

**SPECIAL CALL AIRPORT COMMISSION MEETING  
THURSDAY, APRIL 30, 2020 9:30 A.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**A G E N D A**

**1. CALL TO ORDER**

**DISCUSSION OF THE ATTACHED DRAFT RESOLUTION** – (The Resolution is subject to appropriate wording changes as developed at the meeting. A final Resolution will be recommended for adoption by the City Council at their May 5, 2020 City Council meeting).

**A) A Resolution of the City of Vero Beach, Florida, Establishing Rates and Charges for the Use of the Vero Beach Regional Airport by Airlines**

**2. PUBLIC COMMENT**

**3. ADJOURNMENT**

This is a Public Meeting. Should any interested party seek to appeal any decision made by the Commission with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings, and that, for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4922 at least 48 hours in advance of the meeting.

MEMORANDUM

TO: Airport Commissioners  
VIA: Tammy K. Bursick, City Clerk  
FROM: Ericson W. Menger, Airport Director  
DATE: April 28, 2020  
SUBJECT: AIRPORT COMMISSION AGENDA ITEM

Please see attached City Resolution for "Establishing Rates and Charges for the Use of the Vero Beach Regional Airport by Airlines." This will be discussed at the Special Call Airport Commission Meeting on April 30, 2020, at City Hall.

**BACKGROUND:**

The City of Vero Beach (City), as owner and operator of the Vero Beach Regional Airport (Airport), is authorized to regulate use of the Airport pursuant to State and Federal law, including establishing reasonable and non-discriminatory rates and charges to cover the cost of providing services to users of the Airport. In fact, the Federal Aviation Administration (FAA) encourages airports to maintain a fee and rental structure that, under the circumstances at each particular airport, makes the airport as financially self-sustaining as possible.

Our Airport Minimum Standards do not generally address airline operations. Consequently, in order to recover the costs of staff, maintenance, equipment and other items needed to operate the Airport terminal facilities for use by scheduled commercial service airlines, staff has drafted the attached City Resolution. This draft has been reviewed by airport staff, financial staff, the City Attorney and the City Manager.

**ANALYSIS:**

**Strengths:** Provides the City with an instrument by which to negotiate in good faith to provide airport terminal facilities to aeronautical users.

**Weaknesses:** None perceived.

**Opportunities:** Creates a non-discriminatory policy by which to charge airlines fair rates and charges designed to cover the costs incurred by the Airport to operate and maintain its facilities.

**Threats:** It is incumbent upon the City to ensure fair treatment to all aeronautical users, including airlines. Otherwise, there is a potential threat of losing federal grant funding to the Airport.

**RECOMMENDATION:**

Staff respectfully requests the Airport Commission review and recommend action on the attached City Resolution.

EWM

Attachment

cc: City Manager (via email)  
City Attorney (via email)  
City Finance Director (via email)

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

A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA,  
ESTABLISHING RATES AND CHARGES FOR THE USE OF  
THE VERO BEACH REGIONAL AIRPORT BY AIRLINES.

**WHEREAS**, the City of Vero Beach (the “City”) is the owner, operator, and legal sponsor of the Vero Beach Regional Airport in the City of Vero Beach, Florida (the “Airport”);

**WHEREAS**, the City is authorized to regulate use of the Airport pursuant to Sections 332.02 and 332.08, Florida Statutes, including by adopting all needful rules and regulations governing the use of the Airport and establishing reasonable and not unjustly discriminatory fees and charges to cover the cost of providing services to users of the Airport;

**WHEREAS**, the City is obligated under the terms of its grant agreements with the United States to maintain an airport fee and rental structure that, under the circumstances of the Airport, makes the Airport as financially self-sustaining as possible;

**WHEREAS**, the City incurs certain incremental costs in order to ensure the availability of the Airport and Terminal for use by Airlines for Scheduled Operations;

**WHEREAS**, the City desires to implement, by resolution, reasonable and not unjustly discriminatory rates and charges for use of the Terminal by Airlines conducting Scheduled Operations, in order to recover the aforementioned incremental costs.

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

**Section 1. Definitions**

The following words, terms, and phrases wherever used in this Resolution 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. All definitions contained within the applicable federal aviation laws at 49 U.S.C. § 40101, *et seq.*, and all amendments thereto shall be considered included herein.

- 1.1. Affiliate shall mean, any Airline that (1) pursuant to an agreement with a Permitted Carrier, operates certain flights at the Airport exclusively under the same airline code designator as the Permitted Carrier, or (2) is wholly owned by a Permitted Carrier, the Permitted Carrier’s parent company, or a company that owns the parent company of the Permitted Carrier, or (3) otherwise operates under essentially the same trade name as the Permitted Carrier at the Airport and uses essentially the same livery as the Permitted Carrier.
- 1.2. Airline shall mean a company that has been authorized by the FAA and the U.S. Department of Transportation to engage in Scheduled Operations, and which engages in Scheduled Operations at the Airport.

- 1.3. Airline Common Use Facilities shall mean the Airport real property, facilities, and improvements, together with certain Airport fixtures, equipment, and furnishings located thereon or therein, as may be provided by City for use by Airline in conducting Scheduled Operations at the Airport, including but not limited to passenger ticketing areas, areas for baggage make-up and baggage claim, passenger holding areas, security screening areas, wheelchairs for passenger accommodation, terminal building data communications network, and the terminal building public address system.
- 1.4. Aircraft Parking Apron shall mean those areas of pavement at the Airport that are used for the parking of aircraft and support vehicles, and the loading and unloading of aircraft, as designated by the Director or his designee.
- 1.5. Airline Premises shall mean those areas assigned in the Terminal for use by a Permitted Carrier, plus the appurtenant right to park aircraft and ground service equipment on the Aircraft Parking Aprons designated by the Director.
- 1.6. Airline Requirement shall mean that portion of Operating Expenses incurred only to support Scheduled Operations at the Airport in any given Fiscal Year or other stated period, as set forth in **Attachment A** to this Resolution.
- 1.7. 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.
- 1.8. Airport shall mean the Vero Beach Regional Airport located in Vero Beach, Indian River County, Florida, including all real property and easements, improvements and appurtenances thereto, structures, buildings, fixtures, machinery, equipment, vehicles, supplies and other tangible personal property, or interest in any of the foregoing, now or hereafter acquired by the City in connection with the Vero Beach Regional Airport.
- 1.9. Airport Leasing Policy means City of Vero Beach Resolution 2015-30 and any subsequent amendments thereto adopted by the City from time to time.
- 1.10. Airport Security Program shall mean security policies and procedures adopted or implemented by City and the Vero Beach Police Department from time to time as the 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, including but not limited to TSA security directives and 49 C.F.R. part 1542.
- 1.11. City shall mean the City of Vero Beach, Florida, acting by and through its City Council.
- 1.12. Director shall mean that City employee charged with the management and supervision of the Airport, and shall include from time to time the Director's designee.
- 1.13. Drawing Account shall mean that Drawing Account required by Section 6 hereof.
- 1.14. Effective Date shall mean the date of this Resolution's adoption by the City.

