staff indicated to him that they would speak to the other airports and their Representatives to see if there could be a combination effort. He said the Florida Airport Council is also supportive.

Mrs. Drndak said at the last City Council meeting, they pulled the item regarding Elite Airlines and she was under the impression that the City Council wanted to hold a joint workshop meeting with the Airport Commission at the beginning of January.

Mr. Menger felt that the Airport Commission should have a meeting and make a recommendation to the City Council. He said that he would have the information that Mr. Calcagno requested for that meeting.

Mrs. Karen Emerson, Assistant City Attorney, said the City Council would be holding a workshop meeting in January to discuss multiple issues, one (1) of which was to include the Airport and if she remembers it correctly, the City Council stated that they might need to add this topic. She did not think they proposed it as a joint meeting.

**E) Aero I / Aero II Lease Assignment (10 Federal)**

Mrs. Drndak thought this was a dead project.

Mr. Menger said that is correct.

**7. CHAIRMAN'S MATTERS**

**A) Annual Report**

The Commission members approved the Annual Report to be submitted to the City Council.

**8. AIRPORT DIRECTOR'S MATTERS**

Mr. Menger handed out to the Commission members a copy of the Airport Economic Impact Study that was done by the Florida Department of Transportation (on file in the City Clerk's office).

**9. NEXT MEETING DATE**

**A) January 3, 2020**

The Commission rescheduled their January 3, 2020 Airport Commission meeting to January 9, 2020 at 1:30 p.m., when they will discuss the issue with Elite Airlines.

**10. ADJOURNMENT**

Today's meeting adjourned at 11:02 a.m.

/sp



Florida Department of  
**TRANSPORTATION**

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# FDOT AVIATION GRANT PROGRAM FUNDING

General Aviation vs Commercial Service



*Chapter 332, Florida Statutes*  
All publicly owned Florida airports that are open for public use and included in the Florida Aviation System Plan (FASP) are eligible for state funding.

The Florida Aviation Grant Program  
This program was established to fund projects relating to airport planning, capital improvement, land acquisition, and economic development.



# WHEN THERE IS FAA PARTICIPATION

- ▶ For large and medium primary hub airports, the FAA grant covers 75 percent of eligible costs (or 80 percent for noise program implementation). For small primary, reliever, and general aviation airports, the grant covers a range of 90-95 percent of eligible costs, based on statutory requirements.

90/5/5

Example – on a \$1,000,000 project:

FAA would pay	\$900,000
FDOT would pay	\$50,000
And Local match would be	\$50,000

# WHEN THERE IS NO FAA PARTICIPATION

## General Aviation 80/20



Example – on a \$1,000,000 project:

FDOT would pay \$800,000

And Local match would be \$200,000



# WHEN THERE IS NO FAA PARTICIPATION

## Commercial Service

50/50

- ▶ Under Florida Statute 332 when an airport becomes classified as commercial service by the FAA and subsequently by FDOT, state grants are reduced from 80/20 to 50/50.

Example – on a \$1,000,000 project:

FDOT would pay \$500,000

And Local match would be \$500,000

Airport Classifications		Hub Type % of Annual Passenger Boardings	Common Name # of FL Airports
<b>Commercial Service:</b> Publicly owned airports that have at least 2,500 passenger boardings each calendar year and receive scheduled passenger service <b>§47102(7)</b>	<b>Primary:</b> Have more than 10,000 passenger boardings each year <b>§49 USC 47102(16)</b>	<b>Large:</b> 1% or more  <b>Medium:</b> At least 0.25% but less than 1%  <b>Small:</b> At least 0.05% but less than 0.25%	<b>Large Hub</b> (4)  <b>Medium Hub</b> (3)  <b>Small Hub</b> (7)
	<b>Nonprimary:</b>	<b>Nonhub:</b> More than 10,000 but less than 0.05%	<b>Non Primary</b> (6)
<b>Nonprimary</b> (except commercial service)		<b>Nonhub:</b> At least 2,500 and no more than 10,000	<b>Nonprimary Commercial</b> (1)
		<b>Not Applicable</b>	<b>Reliever</b> §(47102(23)) (21)  <b>General Aviation</b> (47102(8)) (58)

# AIRPORT CLASSIFICATIONS

- ▶ Commercial Service (CA) Airports are publicly owned airports that have at least 2,500 passenger boardings each calendar year and receive scheduled passenger service. Passenger boardings refer to revenue passenger boardings on an aircraft in service in air commerce whether or not in scheduled service. There are two types of commercial service airports:
  - ▶ Nonprimary (having no more than 10,000 passenger boardings each year)
  - ▶ Primary (having more than 10,000 passenger boardings each year)



Florida Department of Transportation

RON DESANTIS  
GOVERNOR

600 Suwannee Street  
Tallahassee, FL 32399-0435

KEVIN J. THRAILL, P.E.  
SECRETARY

## MEMORANDUM

### VIA E-MAIL

DATE: December 17, 2019

TO: George Boyle, Michael Brown, Sunshine Cayubit, Ray Clark, Lauren Farrell, Doreen Joyner-Howard, Allison McCuddy, Laurie McDermott, Lauren Rand, Dionne Richardson, Wendy Sands, Paul Simmons, Kristi Smith, Vanessa Strickland, Scott Walters, Donna Whitney, Quinton Williams, Jim Wikstrom

FROM: Andy Keith, CFM, FCCM, Aviation Development Administrator

COPIES: Aaron Smith, Dave Roberts, Jon Sewell, Lee Lewis, Doug DiCarlo

SUBJECT: FY2020 Commercial Service Airports List

In accordance with paragraph 1.2.1 of *Aviation Program Management, Procedure No. 725-040-040-m*, and based upon the FAA's determination via the CY2018 Passenger Boarding (Enplanement) and All-Cargo Data for U.S. Airports (Preliminary Data) released on 7/18/2019, the following airports are listed as Commercial Service Airports in the Florida Aviation System Plan (FASP):

- Daytona Beach International Airport
- Egin AFB/Destin-Ft Walton Beach Airport
- Fort Lauderdale/Hollywood International Airport
- Gainesville Regional Airport
- Jacksonville International Airport
- Key West International Airport
- Melbourne International Airport
- Miami International Airport
- Northwest Florida Beaches International Airport
- Orlando International Airport
- Orlando Sanford International Airport
- Palm Beach International Airport
- Pensacola International Airport
- Punta Gorda Airport
- St. Pete-Clearwater International Airport
- Sarasota/Bradenton International Airport
- Southwest Florida International Airport
- Tallahassee International Airport
- Tampa International Airport
- Vero Beach Regional Airport

The following airports have moved from "General Aviation" or "General Aviation Reliever" to "Commercial Service":

- Vero Beach Regional Airport

The following airports have moved from "Commercial Service" to "General Aviation Reliever" or "General Aviation":

- Northeast Florida Regional Airport

Based upon this current list, please use the appropriate guidance for funding levels as outlined in the "Florida Aviation Project Handbook" at each District's discretion. If you require any further assistance, please do not hesitate to contact me at (850) 414-4516 or [andy.keith@dot.state.fl.us](mailto:andy.keith@dot.state.fl.us).

ak/AK *AKM*

Guidance documents:  
Aviation Program Management, Procedure No. 725-040-040 (Effective: December 15, 2017)  
Florida Aviation Project Handbook (Effective: July, 2018)

	A	B	C	D	E	F	G	H	I	J	K
	Rank	RO	ST	Locid	City	Airport Name	S/L	Hub	CY 18 Enplanements	CY 17 Enplanements	% Change
1											
2	10	SO	FL	MCO	Orlando	Orlando International	P	L	23,184,634	21,565,448	7.51%
3	15	SO	FL	MIA	Miami	Miami International	P	L	21,025,210	20,709,225	1.53%
4	18	SO	FL	FLL	Fort Lauderdale	Fort Lauderdale/Hollywood International	P	L	17,613,957	15,817,043	11.36%
5	28	SO	FL	TPA	Tampa	Tampa International	P	L	10,369,622	9,548,580	8.60%
6	47	SO	FL	RSW	Fort Myers	Southwest Florida International	P	M	4,602,810	4,364,224	5.47%
7	54	SO	FL	PBI	West Palm Beach	Palm Beach International	P	M	3,277,012	3,110,450	5.35%
8	55	SO	FL	JAX	Jacksonville	Jacksonville International	P	M	3,136,425	2,701,861	16.08%
9	78	SO	FL	SFB	Sanford	Orlando Sanford International	P	S	1,505,104	1,434,990	4.89%
10	90	SO	FL	PIE	Clearwater	International	P	S	1,116,405	1,023,471	9.08%
11	95	SO	FL	PNS	Pensacola	Pensacola International	P	S	972,186	839,248	15.84%
12	104	SO	FL	PGD	Punta Gorda	Punta Gorda Sarasota/Bradenton International	P	S	787,022	643,563	22.29%
13	107	SO	FL	SRQ	Sarasota	International	P	S	686,139	590,941	16.11%
14	108	SO	FL	VPS	Valparaiso	Eglin AFB/Destin-Ft Walton Beach	P	S	683,759	567,633	20.46%
15	124	SO	FL	ECP	Panama City	Northwest Florida Beaches International	P	S	512,848	454,712	12.79%
16	131	SO	FL	EYW	Key West	Key West International	P	N	446,257	392,381	13.73%
17	142	SO	FL	TLH	Tallahassee	Tallahassee International	P	N	384,378	350,174	9.77%
18	147	SO	FL	DAB	Daytona Beach	Daytona Beach International	P	N	367,152	346,470	5.97%
19	176	SO	FL	MLB	Melbourne	Melbourne International	P	N	234,939	221,928	5.86%
20	177	SO	FL	GNV	Gainesville	Gainesville Regional	P	N	234,124	218,578	7.11%
21	398	SO	FL	VRB	Vero Beach	Vero Beach Regional	P	N	11,084	9,110	21.67%
22	388	SO	FL	NIP	Jacksonville	Jacksonville NAS (Towers Field)	G A	None	11,958	14,305	-16.41%
23	464	SO	FL	APF	Naples	Naples Municipal	G A	None	5,694	505	1027.52%
24	513	SO	FL	BCT	Boca Raton	Boca Raton	G A	None	3,761	246	1428.86%
25	565	SO	FL	HRT	Mary Esther	Hurlburt Field	G A	None	2,537	1,886	34.52%
26	571	SO	FL	SGJ	Saint Augustine	Northeast Florida Regional	G A	None	2,477	11,431	-78.33%
27	576	SO	FL	OPF	Miami	Miami Opa Locka Executive	G A	None	2,442	828	194.93%

# FAA CY 18 ENPLANEMENTS

VRB had a 21.7 percent increase in enplanements to officially become a non-hub commercial service airport

# QUESTIONS:

VRB projection for Calendar Year 2019 is that they will be BELOW 10,000 enplanements, while they were ABOVE in Calendar Year 2018. Will they go back to GA status?

- No- Once a GA airport goes above 10,000 enplanements; the FAA will typically designate them a Primary Commercial Service airport.
- Once an airport receives the Commercial Service designation, if they then go back below 10,000 enplanements (but still above 2,500 enplanements), they will then be designated a Non-primary Commercial Service airport.
- If the next year they go below 2,500 enplanements, they will be re-designated a GA airport.
- An airport that is designated a Commercial Service by the FAA (50/50) and has scheduled commercial service would revert to GA status (80/20) when one of two things occur:
  - Either the airport drops below 2500 enplanements in the prior CY, and the FAA re-designates the airport as GA, or the airport loses scheduled commercial service (the Florida Statute gives us this flexibility.)

# Questions?



## Contact Information:

Laurie McDermott  
Aviation Coordinator/Office of Modal  
Development  
Florida Department of Transportation,  
District 4  
3400 West Commercial Blvd  
Fort Lauderdale, FL 33309  
Tel: (954)777-4497  
[Laurie.McDermott@dot.state.fl.us](mailto:Laurie.McDermott@dot.state.fl.us)

B-A)

### ESTIMATED ANNUAL COSTS TO SUPPORT AIRLINE SERVICE

CATEGORY	ELEMENT	ANNUAL COST (\$)	MANDATORY FOR AIRLINE SERVICE	LIKELY TO CONTINUE IF NO AIRLINE SERVICE
ARFF	ARFF Fire Protection	\$ 158,000	√	√
	ARFF Vehicle/Maintenance	1,600	√	√
AIRPORT DRIVER TRAINING	Conducting Driver Training	400	√	√
	Maintain Records, Training Material	250	√	√
FUELING AGENT SAFETY INSPECTIONS/TRAINING	Conduct FBO Inspections, Inspection Training	200	√	√
	Coordinate FBO Training, Maintain Records	200	√	√
PART TIME PERSONNEL	Performing TSA-Related Duties	10,824	√	
OPS STAFF AIRLINE DUTIES	Designated Ramp Observer Duty	3,510	√	
OPS STAFF OVERTIME	Performing Airport Safety Inspections Required for Airline Operations on Weekends/Holidays	18,200	√	
TSA COMPLIANCE	Staff Time/Compliance/Program/Training	20,000	√	
	Badging/Inspections/Recordkeeping	10,000	√	
	VBPD Support	97,000	√	√
JANITORIAL SERVICES	Weekly Cleaning: TSA Sterile Areas Only	517	√	
GSE/PURCHASE/MTC**	Baggage Carts, Boarding Ramps	6,000	√	
<b>TOTAL ANNUAL COST</b>			<b>\$ 326,701</b>	<b>\$ 257,650</b>

<b>DIFFERENCE</b>	<b>\$ 69,051</b>
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\*\* 4-year historical average. Actual Ops and Part Time Staff costs depend on airline scheduling and performance, weekends, holidays.