- 1.15. FAA shall mean the Federal Aviation Administration, or its authorized successor(s).
- 1.16. Fiscal Year shall mean the twelve-month accounting period commencing on October 1st of each year and ending on September 30th of such year, or such other twelve-month period as may be established under the laws of the State of Florida.
- 1.17. Ground Support Equipment means service and maintenance equipment used at the 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.
- 1.18. Letter of Authorization shall mean a letter issued by the Director pursuant to **Section 2**, executed by an Airline and filed with the City, authorizing that Airline to occupy space in the Terminal and make use of Airline Common Use Facilities.
- 1.19. Losses shall mean any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys' fees, investigation costs, remediation costs, expert witness costs and court costs), of any kind or nature.
- 1.20. Non-Signatory Carrier shall mean an Airline that, after the Effective Date, does not have a duly executed Letter of Authorization on file with the City.
- 1.21. Operating Expenses shall mean the direct and indirect expenses paid or accrued by the City on account of operating, maintaining, and repairing the Airport in accordance with Generally Accepted Accounting Principles in any given Fiscal Year.
- 1.22. Permitted Carrier shall mean an Airline which, after the Effective Date, has a duly executed Letter of Authorization on file with the City.
- 1.23. Public Airport Facilities shall mean and include 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.
- 1.24. Ramp Area shall mean the aircraft parking and maneuvering areas and shall include within its boundaries all Aircraft Parking Aprons.
- 1.25. Resolution shall mean this Resolution of the City of Vero Beach, Florida, Establishing Rates and Charges for the Use of the Vero Beach Regional Airport by Airlines.
- 1.26. Revenue Aircraft Arrival shall mean any aircraft arrival at the Airport that is a Scheduled Operation, and excluding, without limitation, ferry, test, courtesy, and inspection or other trips for which there is no fee or charge. Flights which are diverted to the Airport because of mechanical, meteorological or other causes shall be considered the same as a Revenue Aircraft Arrival, except that if a revenue flight that departs from the Airport is required,

without having landed at any other airport, to return to the Airport because of such mechanical, meteorological or other precautionary reasons, such arrival shall not be considered a Revenue Aircraft Arrival.

- 1.27. Rules and Regulations shall mean those rules, regulations, policies, and procedures adopted by the City, and directives issued by the Director, relating to the safety, efficiency, and security of the Airport and its use as now exist or are hereafter adopted or amended.
- 1.28. Scheduled Operations shall mean any common carriage passenger-carrying operation for compensation or hire conducted by an Airline for which the Airline or its representatives offers in advance the departure location, departure time, and arrival location, regardless of how such operation is defined for purposes of federal law.
- 1.29. Terminal shall mean the commercial terminal building at the Airport.
- 1.30. TSA shall mean the Transportation Security Administration or its authorized successor(s).

## **Section 2. Letters of Authorization.**

- 2.1. Prior to becoming a Permitted Carrier, an Airline must present satisfactory evidence to the Director that such Airline:
  - 2.1.1. Does not have any past due debts under any agreement with the City;
  - 2.1.2. Is not currently in default under any lease or contract with the City;
  - 2.1.3. Satisfies the insurance requirements in **Section 13** of this Resolution;
  - 2.1.4. Has provided the required Drawing Account; and
  - 2.1.5. Satisfies all other not unjustly discriminatory requirements established by the City from time to time for engaging in Scheduled Operations at the Airport.
- 2.2. Upon satisfaction of **Section 2.1** above, an Airline will obtain from the Director a Letter of Authorization which the Airline must execute to become a Permitted Carrier and to occupy space in the Terminal, plus the appurtenant right to park aircraft and Ground Service Equipment on the Aircraft Parking Aprons designated by the Director. Permitted Carriers' occupancy of Airline Premises shall be a month-to-month tenancy until such tenancy is canceled or terminated by the Permitted Carrier or the City pursuant to **Section 21** below.
- 2.3. All Letters of Authorization issued prior to the Effective Date of this Resolution granting an Airline the right to occupy Airline Premises shall expire as of the Effective Date, and unless a new Letter of Authorization has been duly executed by the Director and the Airline and filed with the City prior to that date, that Airline's status as a Permitted Carrier and its month-to-month tenancy shall be cancelled and terminated thereon.
- 2.4. Any permission granted by the City, directly or indirectly, expressly or by implication, to any Airline to enter upon or use the Airport or any part thereof is conditioned upon

compliance with this Resolution and the Rules and Regulations; and entry upon or into the Airport by any Airline shall be deemed to constitute an agreement by such Airline to comply with this Resolution and such Rules and Regulations.

- 2.5. The City hereby delegates to the Director or his or her duly authorized designee, the authority to enter into Letters of Authorization in the form attached to this Resolution as **Attachment B**, and to grant any consents or approvals required under this Resolution to an Airline operating at the Airport.