3-A)



# VERO BEACH

FLORIDA BEACHES AND COASTS

## Priority Projects: FY 2020-2024

			Total Project Cost (\$)	Airport and P3 Matching Funds (\$)		
				With FDOT Grants 80/20	With FDOT Grants 50/50	
FY 2020	1	Rehabilitate GA Apron (design) <b>FAA 90%</b>	\$ 200,000	10,000	10,000	
	2	Rehabilitate RWY 12R-30L (design) <b>FAA 90%</b>	1,400,000	70,000	70,000	
	3	Rehabilitate GA Apron (construction) <b>FAA 90%</b>	3,100,000	155,000	155,000	
	4	Rehabilitate Southwest Apron (P3)	3,500,000	700,000	1,750,000	P3
	5	Construct Natural Gas Pipeline	400,000	200,000	200,000	P3
FY 2021	6	Rehabilitate RWY 12R-30L (construction) <b>FAA 90%</b>	5,900,000	295,000	295,000	
	7	Construct GA Apron (P3)	1,700,000	340,000	850,000	P3
	8	Airport Master Plan Update <b>FAA 90%</b>	650,000	32,500	32,500	
FY 2022	9	Rehabilitate TWY B (Design)	750,000	150,000	375,000	
	10	Redevelop Commercial Park (Phase 1)	500,000	100,000	250,000	
	11	Airport Wayfinding Signage	500,000	100,000	250,000	
FY 2023	12	Rehabilitate TWY B (Construction Phase 1)	917,000	183,400	458,500	
FY 2024	13	Rehabilitate TWY B (Construction Phase 2)	917,000	183,400	458,500	
	14	Purchase ARFF Vehicle <b>FAA 90%</b>	850,000	42,500	42,500	
	16	Redevelop Commercial Park (Phase 2)	500,000	100,000	250,000	
	<b>Five Year Totals</b>			<b>\$ 21,784,000</b>	<b>\$ 2,661,800</b>	<b>\$ 5,447,000</b>

**Additional Five Year Funding Required:**

Airport	\$	1,225,200
P3		1,560,000
<b>Total</b>	<b>\$</b>	<b>2,785,200</b>

3-B)

**AGREEMENT  
FOR AIRLINE USE OF  
VERO BEACH REGIONAL AIRPORT**

**THIS AGREEMENT** (hereinafter "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2019 (hereinafter "Effective Date"), by and between the **CITY OF VERO BEACH**, a Florida municipal corporation, (hereinafter "City") whose mailing address is P. O. Box 1389, Vero Beach, Florida 32961-1389, and **ELITE AIRWAYS, LLC**, a Nevada limited liability company, (hereinafter "Airline"), whose mailing address is 50 Portland Pier, Portland, Maine 04101. City and Airline may also be referred to herein individually as a "party" or collectively as the "parties."

**RECITALS**

**WHEREAS**, City owns, supervises, manages, and is the sponsor of the Vero Beach Regional Airport located at 3400 Cherokee Drive in the City of Vero Beach, Florida; and

**WHEREAS**, Airline is engaged in the business of scheduled operations providing air transportation for the carriage of persons, property, parcels, cargo, and mail pursuant to a Federal Aviation Administration CFR Title 14 Part 121 Air Carrier Operating Certificate to operate as an Air Carrier; and

**WHEREAS**, Airline desires to obtain certain rights and privileges for the use of Vero Beach Regional Airport and certain of its facilities and property in order to provide such scheduled operations between Vero Beach Regional Airport and other destinations; and

**WHEREAS**, City desires that Airline provide such scheduled operations between Vero Beach Regional Airport and other destinations and in furtherance thereof is willing to grant Airline such requested rights and privileges upon the terms and conditions hereinafter set forth,

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are hereby incorporated into this Agreement as forming the intent of the parties and the purpose of this Agreement, and the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, City and Airline agree as follows:

**1. DEFINITIONS.** The following words, terms, and phrases wherever used in this Agreement shall have the meanings set forth in this Article, except in those instances where the context clearly indicates a different meaning. The definitions provided shall apply to both singular and plural forms of such words, terms and phrases.

*Air Carrier* means a person who undertakes directly by lease, or other arrangement, to engage in air transportation.

*Aircraft Parking Apron* means those areas of the Airport designated by City for the parking of aircraft and the loading and unloading of passengers, property, parcels, cargo and/or mail.

*Airfield* means those portions of the Airport provided for the landing, taking off, and taxiing of aircraft, including runways, taxiways, approach and runway protection zones, safety areas, infield areas, landing and navigational aids, Aircraft Parking Apron and land areas required by or related to aeronautical use of the Airport.

*Airline Common Use Facilities* shall have the meaning ascribed thereto in section 5 of this Agreement.

*Airport* means the Vero Beach Regional Airport located in Vero Beach, Indian River County, Florida.

*Airport Director* means the City employee charged with management and supervision of the Airport.

*Airport Layout Plan* means the approved scaled drawing of the existing and proposed land and facilities necessary for the operation and development of the Airport submitted to the FAA by City pursuant to airport sponsor grant assurance requirements.

*Airport Leasing Policy* means City of Vero Beach Resolution 2015-30 and any subsequent amendments thereto adopted by City's City Council from time to time.

*Air Transportation* means the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail by aircraft in commerce.

*Department of Homeland Security* means the United States Department of Homeland Security and any divisions thereof, including but not limited to the TSA.

*Department of Transportation* means the United States Department of Transportation and any divisions thereof, including but not limited to the FAA.

*FAA* means the Federal Aviation Administration and its legally authorized successors.

*Fiscal Year* means City's annual accounting period for its general accounting purposes, which as of the Effective Date of this Agreement, is the period of twelve (12) consecutive months commencing on October 1<sup>st</sup> and ending on September 30<sup>th</sup> of each year.

*Ground support equipment* means service and maintenance equipment used at an airport to support aeronautical operations and related activities. Baggage tugs, belt loaders, cargo loaders, forklifts, fuel trucks, lavatory trucks, and pushback tractors are examples of the types of vehicles and equipment fitting this definition.

*Passenger Holding Area* means that secure area within the Terminal reserved for use of Persons awaiting flight departure after having cleared TSA screening.

*PFC* means a passenger facility charge covered by 14 CFR Part 158 authorized to be imposed by the City on passengers enplaned at the Airport.

*Person* means and includes any partnership, joint venture, association, corporation, limited liability company, trust, other entity, or a natural person.

*Public Airport Facilities* means and includes the Airfield; public common areas within the Terminal; public roadways, parking, and sidewalks; and other facilities and improvements at or on the Airport as may now be in existence or hereinafter constructed for the use of the public and Persons lawfully using the Airport, but excludes any facility, improvement, area, or portion of the Airport for which public access to or use of is restricted or otherwise limited by City or that is in the exclusive possession or control of others pursuant to any lease, license, or other contractual arrangement or authority.

*Scheduled Operations* means any common carriage passenger-carrying operation for compensation or hire conducted by an Air Carrier for which the Air Carrier or its representatives offers in advance the departure location, departure time, and arrival location.

*Terminal* means the commercial terminal building at the Airport.

*TSA* means the Transportation Security Administration of the United States Department of Homeland Security and its lawfully authorized successors.

*VBPD* means the Vero Beach Police Department.

*VRB* means the Vero Beach Regional Airport located in Vero Beach, Indian River County, Florida.

**2. AIR CARRIER SERVICE.** City hereby authorizes Airline to operate and provide, and Airline agrees to operate and provide, Scheduled Operations for Air Transportation to and from Vero Beach Regional Airport (“VRB”) on a regularly scheduled basis, subject to the terms and conditions set forth herein and all applicable Federal, state, and local laws and regulations. Said authorization includes non-exclusive use of the Airline Common Use Facilities for such operations and other purposes allowed pursuant to the terms of this Agreement.

**3. TERM.** The term of this Agreement shall be three (3) years commencing December 1, 2019 and terminating November 30, 2022 (hereinafter “Term”). City and Airline may by mutual agreement in writing renew this Agreement for additional terms of one (1) year or more (hereinafter “Renewal Term(s)”). Should Airline desire to renew this Agreement for any Renewal Term Airline shall provide City its written request to renew at least sixty (60) days prior to the end of the Term or the then current Renewal Term, otherwise this Agreement and any licenses granted hereunder automatically terminates.

**4. LICENSE.**

(a) Airline Common Use Facilities. City hereby grants Airline a non-exclusive license to reasonably use the Airline Common Use Facilities specified herein for its Scheduled Operations in providing Air Transportation as contemplated by this Agreement.

(b) Ground Support Equipment. City hereby grants Airline a non-exclusive license for use of City-owned Ground Support Equipment that may be made available by City, in City’s sole discretion,

for non-exclusive Airline use in conjunction with providing Scheduled Operations. This provision shall not be interpreted or be deemed to require City to procure any particular kind or type of Ground Support Equipment for Airline's operations or to otherwise provide such equipment for its use.

(c) Public Airport Facilities. Airline will also have non-exclusive use of the Public Airport Facilities in conjunction with its use of the Airline Common Use Facilities in providing Scheduled Operations.

**5. AIRLINE COMMON USE FACILITIES.** The Airline Common Use Facilities are comprised of the Airport real property, facilities, and improvements specified below, together with certain Airport fixtures, equipment, and furnishings located thereon or therein as may be provided by City (collectively the "Airline Common Use Facilities"). The Airline Common Use Facilities for which Airline is granted a non-exclusive license to use in providing Scheduled Operations are the following:

(a) Those areas or portions of the Terminal and Aircraft Parking Aprons as more fully described and depicted in Exhibit "A" attached hereto and incorporated herein, including the specified areas within and without the referenced buildings and structures, which will include: (1) passenger ticketing area; (2) area for baggage make-up and baggage claim; and (3) passenger holding area.

(b) Passenger holding area seating and other furnishings.

(c) Wheelchairs for passenger accommodation.

(d) Terminal building public local area network (Wi-Fi).

(e) Terminal building public address system, used for flight announcements and paging.

Except as may be specifically provided elsewhere in this Agreement, City shall not be responsible for providing any other facilities, improvements, fixtures, equipment, furnishings, or services needed by Airline for its operations.

**6. PUBLIC AIRPORT FACILITIES.** In addition to use of the Public Airport Facilities in conjunction with providing Scheduled Operations, Airline may also use the Public Airport Facilities for the following:

(a) Training. Airline may train or test personnel employed, or to be employed, by Airline and test aircraft and other equipment owned or operated by Airline on the Airport; provided, however, such training and testing, including, but not limited to, practice take-offs, approaches, and landings shall be incidental to the use of the Airport by Airline for its Scheduled Operations offered and provided at the Airport. In addition, any training and testing by Airline shall not unreasonably interfere with use of the Airport by others. City reserves the right to restrict or prohibit any training or testing activities which it deems to interfere with the use or operation of the Airport.

(b) Incidental Sale of Equipment. Airline may dispose of by sale or exchange on the Airport its aircraft, aircraft engines, and other equipment and supplies owned or operated by Airline and used for its Scheduled Operations at the Airport; provided, however, such activities shall only be incidental to Airline's primary use for providing Scheduled Operations.

(c) Passenger Transport Services. Airline may provide for passenger transport services in connection with its operations for the convenience of the public; provided, however, any vehicles and equipment utilized for passenger transport services shall be in a neat, clean, and presentable condition and in compliance with all applicable Federal, state, and local laws and regulations. City shall have no obligation to provide or contribute to passenger transport services. Airline may provide passenger transport services pursuant to this section alone or in conjunction with other Air Carriers or through designated personnel; provided, however, Airline shall be obligated to ensure that its designated personnel remain in compliance with the requirements of this section.

**7. LIMITATIONS AND CONDITIONS.** Airline's use and occupation of the Airline Common Use Facilities and Public Airport Facilities, and use of any City-owned Ground Support Equipment, shall be in conformance with and subject to all limitations and conditions as provided in this Agreement, including but not limited to the following provisions:

(a) Uses Limited to Those Authorized. Except as otherwise approved by City in writing or authorized by an amendment to this Agreement, Airline shall use or occupy or permit the use or occupation of the Airline Common Use Facilities and the Public Airport Facilities, and use of City-owned Ground Support Equipment, solely and exclusively for the purposes set forth in this Agreement. Airline acknowledges that City shall not have any obligation whatsoever to approve uses not contemplated herein.

(b) Conformance with Terms; Shared Use. Airline's use shall be subject to and in conformance with the terms and conditions set forth in this Agreement and all applicable Federal, state, and local laws, and regulations. Airline's use is and shall be in common and shared with other Airport users and shall also be subject to reasonable and non-discriminatory Airport rules and regulations established by City, as may be amended from time to time; and subject to payment of all applicable fees and charges.

(c) Government Property; Ownership. It is recognized and acknowledged by the parties that Airline is granted a license to use government property under this Agreement with the land, buildings, structures, and other improvements being retained by City in fee simple ownership. All buildings, structures, and other improvements to real property (including those built or otherwise added by Airline) shall be owned by City from the outset and remain government property throughout the Term of this Agreement and all Renewal Terms.

(d) Operating Aircraft. Except in the event of an actual emergency or other unforeseen circumstance beyond the reasonable control of Airline, the Airline Common Use Facilities shall only be used to accommodate Airline's operating aircraft that are compatible with existing Terminal loading bridge/ramp operations or that are otherwise compatible with the physical limitations of the Airline Common Use Facilities.

(e) Disabled Aircraft. Airline shall promptly remove or cause removal of its disabled aircraft from the Airfield and Terminal Aircraft Parking Apron to an Airport Fixed Base Operator (FBO) or in an appropriate area on the Airport designated by City.

(f) Aircraft Servicing, Repair, and Storage. Airline shall engage in or cause the servicing (e.g., refueling, re-provisioning, etc.), inspection, routine maintenance, repairs, overnight storage, and long term storage of Airline's aircraft, vehicles, and other equipment only in such areas on the Airport

designated in writing by the Airport Director for such purposes, which areas shall be subject to availability, and payment of any applicable fees and charges established by City for the use of such Airport areas. Such permissible areas shall include the premises of Fixed Base Operators (“FBO”) and other leasehold tenants on the Airport lawfully providing such services on the Airport within the allowable uses under such FBOs or service provider’s lease with City. Major maintenance or repair of aircraft, vehicles, or other equipment in or on the Airline Common Use Facilities, including the Terminal Aircraft Parking Apron, shall not be permitted. No inoperative aircraft, vehicles, or other equipment shall be stored in or on the Airline Common Use Facilities, including any part of the Terminal or Terminal Aircraft Parking Apron.

(g) Aircraft Restrictions. City may prohibit the use of the Airfield by any aircraft operated or controlled by Airline that exceeds the design strength or capability of the Airfield as set forth in the current FAA-approved Airport Layout Plan or other engineering evaluations performed subsequent to such Airport Layout Plan approval.

(h) Material Storage. Airline shall store or stockpile or allow the storage or stockpiling of equipment, materials, supplies, provisions, and other personal property only in such areas of the Airport designated in writing by the Airport Director for such purposes, which areas shall be subject to availability, and include payment of any applicable fees and charges established by City for the use of such Airport areas.

(i) Limitation on Sales and Concessions. Except as expressly provided in this Agreement, nothing herein shall be construed to give Airline any right or permission to sell or provide at the Airport any goods or services to any Person other than Airline’s Scheduled Operations providing Air Transportation. The foregoing prohibition includes but is not limited to the sale or provision of trip insurance, travel services, wireless internet service, advertising, motor vehicle and other rentals, fuels or lubricants, and any other goods or services not specifically allowed in this Agreement or by separate written agreement between the parties.

(j) Additional Limitation on Food and Beverage Service. Airline shall not maintain or operate in the Terminal or elsewhere on the Airport, any cafeteria, restaurant, bar, cocktail lounge, or other similar facility serving food or beverages. Airline shall not sell or dispense any food or beverages on the Airport by vending machine or by other means except such service as may be provided by Airline in its aircraft in conjunction with its Scheduled Operations. However, in the event of originating flight delays, diverted flights, or originating flights that have returned to the Airport, Airline may provide to its affected passengers at no charge in the Passenger Holding Area(s) typical onboard snacks (e.g., chips, peanuts, pretzels, etc.) and beverages (excluding alcoholic beverages). However, the foregoing restrictions shall not be interpreted to prohibit Airline from providing to its passengers at no charge any other accommodations Airline deems necessary and appropriate due to delays or that is required by law or regulation to be provided due to such delays.

(k) Equipment Use.

(1) Airline shall not allow any employee, agent, or contractor of Airline to operate any of Airline’s equipment, or any equipment as may be provided by City and authorized for Airline’s use, including but not limited to any Ground Support Equipment, without

having first been properly and thoroughly trained in the proper use and operation of such equipment and having shown proficiency in its proper use and operation.

(2) Airline shall inspect or cause the inspection of City provided equipment prior to each use to ensure that such equipment is in a safe condition and operating properly. If at any time Airline or its personnel become aware of the need for maintenance or repairs to such City provided equipment, Airline shall promptly notify the Airport Director or his designee in writing of the nature of the defect or the maintenance and repairs required and shall refrain from using the equipment until such time as repairs or maintenance have been completed. Airlines use of the equipment shall be suspended during the period in which repairs or maintenance of the equipment is being made.

(3) Airline shall promptly notify the Airport Director if: (i) any City equipment is damaged in any way while in Airline's possession, operation, or use; or (ii) the equipment is lost or stolen. In the event the equipment, or any part thereof, is damaged while in the possession or use of Airline due to the willful misconduct or negligence of Airline or Airline personnel, Airline shall reimburse City for the cost of the repairs to such damaged equipment or have the equipment repaired at its expense to the condition it was in prior to the damage. In the event the equipment is destroyed, lost, stolen, or damaged beyond repair or otherwise rendered unfit for use while in the possession or use of Airline due to the willful misconduct or negligence of Airline or Airline personnel, Airline shall reimburse City the replacement value of the equipment.

(4) Airline acknowledges that City is not the manufacturer of the City provided equipment or the dealer in similar property and has not made and does not make any representation, warranty or covenant, express or implied, with respect to the condition, quality, durability, suitability or merchantability of the equipment provided by City. City shall not be liable for any loss or damage caused or alleged to be caused directly or indirectly by the equipment or by any inadequacy thereof or defect therein or by any incident in connection therewith, except to the extent caused by the negligence or willful misconduct of City.

(l) Interference with Utilities. Airline shall not interfere with or permit interference with the effectiveness or accessibility of the drainage, sewerage, water, electric, communications, fire protection systems, or any other part of the utility, electrical, or other systems installed or located at or on the Airport.

(m) Inspection of Facilities and Equipment. Authorized representatives of City shall have the right to enter any part of the Airline Common Use Facilities and Public Airport Facilities at any and all reasonable times for the purpose of inspection of such facilities and City-owned fixtures and equipment, including but not limited to any Ground Support Equipment, for compliance with manufacturer's specifications regarding servicing and preventive maintenance, or for any other purpose incidental to or to confirm compliance with the performance of Airline's or City's obligations hereunder or in the exercise of any of City's governmental functions. City will use its good faith efforts to avoid disruption of Airline's operations in making any such inspections.

(n) Non-discrimination. Airline expressly agrees that no person, on the grounds of race, color, religion, national origin, age, marital status, gender identity, sexual orientation, disability, or any other characteristic protected by Federal or Florida law, will be excluded from participation in, denied benefits of, or be otherwise subjected to discrimination in Airline's use of the Airline Common Use Facilities, the Public Airport Facilities, or Airline's operations and services; and that in Airline's construction of any improvements on, in, over, or under such facilities, as may be approved by City, and the furnishing of services, no person, on any of the foregoing grounds, shall be excluded from participation therein, denied the benefits thereof, or be otherwise subjected to discrimination.

(o) Security Policies and Procedures. Airline shall be responsible for ensuring that Airline's members, officers, directors, employees, volunteers, agents, representatives, participants, guests, contractors, sub-contractors, and other invitees shall comply fully with any and all security policies and procedures adopted or implemented by City or the VBPB from time to time as City deems necessary and appropriate for protecting the public health, safety or, welfare or for compliance with any Federal, state, or local law or regulation. City will provide Airline with notice of any such adopted or implemented security policies and procedures affecting the Airport or its occupation or use.

(p) Air and Safety Regulation. Airline shall conduct its operations and activities under this Agreement in a safe manner, shall comply with all applicable safety standards imposed by Federal, state, and local laws and regulations and shall require the observance thereof by all employees, contractors, business invitees and all other persons transacting business with or for Airline resulting from, or in any way related to, the conduct of operations at or on the Airport. Airline shall procure and maintain such fire prevention and extinguishing devices as may be required by law for Airline's operations, including applicable orders and codes, and shall at all times be familiar and comply with the fire regulations and orders of the fire control agency with jurisdiction at the Airport. Neither Airline nor any employee or contractor or any Person working for or on behalf of Airline, shall require any personnel engaged in the performance of Airline's operations to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970 ("OSHA"), as same may be amended from time to time, as well as all state and local laws, regulations, and orders relative to occupational safety and health.

**8. AIRPORT CONTINUATION OR MODIFICATION**. Notwithstanding any other provision of this Agreement, City, in its sole discretion, may abandon facilities, including real property, which are no longer necessary for the proper and adequate operation of the Airport. Nothing in this Agreement shall be deemed to require City to make any future improvements to the Airport, including but not limited to enlarging the Airport or making any extensions or additions to the Airfield, Terminal, or improved parking, or any other portion or area of the Airport or appurtenances to the Airport.

## **9. AIRPORT FEES AND CHARGES**.

(a) General. Except as expressly provided herein, nothing in this Agreement shall restrict City from imposing reasonable and nondiscriminatory fees and charges on any Person, including but not limited to Airline and Airline's suppliers, agents, and contractors for use of the Airport or any part or area thereof when such use constitutes the performance or conduct of a commercial business activity at or on the Airport, or for the provision of any services by City or its contractors.

(b) License Fee. Subject to the adjustment, escalation, and other provisions of this Agreement, on July 1, 2020 Airline shall pay an **annual** license fee of **\$20,625.00**, for use of the Airline Common Use Facilities. The license fee due for the period from December 1, 2019, through June 30, 2020, shall be **\$7,105.47** due thirty (30) days after approval of this Agreement. All such license fees shall be consistent with fees and charges calculated as provided in the Airport Leasing Policy and as otherwise calculated and determined by City and agreed to by the parties for the use of similar Airport property and facilities, taking into consideration the non-exclusive nature of Airline's use as of the Effective Date.

(c) Ticket Counter(s). Subject to the adjustment, escalation, and other provisions of this Agreement, Airline shall also pay an **annual** non-exclusive counter fee of **\$18,000.00** for use of the two ticket counters and associated areas made available for airline use by City, effective December 1, 2019.

(d) Office Space. If available, the Airline may lease office space in the Airport Terminal at current market rates, currently no less than \$22 per square foot.

(e) Passenger Facility Charges ("PFCs"). City may impose PFCs in conformance with applicable Federal laws and regulations and, if authorized and imposed, Airline shall collect and remit such PFCs to City pursuant to such laws and regulations. City shall use PFCs only as is consistent with such applicable laws, regulations, and authorization to impose such charges.

(f) Landing Fees. City may impose and Airline shall pay, if imposed, reasonable and non-discriminatory landing fees established in conformance with all applicable Federal, state, and local laws and regulations.

(g) Ground Support Equipment Fees. City may establish, in its discretion, and Airline shall pay, reasonable nondiscriminatory fees and charges for the use and maintenance of City-owned Ground Support Equipment provided by City, if any, for the use or benefit of Airline.

(h) Other Fees and Charges. Airline shall pay to City the applicable fees, charges, and costs for any other goods, materials, services, or facilities provided by City or City's contractors to or for Airline that are not specifically identified in this Agreement as being provided by City and covered by fees and charges specified herein.

(i) Other Services by Airline. City may assess and Airline shall pay reasonable and non-discriminatory fees and charges for any other services or concessions permitted by City to be operated or provided by Airline which are in addition to or different from Airline's Scheduled Operations provided for herein.

(j) Airline Provided Ground Transportation. City will not impose, and Airline shall not be obligated to pay, any fee or charge for ground transportation provided by or for Airline at Airline's sole cost and expense for Airline's passengers or employees due to flight delays, diversions, or cancellations.