### **Section 3. Airline Rights and Privileges**

- 3.1. A Permitted Carrier, and a Non-Signatory Carrier authorized in writing by the City to do so, shall have the right, in common with others, to use the Airline Common Use Facilities and Public Airport Facilities for Airline's Scheduled Operations, as prescribed by the City, and in accordance with this Resolution, all applicable federal, state and local laws, and the Rules and Regulations, as each may be modified or amended from time to time.
- 3.2. In addition to its Scheduled Operations, a Permitted Carrier and a Non-Signatory Carrier authorized in writing by the City to do so may use the Airline Common Use Facilities and Public Airport Facilities for the following activities:
  - 3.2.1. 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. 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.
  - 3.2.2. 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 of the Airport for providing Scheduled Operations.
  - 3.2.3. Passenger Transport Services. Airline may provide for passenger transport services in connection with its Scheduled 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. The City shall have no obligation to provide or contribute to passenger transport services.
  - 3.2.4. Aircraft Servicing, Repair, and Storage. Airline may 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 Director for such purposes, which areas shall be subject to availability, and payment

of any applicable fees and charges established by the 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 as authorized by such FBOs or service provider’s lease or other agreement with City. Major maintenance or repair of aircraft, vehicles, or other equipment in or on the Airline Common Use Facilities, including the 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 Aircraft Parking Apron.

- 3.3. A Permitted Carrier shall have the right to use, in common with others, such Ground Support Equipment that may be made available by the City, in the City’s sole discretion, for Airlines’ use in conjunction with providing Scheduled Operations. This Section shall not be interpreted or deemed to require the City to procure or make available any particular kind or type of Ground Support Equipment for Scheduled Operations. Permitted Carriers’ use of the City-provided Ground Support Equipment shall be subject to the following:
  - 3.3.1. Airline shall not allow any employee, agent, or contractor of Airline to operate 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.
  - 3.3.2. Airline shall inspect or cause the inspection of Ground Support 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 Ground Support Equipment, Airline shall promptly notify the 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. Airline use of the equipment shall be suspended during the period in which repairs or maintenance of the Ground Support Equipment is being made.
  - 3.3.3. Airline shall promptly notify the 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. If 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 the 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. If 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 the City for the replacement value of the equipment.
  - 3.3.4. By using City-provided Ground Support Equipment, Airline acknowledges that the City is not the manufacturer thereof 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 Ground Support Equipment provided by the City. The 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 the City.

- 3.4. Nothing in this Section or in **Section 4** below shall be construed as authorizing any Airline to conduct any business at the Airport separate and apart from its Scheduled Operations.
- 3.5. By serving the Airport, an Airline acknowledges that the City has not made any representations or warranties regarding the suitability of the areas, facilities, equipment and improvements at the Airport for the operation of the Airline's Scheduled Operations. The City reserves the right to further develop, improve, repair and alter the Airport, including but not limited to the Airline Common Use Areas and Public Airport Facilities, as it may see fit, free of all liability to Airline for loss of business or Losses of any nature whatsoever occasioned during the making of such development, improvements, repairs, alterations and additions, including but not limited to any Losses resulting from the negligence of the City, or their employees, agents or contractors (or any subcontractor of any such contractor).

#### **Section 4. Airline Obligations**

- 4.1. No Airline shall knowingly interfere or permit interference with the use, operation or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at the Airport.
- 4.2. 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 those aircraft operated by Airline 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.
- 4.3. An Airline in possession of disabled or damaged aircraft on the Airfield or Aircraft Parking Apron shall be responsible for the expeditious removal of such aircraft and/or debris as soon as reasonably possible after release by proper legal authorities. When deemed necessary by the Director, such aircraft and/or debris shall be removed by or at the direction of the City, without any liability of the City, at the cost of the owner or person(s) in possession of the aircraft at the time, plus a fifteen percent (15%) administrative fee. In such case, the Airline shall (i) not assert any claim for compensation against the City or any of its officers, agents, employees, contractors or representatives for any loss or damage sustained to any such disabled aircraft, or any part thereof, by reason of such removal, and (ii) indemnify and hold harmless the City and their officers, agents, employees, contractors and representatives against all liability arising out of such removal of said aircraft.
- 4.4. Each Airline operating at the Airport shall comply at all times with all applicable existing or hereafter adopted federal, state, City and other local laws, rules, ordinances and

regulations, including without limitation all existing or hereafter duly adopted rules, ordinances and regulations of the state, the City, and applicable City and/or county zoning regulations. Airlines shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation of any policy of insurance for the Airport or violation of any of the provisions of any such policy of insurance, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations of its Scheduled Operations. If such an Airline's act, or failure to act, shall cause cancellation of any policy, then the Airline shall immediately, upon notification by the City, do whatever shall be necessary to cause reinstatement of said insurance. Furthermore, if an Airline shall do or permit to be done any act which causes an increase in the City's insurance premiums, the Airline shall immediately remedy such actions and pay the increase in premiums, to the extent attributable to the Airline's acts, upon notice from the City to do so.

- 4.5. 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 Director for such purposes, which areas shall be subject to availability, and include payment of any applicable fees and charges established by the City for the use of such Airport areas.
- 4.6. Except as expressly provided in this Resolution, Airlines may not sell or provide at the Airport any goods or services other than Airline's Scheduled Operations. 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 Resolution. To the extent that Airline relies, in whole or in part, on other persons or entities for the provision of services related to Airline's Scheduled Operations, Airline may use only those persons or entities authorized by the City in writing to provide such services at the Airport.
- 4.7. Airlines 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 Terminal typical onboard snacks (e.g., chips, peanuts, pretzels, etc.) and beverages (excluding alcoholic beverages). The foregoing restrictions shall not prohibit Airline from providing to its passengers at no charge any other accommodations Airline deems necessary and appropriate due to delays or which are required by law to be provided due to such delays.
- 4.8. Any and all rights not specifically granted to an Airline for its use and operations at the Airport are reserved for and to the City.
- 4.9. Each Permitted Carrier shall, at all times and at its own expense, preserve and keep its Airline Premises in an orderly, clean, neat, safe and sanitary condition.