(k) Payments. Except to the extent waived or modified herein, Airline shall promptly pay to City as provided herein all fees, charges, and costs set forth in this Agreement for the rights, licenses, and privileges granted herein to Airline, and for all additional goods, materials, services, and facilities provided to Airline by City not specified as included in the fees and charges set out herein.

(l) Taxes on Fees and Charges. Airline shall also pay to City with the fees, charges, and costs all applicable sales and use taxes and any other taxes or governmental assessments that City is obligated or required by law or regulation to collect on such fees, charges, and costs.

(m) Time and Place of Payment.

(1) Payments due City from Airline shall be paid in lawful money of the United States of America, by check or electronic payment to City, without any deduction, holdback, or setoff whatsoever, and shall be made at such place as City may designate in writing to Airline, which as of the Effective Date shall be as follows for payments by mail:

City of Vero Beach  
Finance Director  
1053 20<sup>th</sup> Place  
P.O. Box 1389  
Vero Beach, FL 32961-1389

For payments by wire or other electronic funds transfer, Airline shall contact the Finance Director for further information at (772) 978-4771.

(2) Annual license fees shall be paid in advance, without demand or deduction, annually or in equal monthly installments on the first (1st) business day of each month.

(3) Payment shall be made by the tenth (10th) business day of each month for all other fees, charges, costs, and taxes accrued in the preceding month, except and unless otherwise provided in conformance with applicable laws or regulations.

(4) Airline shall pay a late charge of five percent (5%) of the amount due or \$100.00, whichever is greater, for any payment not received by City by the due date.

(n) Rate Adjustments.

(1) Rates for license fees payable hereunder shall be reviewed and adjusted annually by City in accordance with the provisions of the Airport Leasing Policy, or if Airline's use of the Airline Common Use Facilities should increase in frequency or number of flights. Annual adjustments shall become effective each October 1<sup>st</sup> throughout the Term of this Agreement and any Renewal Term or, in the case of increased Airline use, on the first (1<sup>st</sup>) day of the month subsequent to the review and adjustment. Review of rates for all other fees and charges shall be at least annually and adjusted accordingly, becoming effective October 1<sup>st</sup> throughout the Term of this Agreement and any Renewal Term, or as otherwise provided by applicable law or regulation.

(2) Adjustments to rates for fees and charges shall apply without the necessity of formal amendment of this Agreement. City shall prepare and deliver to Airline a statement showing the calculation of the new rates for fees and charges.

**10. TAXES AND OTHER GOVERNMENTAL CHARGES.** Airline shall be solely responsible for and pay to the appropriate authority by the due date all other taxes, fees, assessments, and charges legally imposed or accruing against Airline's services, operations, or use of the Airline Common Use Facilities, Public Airport Facilities, other areas of the Airport, or City-provided equipment which, for purposes of example only, may include but are not limited to any sales or use taxes on products, services, and uses, ad valorem taxes, and non-ad valorem assessments. Dispute of any such taxes, fees, assessments, or charges shall be solely the responsibility of Airline at Airline's sole cost and expense and Airline shall indemnify and hold City harmless for any and all such taxes, fees, assessments, and charges imposed as well as all costs and expenses arising from non-payment or late payment thereof or otherwise from any such dispute, including but not limited to penalties, interest, attorneys' fees, and expert fees.

**11. AIRLINE EQUIPMENT/IMPROVEMENTS.** Airline shall not make or cause to be made or allow any construction, alterations, installations, or improvements to or on the Airport without prior written approval of City. Any and all construction, alterations, installations, and improvements shall be at Airline's sole cost and expense (or shared with other Air Carriers) and at no cost or expense to City. Such costs shall include but are not limited to costs of planning, design, engineering, surveying, permitting, site preparation, construction, and installations. Any and all such work requiring a building permit(s) or otherwise requiring the use of a licensed contractor shall be performed by an established contractor(s) properly licensed, insured, and authorized to work in the City of Vero Beach. All work shall be performed in a good and workmanlike manner and consistent with Airline's plans and specifications as approved by City, and in compliance with all applicable laws, rules, and regulations, including but not limited to City of Vero Beach Land Development Regulations, the Florida Building Code, Federal and state regulations, and disabilities laws (e.g., the Americans with Disabilities Act), and payment and performance bond requirements for capital improvements on government real property. All Airline improvements and installations shall be subject to and in conformance with the foregoing and all other applicable terms and conditions of this Agreement, including but not limited to the following:

(a) Airline Signs. Airline may install in the public areas of the Terminal identification, directional, and informational signs regarding Airline's Scheduled Operations. Signs shall be uniform in size, type, and location with those of other Air Carriers operating at the Airport. The number, type, size, design, material, and location of all signs shall be coordinated with and subject to approval of the Airport Director prior to installation.

(b) Airline Equipment.

(1) Airline may install, operate, and maintain radio communication, meteorological, and aerial navigation equipment in such areas within the Airline Common Use Facilities, Public Airport Facilities, or elsewhere on the Airport as may be needed by Airline for its Scheduled Operations and approved in writing by City in advance of any installation or modification. All such equipment shall be installed, operated, and maintained in conformance with all applicable laws, rules, regulations, and orders.

(2) Airline may install, operate and maintain communications systems, computer network systems, teletype, telephone, interphone, message or pneumatic tubes, conveyor systems, and related power lines in such areas within the Airline Common Use Facilities, Public Airport Facilities, or elsewhere on the Airport as may be needed by Airline for its Scheduled Operations and approved in writing by City in advance of

any installation or modification. All such equipment and facilities shall be installed, operated, and maintained in conformance with all applicable laws, rules, regulations, and orders.

(3) Airline may install, operate, and maintain such equipment provided for in this section alone or in conjunction with other Air Carriers operating at the Airport pursuant to an agreement with City. The installation, operation, and maintenance of all such equipment shall be at Airline's sole cost and expense or as shared by separate agreement between Airline and other Air Carriers.

(c) Improvements. Airline may be permitted to construct and install improvements to or within the Airline Common Use Facilities as Airline reasonably finds necessary for its operations and may also be permitted to construct and install improvements in other areas of the Airport necessary for Airline's operations. Any and all such improvements shall be subject to and in conformance with the foregoing and all other applicable terms and conditions of this Agreement, including but not limited to the following:

(1) Airline shall obtain written approval of City for any and all improvements to be constructed or installed, including but not limited to, review and approval of building and installation plans, specifications, and construction schedule(s) prior to commencement of any construction or installation.

(2) Any and all work associated with such construction or installation shall be coordinated with the Airport Director or his designee so as to minimize interference or conflict with Airport operations or use of any part of the Airport by any other Person.

(3) Within sixty (60) days of substantial completion of the improvements, as evidenced by a certificate of occupancy or completion, Airport shall cause delivery to City a copy of such certificate and a complete set of as-built drawings in hardcopy and electronic formats (e.g. PDF).

(4) Construction and installation of any and all improvements shall be: at the sole risk of Airline; in accordance with the City approved plans and specifications; all applicable Federal, state and local codes, laws, rules, and regulations and construction standards established by City; and subject to inspection and approval by City. Any improvements that are constructed or installed in violation of the provisions hereof shall be removed or reconstructed in accordance with the requirements of this Agreement at Airline's sole cost and expense.

(5) The parties recognize and agree that any and all construction, alterations, installations, or improvements are capital improvements made by Airline are to enhance Airline's use of the Airline Common Use Facilities and Airport for its operations and benefit of the general public. Airline's costs of such improvements are not rent or license fees, they are not payments in lieu of rent or license fees, and they are not made for the right to occupy the Airline Common Use Facilities or any other part of the Airport. Rent or license fee payments subject to tax imposed in section 212.031, Florida Statutes, is as provided for exclusively in this Agreement.

(6) Any trade fixtures, equipment, signs and other personal property of Airline which are not permanently affixed to the Airline Common Use Facilities or Airport, shall remain the property of Airline.

(7) On termination of this Agreement, Airline shall leave the Airline Common Use Facilities in substantially the condition existing on commencement of Airline's use of the facilities, less normal wear and tear.

(d) Liens. City's interest in the Premises shall not be subject to any lien for any construction, alterations, installations, improvements, or work as provided in section 713.10, Florida Statutes. Airline shall notify all persons and entities constructing improvements or performing work on the Airport, or supplying materials, equipment rental, or other services for the improvements or work, that this Agreement does not allow any liens to attach to City's interest. Further, Airline acknowledges and shall advise all such persons and entities that all areas of the Airport wherein Airline is making improvements or installations are governmental property not subject to any lien or right to claim a lien and any dispute regarding payment is limited to a claim against any payment and performance bond established pursuant to Chapter 255, Florida Statutes, as required herein. Airline shall be responsible for obtaining and paying for any such bond or requiring its contractor to obtain such bond, which bond shall be in a form required and approved by City. If, notwithstanding the foregoing, any mechanic's, materialman's, laborer's, or any other lien, or any order or judgment for payment of money, shall be recorded against the Airport or any part thereof or against Airline's interest in this Agreement or otherwise asserted against City's interest (whether or not legally effective), then Airline shall, at Airline's own cost and expense, cause the same to be satisfied, cancelled, and discharged of record and, further, shall indemnify and hold City harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees and experts' fees, through trial and appeal, resulting there from or by reason thereof.

**12. FEDERAL INSPECTION FACILITIES; AIRPORT SECURITY.** City will designate and provide one or more areas in the Terminal or elsewhere on the Airport to be used by agencies of the United States Government, including, but not limited to, the Department of Homeland Security and Department of Transportation, for the inspection of passengers and their baggage, and for the agencies to exercise their responsibilities with respect to the movement of persons, property, and cargo to and from and within the United States. In conjunction with such activities, City will also provide secure areas during TSA secure operations of boarding and deplaning aircraft, including police security as may be required during such aircraft boarding and deplaning.

Airline shall cooperate with City in maintaining security of access to the Airfield from or through the Airline Common Use Facilities to the Aircraft Parking Apron and aircraft operations area and shall fully comply with all Federal, state and local laws regulating security at the Airport and with all rules and regulations of the TSA and City concerning security procedures at the Airport, as now exist or as hereafter amended, including, but not limited to, 49 CFR 1542 and the Airport Security Program. If Airline or its officers, employees, agents, or others under Airline's control shall fail or refuse to comply with the aforementioned security requirements and such non-compliance results in a monetary penalty being assessed against City, Airline shall be responsible for the costs thereof and shall reimburse City the full amount of any such monetary penalty.

**13. AIRPORT MAINTENANCE AND REPAIR.** Each party's respective responsibilities for maintenance and cleaning of Airport facilities and equipment, as applicable to this Agreement, are as follows:

(a) City Obligations.

(1) Except as to premises and areas of the Airport leased to or otherwise under the possession and control of others, City will maintain Airport facilities in City's possession and control in good repair and serviceable condition for their intended and designed use.

(2) City will provide periodic janitorial services for the Airline Common Use Facilities, Federal Inspection Facilities, and public areas of the Terminal, such janitorial services include removal of trash and refuse properly disposed of in receptacles, vacuuming and other floor cleaning, restroom cleaning, and other similar services as deemed necessary or appropriate by City to maintain such premises in a neat, orderly, sanitary, and presentable condition.

(3) City will maintain such equipment as may be provided by City and authorized for Airline's use pursuant to this Agreement, including but not limited to any Ground Support Equipment, in proper working order and serviceable condition subject to the terms and conditions of this Agreement.

(b) Airline Obligations.

(1) Airline shall at all times use and operate the Airline Common Use Facilities and all improvements, appurtenances, and equipment in a sound, efficient, safe, and economical manner and shall maintain, preserve and keep same in a neat, orderly, sanitary and presentable condition. Airline shall deposit, or cause to be deposited, all waste, garbage, rubbish, and other refuse in receptacles designed for such purpose and agrees not to allow any accumulation thereof or deposit of same on any part of the Airport; provided, however, that Airline may temporarily store same in appropriate containers in space designated by City in connection with collection for removal from the Airport.

(2) Airline at its sole cost and expense, unless caused by Airline's contract fueler, shall be responsible for the removal and remediation of any and all spillage of oil, lubricants, fuels, and other spillages of other liquids and materials from Airline's aircraft, vehicles, and equipment, or otherwise resulting from Airline's operations, on the Aircraft Parking Apron and any other affected areas of the Airport.

**14. AIRLINE SERVICE PROVIDERS.** Any Person providing services, materials, supplies or other personal property to Airline on the Airport or otherwise conducting business on the Airport in conjunction with or in support of Airline's use shall be required to abide by all applicable Airport rules and regulations and all applicable Federal, state, and local laws and regulations.

**15. CITY ADVERTISING/SIGNS.** City retains the right to install, or cause to be installed, advertising and other revenue generating devices in the Airline Common Use Facilities, the Public Airport Facilities, and other areas of the Terminal and Airport. Such installations shall not unreasonably interfere with Airline's operations hereunder. Nothing in this Agreement shall be construed as precluding City from installing advertising that promotes the Airport, or informational or directional signage.

**16. CLOSINGS AFFECTING AIRPORT.** City may from time to time temporarily or permanently close, re-route, or restrict the use of the Public Airport Facilities or other areas of the Airport; provided, however, City shall use reasonable efforts to provide a reasonably equivalent means for Airline's operations, including but not limited to ingress and egress. City will endeavor to provide reasonable advance written notice to Airline prior to instituting such restrictions, however, the parties acknowledge that such advance notice may not be possible in the event of an emergency or if required by any security or safety related agency pursuant to their authority and jurisdiction, including but not limited to the Department of Homeland Security, Department of Transportation, or the VBPD or other law enforcement agency. Airline hereby releases and discharges City from any and all liability, claims, demands, or causes of action that may arise or are alleged to arise out of such a closing, re-routing or restriction.

**17. DAMAGE OR DESTRUCTION OF AIRPORT FACILITIES.**

(a) Minor Damage. If any portion of the Airline Common Use Facilities shall be partially damaged by fire or other casualty, but such damage does not render the Airline Common Use Facilities untenable, as reasonably determined by City, City will repair the damaged portion as soon as reasonably practicable under the circumstances, subject to the limitations set forth in this Agreement. No abatement in any license fees payable hereunder for use of the Airline Common Use Facilities shall be allowed so long as they remain tenable.

(b) Substantial Damage. If any portion of the Airline Common Use Facilities shall be so extensively damaged by fire or other casualty as to render any portion of the Airline Common Use Facilities untenable, but capable of being repaired, as reasonably determined by City, City will use reasonable efforts to repair the untenable portion(s) subject to the limitations set forth in this Agreement. In such case, any license fees payable hereunder with respect to use of the portion of the Airline Common Use Facilities rendered untenable by the casualty shall be paid up to the time of such damage, and shall thereafter be abated equitably in direct proportion as the part and type of the Airline Common Use Facilities rendered untenable bears to the total Airline Common Use Facilities until such time as the untenable portion shall be repaired adequately, as reasonably determined by City and Airline, for use by Airline. To the extent available, City will provide Airline with alternate facilities to continue its operations while repairs are being completed, at a license fee rate not to exceed that provided herein for space comparable to that portion of the Airline Common Use Facilities that was rendered untenable.

(c) Damage Caused by Airline. Notwithstanding any provision of this Agreement to the contrary, in the event that Airport facilities, including but not limited to the Airline Common Use Facilities, Public Airport Facilities, or Terminal, are damaged or destroyed due to the willful act, omission, or negligence of Airline or Airline's personnel, Airline shall indemnify City for all costs to repair, replace, or reconstruct such facilities. In addition, there shall be no abatement of any fees or charges payable hereunder during the repair or replacement period, and Airline shall not have the option to terminate this Agreement based on such damage or destruction. To the extent that Airline's insurance

does not apply, coverage is denied, or the costs of the repairs exceed the amount of any insurance proceeds paid to City for such damage or destruction, Airline shall reimburse City the amount of City's cost to repair, replace or reconstruct the facilities less the actual amount of insurance proceeds.

(d) Limitation on City's Obligation. City's obligations to repair or reconstruct under the provisions of this section shall be limited to repairing or reconstructing damaged facilities to substantially the same condition that existed prior to any improvements made by Airline and shall further be limited to the extent of insurance proceeds available to City for such repair or reconstruction, plus payments received from Airline pursuant to this section. City shall in no way be responsible for the repair or replacement of any of Airline's improvements, installations, equipment, furnishings, fixtures, signs, or other personal property damaged or destroyed by fire or other casualty, unless such damage was caused by the willful act, omission, or negligence of City. Except as provided otherwise in this section, Airline, at its sole cost and expense, shall be responsible to reconstruct or replace any improvements constructed or installed by Airline should Airline determine to do so.

**18. COMPLIANCE WITH LAWS.** Airline shall not occupy, use, or maintain or permit the occupation, use, or maintenance of the Airline Common Use Facilities, the Airport, or any part thereof for any unlawful, immoral, or improper purpose, or in such a manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of this Agreement or any existing or future code, law, rule, requirement, order, ordinance, or regulation. Airline shall at all times be and shall remain in full and complete compliance with all applicable Federal, state and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature, as now or hereafter amended, applicable to Airline's activities at the Airport, including, but not limited to, FAA Advisory Circulars, Airport Minimum Standards, Rules and Regulations, and environmental laws. Airline shall cooperate in good faith with any investigation, audit, or inquiry by City regarding any Federal or state regulatory action or investigation affecting City but arising out of Airline's activities. Airline shall require its appropriate managers, supervisors, and employees to attend such training and instructional programs as City may require from time to time in connection with the Airport Rules and Regulations and policies and procedures related to certification of the Airport under Title 14, Part 139 of the Code of Federal Regulations as now exist or are hereafter amended.

**19. PERMITS AND LICENSES.** Airline shall be solely responsible for obtaining and paying for the expense of all required governmental and regulatory approvals, permits, and licenses necessary for Airline's occupation and use of the Airline Common Use Facilities and Airport, including but not limited to any required zoning and site plan approvals, building and other permits, and licenses for use of rights-of-way or other real property. Should Airline be unable to obtain all approvals necessary for Airline's intended use or operation of the Airline Common Use Facilities or other necessary areas, this Agreement shall terminate unless agreed otherwise in writing by the parties.

**20. GOVERNMENTAL AUTHORITY RETAINED.** Nothing in this Agreement shall be construed or deemed to waive or limit City's governmental authority as a municipality of the State of Florida to regulate Airline or its operations, to alter or impair City's governmental functions, including but not limited to City's right to lawfully exercise its regulatory authority over the development of the Airline Common Use Facilities or any other area of the Airport, nor to enable, permit, or create any cause of action or claim arising out of the lawful exercise of City's governmental authority. Nor shall any provision of this Agreement or any inference arising hereunder be construed or deemed to waive City's

sovereign immunity except as provided and limited in section 768.28, Florida Statutes, or to preclude City from using or asserting any defense available at law or in equity.

**21. CITY RIGHT OF ENTRY.** City retains a general right of ingress, egress, and regress throughout the Airline Common Use Facilities as reasonably needed for City's employees, contractors, and agents in performance of their duties at all reasonable times. City shall also have the right to enter the Airline Common Use Facilities for inspection, protection, or preservation thereof, including but not limited to inspection to determine whether Airline is complying with the terms of this Agreement, applicable laws, orders, or regulations of any lawful authority having jurisdiction over the Airport or any activities conducted thereon or therein. City's retained rights hereunder also include the right to otherwise make reasonable use of the Airline Common Use Facilities in such a manner as not to disturb Airline's operations and use.

**22. ASSUMPTION OF RISK; RELEASE AND INDEMNIFICATION.** For and in consideration of the separate sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by City to Airline, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

(a) **Facilities and Equipment "As Is."** Airline acknowledges that it has inspected the Airline Common Use Facilities, Public Airport Facilities, and Ground Support Equipment, and accepts the condition of the Airline Common Use Facilities, Public Airport Facilities, and Ground Support Equipment "as is" and recognizes and hereby expressly and fully assumes all risks, known and unknown, that arise or might arise incidental to or in any way connected with the condition or use of the such facilities and equipment. Airline acknowledges that City has not made and makes no warranty of any kind whatsoever as to the condition of the facilities or equipment, or fitness of such facilities and equipment for any particular purpose.

(b) **Release and Indemnification (Facilities and Equipment).** Airline hereby releases and forever discharges City and City's elected officials, officers, employees, and agents, cumulatively the "Released Parties," and agrees to indemnify and hold harmless the Released Parties, from and against any and all liabilities, claims, demands, damages, actions, lawsuits, costs, and expenses, of any kind or nature, including but not limited to costs of investigation, attorneys' fees, experts' fees, and costs through trial and appeal, arising out of, incidental to, or in any way connected with the condition, maintenance, or use of the Airline Common Use Facilities, Public Airport Facilities, or Ground Support Equipment, access thereto, and the condition, maintenance, or use of any installation, improvement, or equipment on, in, or serving such facilities or premises.

(c) **Indemnification (Use).** Airline shall indemnify and hold the Released Parties harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, judgments, penalties, losses, costs, or expenses, of any kind or nature, including but not limited to costs of investigation, attorneys' fees, experts' fees, and costs, through trial and appeal, arising out of, incidental to, or in any way connected with Airline's operations or Airline's use, operation, or maintenance of aircraft, vehicles, and equipment, or Airline's use, occupancy, operation, or maintenance of the Airline Common Use Facilities, Public Airport Facilities, or Ground Support Equipment, or any act or omission of Airline or Airline's members, officers, directors, employees, volunteers, agents, representatives, participants, guests, contractors, subcontractors, and other invitees.

(d) Claims Under Disabilities Laws. Should a regulatory agency, private party, organization, or any other person or entity make any claim under the Americans with Disabilities Act or other Federal or state law against Airline or City, or both Airline and City, for an alleged violation of or noncompliance with any such law arising from Airline's operations or Airline's use, occupancy, operation, or maintenance of the Airline Common Use Facilities, Public Airport Facilities, or Ground Support Equipment, or any act or omission of Airline or Airline's members, officers, directors, employees, volunteers, agents, representatives, participants, guests, contractors, or subcontractors, Airline shall defend, save, and hold harmless City from any and all expenses incurred in responding to such a claim, including without limitation the fees of attorneys and other advisors or experts and court costs.

The provisions and obligations of this section shall survive the expiration or termination of this Agreement for any matter, claim, or liability arising from or out of this Agreement or any condition, use, operation, action, or inaction existing or occurring prior to such expiration or termination or the date Airline no longer uses, occupies, or operates, any of the facilities, improvements, or equipment, whichever is later.

**23. INSURANCE.** In addition to such insurance as may be required by law or regulation, Airline, at its sole cost and expense, shall maintain in full force and effect throughout the Term of this Agreement and all Renewal Terms, and so long as Airline uses, occupies, or operates the Airline Common Use Facilities or the Public Airport Facilities, insurance coverage with minimum limits and endorsements specified and otherwise in conformance with the provisions of this section provided below. Neither the requirements contained in this section nor City's review or acceptance of insurance submitted by Airline shall in any manner limit or qualify the liabilities and obligations assumed by Airline under this Agreement.

(a) Commercial General Liability Insurance/Airline Liability. Commercial general liability insurance providing for all risks coverage, including comprehensive airline and aircraft liability, which protects Airline and City from and against any and all claims and liabilities for bodily injury, death, and property damage or loss arising from Airline's operations, premises liability, and all other risks. Such insurance shall provide minimum coverage of \$350,000,000 per occurrence. Coverage shall be provided in a form no more restrictive than the latest edition of the commercial general liability policy filed by Insurance Services Office (ISO). Airline shall be and remain liable for and pay all deductibles and other amounts not covered, paid, or reimbursed under the insurance policies.

(b) Business Automobile Insurance. Business automobile liability insurance covering all owned, hired, and non-owned vehicles operated by Airline on the Airport in an amount of not less than \$250,000 combined single limit each occurrence for bodily injury, death, and property damage liability; provided, however, that if the scope and conduct of Airline's operations under this Agreement require vehicle access to the aircraft operations area, Airline shall maintain business automobile liability insurance in an amount not less than \$1,000,000 combined single limit each occurrence for bodily injury, death, and property damage liability. Notwithstanding the foregoing, if the scope and conduct of Airline's operations under this Agreement do not involve the operation, ownership or use of any vehicle, then this requirement shall include automobile liability for hired & non-owned vehicles only.

(c) Workers' Compensation Insurance. Workers' compensation insurance if and to the extent required by law, with coverage amounts that meet or exceed the statutory mandatory minimums and, if operations are to be undertaken on or about navigable waters, coverage to include the U.S.

Longshoremen & Harbor Workers Act and Jones Act. In the event Airline contracts for any work or services under this Agreement to another party for its operations or otherwise, Airline shall be responsible for ensuring such contractors maintain workers' compensation and employers' liability insurance.

(d) City Additional Insured; Policy Endorsements; Certificates of Insurance. The policies of insurance required herein for commercial general liability insurance and business automobile liability insurance, including all renewals, shall be written to specifically name and include City as additional insured or be endorsed to name and include City as additional insured, and provide for at least thirty (30) days advance notice to City by the insurer prior to any policy change, amendment, termination, or expiration of coverage. Airline shall cause its insurance agent(s) or carrier(s) to provide City with a copy of such policies, additional insured endorsements containing language no less restrictive than ISO Form CG 20 10 11 85, and certificates of insurance stating that the coverage as required herein is in force and effective no later than the Effective Date of this Agreement. Airline shall cause insurance policies, policy endorsements, and certificates of insurance in conformance with the requirements hereof to be promptly provided to City for each subsequent policy renewal. For any new or replacement insurer, Airline shall cause a copy of the new or replacement insurance policy and corresponding additional insured endorsement and certificate of insurance to be promptly provided to City.