- 4.10. Each Airline shall keep at its own expense the Aircraft Parking Apron free of fuel, oil, debris, and other contaminants.
- 4.11. Each Airline, its officers, employees, agents, and those under its control, shall comply with security measures required of the Airline by the FAA, the TSA, or contained in any Airport Security Program approved by the TSA. If an Airline, its officers, employees, agents, or those under its control shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then the Airline shall be responsible and shall reimburse the City in the full amount of any such monetary penalty.
- 4.12. The Director or his or her designee shall have the right to require an Airline or its Affiliate to remove its aircraft from any Aircraft Parking Apron at any time that is more than one hour before or after that aircraft's scheduled departure time if the Director (or his or her designee) determines that such Aircraft Parking Apron is needed to accommodate other aircraft, provided that the City (or a tenant thereof) shall provide other Ramp Area, which may be remote from the Terminal, at which such aircraft may be parked, with or without fee; provided, however, that said one hour period may be extended by the Director if the aircraft is in the process of deplaning passengers until the completion of the active deplaning process, or if the aircraft is in being boarded and actively prepared for departure until the completion of the active boarding process.
- 4.13. All labor agreements, employment agreements or other employment arrangements between an Airline and its employees or other third parties are solely the obligations of the Airline and not the City, and the City shall not have any obligation or liability with respect thereto. All persons employed by or on behalf of an Airline must apply for, be eligible to receive (under both TSA and the Rules and Regulations) and at all times while within the Airport properly display a City-issued identification badge. Any person who fails to comply with the Airport Security Program or with any security directives or regulations issued by TSA or the City shall be subject to revocation of their City-issued identification badge and the privilege of unescorted access to the sterile areas of the Airport.
- 4.14. All ground service equipment owned or operated by or on behalf of an Airline shall be parked, staged or stored in the location or locations designated by the Director and shall be otherwise operated strictly in compliance with the Rules and Regulations as in force from time to time, subject to the requirement that such Airline's ground service equipment may be required to be removed expeditiously from such staging/storage areas at the Director's request if necessary to accommodate use of such areas for other aircraft. Following consultation with Airline personnel, the Director shall, from time to time, taking into consideration Airline's operational needs, designate the areas available for the parking, staging or storage of ground service equipment on the Aircraft Parking Apron or elsewhere at the Airport. Airlines shall immediately remove from the Aircraft Parking Apron and shall not store on the Aircraft Parking Apron any damaged equipment, disabled equipment or mechanically non-operable motorized equipment.
- 4.15. 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.

**Section 5. Environmental Restrictions**

- 5.1. Airline shall not store, discharge, or dispose of any industrial or hazardous materials or wastes on or in the Airport 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, the 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 Airline's Letter of Authorization.
- 5.2. An emergency contact and phone number for Airline shall be furnished to the 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.

**Section 6. Drawing Account**

- 6.1. Prior to becoming a Permitted Carrier, each Airline shall establish a Drawing Account consisting of a cash deposit with the City in an amount equal to the City's estimate of three (3) months' rentals, fees, and charges payable by the Airline and its Affiliates pursuant to this Resolution (the "Minimum Balance"), to guarantee the faithful performance by the Airline of its obligations and the payment of all rentals, fees, and charges due hereunder. Such Drawing Account shall also secure the faithful performance of all obligations and the payment of all rentals, fees, and charges to the City by any Affiliate of the Permitted Carrier.
- 6.2. By executing a Letter of Authorization, Permitted Carrier acknowledges that the City may deduct from the Drawing Account all Terminal rentals, fees, and charges required under Section 7 of this Resolution, and that Permitted Carrier shall be responsible for restoring the Drawing Account to its Minimum Balance within thirty (30) days of receiving an accounting of such deduction by the City.
- 6.3. If a Permitted Carrier shall fail to maintain its Drawing Account at or above the Minimum Balance for a period of sixty (60) days or greater, such failure shall be grounds for immediate cancellation and termination of its Letter of Authorization and its right of occupancy pursuant to [Section 22](#) below.

## **Section 7. Terminal Rentals, Fees and Charges**

- 7.1. All Airlines shall pay a Common Use Charge and Ticket Counter Fee calculated as follows:
- 7.1.1. Common Use Charge. The Airline Requirement shall be paid on a prorated basis among all Airlines providing Scheduled Operations at the Airport, based on each Airline's and (in the case of a Permitted Carrier) its Affiliate's Revenue Aircraft Arrivals as a percentage of total Revenue Aircraft Arrivals for each month; *provided*, however, that the maximum percentage of the Airline Requirement that may be allocated to any one Permitted Carrier as a Common Use Charge in any one month shall be thirty-five percent (35%) (the "Maximum Permitted Carrier Share"). The proration of the Airline Requirement as applied to Non-Signatory Carriers shall not be limited by the Maximum Permitted Carrier Share.
  - 7.1.2. Ticket Counter Fee. Airlines shall pay a monthly Ticket Counter Fee of \$750 for the non-exclusive use of each ticket counter and associated areas made available for the Airline's use by City as provided in the Letter of Authorization or, in the case of a Non-Signatory Carrier, as authorized by the City in writing.
- 7.2. If available, an Airline may lease office space in the Terminal at current market rates, as determined by and subject to the terms of the Airport Leasing Policy.
- 7.3. Non-Signatory Rates. The City shall add a thirty percent (30%) premium to all rents, rates, and charges, as provided in **Sections 7.1 and 7.2** above, due from Non-Signatory Carriers and, by serving the Airport, a Non-Signatory Carrier agrees to pay such premium.
- 7.4. Taxes on Fees and Charges. Airline shall also pay to City with the rents, rates, and charges 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 rents, rates, and charges.
- 7.5. Method of Payment
- 7.5.1. Permitted Carriers. On or about the fifteenth (15<sup>th</sup>) day of each month, the City shall deduct all rents, rates, and charges assessed under this Section for the previous month from each Permitted Carrier's Drawing Account. Within ten (10) days thereof, the City shall provide Permitted Carrier with an accounting of its Drawing Account. The Permitted Carrier shall have thirty (30) days from the date of such accounting to remit to the City those amounts necessary to restore its Drawing Account to the Minimum Balance. The failure by a Permitted Carrier to restore its Drawing Account to the Minimum Balance within thirty (30) days constitutes a violation of this Resolution which may result in the termination of such Permitted Carrier's Letter of Authorization and conversion to a Non-Signatory Carrier.
  - 7.5.2. Non-Signatory Carriers. All rents, rates, and charges assessed under this Section are due and payable to the City monthly on the date of the City's invoice and shall be deemed delinquent if not received within thirty (30) days of the date of such

invoice. Delinquent amounts shall bear a late charge of five percent (5%) per month until paid, up to the maximum amount of interest that may be imposed by law.