(e) Airline Insurance Primary; Approval of Insurer; Deductibles. Airline's insurance in all instances shall be primary and any insurance that may be maintained by City shall be in excess of and shall not contribute with Airline's insurance. All insurance policies shall be issued by a company licensed to do business in the state of Florida and be otherwise satisfactory to City and subject to City's approval. Airline shall be fully and solely responsible for any deductible, co-insurance penalty, or self-insurance retention, including but not limited to any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the subject policy.

(f) Modification of Insurance Requirements. City shall have the right to periodically review the adequacy of the required insurance, its form, type, and the amount of coverage and, notwithstanding any other provision of this Agreement, unilaterally modify the insurance requirements of this section by written notice of such amendment to Airline. Such modifications shall be as found reasonably necessary in the sole discretion of City. Factors considered by City may include, but are not limited to, changes in generally accepted insurance industry standards and practices, changes in use of the Airport by Airline, changes in risk exposure, measurable changes in local and national economic indicators, and changes in City's policies and procedures.

(g) Failure to Maintain Insurance. Airline understands and acknowledges that the responsibility and obligation to provide and maintain insurance in the forms, type, and coverage required herein and to maintain proper City additional insured policy endorsements and certificates of insurance is solely Airline's responsibility and obligation which continues during the entire Term, all Renewal Terms, and until such time as Airline no longer uses or occupies the Airline Common Use Facilities and Public Airline Facilities, whichever date is later. Airline further understands and acknowledges that failure to provide and maintain all insurance coverage as and in the manner required herein will be deemed detrimental to the public interest, an increased and unnecessary risk to the public and to City's taxpayers, and a material breach of this Agreement which can result in termination of this Agreement and in Airline being liable for the full amount of all losses incurred due to the failure to maintain insurance.

**24. SECURITY OF AIRLINE PROPERTY.** Airline acknowledges and accepts full responsibility for the security and protection of any and all of Airline's aircraft, vehicles, inventory, equipment, and other personal property now existing or hereafter placed on or installed in or upon the Airline Common Use Facilities, the Public Airport Facilities, or any other area of the Airport, and for the prevention of unauthorized access to such property of Airline. Any special security measures deemed necessary or desirable by Airline for protection of such property owned or used by Airline is the sole responsibility and expense of Airline and shall involve no cost to City.

**25. STORM PREPARATIONS.** In the event of approaching inclement weather, including but not limited to tornados, windstorms, or hurricanes, Airline, at Airline's sole expense, shall remove or cause the removal of all its personal property from the exterior of the Airline Common Use Facilities and otherwise secure and provide for protection of all such personal property located on the Airport in advance of the inclement weather.

**26. ENVIRONMENTAL RESTRICTIONS; REMOVAL OF REFUSE.** Airline shall not store, discharge, or dispose of any industrial or hazardous materials or wastes on or in the Airline Common Use Facilities whatsoever or allow such storage, discharge, or disposal. Airline shall utilize, store, and dispose of all such industrial, hazardous, and solid wastes only in accordance with applicable Federal, state, and local laws, rules and regulations. Airline shall be solely responsible for and indemnify City for all costs and expenses, including but not limited to costs of remediation, fines, penalties, attorneys' and experts' fees, and costs through trial and appeal, that arise in any manner out of environmental contamination caused by Airline, Airline's agents, officers, members, employees, contractors, subcontractors, or invitees, or otherwise from Airline's use or occupancy of the Airline Common Use Facilities, Public Use Facilities, or any other area of the Airport, or otherwise from Airline's operations, which responsibilities, obligations, and liabilities shall survive the expiration or termination of this Agreement.

An emergency contact and phone number for Airline shall be furnished to the Airport Director and to all appropriate governmental entities having jurisdiction thereof, for contacting Airline and its designated personnel in case of any spill, leak, or other emergency involving hazardous substances at the Airport.

**27. AGREEMENT SUBORDINATE.** This Agreement and its provisions hereof shall be subject and subordinate to all the terms and conditions of any instruments and documents under which City acquired the Airport land or improvements thereon, of which the Airline Common Use Facilities and Public Airport Facilities are a part, and this Agreement and its provisions shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. This Agreement and its provisions shall be subordinate to the provisions of any and all existing or future agreements between City and the United States of America, State of Florida, or any of their respective agencies, relative to the operation or maintenance of the Airport, the execution of which has been or is required as a condition precedent to the spending of Federal funds for the development of the Airport.

**28. NONEXCLUSIVE RIGHTS.** Notwithstanding anything herein contained, the rights, privileges and licenses granted under this Agreement are nonexclusive and City reserves the right to grant similar but no greater privileges to other Air Carriers. Notwithstanding any provision of this Agreement to the contrary, including, but not limited to, the use of the terms "fee" or "fees," Airline acknowledges that the Airline Common Use Facilities are being made available for Airline's use hereunder on a license

basis and nothing herein shall be deemed to grant Airline any title, leasehold interest or estate, in such Airline Common Use Facilities or any are area or part of the Airport.

**29. GOVERNMENTAL RESTRICTIONS.** This Agreement and its provisions, and Airline's operations, shall be subject to all applicable governmental regulations and restrictions, including but limited to the following:

(a) Avigation Rights. City reserves unto itself, 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 Airport, including the Airline Common Use Facilities, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, for navigation of, or flight in the said airspace for landing on and taking off from the Airport.

(b) Height Limitation. The height of structures, objects of natural growth, and other obstructions on the Airport in possession or control of Airline or constructed or installed by Airline, if any, shall be restricted to such a height so as to comply with Federal Aviation Regulations, Part 77, as such may be amended or superseded from time to time.

(c) Tax Assessment Right. None of the terms, covenants and conditions of this Agreement shall in any way be construed as a release or waiver on the part of City, as a municipality of the State of Florida, or any of the public officials of the City, of the right to assess, levy, and collect any license, personal, intangible, occupation, or other tax of general application that shall be lawfully imposed on the business or property of Airline.

(d) Governmental Review. This Agreement is subject to review or inspection by the United States government and the State of Florida and their respective agencies and departments, including but not limited to the FAA, to determine satisfactory compliance with state and Federal law and/or PFC and grant assurance requirements. This Agreement shall be in full force and effect and binding upon the parties pending such review or inspection; provided, however, that upon such review or inspection the parties agree to modify any of the terms of this Agreement that are determined by the United States government or the State of Florida or any of their respective agencies or departments to be in violation of or inconsistent with any state or Federal law and/or PFC or grant assurance requirement.

(e) Federal Right to Reclaim. In the event the United States or any agency thereof shall demand and take over the entire facilities of the Airport or the portion wherein the Airline Common Use Facilities are located, for public or governmental purposes, this Agreement shall thereupon terminate and the parties shall be released and fully discharged from any and all liability hereunder, except for any payment obligation arising or accruing prior to the termination, which shall survive such termination. This Article shall not act or be construed as a waiver of any rights or claims Airline may have against the United States or any agency thereof as a result of an alleged taking.

**30. DEFAULT AND REMEDIES.** Except as otherwise provided in this Agreement, the following shall be deemed to constitute a default and material breach of the terms of this Agreement:

(a) Failure by Airline to pay any obligation or amount of money due under this Agreement.

(b) Failure by Airline or City to comply with any provision or condition of this Agreement.

(c) Abandonment by Airline of Scheduled Operations or use of the Airline Common Use Facilities as provided for in this Agreement without the written agreement of City.

Airline and City shall have all remedies for any default by the other party as provided for herein and at law or in equity, including but limited to termination of this Agreement. However, this Agreement shall not be deemed a lease nor shall Airline be deemed to have been granted any leasehold interest in real property under this Agreement.

**31. EXPIRATION/TERMINATION.** This Agreement and the licenses granted hereunder shall terminate as of the last day of the Term or the then current Renewal Term, or as of such date that Airline has subsequently vacated the Airline Common Use Facilities as provided herein, whichever is later. However, either party may terminate this Agreement early for cause should the other party fail to cure a material breach of any term(s) of this Agreement within fifteen (15) days after having been served with written notice and demand to cure such breach, or either party may elect to terminate this Agreement for convenience upon sixty (60) days written notice. Airline releases and shall indemnify City for and from any and all claims for damages arising in any manner from early termination by City for Airline's material breach of this Agreement and termination of Airline's operations. Such obligation for release and indemnification shall survive termination of this Agreement.

**32. SUSPENSION OF OPERATIONS.** Notwithstanding any notice provision herein to the contrary, City reserves the right to immediately suspend Airline's use of the Airline Common Use Facilities or Public Airport Facilities due to any uncorrected unsafe condition, whether caused by Airline or due to any other condition on the Airport, that the Airport Director or his designee, in consultation with FAA officials, determines to necessitate interruption of Airline's operations or activities. In the event of such suspension, Airline shall continue to retain liability hereunder until all activities related to Airline's use have been completed and all equipment and persons have been removed from Airport property or otherwise secured. Airline releases and shall indemnify City for and from any and all claims for damages arising in any manner from any such suspension of Airline's operations or activities as provided in this section.

**33. SURRENDER ON EXPIRATION/TERMINATION; RESTORATION.** Airline shall cease General Operations and use of the Airline Common Use Facilities and Public Use Facilities upon expiration or termination of this Agreement. Airline shall remove its equipment and all other personal property of Airline and vacate the facilities, leaving the facilities in a clean and usable condition acceptable to City, with exception made for reasonable and ordinary wear and tear. If Airline fails to remove its equipment and other personal property within fifteen (15) days after the date of expiration or earlier termination, such equipment and personal property shall be deemed to have been abandoned by Airline. City may appropriate, sell, store, destroy, or otherwise dispose of any such abandoned equipment and personal property without notice to Airline and without obligation to account therefor and without liability to Airline or any claimant. Further, Airline shall pay to City the cost City incurs in removing, selling, storing, destroying, and disposing of such abandoned equipment and property in excess of any value recovered for such abandoned equipment and property, which obligation shall survive expiration or termination of this Agreement.

### 34. MISCELLANEOUS PROVISIONS.

(a) No Joint Venture or Agency. Nothing in this Agreement or any exhibit or attachment hereto creates or is intended to create an association, trust, partnership, joint venture, or other entity or similar legal relationship among or between the parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the parties. Neither party is nor shall be deemed the agent or representative of the other party in any instance whatsoever.

(b) No Third-Party Beneficiaries. Notwithstanding the public nature of Airline's intended use of the Airport, the terms and provisions of this Agreement are intended solely for the benefit of the parties and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.

(c) Airline Organization. Airline's status as a legal entity shall continuously be in good standing, active, and current with the state of its incorporation or registration and maintain its authorization to operate in the State of Florida, and Airline shall keep its status active and current throughout the Term and all Renewal Terms. Airline shall keep City apprised of all changes in its designated officers, directors, representatives, and other officials and their contact information.

(d) Real Estate Commission. Airline and City each covenant and warrant to the other that they have not authorized nor contracted with any person, firm, or entity as a real estate agent or broker to deal on behalf of such party with respect to this Agreement and that no such person, firm, or entity has been paid or is owed any remuneration, commission, or fee arising out of this transaction or Agreement.

(e) Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.

(f) City's Agent. Except as otherwise provided herein, the Airport Director shall be City's agent and shall have the authority to administer this Agreement on behalf of City in consultation with City's City Manager, including but not limited to the authority to cause notices to be served on Airline; enforce or terminate the Agreement upon material breach of any terms by Airline; and to enforce City's right to enter the any of the facilities or premises as provided herein.

(g) Marketing Assistance. City will assist Airline in marketing of its Scheduled Operations in conjunction with the Airport as approved by the City Council in its annual budget. Any marketing expenses proposed by Airline to be paid or reimbursed by City must be approved in advance by the Airport Director.

(h) Annual Budgetary Funding. This Agreement and performance of all obligations of City hereunder are subject to and contingent upon annual budgetary funding and appropriations by City's City Council.

(i) Waiver of Compliance; Consents. Any term or condition of this Agreement may be waived by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth

in a written instrument duly executed by or on behalf of the party waiving such term or condition. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this Agreement, in any one or more instances, shall not invalidate this Agreement, nor shall such waiver be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement. Except as otherwise provided herein, the failure of a party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. A waiver by a party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation, or warranty. A waiver by a party of the time for performing any act shall not constitute a waiver of time for performing any other act or the time for performing an identical act required to be performed at a later time.

(j) Notices. Any notices that are required to be served or that may be served pursuant to this Agreement shall be in writing, addressed to the party's address below, and shall be deemed served as follows: (1) on the date hand delivered, as evidenced by an affidavit of service; (2) on the date delivered by courier service such as FedEx, UPS, or U.S. Priority or Express Mail; or (3) on the date delivered by Registered or Certified First Class U.S. Mail, as evidenced by a return receipt.

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

With copies to:	City Manager	City Attorney
	City of Vero Beach	City of Vero Beach
	1053 20 <sup>th</sup> Place	1053 20 <sup>th</sup> Place
	P.O. Box 1389	P.O. Box 1389
	Vero Beach, FL 32961-1389	Vero Beach, FL 32961-1389

To Airline: Robert Lyle, Manager  
Elite Airways, LLC  
50 Portland Pier  
Portland, ME 04101

Any notice or request the delivery of which is refused by the recipient shall be deemed given as of the date it is mailed or sent. A party may change their foregoing address by providing written notification to the other in the manner provided herein.

(k) Airline Agent for Service. Airline shall appoint an agent within the state of Florida for the purpose of service of notices required or permitted under this Agreement and for service of process, in any court action between Airline and City, arising out of or based upon this Agreement or Airline's operations or use of the Airport. Airline shall promptly notify City, in writing, of the name, address, and contact information of said agent and any subsequent changes. The service of notices shall be made as provided herein and service of process shall be as provided by the laws of the state of Florida for service upon persons or entities having a registered agent in the state of Florida. Should Airline fail to appoint said agent, or fail to notify City of the name, address, and contact information of said agent as aforesaid,

Airline may be personally served with such process out of this state by registered or certified mailing of such process, return receipt requested, to Airline at its address set forth in this Agreement. Such service shall be deemed complete upon mailing should Airline fail or refuse to accept such registered or certified mailing.

(l) Assignment. Airline shall not assign, sublease, or transfer all or any part of this Agreement or any of Airline's rights or obligations hereunder without prior written consent of City's City Council, which shall be in City's sole discretion. Airline shall not mortgage or otherwise pledge this Agreement or any rights hereunder as security for any obligation. Subject to this subsection, this Agreement is binding upon, inures to the benefit of, and is enforceable by the parties and their respective successors and permitted assigns.

(m) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies, except to the extent Federal law specifically applies and preempts state law.

(n) Venue. Venue for resolution of any dispute arising from or under this Agreement or its performance shall be in Indian River County, Florida and all actions and proceedings arising from or under this Agreement or Airline's use or occupancy of the Airline Common Use Facilities or any other area of the Airport or otherwise related to the subject matter of this Agreement shall be in the court of the State of Florida in Indian River County, Florida, which court shall have exclusive jurisdiction for such purpose, except that in the case of Federal jurisdiction, venue shall be solely in the U.S. District Court for the Southern District of Florida.

(o) Waiver of Jury Trial. Each of the parties hereto irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Agreement or Airline's use or occupancy of the Airline Common Use Facilities or any other area of the Airport or otherwise related to the subject matter of this Agreement. This provision is a material inducement for the parties hereto to enter into this Agreement, and shall survive the termination of this Agreement.

(p) Attorneys' Fees. Except as otherwise provided in this Agreement, in the event there arises between the parties any dispute or litigation, each party shall be responsible for its own attorneys' fees, expert and consultant fees, and costs.

(q) Entire Agreement. This Agreement and its exhibits and attachments set forth all the promises, agreements, conditions, and understandings, either oral or written, between the parties.

(r) Exhibits. Except as otherwise provided in this Agreement, all exhibits and attachments referred to herein are intended to be and hereby are specifically made a part of this Agreement.

(s) Amendment. Except as otherwise provided in this Agreement, no subsequent alteration, amendment, change, or addition to this Agreement or any exhibit or attachment hereto shall be binding on Airline or City unless in writing and signed by them and made a part of this Agreement by direct reference. Any amendment shall require the approval of City's City Council.

(t) Captions. The captions, paragraphs, sections, or letters appearing in this Agreement are inserted only as a matter of convenience and in no way affect, define, limit, construe, or describe the scope or intent of the sections and paragraphs of this Agreement.

(u) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all which together shall constitute one and the same instrument.

(v) Recording. Recording of this Agreement in the public records shall not be required; however, either party may record this Agreement in the public records of Indian River County, Florida at such party's own expense.

(w) Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, such provision shall be fully severable; this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; the parties shall negotiate in good faith to restore insofar as practicable the benefits to each party that were affected by such ruling and to include as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as possible.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates entered below and each party's respective signatory whose signature appears below hereby warrants and represents that such signatory has been and is on the date of execution of this Agreement duly authorized to execute this Agreement on behalf their respective party.

**SIGNATURE PAGES FOLLOW**

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Airline – Elite Airways, LLC  
(This section to be completed by Airline only)

WITNESSES:

**ELITE AIRWAYS, LLC,**  
a Nevada limited liability company

Sign: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

John Pearsall  
Authorized Agent

Sign: \_\_\_\_\_

[SEAL]

Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2019,  
by **John Pearsall**, as Authorized Agent of **ELITE AIRWAYS, LLC**, a Nevada limited liability  
company. He is personally known to me; OR produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name:

Commission No.:

My Commission Expires:

[NOTARY SEAL]

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City – City of Vero Beach  
(This section to be completed by City only)

ATTEST:

**CITY OF VERO BEACH,**  
a Florida municipal corporation

\_\_\_\_\_  
Tammy K. Bursick  
City Clerk

By: \_\_\_\_\_  
Anthony W. Young  
Mayor

[SEAL]

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2019,  
by, **Anthony W. Young**, as Mayor, and attested to by **Tammy K. Bursick**, 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:

[NOTARY SEAL]

**ADMINISTRATIVE REVIEW**  
(For Internal Use Only–Sec. 2-77 COVB Code)

Approved as to form and legal sufficiency:

Approved as to technical requirements:

\_\_\_\_\_  
John S. Turner  
City Attorney

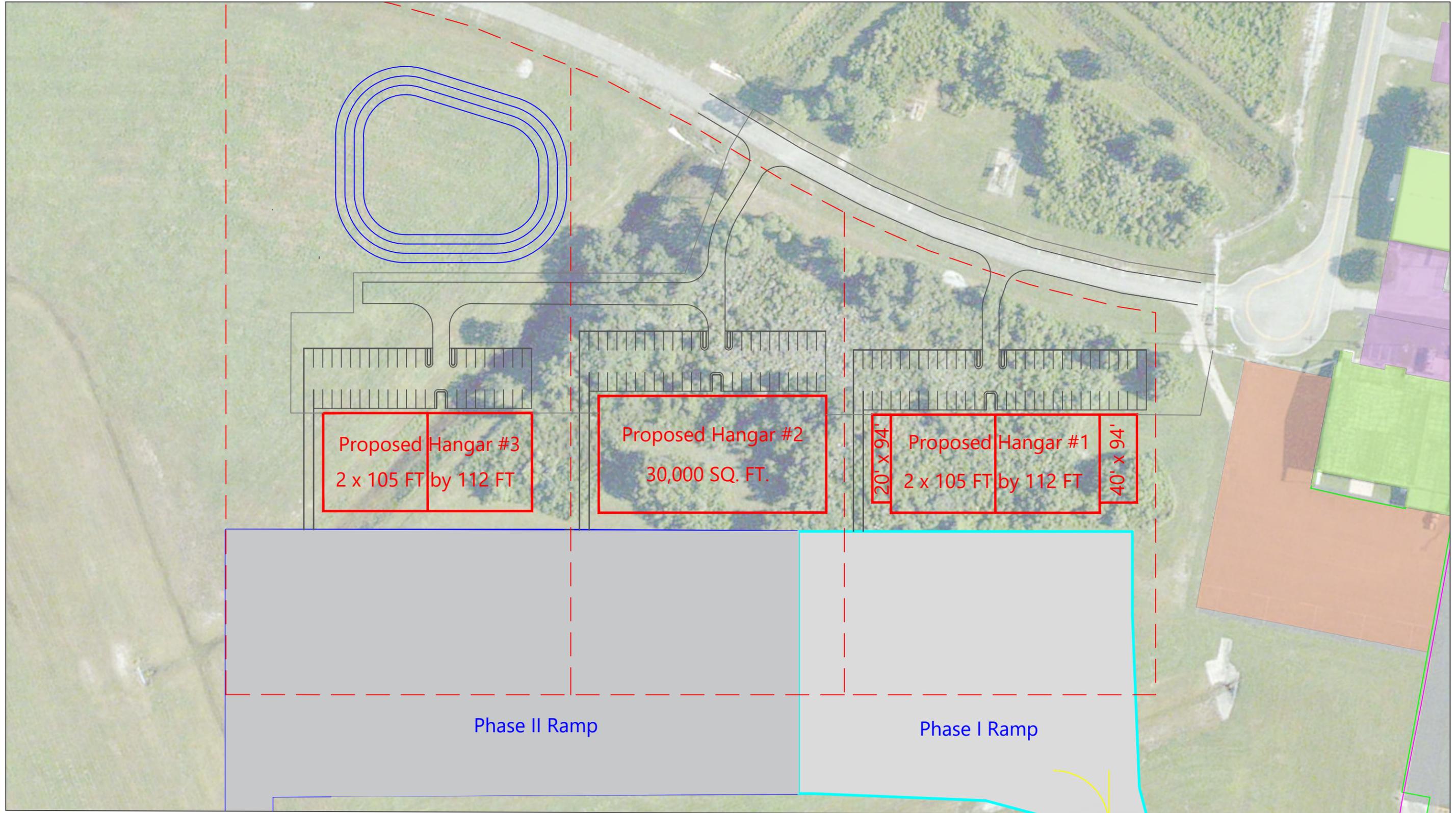
\_\_\_\_\_  
Monte K. Falls, P.E.  
City Manager

Approved as to technical requirements:

Approved as to financial requirements:

\_\_\_\_\_  
Ericson W. Menger  
Airport Director

\_\_\_\_\_  
Cynthia D. Lawson  
Finance Director



**CITY OF VERO BEACH**  
**AGENDA ROUTING SLIP**

**Date: December 27, 2019**

**For City Council Meeting on January 7, 2020**

**Originated by:**  
(Check one)

- City Council, motion adopted on: \_\_\_\_\_
- Council Member \_\_\_\_\_
- City Manager
- City Attorney
- City Clerk
- Airport \_\_\_\_\_ Department

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**Person to Contact:** Ericson W. Menger, Airport Director  
**Telephone Number:** 978-4930 x103

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**[CITY RESOLUTION]**

**SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY OF VERO BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION TO CONSTRUCT HANGAR APRON AT VERO BEACH REGIONAL AIRPORT (VRB)**

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<u>Route for Signature to:</u>		<u>Initial/Date</u>
1.	Airport Director	<u>M 12/27/19</u>
2.	Finance Director	_____
3.	City Attorney	_____
4.	City Manager	_____

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**Return one Executed to:**          **Airport**

## MEMORANDUM

**TO:** Monte K. Falls, City Manager  
**VIA:** John S. Turner, City Attorney  
**FROM:** Ericson W. Menger, Airport Director  
**DATE:** December 27, 2019  
**SUBJECT:** SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY OF VERO BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION TO CONSTRUCT HANGAR APRON AT VERO BEACH REGIONAL AIRPORT (VRB)

---

Attached are two (2) copies of a Supplemental Joint Participation Agreement (SJPA) and associated Resolution between the City of Vero Beach and the Florida Department of Transportation (FDOT) for the above-referenced airport project.

### **BACKGROUND:**

On August 21, 2018, City Council accepted an FDOT grant (JPA) to construct a new 35,000 square foot (sf) hangar to support increased capacity to handle large corporate jet aircraft at Vero Beach Regional Airport. At the time, it was anticipated that Elite Airways or another large user would complete a public-private partnership (P3) agreement such that the \$1M match for the 80/20 FDOT grant would allow for the hangar construction and use. Airport staff was unable to complete negotiations with Elite Airways for a long term lease, so an RFP was advertised to find a suitable partner. Sheltair, an aviation management and development company in Fort Lauderdale, submitted a proposal but it was not fully responsive to the City's requirements to lease the property.

Recently, however, a current airport tenant, JP Aviation Investments, Inc., has indicated their interest in the property. JP Aviation already has approximately 3 acres of Airport land under long-term lease from the City and has constructed three large (12,000 sf) hangars on their leasehold. They are tenants in good standing and would now like to lease additional property to construct at least 3 more large (12,000 sf) hangars to maintain their aircraft.