- 7.6. Not less than thirty (30) days prior to the beginning of each Fiscal Year, the Director shall recalculate the Airline Requirement for the upcoming Fiscal Year and provide notice thereof to all Airlines operating at the Airport. Such updated Airline Requirement shall replace **Attachment A** to this Resolution without further action by the City. Notwithstanding the foregoing, if it appears to the City, on the basis of information it is able to accumulate during the course of any Fiscal Year, that the projected Airline Requirement is likely to vary significantly from the actual Airline Requirement for said Fiscal Year, the City may make adjustments to such fees and charges at mid-year or at such other time during the Fiscal Year as the need for such an adjustment becomes apparent to the City; provided, however, that no such adjustments shall be made for anticipated variances less than ten percent (10%) of the projected Airline Requirement. The City shall provide all Airlines operating at the Airport with at least thirty (30) days advance written notice of any adjustments to be made under this **Section 7.6**.

**Section 8. Other Fees and Charges.**

- 8.1. In addition to other rates and charges authorized to be imposed by the City by other provisions of this Resolution, the City expressly reserves the right to assess and collect the following from an Airline:
- 8.1.1. Reasonable and not unjustly discriminatory fees for concessions and other services authorized in writing by the City to be provided by an Airline for others or for an Airline by others, to the extent not included in the Airline Requirement;
  - 8.1.2. Reasonable and not unjustly discriminatory fees and charges for services or facilities provided by the City and accepted by an Airline, including, but not limited to, Federal Inspection Services (FIS) facility fees, to the extent not included in the Airline Requirement; and
  - 8.1.3. Pro-rata shares of any charges for the provision of any services or facilities which the City is required to provide by any governmental entity (other than the City acting within its proprietary capacity) having jurisdiction over the Airport, to the extent not included in the Airline Requirement.
- 8.2. 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.

## **Section 9. Reporting**

- 9.1. Not later than ten (10) calendar days after the end of each month, each Airline shall file with the City written reports on forms provided by the City for activity conducted by the Airline and (in the case of a Permitted Carrier) its Affiliates, during said month. The monthly report shall include, but shall not be limited to: (1) the Airline's and (in the case of a Permitted Carrier) its Affiliate's total number of Revenue Aircraft Arrivals at the Airport, by type of aircraft and Maximum Gross Landed Weight of each type of aircraft; (2) the total number of enplaning and deplaning passengers; and (3) the total weight of freight, mail, and other cargo for such month. The acceptance by the City of any payment made by an Airline pursuant to one of such Airline's monthly reports shall not preclude the City from verifying the accuracy of the Airline's monthly report or from recovering any additional payment actually due from the Airline in the event that the report is inaccurate, plus interest at the rate of 5% per month from the date such payment should have been made to the date such payment was received by the City.
- 9.2. If an Airline fails to furnish the City with the report required in **Section 9.1** above, the Airline's Revenue Aircraft Arrivals shall be calculated by assuming that the total Revenue Aircraft Arrivals for the Airline during the preceding month was one hundred twenty-five percent (125%) of either (i) the total Revenue Aircraft Arrivals for the most recent month for which such figure is available, or (ii) by reference to the schedule for such Airline's operations published in the current edition of the Official Airline Guide, at the discretion of the Director. The Common Use Charge shall be adjusted after an accurate report is delivered to the Director by the Airline for the month in question, and if such accurate report shows a deficit and it is delivered to the Director more than thirty (30) days after it was originally due, it shall be subject to a penalty of five (5%) of the deficit, and if such accurate report shows a surplus, the amount of this surplus shall be applied as a credit to such Airline's Common Use Charge for the next succeeding month.
- 9.3. The City shall rely on said activity reports in determining rentals and charges due under this Resolution; provided, however, each Airline shall have full responsibility for the accuracy of said reports.

## **Section 10. Airline Equipment and Improvements**

- 10.1. Airline Signs. Permitted Carriers, but not Non-Signatory Carriers, may install in the public areas of the Terminal identification, directional, and informational signs regarding Permitted Carrier's Scheduled Operations. Signs shall be uniform in size, type, and location with those of other Airlines 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 Director prior to installation.
- 10.2. Installation and Operating of Airline Equipment

- 10.2.1. Airline may install, operate, and maintain communication systems, meteorological equipment, and aerial navigation equipment, including related electrical and communications infrastructure, in such areas within the Airline Common Use Facilities or elsewhere on the Airport as may be needed by Airline for its Scheduled Operations and approved in writing by the 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.
- 10.2.2. Airline may install, operate, and maintain such equipment provided for in this **Section 10.2** alone or in conjunction with other Airlines 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 Airlines.
- 10.3. Improvements. Airline shall not make or cause to be made or allow any construction, alterations, installations, or improvements to or on the Airport, including the Airline Common Use Facilities (the "Improvements"), without prior written approval of the City. Any and all such improvements shall be subject to the terms and conditions of this Resolution and the City's written approval, including but not limited to the following:
  - 10.3.1. 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.
  - 10.3.2. Improvements shall be at Airline's sole cost and expense (or shared with other Airlines) and at no cost or expense to the City. Such costs shall include but are not limited to costs of planning, design, engineering, surveying, permitting, site preparation, construction, and installations.
  - 10.3.3. 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.
  - 10.3.4. 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.
  - 10.3.5. Any and all work associated with the Improvements shall be coordinated with the Director or his designee so as to minimize interference or conflict with Airport operations or the use of any part of the Airport by any other person.
  - 10.3.6. Within sixty (60) days of substantial completion of the improvements, as evidenced by a certificate of occupancy or completion, Airline 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).