To fund the associated airport infrastructure needed (including associated aircraft parking ramp, engineering, permitting, storm water treatment, and road improvements) to accommodate this development, staff pursued an SJPA to the FDOT grant to allow the existing grant funding to be used for construction of infrastructure instead of the hangar. FDOT agreed with this plan and has issued the attached SJPA. JP Aviation has also indicated that they will fund the \$1M grant match necessary to begin the construction of the apron, and will fund the entire hangar construction at their own expense. This is similar to the P3 agreement that was negotiated with both Corporate Air and Paris Air for their aircraft parking aprons at Airport West (near 43<sup>rd</sup> Avenue).

### **FUNDING:**

The total cost of the project is estimated at \$5,000,000; FDOT will be funding a maximum amount of \$4,000,000 (80%) and the City (Airport) will be responsible for the remaining \$1,000,000 (20%). The City Attorney's Office is assisting with the lease agreement, which will include provisions that require the tenant to be responsible for the City's grant match of \$1M, which will be paid in advance prior to beginning construction. No City expenditures are anticipated for this project. The Airport will manage the project and grant administration (FDOT), while the financial accounting and audit will be handled by the Finance Department.

### **ANALYSIS:**

Strengths: Up to 3 new hangars and over 400,000 sf of new aircraft parking apron at no expense to the City. A new revenue stream to the Airport of approximately \$111,000 per year from the land rental, plus an increase in fuel flowage fees.

Weaknesses: Approximately 2 years to complete the build-out.

Opportunities: Increased business will lead to increased airport revenue, increased ad valorem taxes for the general fund, and about 15-30 new jobs in the community (JP Aviation estimate).

Threats: None.

### **RECOMMENDATION:**

Staff respectfully request that this item be placed on the **January 7, 2020**, City Council Agenda, recommending approval of the proposed Resolution and acceptance of the SJPA.

EWM  
Attachments

cc: Airport Commission Members (via email)  
Finance Department (via email)

RESOLUTION NO. 2020-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, AUTHORIZING THE CITY TO ENTER INTO A SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR A PROJECT AT THE VERO BEACH REGIONAL AIRPORT ENTITLED “APRON CONSTRUCTION” (FDOT #442101-1-94-01); PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Vero Beach owns and operates the Vero Beach Regional Airport which serves the general aviation needs of the public; and

**WHEREAS**, the City Council finds that it is desirable to construct additional aircraft parking apron at the Vero Beach Regional Airport (“Project”) in order to better serve the public; and

**WHEREAS**, the Florida Department of Transportation has agreed to participate with the City of Vero Beach in funding of the above-referenced Project pursuant to a Supplemental Joint Participation Agreement (“Agreement”) attached hereto as Attachment “A”; and

**WHEREAS**, the City Council finds that entering into said Agreement serves a municipal purpose and is in the public interest by helping facilitate completion of the Project.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA THAT:**

**Section 1 – Adoption of “Whereas” clauses.**

The foregoing “Whereas” clauses are hereby adopted and incorporated herein as forming the legislative findings, purpose, and intent of this Resolution.

**Section 2 – Approval and Execution of Agreement.**

The City Council hereby approves the Supplemental Joint Participation Agreement between the City of Vero Beach and the Florida Department of Transportation attached hereto as Attachment “A” and authorizes the Mayor to execute on behalf of the City of Vero Beach said Agreement and all other related documents required to implement the terms and conditions of the Agreement.

**Section 3 – Effective Date.**

This Resolution shall become effective upon adoption by the City Council.

\*\*\*\*\*

This Resolution was heard on the \_\_\_ day of \_\_\_\_\_ 2020, after which hearing it was moved for adoption by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted by the following vote of the City Council:

Mayor Anthony Young \_\_\_\_\_  
Vice Mayor Laura Moss \_\_\_\_\_  
Councilmember Robert Brackett \_\_\_\_\_  
Councilmember Rey Neville \_\_\_\_\_  
Councilmember Joseph Graves \_\_\_\_\_

ATTEST:

CITY COUNCIL  
CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Bursick  
City Clerk

\_\_\_\_\_  
Anthony W. Young  
Mayor

Approved as to form and legal  
sufficiency:

Approved as conforming to  
municipal policy:

\_\_\_\_\_  
John S. Turner  
City Attorney

\_\_\_\_\_  
Monte K. Falls  
City Manager

Approved as to technical requirements:

Approved as to financial requirements:

  
\_\_\_\_\_  
Ericson W. Menger  
Airport Director

\_\_\_\_\_  
Cynthia D. Lawson  
Finance Director

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT**

725-030-07  
 PUBLIC TRANSPORTATION  
 12/18

Number: 1

Page 1 of 5

Financial Project No(s): <u>442101-1-94-01</u> <small>(item-segment-phase-sequence)</small> Contract No.: <u>G1002</u>	Fund: <u>DTTO</u> Function: <u>215</u> Federal No.: _____ DUNS No.: <u>80-939-7102</u>	FLAIR Category: <u>088719</u> Object Code: <u>751000</u> Org. Code: <u>55042010429</u> Vendor No.: <u>VF59600045004</u>
Catalog of Federal Domestic Assistance Number: _____		Catalog of State Financial Assistance Number: <u>55.004</u>
CFDA Title: _____		CSFA Title: <u>Aviation Grant Program</u>

THIS AGREEMENT, made and entered into on \_\_\_\_\_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department,

and The City of Vero Beach, 3400 Cherokee Drive, PO Box 1389 Vero Beach, Florida 32961-1389

hereinafter referred to as Agency.

WITNESSETH:

WHEREAS, the Department and the Agency heretofore on 9/18/2018, entered into a Joint Participation Agreement; and

WHEREAS, the Agency desires to accomplish certain project items as outlined in the Attachment "A" appended hereto; and

WHEREAS, the Department desires to participate in all eligible items for this project as outlined in Attachment "A" for a total Department Share of \$4,000,000

NOW, THEREFORE THIS INDENTURE WITNESSETH: that for and in consideration of the mutual benefits to flow from each to the other, the parties hereto agree that the above described Joint Participation Agreement is to be amended and supplemented as follows:

**1.0 Project Description:** The project description is amended

from Hanger Construction to Apron Construction: The scope of this grant is modified to provide design, permitting, and construction of all site improvements in the area adjacent to the newly constructed Taxiway E to accommodate hanger construction. As required by 215.971, F.S., this scope of work includes but is not limited to consultant and design fees, survey and geotechnical costs, permitting, construction inspection and material testing costs, mobilization and demobilization, maintenance of traffic, erosion control, demolition, excavation, embankment, subgrade preparation, base course, surface course, joint construction, pavement markings, lighting system improvements (includes conduits, lights, conductors, cans, lightning protection, vault, and ALCS upgrades), high-mast lights and signage, drainage, utilities, and fencing and gates, including all materials, equipment, labor, and incidentals required to construct the apron pavement. The Sponsor will comply with Aviation Program Assurances.

Attachment "A"

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT**

725-030-07  
PUBLIC TRANSPORTATION  
12/18

Page 2 of 5

**2.00 Project Cost:**

Paragraph 3.00 of said Agreement is  increased /  decreased by \$0.00

bringing the revised total cost of the project to \$5,000,000.00.

Paragraph 4.00 of said Agreement is  increased/  decreased by \$0.00

bringing the Department's revised total cost of the project to \$4,000,000.00.

**3.00 Amended Exhibits:**

Exhibit(s) A of said Agreement is amended by Attachment "A".

**4.00 Contract Time:**

Paragraph 16.00 of said Agreement 12/31/20.

**5.00 E-Verify**

Vendors/Contractors:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

Financial Project No(s): \_\_\_\_\_

442101-1-94-01

Contract No. G1002 \_\_\_\_\_

Agreement Date: \_\_\_\_\_

Except as hereby modified, amended or changed, all other terms of said Agreement dated 9/18/2018 \_\_\_\_\_ and any subsequent supplements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

AGENCY

FDOT

See attached Encumbrance Form for date of Funding Approval by Comptroller

\_\_\_\_\_  
AGENCY NAME

\_\_\_\_\_  
SIGNATORY (PRINTED OR TYPED)

\_\_\_\_\_  
LEGAL REVIEW  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
Steven C. Braun, P.E.  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
Director of Transportation Development  
TITLE

Financial Project No(s): \_\_\_\_\_

442101-1-94-01 \_\_\_\_\_

Contract No. G1002 \_\_\_\_\_

Agreement Date: \_\_\_\_\_

**ATTACHMENT "A"  
 SUPPLEMENTAL JOINT PARTICIPATION AGREEMENT**

This Attachment forms an integral part of that certain Supplemental Joint Participation Agreement between the State of Florida, Department of Transportation and The City of Vero Beach, 3400 Cherokee Drive, PO Box 1389 Vero Beach, Florida 32961-1389 dated 9/18/18.

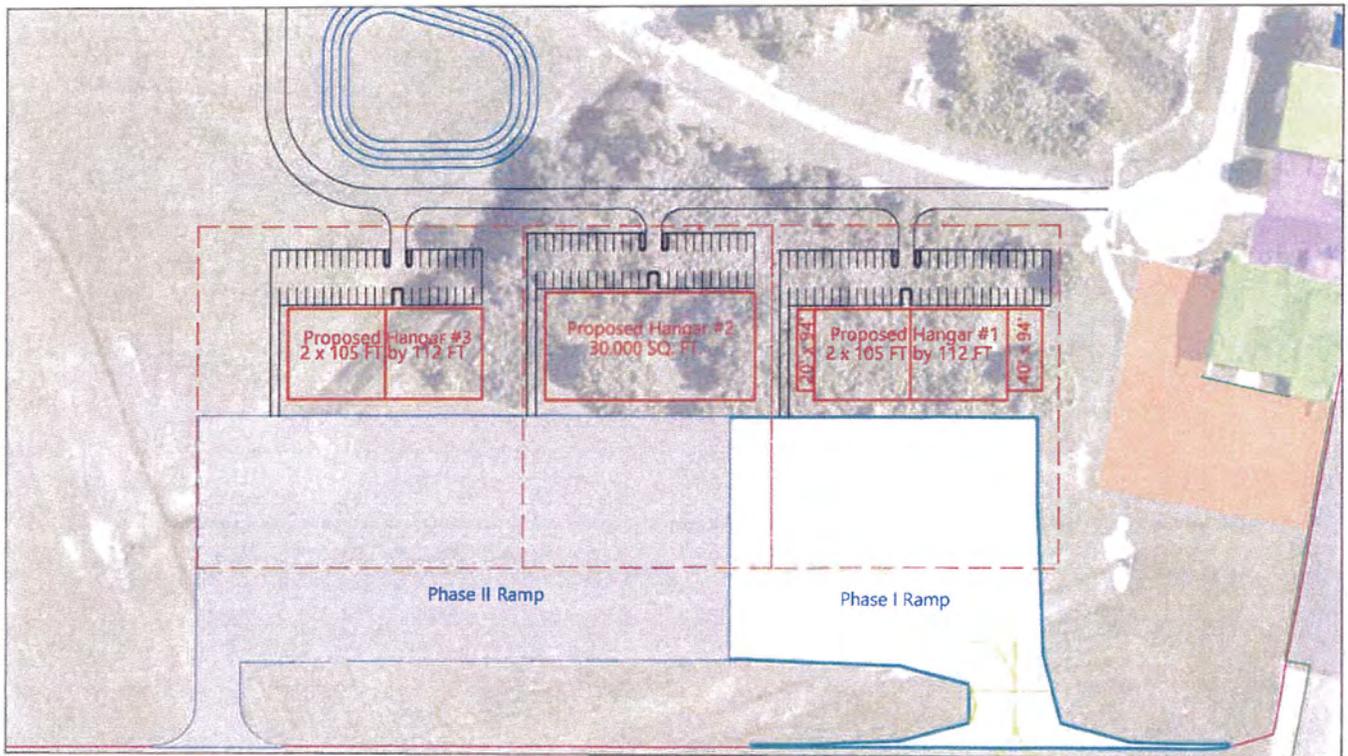
DESCRIPTION OF SUPPLEMENT (Include justification for cost change):

The scope of this grant is modified to provide design, permitting, and construction of all site improvements in the area adjacent to the newly constructed Taxiway E to accommodate hanger construction. There is no change in funding.

I. <u>Project Cost:</u>	<u>As Approved</u>	<u>As Amended</u>	<u>Net Change</u>
	\$5,000,000.00	\$5,000,000	\$ 0.00
Total Project Cost	\$5,000,000.00	\$5,000,000.00	\$ 0.00
II. <u>Fund Participation:</u>	<u>As Approved</u>	<u>As Amended</u>	<u>Net Change</u>
Department:	\$4,000,000.00	\$4,000,000.00	\$ 0.00
Agency:	\$1,000,000.00	\$1,000,000.00	\$ 0.00
Total Project Cost	\$5,000,000.00	\$5,000,000.00	\$ 0.00

Comments:

See sketch attached



1

Midfield Development Phase 2