- 10.3.7. 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 and 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 Resolution at Airline's sole cost and expense.
- 10.3.8. All Improvements made by Airlines shall be considered capital improvements to enhance Airline's use of the Airline Common Use Facilities and Airport for its operations and for the benefit of the general public. Airline's costs of such Improvements shall not be considered payments in lieu of the Rates and Charges established by this Resolution and payable to the City, absent express written agreement by the City, nor shall such costs entitle an Airline to any right to occupy the Airline Common Use Facilities or any other part of the Airport.
- 10.3.9. The City's interest in the Airport 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 Resolution does not allow any liens to attach to the 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 the 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 otherwise asserted against the 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 the 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.
- 10.4. All Improvements made to the Airport and additions and alterations thereto made by an Airline, except those financed by the City, shall be and remain the property of the Airline until termination of occupancy of such Improvements or the cessation or suspension of Airline's Scheduled Operations at the Airport. Upon either event, Improvements shall become the property of the City without any obligation for additional payment or reimbursement of such Airline by the City, unless the Director directs the Airline in writing

to remove said Improvements, in which event they shall be removed promptly by the Airline and the Airline shall promptly restore at such Airline's sole cost and expense, to the Director's reasonable satisfaction, the Airport to its condition immediately before the installation of said Improvements.

- 10.5. 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 and upon the termination of occupancy under this Resolution or upon cessation or suspension of Airline's Scheduled Operations, shall be promptly removed by the Airline.
- 10.6. In the event that an Airline does not remove its Improvements, trade fixtures, signs, equipment or other moveable personal property as required by this Resolution or as directed by the Director, the City may remove any or all such Improvements, trade fixtures, signs, equipment or other moveable personal property and the Airline shall reimburse the City for the full costs of such removal, the repair and restoration of the Airport, and any storage and other related costs, plus an administrative fee equal to 10% of such costs, within thirty (30) days after receipt of an invoice therefor. Failure by any Airline to pay such invoice within such thirty (30) day period shall result in the City having the right, but not the obligation, to sell such Improvements, trade fixtures, signs, equipment or other moveable personal property on such terms as may be acceptable to the City, in its sole discretion, and to apply the proceeds of such sale, after paying the costs of such sale, storage and other administrative costs, to the costs of removal, repair and restoration of the Airport.

#### **Section 11. Damage to Airport Property**

Notwithstanding any provision of this Resolution to the contrary, in the event that Airport facilities, including but not limited to the Airline Common Use Facilities or Terminal, are damaged or destroyed due to the willful act, omission, or negligence, abuse, of carelessness of Airline or Airline's employees, agents, customers, visitors, suppliers, or other persons with whom it may do business, Airline shall indemnify the 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. 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 the City for such damage or destruction, Airline shall reimburse the City the amount of the City's cost to repair, replace or reconstruct the facilities less the actual amount of insurance proceeds.

#### **Section 12. Assumption of Risk**

By serving the Airport, the Airline acknowledges that:

- 12.1. The Airline has inspected the Airport, including the Airline Common Use Facilities and Ground Support Equipment, and accepts the condition of the Airport, including the Airline Common Use Facilities and Ground Support Equipment, "as is."

- 12.2. The Airline 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 Airport, including the Airline Common Use Facilities and Ground Support Equipment.
- 12.3. The City has not made and makes no warranty of any kind whatsoever as to the condition of the Airport, including the Airline Common Use Facilities and Ground Support Equipment, or fitness of such facilities and equipment for any particular purpose.

### **Section 13. Insurance**

- 13.1. 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, so long as Airline uses, occupies, or operates at the Airport, including the Airline Common Use Facilities, insurance coverage with minimum limits and endorsements specified and otherwise in conformance with the following provisions:
  - 13.1.1. 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 the 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.
  - 13.1.2. 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 do not involve the operation, ownership or use of any vehicle, then this requirement shall include automobile liability for hired and non-owned vehicles only.
  - 13.1.3. 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.

- 13.1.4. 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 the City as additional insured or be endorsed to name and include the City as additional insured, and provide for at least thirty (30) days advance notice to the 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 the 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. Airline shall cause insurance policies, policy endorsements, and certificates of insurance in conformance with the requirements hereof to be promptly provided to the 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 the City.
- 13.2. Airline's insurance in all instances shall be primary and any insurance that may be maintained by the 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 the City and subject to the 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.
- 13.3. The City may periodically review the adequacy of the required insurance, its form, type, and the amount of coverage and, notwithstanding any other provision of this Resolution, 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 the City. Factors considered by the 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 the City's policies and procedures.
- 13.4. Neither the requirements contained in this Section nor the 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 Resolution by serving the Airport.
- 13.5. By serving the airport, Airline 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 until such time as Airline no longer uses or occupies the Airport and/or Airline Common Use Facilities, whichever date is later. Airline further 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 the City's taxpayers, and a

violation of this Resolution which can result in termination of Airline's Letter of Authorization and/or right to occupy the Airline Premises under Section and in Airline being liable for the full amount of all losses incurred due to the failure to maintain insurance.

**Section 14. Indemnity**

- 14.1. By serving the Airport, Airline releases and forever discharges the City and the 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 Airport, including the Airline Common Use Facilities and Ground Support Equipment, access thereto, and the condition, maintenance, or use of any installation, improvement, or equipment on, in, or serving such facilities.
- 14.2. By serving the Airport, Airline agrees to 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 Airport, including the Airline Common Use Facilities and 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.
- 14.3. 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 the City, or both Airline and the 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 Airport, including the Airline Common Use Facilities and 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 the 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.

**Section 15. Transfer or Sublet of Airline Premises**

All Letters of Authorization issued hereunder are personal at to the Airline and (in the case of a Permitted Carrier) its Affiliates, and the assignment or subletting of Airline Premises designated thereunder is not permitted. Notwithstanding the foregoing, a Permitted Carrier may assign its Airline Premises and its rights and obligations hereunder in their entirety, but not in part, without the City's prior written consent, to an entity with whom such Permitted Carrier merges or consolidates or to an entity that succeeds to all or substantially all of the Permitted Carrier's assets,

as long as such successor executes and delivers to the City a written undertaking in a form satisfactory to the City expressly assuming such Permitted Carrier's rights and obligations under its Letter of Authorization.

#### **Section 16. Inspection and Audit**

- 16.1. Each Airline shall at all times maintain and keep books, ledgers, accounts or other records wherein are accurately kept all entries reflecting the activity statistics to be reported pursuant to **Section 9** above. Such records shall be retained by each Airline for a period of three (3) years subsequent to the activities reported therein, or such longer retention period as set forth in 14 C.F.R. Part 249.7, and made available to the City, without any charge, at Vero Beach, Florida, for audit and/or examination by the City or its duly authorized representative during all normal business hours. Notwithstanding the foregoing, if the City has commenced an audit during such retention period, such records shall be maintained until the City notifies the Airline that the audit and all issues raised by the audit have been resolved. Each Airline shall produce such books and records at Vero Beach, Florida, within thirty (30) calendar days of the City's notice to do so or pay all reasonable expenses, including but not limited to transportation, food and lodging, necessary for an auditor selected by the City to audit said books and records.
- 16.2. The cost of audit, with the exception of the aforementioned expenses, shall be borne by the City; provided, however, the total cost of said audit shall be borne by the Airline if either or both of the following conditions exist:
  - 16.2.1. The audit reveals an underpayment of more than three percent (3%) of rentals, fees and charges due hereunder in any Fiscal Year, as determined by said audit; and/or
  - 16.2.2. The Airline has failed to maintain true and complete books, records, accounts, and supportive source documents in accordance with **Section 8**.
- 16.3. Authorized representatives of the City may 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 obligations hereunder or in the exercise of any of City's governmental and proprietary functions.

#### **Section 17. Severability**

In the event that any covenant, condition or provision of this Resolution is held to be invalid by any court or agency of competent jurisdiction, such invalid provision shall be enforced to the maximum extent permitted by law, and the remainder of the provisions shall not thereby be invalidated, but shall remain in full force and effect, all parts being declared severable and independent of all others.

**Section 18. Governing Law**

- 18.1. This Resolution is to be read and in accordance with the laws of the State of Florida as to all matters, including but not limited to validity, construction, effect, performance, and remedies, except to the extent federal law specifically applies and preempts state law.
- 18.2. By serving the Airport, Airline agrees and stipulates to the venue and jurisdiction of the 19th Judicial Circuit of the State of Florida, Indian River County, in in any action brought to enforce the terms of this Resolution, irrevocably and unconditionally submits to the jurisdiction (both subject matter and personal) of any such court, and irrevocably and unconditionally waives: (i) any objection any party might now or hereafter have to the venue in any such court; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

**Section 19. 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.

**Section 20. FAA Requirements**

- 20.1. 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, Airport Security Program, and environmental laws. Airline shall cooperate in good faith with any investigation, audit, or inquiry by the 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 the 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.
- 20.2. The City reserves unto itself, and unto its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above or adjacent

to the surface of the Terminal and all other areas of the Airport, together with the right to cause in said airspace such noise, light, vibrations, smoke, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of or as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the said airspace, and use of said airspace for landing on, taking off from or operating on the Airport. By operating at the Airport, each Airline accepts the foregoing conditions and the Airline Premises subject to the risks and activities herein described.

- 20.3. Each Airline expressly agrees, on behalf of itself and (in the case of a Permitted Carrier) Affiliates, and their respective successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Airline Premises in compliance with the requirements of Federal Aviation Regulations, 14 CFR Part 77. In the event the aforesaid covenants are breached, the City reserves the right to enter upon the Airline Premises and to remove the offending structure or object and cut the offending natural growth, all of which shall be at the expense of the Airline occupying such Airline Premises.
- 20.4. Each Airline agrees to require any lights in the Airline Premises to be constructed, focused or arranged in a manner that will prevent them from casting their beams in an upward direction so as to interfere with the vision of pilots in aircraft landing at or taking off from the Airport.
- 20.5. Each Airline shall prevent and shall cause (in the case of a Permitted Carrier) its Affiliates to prevent any use of the Airport which would interfere with or adversely affect the operation or maintenance of the Airport, or which would otherwise constitute a hazard or nuisance at the Airport.
- 20.6. No Airline shall exercise or (in the case of a Permitted Carrier) grant or permit any of its Affiliates to exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any service (including, but not limited to maintenance and repair) on its own aircraft with its own employees that it may choose to perform. No Airline shall be granted or may exercise any exclusive right to operate aircraft or provide any aeronautical services at the Airport.
- 20.7. The rights granted to any Airline to operate at the Airport and to occupy its Airline Premises under this Resolution shall be subordinate to the provisions or requirements of any existing or future agreements between the City and the United States of America granting federal funds to the Airport, or relating to the development, operation or maintenance of the Airport or relating to the imposition or use of PFCs.
- 20.8. The rights granted pursuant to this Resolution and all the provisions hereof shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. 40103(e).

**Section 21. Cancellation and Termination of Letter of Authorization**

- 21.1. The Letter of Authorization issued to a Permitted Carrier pursuant to **Section 2.2** above may be cancelled and terminated by the City or the Permitted Carrier at any time on thirty (30) days prior written notice by the cancelling party to the other party. A Permitted Carrier's Letter of Authorization may also be cancelled and terminated by the City by written notice to the Permitted Carrier should such Permitted Carrier fail to cure a material violation of any term(s) of this Resolution within fifteen (15) days after having been served with written notice and demand to cure such violation.
- 21.2. The cancellation and termination of a Permitted Carrier's Letter of Authorization pursuant to this Section shall automatically terminate both that Permitted Carrier's right to occupy its Airline Premises and its status as a Permitted Carrier.
- 21.3. Not less than thirty (30) days after the effective date of cancellation and termination of a Permitted Carrier's Letter of Authorization, the City shall return any remaining balance of the Permitted Carrier's Drawing Account, after deducting from the Drawing Amount any amounts owed by the Permitted Carrier.

**Section 22. Right to Eject**

- 22.1. In the event of termination and cancellation of a Permitted Carrier's Letter of Authorization and if such Permitted Carrier fails or refuses to permit the City to re-enter such Permitted Carrier's Airline Premises, the City shall have the right to eject such Permitted Carrier from such Airline Premises in accordance with the provisions of Chp. 66, Fla. Stat. without forfeiting any of the City's rights under this Section or under this Resolution, and the City may at the time or subsequently sue for any money due or to enforce any other rights which the City may have. By entering into a Letter of Authorization, each Permitted Carrier specifically waives **any notice requirements under said statutes.**
- 22.2. In the event of failure to comply with this Resolution by a Non-Signatory Carrier authorized in writing by the City to occupy or use areas, facilities, equipment and improvements at the Airport, and such Non-Signatory Carrier fails or refuses to permit the City to re-enter such Airline's premises, the City shall have the right to eject such Non-Signatory Carrier from such premises in accordance with the provisions of Chp. 66, Fla. Stat., without forfeiting any of the City's rights under this Section or under this Resolution, and the City may at the time or subsequently sue for any money due or to enforce any other rights which the City may have. By operating at the Airport, a Non-Signatory Carrier specifically waives **any notice requirements under said statutes.** In the event any attorney's fees, expert witness fees or court costs are incurred by the City in enforcing any provision of this Section, the Airline against whom such enforcement action has been brought shall be responsible for payment of all such attorney's fees, expert witness fees and court costs, whether suit is filed or not.
- 22.3. All rights and remedies of the City under this Resolution shall be cumulative and none shall exclude any other rights or remedies allowed by law.

**Section 23. Notices**

Any notices that are required to be served or that may be served upon the City pursuant to this Resolution shall be in writing, addressed to the addresses below:

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

With copies to:

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

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

Any notices that are required to be served or that may be served upon an Airline pursuant to this Resolution shall be in writing, to the address on file with the Airport, or to such other notice address as the Airline may provide to the City in accordance with the provisions of this Section.

All notices under this Section 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.

**Section 24. Section Headings**

The section headings in this Resolution have been prepared for convenience only and are not a part of this Resolution and shall not be taken as an interpretation of any provision hereof.

**Section 25. Repeal**

Any ordinance or resolution in conflict with this Resolution is, to the extent of such conflict, hereby repealed.

**Section 26. Amendment**

Other than amendments to the Airline Requirement as set forth in Attachment A, which amendments shall be governed by Section 6 hereof, the City reserves the right to amend any other provision of this Resolution, by resolution, after due notice and public hearing.

\*\*\*\*\*

This Resolution was heard at a public meeting 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 W. Young \_\_\_\_\_

Vice Mayor Laura Moss \_\_\_\_\_

Councilmember Robert Brackett \_\_\_\_\_

Councilmember Joseph Graves \_\_\_\_\_

Councilmember Rey Neville \_\_\_\_\_

**ATTEST:**

**CITY COUNCIL  
CITY OF VERO BEACH, FLORIDA**

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

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

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

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

## ATTACHMENT A – Airline Requirement

### 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>AIRLINE REQUIREMENT</b>			<b>\$ 69,051</b>	

\*\* 4-year historical average. Actual Ops and Part Time Staff costs depend on airline scheduling and performance, weekends, holidays.

## ATTACHMENT B

### Form Letter of Authorization

[DATE]

Dear \_\_\_\_\_:

This is a Letter of Authorization to conduct Scheduled Operations at the Vero Beach Regional Airport (the "Airport") issued by the City of Vero Beach (the "City") to \_\_\_\_\_ ("Airline") pursuant to **Section 2** of Resolution No. \_\_\_\_\_ of the City adopted on \_\_\_\_\_ (the "Resolution"), a copy of which is enclosed. Capitalized terms used but not defined in this Letter of Authorization are defined in the Resolution.

The Resolution details the operating requirements and various rentals, fees and charges associated with operating at the Airport. **Section 7** of the Resolution and Attachment A outlines the Airline rates and charges in effect at this time. Airline shall be a Permitted Carrier under the Resolution.

This Letter of Authorization authorizes Airline to occupy certain Airline Premises at the Airport designated from time to time by the Director as a month-to-month tenancy pursuant to the terms of the Resolution until such tenancy is cancelled or terminated by Airline or the City pursuant to **Section 21** of the Resolution. Airline's Airline Premises is described on attached Exhibit A, as such Exhibit may be amended on thirty (30) days prior written notice given by the Director to Airline, and subject to the City's rights under **Section 4.12** of the Resolution. Airline hereby agrees that except as otherwise expressly provided in the Resolution, it shall be responsible for any damage or injury to any persons or property arising out of the occupancy, use, condition, or state of repair of the Airline Premises.

The rentals, fees and charges for the Airline's occupancy of the Airline Premises and Airline's use of the Airport shall be calculated by the City from time to time pursuant to the Resolution. Airline hereby agrees to pay all rentals, fees and charges payable by Airline and its Affiliates under the Resolution and to be bound by all of the other provisions of the Resolution applicable to Airline.

Pursuant to **Section 13** of the Resolution, a copy of Airline's certificate of insurance is attached as Exhibit B. Airline has deposited with the City cash sufficient to satisfy the requirements of the Drawing Account required under **Section 6** of this Resolution and acknowledges that the City will deduct therefrom all Terminal rentals, fees, and charges due thereunder.

Please acknowledge Airline's agreement to the terms of this Letter of Authorization, including without limitation, its agreement and stipulation to the provisions of **Section 18** of the Resolution, captioned "Governing Law", by signing two copies in the space provided below and returning them to the Vero Beach Regional Airport, Attention: Airport Director, Vero Beach Regional Airport, 3400 Cherokee Drive, P.O. Box 1389, Vero Beach, FL 32961-1389. Both copies shall then be signed the City and one fully executed copy will be returned to Airline. Airline may not

initiate service as a Permitted Carrier at the Airport until this Letter of Authorization has been fully executed, and Airline's right to use the Airline Premises shall terminate when its month-to-month tenancy under this Letter of Authorization has been cancelled and terminated by Airline or the City pursuant to **Section 21** of the Resolution.

Should you have any questions or require further information, please call [NAME], [TITLE] at the Airport, at \_\_\_\_\_ or via e-mail at \_\_\_\_\_.

Sincerely,

CITY OF VERO BEACH, FLORIDA

By: \_\_\_\_\_  
Airport Director, Vero Beach Regional Airport

ACCEPTED AND AGREED TO:

\_\_\_\_\_ ("Airline")

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

Name:

Title: