

**AVON PARK EXECUTIVE AIRPORT
MANAGEMENT AGREEMENT**

By and between

FLORIDA AIRPORT MANAGEMENT, L.L.C.

and

THE CITY OF AVON PARK, FLORIDA

EFFECTIVE AS OF 12:01 A.M. ON April 22, 2022

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AVON PARK EXECUTIVE AIRPORT MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the “*Agreement*”) is entered into effective as of 12:01 A.M. on April 22, 2022 (the “*Effective Date*”), by and between **FLORIDA AIRPORT MANAGEMENT, LLC**, a limited liability corporation organized and existing under and by virtue of the laws of the State of Florida, having an office at 450 S. Orange Avenue, Floor 3, Orlando, Florida 32801 (the “*Operator*”), and **THE CITY OF AVON PARK, FLORIDA**, a municipal corporation of the State of Florida, with offices at 110 E. Main Street, Avon Park, Florida (the “*City*”).

WHEREAS, the City presently owns and operates Avon Park Executive Airport (the “*Airport*”), a general aviation airport located in Highlands County, Florida and has the power to enter into agreements concerning the operation and management of the Airport; and

WHEREAS, the City desires to engage Operator to assume primary management, operating, and routine maintenance responsibilities at the Airport; and

WHEREAS, the City has agreed to pay Operator a fee in exchange for Operator assuming responsibilities for on-going operation, administration, and routine maintenance of the Existing Improvements and certain future improvements at the Airport (as described in more detail herein); and

WHEREAS, the parties have begun the due diligence process to explore a comprehensive agreement for Operator to lease, manage, and operate the Airport under the FAA’s Airport Investment Partnership Program (“*AIPP*”); and

WHEREAS, completion of the AIPP process may take a significant period of time, and both parties intend that Operator assume management and operation of the Airport under this Agreement as soon as possible; and

WHEREAS, both parties understand that if an agreement is reached under the AIPP, the mutual intention is for this Agreement to terminate pursuant to its own terms;

NOW, THEREFORE, for good and valuable consideration, including the premises of this Agreement, the receipt and sufficiency of which is hereby acknowledged, Operator and the City hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions

As used in this Agreement, the following terms shall have the respective meanings set forth below:

“**Aeronautical Charges**” shall have the meaning set forth in Section 4.1 of this Agreement.

“Agreement” shall mean this Agreement, as amended from time to time in accordance with the terms of this Agreement.

“Agreement Year” shall mean the period of time beginning on the Handover Date or each subsequent anniversary thereof of each year and ending on the day before the following anniversary of the Handover Date.

“Airport” shall mean the Avon Park Executive Airport located in Highlands County, Florida, as reflected on the current Airport Layout Plan.

“Airport Account” shall mean a separate account or balance sheet maintained by the City for the receipt of Airport Revenue and any additional City Funds, and disbursement of Airport operating, maintenance, and Capital Project expenses.

“Airport Layout Plan” shall mean the airport layout plan for the Airport required by federal law and as approved by the FAA and the City and in force from time to time, a copy of which is attached to this Agreement as **Exhibit A**.

“Airport Master Plan” shall mean the master plan for the Airport required by federal law and as approved by the FAA and the City and in force from time to time, a copy of which is attached to this Agreement as **Exhibit B**.

“Airport Revenue” shall have the meaning set forth in Section 4.1 of this Agreement.

“Applicable Law” shall mean all laws, statutes, ordinances, rules, and regulations (including without limitation Environmental Laws) lawfully enacted, adopted, issued or promulgated by any Governmental Authority governing or otherwise applicable to the Airport (including Rules and Regulations adopted by the City), as any of the same may now exist or may hereafter be enacted, adopted, issued or promulgated, or amended, modified, extended, re-enacted, re-designated, or replaced from time to time, and judicial interpretations thereof.

“Business Day” shall mean any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of Florida are authorized or required by Applicable Law to close.

“Capital Project” means any expenditure made by Operator on behalf of the City to acquire, purchase or construct a single capital item or project for the purpose(s) of improving, developing, preserving, or enhancing the aeronautical functions of the Airport and having a cost in excess of Fifteen Thousand Dollars (\$15,000) and a useful life in excess of one (1) year and shall include expenses incurred for development, study, analysis, review, design, or planning efforts.

“City” has the meaning set forth in the first paragraph of this Agreement.

“City Default” has the meaning set forth in Section 13.2 of this Agreement.

“City Funds” shall mean any additional funds deposited by the City into the Airport Account as necessary and available for the operation, maintenance, and Capital Projects at the Airport.

“City Indemnitee” shall mean the City, its successors and assigns, and each of its Council members, officers, officials, employees, agents, contractors, or subcontractors.

“Effective Date” has the meaning set forth in first paragraph of this Agreement.

“Employee(s)” shall mean any direct employee, independent contractor, subcontractor, vendor, supplier, or any other Person engaged by Operator to provide Services hereunder.

“Environmental Claim” shall mean any claim, expense, or liability relating to the Fuel System or arising therefrom, or the Airport, including any action, governmental order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature or other legal obligation (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, release of, threat of release of, or exposure to, any Hazardous Materials which originated on the Airport and which are located on, in, under or migrating from the Airport; or (b) any actual or alleged non-compliance with any Environmental Laws or term or condition of any Environmental Permit.

“Environmental Laws” shall mean and include all Federal, State, and local statutes, ordinances, regulations, rules, and orders relating to environmental quality, health, safety, contamination, and clean-up, as they currently exist or may exist in the future, including, without limitation, the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*; the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 *et seq.*; the Noise Control Act, 42 U.S.C. §4901 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act; the Emergency Planning and Community Right to Know Act; and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §9601 *et seq.*; the Toxic Substance Control Act, 15 U.S.C. §2601 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*; all State environmental protection, superlien and environmental clean-up statutes; all implementing rules, regulations, guidelines, and orders and all local laws, regulations, rules, ordinances, and orders insofar as they relate to environmental quality, health, safety, contamination, and clean-up or purport to regulate Hazardous Materials; and judicial interpretations of each of the foregoing.

“Environmental Permit” shall mean any permit, letter, clearance, consent, waiver, closure, exemption, decision or other governmental regulatory action required under or issued, granted, given, authorized by or made pursuant to Environmental Laws.

“Event of Default” means collectively, a City Default or an Operator Default.

“Existing Agreements” means, as of the Effective Date, the existing hangar, tie-down, aircraft shelter, office lease, or other written agreements between the City and Airport tenants or users, as more specifically listed and indexed on **Exhibit C** to this Agreement. Operator acknowledges and agrees that it has received copies of the Existing Agreements and has had an opportunity to review the Existing Agreements prior to the Effective Date of this Agreement. The term “Existing Agreements” shall not include any agreements between the City and Airport tenants or users which do not appear on **Exhibit C**.

“Existing Improvements” means, as of the Effective Date, any and all physical improvements at the Airport owned by the City, including but not limited to the Fuel System, airfield pavement, hangars, aircraft tie-downs, aircraft shelters, offices, auxiliary buildings, utility infrastructure, pedestrian walkways, vehicle parking lots, and all fixtures reasonably connected to such improvements. The term “Existing Improvements” does not include any improvements constructed and presently owned by Airport tenants.

“FAA” shall mean the Federal Aviation Administration as presently constituted as a division of the U.S. Department of Transportation or its successor agency or agencies.

“Florida Department of Transportation” or **“FDOT”** means the executive department of the State that is so designated or any State department that succeeds to FDOT.

“Fiscal Year” shall mean the annual accounting period of the City for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve consecutive months, ending with the last day of September of any year.

“Fuel” shall mean: (1) avgas meeting the specification for ASTM D910 and suitable for the aircraft fleet mix regularly utilizing the Airport; and (2) jet aircraft fuel meeting the specification of ASTM D1655 (latest revision) and any other quality specifications established by the City from time to time. The definition of Fuel specifically excludes automotive gasoline (mogas) and diesel.

“Fuel Flowage Fee” shall have the meaning set forth in Section 4.3 of this Agreement.

“Fuel System” shall mean the Fuel storage and distribution facility at the Airport as such facility may change from time to time. The Fuel System as of the Effective Date is described and depicted on **Exhibit D**, which includes 12,000 Gallon Fuel tanks located within the Airport; [further description]. **Exhibit D** may be updated or amended from time to time by the mutual agreement of the parties, to reflect any improvement or changes to the Fuel System.

“GAAP” shall mean generally accepted accounting principles in the United States consistently applied.

“Gallon” shall mean a U.S. gallon.

“Governmental Authority” shall mean any federal, state, county, municipal, or other governmental entity (including the City in its governmental capacity), or any subdivision thereof, with authority over the Airport or the Fuel System.

“Grant Agreement” shall mean a written contract between the City and any of the following: (i) the United States of America, (ii) any federal agency or department, including but not limited to the FAA, (iii) FDOT, (iv) a not for profit Person, or (v) a private Person, in each case, for financial assistance for Capital Projects at the Airport, its operation, or its maintenance.

“Ground Service Equipment (or “GSE”)” shall mean equipment that is used at the Airport to service aircraft, including, but not limited to, during maintenance and other ground-based operations.

“Grant Assurances” has the meaning given to it in Section 15.8(a) of this Agreement.

“Handover Date” has the meaning set forth in Section 2.1(c) of this Agreement.

“Hazardous Materials” shall mean and include any materials, substances, chemicals, or elements in any physical state (liquid, solid, gaseous/vapor) that are prohibited, limited, or regulated by Environmental Laws, or any other substances, chemicals, materials, or elements that are defined as “hazardous” or “toxic,” under Environmental Laws, or that are known or considered to be harmful, hazardous, or injurious to the human health or safety or the environment.

“Indemnified Parties” means the City, its successors, and assigns, and each of its Council members, officers, officials, employees, agents, contractors, subcontractors, and volunteers.

“Key Personnel” means the Employees of Operator listed in Section 7.1(a) and (b).

“Initial Term” has the meaning set forth in Section 11.1(a) of this Agreement.

“Licensed Equipment” shall mean, collectively, the GSE, vehicles, and other equipment provided by the City for the Operator’s use for the duration of this Agreement, as more specifically identified and itemized on **Exhibit E**.

“Operator” has the meaning set forth in the first paragraph of this Agreement.

“Operator Default” has the meaning set forth in Section 13.1(a) of this Agreement.

“Operator Party” shall mean, collectively, Operator, and any of Operator’s officers, volunteers, representatives, agents, Employees, contractors, subcontractors, licensees, subtenants, or suppliers.

“Person” or **“person”** shall mean any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, Governmental Authority or other legal entity or organization.

“Pre-Existing Environmental Condition” shall mean the presence in soil, rock, bedrock, sediment, surface water, groundwater, drinking water, or other environmental media (including

soil vapors or gases) on, under, in, or around the Airport of any Hazardous Materials or any substance, material, or matter regulated under Environmental Laws or any substance, material, or matter for which liability or standards of conduct may be imposed under Applicable Laws and which Operator demonstrates were present on or before the Handover Date, and including any subsequent migration, movement, or transformation of such substances, materials, matter, or Hazardous Materials after the Handover Date.

“Regulatory Approvals” means all FAA, FDOT, and Avon Park City Council approvals required for the transfer of operating and management responsibility for the Airport from the City to Operator.

“Renewal Term” has the meaning set forth in Section 11.1(b) of this Agreement.

“Rules and Regulations” shall mean the rules and regulations governing the conduct and operation of the Airport promulgated from time to time by the City pursuant to Applicable Law including, without limitation, the City’s duly adopted and generally applicable Policies, Operating Directives, Standard Procedures, or Ordinances, in each case as such may be in force and as amended from time to time.

“Services” means the Operational Services and the Management Services as defined in Sections 2.1 and 2.2 of this Agreement.

“State” means the State of Florida.

“Tenant Payments” shall have the meaning set forth in Section 4.1 of this Agreement.

“Term” collectively means, the Initial Term, with any applicable Extended Term or Renewal Term, unless earlier terminated pursuant to Article 11.

“Third-Party Environmental Condition” shall mean the presence in soil, rock, bedrock, sediment, surface water, groundwater, drinking water, or other environmental media (including soil vapors or gases) on, under, in, or around the Airport of any Hazardous Materials or any substance, material, or matter regulated under Environmental Laws or any substance, material, or matter for which liability or standards of conduct may be imposed under Applicable Laws, and the presence of which Operator demonstrates were or are caused or permitted by any Person not affiliated with Operator or any Operator Party, whether or not such substances, materials, matter, or Hazardous Materials were or are present on, before, or after the Handover Date.

Section 1.2 Article and Section Headings, Etc.

Unless otherwise indicated, all references herein to “Article,” “Section” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subdivision or clause hereof. The terms defined herein shall include the plural as well as the singular and the singular as well as the plural. Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent

permitted by, and in accordance with, the terms thereof. References to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to and judicial interpretations thereof; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; and references to a Person includes such Person’s successors and permitted assigns. For purposes of this Agreement, “in writing” and “written” mean and include but are not limited to electronic transmissions such as facsimile or electronic mail. Any reference to “approval” or “consent” by the City shall mean the City’s written approval or consent, as the case may be.

ARTICLE 2 OPERATION AND MANAGEMENT

Section 2.1 Transition Period and Plan

(a) No later than thirty (30) days after the Effective Date, Operator must perform a complete inspection and evaluation of the Airport, including without limitation, all capital assets at the Airport and prepare a written plan describing those Capital Projects and improvements to the Airport (if any) necessary for safe and secure operation of the aeronautical facilities at the Airport to be undertaken by Operator on behalf of the City within five (5) years after the Handover Date (the “**Transition Plan**”). Operator must submit a draft Transition Plan to City for review and comment and shall reasonably consider any comments from City in preparation of a final Transition Plan. Operator must prioritize Capital Projects necessary for (1) safe operations at the Airport, (2) security of the Airport and those operating at the Airport, and (3) compliance with Applicable Law, including FAA and FDOT requirements. Operator must submit the final Transition Plan to City, and thereupon the City shall review and approve the construction of Capital Projects such other improvements as reflected in the Transition Plan, which Operator will undertake on the City’s behalf from funds on deposit in the Airport Account or City Funds provided by the City.

(b) From and after the Effective Date, Operator and the City must reasonably coordinate to transition performance of the Services from the City to Operator, including taking all steps reasonably necessary to notify Airport tenants and counterparties to any Existing Agreements of changes in payments terms or operating procedures, and pursuing all necessary Regulatory Approvals to the extent they have not already been received.

(c) After the final Transition Plan has been submitted to the City, both Operator and City are reasonably satisfied that Operator is prepared to assume performance of the Services, and all Regulatory Approvals have been received, the parties must agree upon the date when Operator will begin performance of the Services (“**Handover Date**”). The previous sentence notwithstanding, if the parties have not agreed to a Handover Date within ninety (90) days of the Effective Date, the City may terminate this Agreement by providing written notice to Operator.

Section 2.2 Operational and Management Services

(a) From and after the Handover Date, Operator agrees to operate and manage the Airport, as shown on the current Airport Layout Plan, in accordance with (a) the City’s State of Florida Airport License, (b) the obligations of the City to the Federal Government under all

Applicable Laws, (c) all existing Grant Agreements in effect at the time of execution of the Agreement (as set forth on **Exhibit F**) and any future Grant Agreements, and (d) the provisions of this Agreement. In furtherance of this general covenant, but without limiting its general applicability, the Operator specifically agrees to operate the Airport for the use and benefit of the public; to make available all Airport facilities and services to the public on fair and reasonable terms and without unjust discrimination; to provide space on the Airport, to the extent available, and to grant rights and privileges for use of the landing area facilities of the Airport to all qualified Persons desiring to conduct aeronautical operations on or at the Airport.

(b) As more specifically set forth in Section 2.2(c), Operator covenants and agrees that it shall have the responsibility for and must perform all routine maintenance and repairs necessary for the aeronautical functions of the Airport, and must at all times on and after the Handover Date keep the Airport in a clean and orderly condition and appearance, take good care of the Airport, maintaining the same at all times in good operating condition, and as may be required by any Governmental Authority having jurisdiction. Any and all repairs must be of reasonably good quality. The obligation of Operator hereunder shall not apply to facilities that are maintained by any agencies of the Federal Government. Operator must repair or rebuild any City-owned buildings, structures, or improvements damaged or destroyed by casualty to the extent of insurance proceeds or City Funds made available therefor. Notwithstanding anything herein contained to the contrary, to the extent approved by the City through the Annual Budget process or otherwise, Operator must make any replacements of Existing Improvements in connection with the maintenance and repair of the Airport as may be necessary for the reasonable operation and maintenance of the Airport. Operator must be responsible hereunder to maintain the Airport in good operating condition. Any equipment or personalty purchased or acquired by Operator using its own funds during the Term hereof shall at all times remain the property of Operator, including upon expiration or termination of this Agreement, except that any equipment purchased under any Grant Agreement or from Airport Revenue or City Funds shall be the City's property.

(c) Without limiting the generality of the forgoing, from and after the Handover Date, and on the terms and conditions set forth in this Agreement, the City hereby appoints Operator to specifically perform the following functions and services at the Airport on the City's behalf (the "**Operational Services**"):

(i) Operation and routine maintenance of the landing area, runways, taxiways, and appurtenant areas in a safe and usable condition in accordance with all Applicable Laws and Federal obligations;

(ii) Operation and routine maintenance of the Terminal building, vehicle parking areas, and roadways;

(iii) Daily and weekly airfield checks, including pavement and foreign object debris (FOD) inspections;

(iv) Regular maintenance and upkeep of the Fuel System as more specifically set forth in Article 3;

(v) Regular maintenance and upkeep of all Licensed Equipment;

(vi) Ensuring that the aerial approaches to the Airport are protected from hazards and obstructions, including but not limited to vegetation, on-Airport structures, and wildlife, and must comply with all applicable FAA regulations under 14 C.F.R. Part 77;

(vii) Issuance of any and all required Notice to Air Missions (NOTAM) via the FAA's Federal NOTAM System;

(viii) Entry of appropriate reports in the City's Airport Safety and Operations Compliance System (ASOCS), including but not limited to daily inspection reports and Fuel System inspection and maintenance reports;

(ix) Supervision of systems for fuel, water, and other utility systems as deemed necessary or appropriate under the circumstances;

(x) Arranging for waste disposal, pest control, and wildlife management at the Airport;

(xi) Maintenance of all landscaping and grass cutting on Airport property;

(xii) Maintenance of public toilets for Airport users;

(xiii) Providing appropriate personnel for the efficient and effective operation of the Airport, and its security and to meet emergencies at all times;

(xiv) Furnishing, supplying, and maintaining such equipment, material, and tools reasonably necessary or appropriate for the proper operation of the Airport, customarily used for airport purposes, and which equipment must be under the exclusive control of Operator during the term of this Agreement;

(xv) Arranging and payment for all water, sewer, electric, gas, telephone and other utilities necessary at the Airport, and must coordinate all such activities with City to the extent necessary; provided, however, that Operator must not drill any wells for potable water or other water use that would reduce the City's current or future water use allocations; and

(xvi) General cleaning and routine maintenance of all Existing Improvements.

(d) From and after the Handover Date, and on the terms and conditions set forth in this Agreement, the City hereby designates Operator as its agent for the following limited purposes (the "**Management Services**"):

(i) Subject to the provisions of Article 4, administration of all Existing Agreements, including collection and remittance to the City of rent and fees due under such Existing Agreements;

(ii) Advertising and marketing of available hangar, tie-down, aircraft shelter, office space, and vacant land at the Airport;

(iii) Responding to information requests from prospective Airport tenants and users and provide tours of the Airport upon request;

(iv) Responding to inquiries from prospective providers of commercial aeronautical activities at the Airport and adhering to the City's procedures for review and approval of any applications;

(v) Negotiation of new hangar, tie-down, aircraft shelter, office lease, and developments agreements between the City and Airport users on terms and conditions to be set by the City as further provided in this Agreement;

(vi) Providing the City a copy of any executed agreements or amendments and notification to the City of any defaults under any agreements;

(vii) Ordering and arranging for delivery of sufficient Fuel to meet user demand at the Airport;

(vii) Setting of Aeronautical Charges and retail Fuel prices, subject to Applicable Law, provisions of the Grant Agreements, and the City's approval through the annual budgeting process set forth in this Agreement; and

(viii) Collection, remitting, accounting and reporting of Airport Revenues on behalf of the City in accordance with Article 4.

(e) In negotiating leases of property at the Airport on behalf of the City, Operator must ensure that the following requirements are met:

(i) Any lease must be in a form approved by City and at rates approved by City through the annual budgeting process set forth in this Agreement;

(ii) Rents and fees imposed through the lease on behalf of the City must be reasonable and not unjustly discriminatory to all users, similar rents and fees must be imposed on similarly situated users;

(iii) The term of any lease must not be longer than the lesser of the remainder of the Term of this Agreement (including the Renewal Term), except as specified herein; and

(iv) City must provide written consent for and execute each lease, which must not be unreasonably withheld or delayed as long as such lease complies with the foregoing requirements.

(f) Provided that the lease complies with the other requirements and conditions of this Section 2.2, Operator is not prohibited from negotiating for a lease that would exceed the Term of this Agreement (including the Renewal Term), except that any lease which would extend beyond the Term of this Agreement must be approved by City Council.

(g) Operator may negotiate one or more leases with entities related to Operator, but the Operator must demonstrate to the City that the terms and conditions of such leases are reasonable under the circumstances.

(h) The rest of this Section 2.2 notwithstanding, Operator must not at any time represent itself as the owner or landlord of the Airport. Operator's role is strictly limited to performance of the Services at the Airport and function as the City's agent as set forth above.

Section 2.3 Aeronautical Operations.

City and Operator agree that Operator must operate and maintain the Airport on behalf of the City as a public airport and in accordance with all Applicable Laws and must further operate the Airport in compliance with all Grant Agreements. Subject to the conditions of Applicable Law, the Grant Agreements, and execution of a separate lease agreement with the City where necessary to conduct the activities contemplated, Operator may provide commercial aeronautical services at the Airport. Any such separate lease agreement must provide that Operator's rights to conduct any commercial aeronautical services will be non-exclusive.

Section 2.4 Licensed Equipment

(a) From and after the Handover Date, the City must allow Operator to use the Licensed Equipment as set forth on **Exhibit E** for performance of the Services at the Airport. Title to the Leased Equipment shall remain with the City. Operator acknowledges and agrees that the Licensed Equipment was purchased by the City, including in some instances through Grant Agreements and/or Airport Revenue, and that all of the Licensed Equipment must remain at the Airport unless the City provides written notice otherwise.

(b) Operator acknowledges and agrees that the Licensed Equipment is provided AS-IS, WHERE-IS, and the City provides no warranty that the Licensed Equipment is fit for any particular purpose.

(c) Operator must:

(i) To the extent necessary and appropriate, utilize the Licensed Equipment in the performance of the Services and for no other purpose;

(ii) Obtain and maintain any required insurance on the Licensed Equipment (e.g., automobile liability insurance) in Operator's name and include the City as an additional insured on any such policies;

(iii) Maintain and repair the Licensed Equipment;

(iv) Notify the City if any of the Licensed Equipment has reached the end of its useful life and is, in Operator's judgment, beyond economical repair; and

(v) Permit the City, in its sole discretion, to dispose of any Licensed Equipment that Operator has determined is beyond economical repair.

(d) Neither the City nor Operator shall have any obligation to replace any specific item of Licensed Equipment which has reached the end of its useful life or is beyond economical repair. However, Operator is solely responsible for acquiring any replacement equipment it determines is necessary to perform the Services. Any replacement equipment purchased using Operator's own funds shall remain property of the Operator, and any equipment purchased using funds from a Grant Agreement, Airport Revenue, or City Funds shall be property of the City and remain at the Airport.

Section 2.5 City Rights and Responsibilities.

(a) From and after the Effective Date, the City must:

(i) Fully cooperate with Operator in connection with any changes necessary for utility billing and payments;

(ii) Reasonably cooperate with Operator in communications with the City's wholesale Fuel provider for the purposes of supplying Fuel to the Airport, if necessary;

(iii) Subject to the conditions set forth in Article 7, review and approve Operator's safety and operational training plan for Operator's Employees performing the Services;

(iv) Establish and periodically update application procedures for commercial aeronautical service providers at the Airport, and review with Operator any applications submitted to City for the performance of such services;

(v) Provide Operator with access to, and training on, City-owned or operated software systems necessary to perform the Services; and

(vi) Perform periodic safety and quality control inspections of the Airport and its physical facilities as necessary.

(b) Any other provision of this Agreement notwithstanding, the City retains the right to:

(i) Regularly review Operator's performance of the Services and under this Agreement,

(ii) Review and approve any proposal by Operator to construct any new improvements or modify any existing physical facility at the Airport;

(iii) Review and approve any proposal by Operator to modify any operating procedure at the Airport;

(iv) Develop, lease, or dispose of Airport real property for any purpose, except that no such negotiations or transactions will be made without prior consultation with Operator;

(v) Execute any agreements with the United States or State government for financial assistance for the Airport; and

(vi) Impose and enforce rules, regulations, standards, and any other governance structure for the Airport, except that following the Handover Date, any amendments or changes to the rules, regulations, or standards governing the Airport must be made in consultation with Operator.

Section 2.6 Procurement

Operator must develop and submit to the City for its review and approval policies and procedures for procurement of goods and services which must be generally consistent with the City's own policies and procedures for procurement of goods and services and which, to the extent permissible under Applicable Laws, must prioritize provision of such goods and services by Permanent Residents of the City or the County. Subject and subordinate to the requirements of Applicable Law, Operator must comply with the Master Procurement Policy attached as **Exhibit H**, as such policy may be revised in order to comply with revisions to procurement requirements under Applicable Laws. Any procurement for goods or services that will be reimbursed or paid for using federal funds must comply with Applicable Laws, including but not limited to 2 CFR Part 200.

Section 2.7 Grant Agreements

(a) City must remain the federal or state obligated sponsor of the Airport for all existing Grant Agreements and must be the obligated sponsor for future Grant Agreements. Accordingly, it is understood that City retains responsibility for compliance with existing and future Grant Agreements. City hereby reserves such rights and authority to ensure that the Airport will be operated and maintained in accordance with Applicable Law, including without limitation City's contractual assurances entered into, or hereinafter entered into, in Grant Agreements between City and FAA and/or FDOT.

(b) Section 2.7(a) notwithstanding, as between City and Operator, Operator, as operator and manager of the Airport, must ensure compliance with City's obligations under the Grant Agreements as such obligations pertain to operation and maintenance of the Airport and construction of Capital Projects on behalf of the City. At City's direction, Operator must be responsible for preparing applications for future Grant Agreements and coordinating with City during such process.

(c) Operator must indemnify and hold harmless City against the loss of any grant funds if such loss is caused in whole or in part by Operator's noncompliance with any conditions of any Grant Agreements.

(d) If Operator becomes aware of any formal or informal complaint by an Airport user or tenant that alleges Operator is not operating or maintaining the Airport in compliance with any aspect of the Grant Agreements, it must immediately notify the City and forward to the City any information or documentation provided by the complaining party and any information or documentation in Operator's possession pertaining to the dispute. Subject to Applicable Law, the

City must have the right to take actions reasonably necessary to investigate any such complaints and determine Operator's compliance with the Grant Agreements.

Section 2.8 New Grants

(a) Subject to the provisions of Section 2.7, Operator and/or City may from time to time, and must mutually cooperate at all times, in all efforts to receive any and all Federal or State grants for maintenance, construction, or alteration of the Airport, or otherwise, including grants from the FAA, FDOT, or other agency, and any other additional State or Federal grants that may be available for use at the Airport; provided, however, that the City must not be required to approve any applications for grant funding which would or could reduce the City's eligibility for grant funding under the same program for projects elsewhere within the City. The forgoing obligation also includes, but is not limited to, cooperation in the preparation and submission of applications, and support as an airport under rural distress, under Fla. Stat. § 288.0656, the Rural Economic Development Initiative, or any similar successor program. The amounts of any such Federal or State grants must be obtained with the mutual cooperation of Operator and City.

(b) Thereafter the grant funds must be used for projects which have been mutually agreed to between the City and Operator and, subject to the terms of any Grant Agreements, all construction, supervision, payment, and operation thereof shall be the responsibility and obligation of Operator to the extent permitted by Applicable Law. All Federal and State grant funds must be used for their intended purpose, and any additional or matching amounts required must be paid by the City.

(c) Nothing in this Section 2.8 is intended to prevent or prohibit Operator from applying for or utilizing grants that do not require City's participation as the primary grantee. However, Operator must inform City of any applications submitted or awards made for such grants.

ARTICLE 3 SERVICES RELATED TO FUEL SYSTEM

Section 3.1 Services Related to Fuel System

From and after the Handover Date, except as otherwise specified:

(a) Operator must regularly maintain, repair, calibrate, and inspect the Fuel System, including, without limitation, all future improvements and additions thereto, and all GSE and equipment used by Operator, in order to keep the Fuel System: (i) in good, safe, and efficient operating condition and repair; (ii) in sanitary and sightly condition; (iii) in compliance with all Applicable Laws, including Environmental Laws; and (iv) in compliance with all directives and applicable Rules and Regulations established by the City. Without limiting the generality of the foregoing, in accordance with Applicable Laws, Operator must maintain detailed records of inspections of the Fuel System that demonstrate there are no leaks in the pipelines, tanks, or vessels that are a part of the Fuel System, that the Fuel System is cathodically protected, and that any Fuel present in vaults containing vents, drains, valves, or any other subsurface features of the Fuel System must be removed on a scheduled basis to prevent release of any Fuel to the environment;

(b) Operator must comply with all security controls or measures established by the City for the Airport or the Fuel System, and take such measures as are reasonably required or customary in order to secure the Fuel System and to prevent tampering with the Fuel System, including, without limitation, ensuring availability of Operator personnel to process and monitor users' access to the Fuel System during regular hours of operation as determined by Operator (except that the City may designate additional hours in its reasonable discretion), control system, storage and distribution facilities, buildings, and equipment, provided, however, Operator is not required to provide guards in the normal course of business;

(c) Operator must provide management and technical personnel to attend meetings related to the orderly and efficient operation of the Fuel System, including, but not limited to, meetings with the City, architects, engineers, contractors, agencies, and others;

(d) subject to the approval of the City, Operator must establish and follow procedures for receipt, handling, dispensing and quality control of Fuel, and training and supervision of personnel working with Fuel or the Fuel System, in accordance with all Applicable Laws;

(e) Operator must protect Fuel from the introduction of any substances that change the quality of the Fuel after delivery thereof to the Fuel System and take all other reasonable steps to preserve the quality of the Fuel in the Fuel System, including but not limited to ensuring that separate types of Fuel are kept separate;

(f) Operator must provide the City with records of Fuel throughput and other statistics in sufficient detail as the City may reasonably request;

(g) Operator is responsible for compliance with Applicable Laws, including without limitation Environmental Laws, and for the securing and filing of all necessary Environmental Permits for providing the Services and for operation of the Fuel System, all of which Operator must maintain in full force and effect at all times during Operator's operations at the Airport;

(h) Operator must assure that (i) all Persons properly access and use the Fuel System, and (ii) established procedures and contractual obligations are met and followed;

(i) if requested by the City, Operator must assist outside auditors in reasonable requests made by the auditors;

(j) Operator must perform such other functions relating to the operation and maintenance of the Fuel System as the City may reasonably authorize or request.

Section 3.2 Additions to the Fuel System; Tanks

Operator agrees that it will not construct or place any underground or above ground storage tanks on the Airport unless specifically authorized in writing by City, which authorization must not be unreasonably withheld, conditioned, or delayed as long as the design, installation and construction of such tanks complies with then-current requirements of all Governmental Authorities with jurisdiction over such tanks. If any tank is authorized by City, Operator covenants and agrees that it will comply with all Applicable Laws concerning the installation, operation,

maintenance and inspection of above ground and underground storage tanks ("**Tanks**") including financial responsibility and corrective action requirements.

ARTICLE 4 REVENUE; PAYMENTS; REPORTS

Section 4.1 Airport Revenues

(a) As part of the Services, Operator must collect and remit to the City all payments due to the City through any Existing Agreement or new Airport agreements executed by the City during the Term ("**Tenant Payments**").

(b) As part of the Services, Operator must collect all City-imposed landing fees, if any, and other aeronautical charges at the Airport ("**Aeronautical Charges**") on the City's behalf and remit the Aeronautical Charges to the City. If for any reason Operator is not permitted to collect such Aeronautical Charges, including, without limitation, because Operator is not a Governmental Authority, then, in that event, City agrees to collect such Aeronautical Charges.

(c) Operator must collect and remit to the City the Fuel Flowage Fee assessed by the City (the "Fuel Flowage Fee") on each Gallon of Fuel sold by Operator at the Airport. As of the Effective Date, the City's Fuel Flowage Fee is Five Cents (\$0.05) per Gallon. The City reserves the right to adjust the Fuel Flowage Fee during the Term of this Agreement, and the adjustment shall become effective thirty (30) days after providing written notice to Operator.

(d) Operator's remittance of Tenant Payments, Aeronautical Charges, and Fuel Flowage Fee (collectively, "**Airport Revenue**") for the preceding calendar month shall be due to the City no later than the twentieth (20th) day of each calendar month. Together with the Tenant Payments, Aeronautical Charges, and Fuel Flowage Fee, Operator must submit a detailed report of its activities for the preceding month in a form as the City may reasonably request. At a minimum, each monthly report must contain:

(i) An accounting of all rents, fees, and charges collected by Operator from all Airport agreements;

(ii) An accounting of operations at the Airport and corresponding Aeronautical Charges collected by Operator;

(iii) An accounting of Gallons of Fuel sold by Operator and corresponding Fuel Flowage Fee collected by Operator.

(e) Upon receipt of Airport Revenue from Operator, the City must deposit such amounts into the Airport Account or take other measures to ensure such Airport Revenue is represented on the Airport Account balance sheet as available to Operator pursuant to Section 4.4.

Section 4.2 Annual Budget

(a) No later than April 1 of each calendar year during the Term, Operator must notify City of any expenses or costs relative to the operation of the Airport for which Operator intends to

request payment from City during the following Fiscal Year. City is not obligated to provide such funds except to the extent required under this Agreement.

(b) No later than April 15 of each calendar year during the Term, Operator must provide the City with a draft annual budget for the operation of the Airport, including proposed Management Fee (if applicable), key positions, marketing costs, Aeronautical Charges and other user fees, and operating, maintenance, and capital expenses for the following Fiscal Year. The City may review and comment on the draft annual budget and must consult with Operator regarding any necessary changes. No later than May 31 of each calendar year during the Term, Operator must incorporate and/or respond to any City comments, and provide City with a final proposed annual budget. Each final annual budget is subject to City's final review and must be approved by City's City Council before it is effective. The deadlines set forth in this Section 4.2 shall not apply to the period covered by the Initial Annual Budget, which is attached to this Agreement as **Exhibit G**.

(c) The amounts proposed in the annual budget must segregate and recommend proposed allocations of any actual or expected Airport Revenue in the Airport Account that is or will be remitted to the City pursuant to Section 4.1, and any unspent funds disbursed to Operator from the previous year. Operator will use commercially reasonable efforts to balance projected Airport Revenues and expenses in the annual budget and will work with the City to pursue all available federal and State grant funding for the Airport. The annual budget must also specifically indicate the amount of City Funds that Operator is requesting the City deposit into the Airport Account to be disbursed in accordance with Section 4.4 herein.

(d) Operator acknowledges and agrees that the Airport Revenue may only be used for the capital or operating costs of the Airport and specifically in accordance with Applicable Law and the Grant Agreements. Operator further acknowledges and agrees that the City will not expend, allocate, or disburse the Airport Revenue in any manner that is inconsistent with Applicable Law or the Grant Agreements, and that the City shall have sole discretion in any such determination.

(e) By the twentieth (20th) day of each calendar month, the Operator must submit a budget-to-actual report for the preceding calendar month in a form as the City may reasonably request. At a minimum, each monthly report must contain:

(i) Budget Airport Revenues compared to collected Airport Revenues month to date and year to date.

(ii) Budget Airport expenses compared to actual expenses other than grant funded month-to-date and year-to-date.

(iii) Budget City Fund contributions compared to actual City Fund contributions month-to-date and year-to-date.

(iv) Actual Airport Revenues and City Funds compared to actual Airport expenses (other than grant funds) month-to-date and year-to-date.

- (v) Budget Grant receipts and expenses by individual grant month-to-date and year-to-date.

Section 4.3 Management Fee

(a) In exchange for Operator performing the Services and assuming the on-going administrative, operational, and maintenance obligations stated herein, during the Term of this Agreement, City agrees to pay Operator a management fee (“**Management Fee**”). The Management Fee shall compensate the Operator for its internal costs and overhead associated with the Services, including staff, insurance, and a reasonable profit.

(b) For the first Agreement Year and consistent with the Initial Annual Budget set forth at **Exhibit G**, the Management Fee shall be an amount equal to One Hundred and Twenty Thousand Dollars (\$120,000.00); and

(c) For each subsequent Agreement Year, the Management Fee shall be an amount equal to the previous Agreement Year’s Management Fee increased by CPI or another amount if approved by the City through the annual budgeting process.

Section 4.4 Disbursements

(a) All disbursements made by the City to the Operator under this Section 4.4 shall be from the Airport Account, or from City Funds if there are insufficient funds in the Airport Account.

(b) On the first day of each calendar month during the Term, and subject to Section 4.4(c), the City must disburse to Operator:

- (i) One-twelfth of the annual budgeted expense amount for operation and routine maintenance of the Airport (or another amount if the annual budget provides for different expenses in different calendar months) (“**Monthly O&M Disbursement**”); plus

- (ii) One-twelfth of the then-current Management Fee.

(c) If based on the reports required under Section 4.2(e) Operator has not spent its full Monthly O&M Disbursement from a prior calendar month, Operator may retain the unspent funds as operating reserves. However, the Operator must provide a complete reconciliation of the budget to actual halfway through each Agreement Year reflecting the previous six months, and the City reserves the right to reduce the next Monthly O & M Disbursement to match the unspent amounts. At the end of each Agreement Year, Operator must provide a complete reconciliation of the budget to actual for the preceding year and current year to date in updating the proposed budgeted expenses for the next fiscal year in Section 4.2.

(d) In accordance with an approved construction schedule or other approved timeline, the City must disburse to Operator such amounts required for or associated with construction of approved and budgeted Capital Projects that Operator is undertaking on the City’s behalf, other than grant funded Capital Projects, which shall follow Section 5.3.

(e) If Operator requires additional funds for emergency, unanticipated, or unbudgeted repairs to Airport facilities, it must make a request to the City as soon as possible with specific documentation of the condition requiring repairs and an estimate of the costs. The City must in its reasonable discretion disburse additional funds to Operator to complete the repairs.

(f) Upon invoice from Operator and subject to the conditions set forth in this Section 4.4(f), City must reimburse Operator for any necessary emergency or unanticipated repairs to Airport facilities or emergency responses that Operator has paid for from its own funds. Operator must submit documentation reasonably supporting the existence of the emergency or unanticipated condition which necessitated such repairs or responses, and an explanation of why such expense was not approved in advance by the City under Section 4.4(d). Operator must also submit documentation memorializing its actual expenditures. If the City determines, in its reasonable discretion, that Operator incurred the expenses in good faith and that advance approval of the City would have been unreasonable under the circumstances, the City must reimburse Operator for its actual expenditures.

Section 4.5 Books, Records and Accounts of Operator; Operator Certification

(a) No later than ninety (90) days after the end of each Fiscal Year during the Term, Operator must provide City with an annual financial report on the operations of the Airport and Operator for the preceding Fiscal Year ("**Annual Financial Report**") including a reconciliation of the adopted budget for such Fiscal Year to actual revenues and expenses. Each Annual Financial Report must be prepared by a certified public accountant or Operator's Chief Financial Officer in accordance with GAAP and any applicable financial reporting requirements of FAA and FDOT.

(b) When reasonably requested by the City, but in any event at least once per Agreement Year, Operator must provide the City a written certification executed by Operator's Chief Financial Officer certifying that the reports submitted hereunder are true and accurate in all respects.

(c) Upon reasonable notice to Operator, the City or its agents may inspect, review, and audit any and all records of Operator pertaining to the Airport or this Agreement.

(i) Operator must immediately correct any errors, discrepancies, or omissions in records identified by the City or its agents.

(ii) If the audit reflects an underpayment by Operator of any Airport Revenue, Operator must immediately remit the difference to the City.

(iii) If the audit reflects an overpayment by Operator of Airport Revenue, but only if Operator has overpaid the City out of its own funds, the Operator is entitled to a credit of the difference against future Airport Revenue owed to the City.

(iv) The cost of the audit must be borne by the City unless the audit reflects a discrepancy of more than five percent (5%) in the reported and Airport Revenue over the audited period (not to be less than twelve months). In such event Operator must be responsible for the total cost of the audit in addition to the payment to the City of any under-remitted Airport Revenue in accordance with this Article 4.

ARTICLE 5 CONSTRUCTION

Section 5.1 Airport Master Plan

The Airport Master Plan, the current version of which is attached as **Exhibit B** to this Agreement, shall govern the development and construction of Capital Projects on the Airport. Operator may prepare new or updated Airport Master Plans for review and approval by City's City Council, which approval will not be unreasonably withheld. It is expressly understood and agreed that from and after the Effective Date and throughout the Term, Operator must not engage in any construction of Capital Projects at the Airport except with City's prior written consent and consistent with the Airport Master Plan and approved annual budget.

Section 5.2 Capital Project Approval Process

If Operator intends to construct a Capital Project on behalf of the City at the Airport, in addition to compliance with Applicable Law, including without limitation State and local building codes and zoning requirements, it must receive written approval and notice to proceed from City Council at the following points:

- (a) Initial concept stage, to ensure that such Capital Project in accordance with the then-current Airport Master Plan and can be incorporated into the annual budgeting process;
- (b) Concept/design stage, to ensure that such Capital Project complies with City's standards for location, size, funding, rent structure, and proposed use, except that the City's Representative may issue such approval; and
- (c) Funding stage, to permit City to apply for any available grants and to approve the final design, use, or rent structure of the Capital Project.

Section 5.3 Grant Funding

(a) For any Capital Project to be funded, in whole or in part, through grant funds and/or a Grant Agreement, City must remain the airport sponsor and shall be the administrator and primary recipient of such funds. Operator is not entitled to direct receipt of any grant funds and must not make any representations to any grantor that it is entitled to any such funds.

(b) Upon invoice from Operator, and upon approval by the grantor if required under such Grant Agreement, City must reimburse Operator from grant funds for eligible costs (as defined in the particular Grant Agreement) incurred by Operator in the construction of Capital Projects. If Operator fails to comply with the conditions of any Grant Agreement such that City becomes ineligible for the receipt of grant funds, Operator is not entitled to any reimbursement for costs expended on the Capital Project.

Section 5.4 Existing Plans

Upon request of Operator, City must provide any existing as-built or in-process plans (as of the Handover Date), specifications, and related materials pertaining to planned or in-progress

construction. Operator may utilize such materials at its sole risk, and City shall have no liability for such use.

Section 5.5 Permits

City covenants and agrees to fully cooperate with Operator, without delay, in obtaining any approvals, permits, and licenses.

Section 5.6 Updated Plans

Operator must cooperate with City in preparing any updated plans or other regulatory documents at such times as they may be required by Applicable Law or any Governmental Authority. City must file in its own name any applications and execute any documents in connection with such updated plans.

Section 5.7 Other Construction

Operator may, from time to time, engage in construction and activities other than Capital Projects so as to enhance the Airport provided that such construction and activities are approved by the City, either through the annual budget or otherwise. All such development and construction by Operator must be reasonably calculated to enhance the Airport, and in compliance with all Applicable Laws.

ARTICLE 6 OTHER SERVICES

Operator may render services at the Airport other than those Services constituting the subject matter of this Agreement, if such services are otherwise permitted by a separate agreement or permit with the City, acting in its governmental capacity.

ARTICLE 7 STANDARDS OF OPERATIONS

Section 7.1 Employees of Operator

(a) Operator must employ sufficient staff with qualifications and experience necessary to fulfill its obligations under this Agreement. On or before the Handover Date, Operator must employ at least the following Key Personnel, either on retainer or full-time employees of Operator:

(i) Airport Manager, who must have previously operated and managed a general aviation airport substantially similar to the Airport.

(ii) Grounds Maintenance Supervisor, who must have sufficient experience and qualifications to provide such services at the Airport.

(iii) Finance Director, with experience and qualifications in the financial management of airports.

(iv) Other full or part time employees or staff on retainer to provide all services reasonably necessary for the operation and maintenance of the Airport.

(b) Within three (3) years of the Handover Date, in addition to the Key Personnel set forth above, Operator must employ the following Key Personnel, either on retainer or full-time staff, except that such Key Personnel must be employed sooner to the extent that activities are conducted that require their expertise:

(i) An Airport Planner with experience and qualifications in the operation, planning and development of general aviation airports and in grant administration.

(ii) A Legal Adviser with experience and qualifications in the legal issues affecting general aviation airports and compliance with Applicable Laws.

(c) Prior to the hiring of any of the Key Personnel, Operator must provide a job description and resume of the proposed Person for the Key Personnel position to City for review and comment, which must not be unreasonably withheld or delayed. Operator must reasonably consider and respond to any comments from City. If Operator's chosen Person does not meet the objective experience and qualification requirements set forth above for the identified Key Personnel position, Operator must provide an alternative candidate that meets the objective experience and qualification requirements for the Key Personnel position. The rest of this Section 7.1(c) notwithstanding, the Key Personnel listed on Exhibit M are deemed approved by the City for their respective positions.

(d) Operator must notify City of the departure of any Key Personnel from Operator's employment or retainer. If any Person serving as Key Personnel leaves his or her employment or retainer with Operator, Operator must immediately undertake diligent efforts to replace such Key Personnel.

(e) Any other provision of this Agreement notwithstanding, all Key Personnel must be employees of, or retained by, Operator. Nothing in this Agreement shall be interpreted as creating an employer-employee or principal-agent relationship between City and the Key Personnel or other employees or agents of Operator. Except as otherwise specified in this Section 7.1 and to the extent of its governmental authority, the City shall not have any right or responsibility to supervise, direct, or control any Employee. When present at the Airport, Employees must not display any insignia or name other than that of Operator (except with respect to any required Airport identification).

(f) Operator must use commercially reasonable efforts to employ local personnel and staff to conduct operations under this Agreement, to the extent qualified personnel are available. Nothing contained herein shall be construed so as to require Operator to employ current employees of City. It is contemplated by this Agreement that the Operator shall operate, maintain, staff, regulate and engage in such other activities authorized by this Agreement as an independent contractor.

(g) In coordination with the City, Operator must develop an initial training plan for its Employees at the Airport, which is subject to the City's review, comment, and approval in its reasonable discretion. The initial training plan must include but not be limited to: airfield safety, operation and maintenance of the Fuel System, and use of the City's software system as may be necessary for performance of the Services. The City must reasonably cooperate with Operator in

developing and implementing the initial training program, including but not limited to granting access to necessary City personnel, facilities, software, and other materials in City's possession for such training purposes. Prior to performing any of the Services at the Airport, an Employee must satisfactorily complete the Operator's initial training program.

(h) Employees must comply with all applicable FAA rules, regulations, and guidance concerning the storage, handling, and dispensing of Fuel.

(i) All Employees, while in or around the Airport, must be polite, appropriately attired and possess and display proper Airport identification. Operator must remove from service at the Airport any Employee who is discourteous to any user of the Airport or who does not present the professional image the City expects of its own employees. Operator must immediately remove from service at the Airport any Employee that the City reasonably requests for any lawful reason whatsoever. No Employee may use inappropriate language or act in a loud, boisterous manner or in any manner behave in an improper way.

(j) The City reserves the right, in its reasonable discretion, to approve any uniform to be worn by Employees.

(k) Operator must ensure that security screenings, including fingerprint-based criminal history record checks, and/or checks pursuant to Applicable Laws and best practices, for all Operator Employees providing the Services are completed prior to employment. For any contractor, agent, or other Person engaged by Operator to provide Services upon the Fuel System, Operator must ensure that appropriate security screenings, including fingerprint-based criminal history records checks, and/or checks pursuant to Applicable Laws and best practices are conducted prior to engagement. Operator must exclude all potential Employees that, based on such security screenings, may present a risk to the security and safety of the City's operations at the Airport or whose performance of Services would violate Applicable Laws.

Section 7.2 Relations with Workers

(a) Operator assumes responsibility for establishing workable and satisfactory relations with Employees and any authorized Employee representative representing Operator's personnel who are engaged in the performance of services hereunder, including responsibility for labor negotiations, arbitrations, and grievance hearings which may involve such personnel.

(b) In connection therewith, Employees must:

(i) comply with safety procedures as designated by the FAA, the City, and other Governmental Authorities;

(ii) perform the Services with reasonable care, skill and diligence in a non-discriminatory/non-prejudicial manner in accordance with standard and customary good practice in the industry; and

(iii) as required, carry/operate handheld radio, and communicate with proper radio etiquette.

Section 7.3 Emergencies

(a) The City must provide Operator with contact information for the applicable local emergency management officials and service providers. Prior to performing the Services, Operator must organize and participate in a meeting with local emergency management officials and the City. Operator must complete any training required by the local emergency management officials, and provide any information requested by the local emergency officials pertinent to the Services or its operations at the Airport.

(b) Operator must comply with any notification procedures requested or required by local emergency management officials. Operator must immediately notify the City if any emergency occurs on the Airport, including but not limited to:

- (i) Fire;
 - (ii) A breach of Airport security;
 - (iii) A significant Fuel spill;
 - (iv) Any accident or incident causing damage to an aircraft or injury to persons;
- or
- (v) A vehicle accident causing significant property damage, bodily injury, or death.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

Section 8.1 Indemnity

(a) Operator agrees to protect, defend, reimburse, indemnify and hold City and the Indemnified Parties (collectively, “**City Indemnitees**”), free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including, without limitation, reasonable attorney fees and costs incurred prior to trial, at trial, on any appeal, and in any bankruptcy proceeding) and causes of action (“**Claims**”) of every kind and character, known or unknown, against any City Indemnitees by reason of any damage to property or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever, or any Governmental Authority, to the extent arising out of or incident to or in connection with Operator's performance under this Agreement. Operator's use or occupancy of the Airport, Operator's acts, omissions or operations hereunder or the performance, nonperformance or purported performance of Operator hereunder or any breach of the terms of this Agreement, but excluding any Claims to the extent they are caused by the gross negligence or willful misconduct on the part of the City or any of the City Indemnitees; provided, however, (1) Operator must assume the responsibility to defend all Claims arising under this Agreement and (2) in the event that City or a City Indemnitee is in part responsible for any loss, liability will be allocated between the City and Operator in accordance with Florida principles of comparative fault but Operator will in no event be required to pay any portion of a loss that is attributable to the gross negligence or willful misconduct of City or a City Indemnitee; and provided, further, for the avoidance of doubt, that City is not hereby waiving any defense or

limitation of its liability, and all Claims against City or any City Indemnitee are subject to the provisions of Section 768.28 of the Florida Statutes, as amended from time to time (which defense and/or limitation of liability Operator may argue in its defense of any Claim). Operator recognizes the broad nature of this indemnification and hold harmless clause and acknowledges that City would not execute this Agreement without this indemnity. This clause shall survive the expiration or termination of this Agreement. Compliance with the insurance requirements as included in this Agreement shall not relieve Operator of its liability or obligation to indemnify City as set forth in this Article.

(b) If the above indemnity or defense provisions or any part of the above indemnity or defense provisions are limited by Florida Statute §725.06(2)-(3) or Florida Statute §725.08, then with respect to the part so limited, Operator agrees to the following: To the maximum extent permitted by Florida law, Operator will indemnify, defend and hold harmless City and City Indemnitees from any and all Claims, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of Operator or any Operator Party and except to the extent they are caused by the gross negligence or willful misconduct on the part of the City or any of the City Indemnitees; provided, however, (1) Operator shall assume the responsibility to defend all Claims arising under this Agreement and (2) in the event that City or a City Indemnitee is in part responsible for any loss, liability shall be allocated between City and Operator in accordance with Florida principles of comparative fault but Operator will in no event be required to pay any portion of a loss that is attributable to the gross negligence or willful misconduct of the City or a City Indemnitee; and provided, further, for the avoidance of doubt, that City is not hereby waiving any defense or limitation of its liability, and all Claims against City or a City Indemnitee are subject to the provisions of Section 768.28 of the Florida Statutes, as amended from time to time (which defense and/or limitation of liability Operator may argue in its defense of any Claim).

(c) If the above indemnity or defense provisions or any part of the above indemnity or defense provisions are limited by Florida Statute §725.06 (1) or any other Applicable Law, then with respect to the part so limited the monetary limitation on the extent of the indemnification shall be the greater of the (i) coverage amount of Commercial General Liability Insurance required under this Agreement or (ii) \$1,000,000.00. Otherwise, the obligations of this Section 8.1 will not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

(d) In addition to the requirements stated above, to the extent required by any Florida Department of Transportation ("FDOT") Public Transportation Grant Agreement to which the City is a party and to the fullest extent permitted by Applicable Law, the Operator must indemnify and hold harmless the State of Florida, FDOT, including FDOT's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Operator or any Operator Party. This indemnification in this paragraph shall survive the termination of this Agreement. Nothing contained in this paragraph shall constitute a waiver of the State of Florida's or FDOT's sovereign immunity.

Section 8.2 Insurance

(a) Operator must provide, pay for, and maintain throughout the Term of this Agreement insurance as specified herein. All insurance must be from nationally recognized companies rated no lower than A-VIII by A.M. Best Company authorized to do business in the State of Florida. All liability insurance policies of Operator required herein must provide a severability of interest provision. The insurance coverages and limits required must be evidenced by properly executed certificates of insurance. There must not be a legal prohibition preventing the issuer of any of the required policies of insurance from making payment under a policy in Highlands County, Florida, and all policies must be construed in accordance with the laws of the State of Florida.

(b) All certificates must provide that thirty (30) days' prior written notice must be given City of any cancellation or reduction in the policies' coverages below the requirements of this Article. In the event of a reduction in any aggregate limit below the requirements of this Article, Operator must take immediate steps to have such aggregate limit reinstated. If at any time the City reasonably requests a written statement from the insurance company regarding any impairment to the aggregate limit of insurance, Operator must promptly deliver such statement to the City. Operator must resolve any such impairment when known to it. Operator authorizes City to confirm all information, as to compliance with the insurance requirements herein with Operator's insurance agents, brokers, and insurance carriers. All insurance coverages of Operator must be primary as regards any insurance or self-insurance program carried by City with respect to all matters covered by the insurance requirements of this Article.

(c) The acceptance of delivery by City of any certificate of insurance evidencing Operator's insurance coverages and limits does not constitute approval or agreement by City that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements herein.

(d) Certificates of Insurance or other evidence must be filed with and approved by City prior to any activity being performed on the Airport by Operator, and in no event later than five (5) days prior to the Handover Date. Operator must, before commencement of any work on the Airport, furnish City evidence that its contractor(s) is covered to the reasonable satisfaction of City.

(e) The insurance coverages and limits required of Operator are designed to meet the minimum requirements of City. They are not designed as a recommended insurance program for Operator. Operator alone must be responsible for the sufficiency of its own insurance program.

(f) Operator and City understand and agree that the limits and coverages of the insurance herein required may become inadequate during the Term of this Agreement based on Operator's activities and industry practices or general inflation in relation to the initial policy requirements, and Operator agrees that it will increase such limits or provide such coverages as City may determine to be commercially reasonable at the time for facilities such as the Airport within thirty (30) days after receipt of notice in writing from City.

(g) If any liability insurance required herein is to be issued or renewed on a "claims made" form as opposed to the "occurrence" form, the retroactive date for coverage must

be no later than the Effective Date of the Agreement and must provide that in the event of cancellation or non-renewal, the discovery period for insurance claims (Tail Coverage) must be unlimited.

(h) All of the required insurance coverages must be issued as required by Applicable Law and must be endorsed, where necessary, to comply with the minimum requirements contained herein. Submissions required by this Article must be given to:

City of Avon Park
Attn. City Manager
City Hall Building – 2nd Floor
110 E. Main Street
Avon Park, FL 33825

(i) Renewal Certificates of Insurance must be provided to City a minimum of fifteen (15) days prior to expiration of current coverages.

(j) Operator must obtain and maintain insurance on the types, amounts, and conditions set forth below:

- (i) Commercial General Liability Insurance, including Premises & Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, and Broad Form property Damage including Completed Operations.

Limits of coverage must not be less than:

\$2,000,000 Combined Single Limit each occurrence Bodily Injury, Personal Injury and Property Damage Liability,

OR

\$2,000,000 each occurrence and aggregate for liability associated with all operations under this specific Agreement. The aggregate limits must be separately applicable to this Agreement.

- (ii) Airport Operator's Insurance with limits of no less than \$5,000,000 per occurrence.

- (iii) Hangarkeeper's Liability Insurance. Operator must maintain Hangarkeeper's Legal Liability providing property damage to aircraft which are the property of others and in the care, custody, or control of the Operator, but only while such aircraft are not in flight, in an amount commensurate with the size, type, and number of aircraft utilizing or that may utilize the Airport. Operator must regularly review its Hangarkeeper's Legal Liability limits and adjust them as reasonably necessary. Operator must report any such adjustments to City prior to their effective date. City reserves the right to establish specific limits

for Hangarkeeper's Legal Liability insurance if, in City's reasonable discretion, it believes that Operator's existing policies are insufficient to address the risks of aircraft that may operate at the Airport.

(iv) Pollution Liability Insurance with limits of not less than two million dollars (\$2,000,000) per occurrence, whether sudden, catastrophic, or due to a gradual release, which policy must include a reasonable period of time generally consistent with the policy in place on the Effective Date for discovery and reporting of each covered occurrence, covering the costs of remediating any sudden and accidental environmental contamination for which Operator is responsible under this Agreement and for which Operator has not commenced remediation activities as required under this Agreement within thirty (30) days of such remediation obligation arising under this Agreement.

(v) Workers' Compensation and Employers' Liability Insurance in accordance with the statutes and regulations of the State of Florida, including Employer's Liability. Limits must not be less than:

Workers' Compensation	Florida Statutory requirements
Employer's Liability	\$500,000 limit each accident
	\$500,000 limit disease aggregate
	\$500,000 limit disease each employee

(vi) Automobile Insurance must be maintained by Operator as to the ownership, maintenance and use of all owned, non-owned, leased or hired vehicles which are tagged and used commercially on City's premises with limits of not less than:

Bodily Injury Liability	\$1,000,000 limit each person/\$1,000,000 limit each accident
Property Damage Liability	\$1,000,000 limit each accident

OR

Bodily Injury and	\$1,000,000 Combined Single Limit each occurrence
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Property Damage Liability

(vii) Umbrella Liability or Excess Liability Insurance must not be less than \$1,000,000 each occurrence and aggregate. The limits of primary liability insurance for the General Liability and Employers' Liability insurance coverages required in this section must be not less than \$500,000 Combined Single Limit each occurrence and aggregate where

applicable for Bodily Injury, Personal Injury, and Property Damage liability.

(k) Additional Insured. Operator agrees to endorse the City as an Additional Insured with a CG2026 Additional Insured – Designated Person or Organization endorsement, or similar endorsement, to the Commercial General Liability and Business Automobile Liability. The Additional Insured must read “City of Avon Park, Florida, and its successors and assigns, and its City Councilors, elected or appointed officials, officers, employees, agents, contractors, subcontractors and invitees to the extent of the indemnity obligation set out in Section 8.1 of the Agreement pursuant to which this certificate is issued.”

(l) It is further agreed that Operator must not do or permit to be done anything upon any portion of the Airport or bring or keep anything thereon which will in any way conflict with the conditions of any insurance policies with respect to the Airport carried by the City to jeopardize coverage, or by its existence exempt an insurer from coverage for liability or casualty, or which will increase the rate of the insurance on the Airport, or which will in any way obstruct or interfere with the rights of other tenants at the Airport.

(m) Any policy provided by Operator must be primary insurance for any event occurring on the Airport or otherwise indemnified by Operator and provide that the Operator’s insurer must not subrogate against City or its insurer.

(n) Failure to maintain the insurance in the types and amounts set forth in this Article is an Event of Default, and in City’s sole discretion, it may seek to temporarily obtain, at Operator’s expense, any insurance required in this Agreement but not provided by Operator, while City retains any right to proceed legally against Operator for the Event of Default.

ARTICLE 9

ENVIRONMENTAL REGULATIONS; CONTAMINATION AND CONDITIONS

Section 9.1 Environmental Representations.

(a) Notwithstanding any other provisions of this Agreement, and in addition to any and all other Agreement requirements, and any other covenants and warranties of Operator, Operator hereby expressly warrants, guarantees, and represents to City, upon which City expressly relies that:

(i) Operator will comply, and cause all Operator Parties to comply, with all applicable Environmental Laws in connection with its performance of the Services and use of any Airport facilities and property. In the event of any noncompliance with Environmental Laws, Operator must take prompt and appropriate action to address the conditions causing the noncompliance and return to full compliance.

(ii) Operator is knowledgeable of any and all Environmental Laws without limitation which govern or which in any way apply to the direct or indirect results and impacts to the environmental and natural resources due to, or in any way resulting from, the conduct by Operator of its operations pursuant to this Agreement and upon the Airport. Operator agrees to keep informed of future changes in Environmental Laws.

(iii) Operator agrees to comply with all Environmental Laws applicable to its operations at the Airport and accepts full responsibility and liability for such compliance.

(iv) Operator, and all Operator Parties, have been fully and properly trained in the handling and storage of all such Hazardous Materials and other pollutants and contaminants; and such training complies with any and all Applicable Laws.

(v) Operator agrees that it will neither handle nor store any Hazardous Materials on the Airport in excess of those required to perform the Services and that all such Hazardous Materials will be stored, used and disposed of in accordance with Applicable Law.

(vi) Operator must provide City satisfactory documentary evidence of all such requisite legal permits and notifications as required by Section 9.1 above.

(vii) Operator agrees to cooperate with any investigation, audit or inquiry by City or any Governmental Authority regarding possible violation of any Environmental Law.

Section 9.2 Hazardous Waste and Materials

(a) If Operator is deemed to be a generator of hazardous waste, as defined by Applicable Law, Operator must obtain an EPA identification number and the appropriate generator permit and must comply with all Environmental Laws imposed upon a generator of hazardous waste including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with Environmental Law.

(b) Operator must maintain an accurate inventory list (including quantities) of all such Hazardous Materials, whether stored, disposed of or recycled, available at all times for inspection by City officials and also by Fire Department officials or regulatory personnel having jurisdiction over the Airport, for implementation of proper storage, handling, and disposal procedures.

(c) Notification of all activities relating to Hazardous Materials by Operator must be provided on a timely basis to City or such other agencies as required by Applicable Law. Operator must provide the name of Operator's twenty-four (24)-hour emergency coordinator and his or her phone number to City in case of any spill, leak or other emergency situation involving Hazardous Materials. Operator agrees to provide City copies of all permit application materials, permits, monitoring reports, environmental response plan, and regulated materials storage and disposal plans relating to the Airport.

Section 9.3 Violations.

(a) If City receives a notice from any Governmental Authority asserting a violation by Operator of Operator's covenants and agreements contained herein, or if City otherwise has reasonable grounds upon which to believe that such a violation has occurred, City or its duly appointed consultants have the right, but not the obligation, to perform environmental site assessments for the purpose of determining whether there exists any environmental condition that could result in any liability, cost or expense to City. City may perform such tests on the Airport as may be necessary, in the opinion of the City or its duly appointed consultants, acting reasonably, to conduct a prudent environmental site assessment. Operator must supply such information as is

reasonably requested by the City. If Operator receives a Notice of Violation or similar enforcement action or notice of noncompliance, Operator must provide a copy of same to City within three (3) days of receipt by Operator or Operator's agent.

Section 9.4 Inspection After Termination.

(a) Within the last sixty (60) days of the Term or thereafter, City has the right to have an environmental inspection performed, subject to applicable security and safety requirements, procedures, and controls, to determine the status of any Hazardous Materials, including, but not limited to, asbestos, polychlorinated biphenyls (PCBs), per- and polyfluoroalkyl substances (PFOA and PFAS), urea formaldehyde, and radon gas existing on the Airport or whether any said substances have been generated, released, stored or deposited over, or then exist beneath or on, the Airport from any source. The environmental inspection may also assess the Airport for any other environmental conditions in the City's discretion. Nothing in this Section 9.4 shall be interpreted to limit the permitted scope of the environmental investigation to anything less than the Environmental Baseline Investigation as set forth in Section 10.4.

(b) The firm(s) conducting the site inspection or the site cleanup work must be qualified and approved by City and the Operator, which approval must not be unreasonably withheld, conditioned, or delayed, and the scope of work used by such firm(s) must be consistent with the then current engineering practices and methods required or recommended by the State of Florida and the United States and be acceptable to the City, which acceptance must not be unreasonably withheld, conditioned, or delayed.

Section 9.5 Indemnification.

(a) Except as provided in Article 10, and in addition to any indemnification set forth elsewhere in this Agreement, Operator hereby indemnifies and agrees to defend and hold harmless the Indemnified Parties from all costs, claims, demands, actions, liabilities, complaints, fines, citations, violations, or notices of violation arising from or attributable to: (i) a presence or release of Hazardous Materials into the environment caused by Operator or any Operator Party at the Airport, or the subsurface, waters, air, or ground thereof, in excess of levels allowable by Environmental Laws or the violation of any Environmental Laws due to Operator's or any Operator Party's management, control, authorization, handling, possession, or use of Hazardous Materials at the Airport; (ii) any breach by Operator of any of its warranties, representations, or covenants in this Article 9; (iii) Operator's remediation or failure to remediate Hazardous Materials as required by this Agreement. Operator's obligations hereunder will survive the termination or expiration of this Agreement, and will not be affected in any way by the amount of or the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting Airport or any part thereof, except that, in the event that City recovers funds from insurance carriers in connection with claims associated with (i), (ii), or (iii) above, City may not recover the same funds from Operator. Notwithstanding the foregoing, the Operator has no indemnification obligation under this Section 9.5 for any costs, claims, demands, actions, liabilities, complaints, fines, citations, violations or notices of violation arising from or attributable to any release of Hazardous Substances in, on or under the Airport prior to the Effective Date, except to the extent materially exacerbated by the Operator or any

Operator Party or invitee, or otherwise if Operator's provision of the Services or performance under this Agreement fails to comply with Environmental Laws.

(b) Except as provided in Article 10, with regard to any environmental contamination caused by Operator or arising by reason of Operator's provision of the Services, Operator must promptly take such action as is required by applicable Environmental Laws to clean up and remediate the Airport or portion of the Airport at its own expense in accordance with Environmental Laws. The remediation must continue until the Governmental Authorities with jurisdiction determine that no further action is necessary in compliance with applicable Environmental Laws; it being understood and agreed that Operator is obligated to clean-up and remediate the property to achieve such standards or clean-up levels as are reasonably required by the City for properties at the Airport.

Section 9.6 City's Rights

(a) The City and its authorized representatives and consultants have the right, but not the obligation, to enter the Airport with 24 hours' notice to Operator to confirm Operator's compliance with the provisions of this section, this Agreement generally, and to review all permits, reports, plans, and other documents regarding the use, handling, storage, or disposal of Hazardous Materials or compliance with Environmental Laws; provided, however, that no notice from the City will be required in the event of an emergency, situation that may endanger persons or property, or any other condition on the Airport requiring an immediate response from the City. Operator must also timely provide information in response to requests for information regarding compliance with its obligations under this section.

(b) The City's exercise of any approval or inspection right under this Article 9 does not diminish or alter Operator's obligation to comply with Applicable Law, including Environmental Laws, or any other term or condition of this Agreement unless expressly waived in writing by the City.

ARTICLE 10 PRE-EXISTING AND THIRD-PARTY ENVIRONMENTAL CONDITIONS

Section 10.1 Non-Liability of Operator

Notwithstanding anything to the contrary in this Agreement, Operator is not liable for and has no obligation or responsibility under this Agreement, at law, or otherwise for any Pre-Existing Environmental Condition, or any Third-Party Environmental Condition. City hereby releases, waives, and discharges any and all claims, rights, suits, liabilities, losses, demands, actions, or causes of action, whether arising by statute, regulation, contract, common law, equity, or otherwise (excluding, however, any claims, rights, suits, liabilities, losses, demands, actions, or causes of action arising from the negligence of the Operator or any Operator Party) that it may have, now or in the future, against the Operator or any Operator Party, all to the extent arising from, connected with, or relating to any Pre-Existing Environmental Condition or Third-Party Environmental Condition. This Section 10.1 does not apply to the extent that Operator (a) fails to promptly report to the City the presence of a newly discovered Third-Party Environmental Condition, or (b) otherwise negligently or intentionally fails to take action with respect to a Third-Party

Environmental Condition, and such action would fall within (i) the scope of Operator's Services under this Agreement, (ii) Operator's duties under Applicable Law, or (iii) the requirements of any insurance policy applicable to Operator or the Airport.

Section 10.2 City Cleanup

Subject to the last sentence of Section 10.1, City covenants and agrees that it will undertake, at its sole cost and expense, any notification, investigation, monitoring, clean-up, removal or remediation of any Pre-Existing Environmental Condition or Third-Party Environmental Condition, to the extent required by any Applicable Law, or as required by any Governmental Authority, whether such action is required now or in the future. In undertaking the foregoing, City must use commercially reasonable efforts not to unreasonably interfere with Operator's operations or Operator's use and enjoyment of the Airport. For the avoidance of doubt, the foregoing undertaking applies without limitation to any Pre-Existing Environmental Condition or Third-Party Environmental Condition encountered during any construction of Improvements at the Airport performed by Operator. Operator must implement, at its sole cost and expense, erosion control and storm water plans as necessary to comply with Applicable Law in conjunction with construction of Improvements at the Airport.

Section 10.3 Cleanup Coordination

In the event that City or any third-party undertakes any notification, investigation, monitoring, clean-up, removal or remediation of any Pre-Existing Environmental Condition or Third-Party Environmental Condition during the Term of this Agreement, City must (1) coordinate with Operator to seek to minimize any disruption to Operator's use and occupation of the Airport, and (2) keep Operator informed of its progress in performing or completing any such actions. Operator is entitled, at its own cost and expense, to reasonably monitor City's performance and completion of such actions. Such monitoring may include, without limitation: (1) the right to receive copies of all reports, work plans and analytical data generated by or on behalf of the City; all notices or other letters or documents received from or submitted to any Governmental Authority; and any other data, documentation and/or correspondence reasonably requested by Operator, excepting any such documentation as may be subject to attorney-client privilege or other similar confidentiality restrictions, including without limitation requirements of Governmental Authorities and (2) prior notice of and the opportunity to attend and participate in any material meetings related to such actions.

Section 10.4 Initial Environmental Documentation and Subsequent Environmental Investigations

Operator acknowledges receipt from the City of certain Environmental Documentation pertaining to the Airport, which are listed and attached as **Exhibit I** to this Agreement. During the Term of this Agreement, the City agrees to take reasonable efforts to secure AIPP grant funds to complete additional environmental investigation of the Airport. Whether or not the City receives such grant funds, if directed by the City and at the City's sole cost, Operator must conduct an Environmental Baseline Investigation of the Airport upon thirty (30) days' written notice from the City. Operator shall complete the Environmental Baseline Investigation in accordance with a scope of work approved by the City. Once completed, the Environmental Baseline Investigation

will be appended and incorporated into this Agreement as a replacement Exhibit I. Operator has the right in its sole discretion and at its sole expense to conduct additional environmental investigations and sub-surface assessments of the Airport during the Term.

Section 10.5 Survival

City's and Operator's rights and obligations under this Article 10 shall survive any termination of the Agreement.

ARTICLE 11 TERM AND TERMINATION

Section 11.1 Initial Term and Renewal Term

(a) This Agreement is effective on the Effective Date. The Term of this Agreement commences on the Handover Date and continues for twenty (20) years from the Handover Date (the "***Initial Term***").

(b) Provided there is no Operator Default ongoing, this Agreement will be automatically extended for an additional ten (10) years from the expiration of the Initial Term (the "***Renewal Term***") unless the City or Operator provides written notice of termination to the other party no more than 60 days before the Renewal Term is set to begin.

Section 11.2 Termination for Cause by the City

The City may terminate this Agreement for cause:

(a) Upon Operator failing to cure an Operator Default as provided in Section 13.1 of this Agreement; or

(b) If Operator (i) makes a general assignment for the benefit of creditors, (ii) files a petition in bankruptcy, (iii) files a petition or answer seeking its reorganization or the readjustment of its indebtedness under any present or future federal bankruptcy law or other Applicable Law, (iv) is subject to the appointment of or applies for a receiver, trustee, or liquidator of all or substantially all of its property, or (v) becomes subject to any judgment, decree or order by a court of competent jurisdiction determining that proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding up or any similar relief under any present or future federal bankruptcy law or other Applicable Law have been properly instituted otherwise than by it and such judgment, decree, or order remains unstayed and in effect for sixty (60) days, upon written notice of termination to Operator.

Section 11.3 Termination for Cause by Operator

At any time during the Term of this Agreement Operator may terminate this Agreement for cause upon the occurrence of a City Default as provided in Section 13.2 of this Agreement.

Section 11.4 Termination Upon New Agreement or for Convenience

This Agreement automatically terminates if the City and Operator enter into another agreement that governs the overall lease, operation, and management of the Airport by Operator, including but not limited to any agreement pursuant to the FAA's Airport Investment Partnership Program. This Agreement may also be terminated for convenience by either party upon one hundred and twenty (120) days' written notice to the other party.

ARTICLE 12 RECORDKEEPING AND AUDIT

Section 12.1 Maintenance of Records

Operator must maintain in accordance GAAP, complete records of its operations at the Airport under this Agreement. Operator must ensure, at a minimum, that such records are sufficient to demonstrate compliance with all Applicable Laws and Grant Agreements. At the City's request, Operator must prepare and submit to the City any financial documentation required by the FAA, and the City is responsible for filing such documentation with the FAA. Operator and the City must reasonably cooperate to resolve any discrepancies, errors, or omissions in such documentation.

Section 12.2 Public Records

To the extent required by Applicable Law, the Operator agrees in accordance with Florida Statute Section 119.0701 to comply with public records laws including the following:

(a) Keep and maintain public records required by the City in order to perform the services contemplated by this Agreement.

(b) Upon request from the City custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat. or as otherwise provided by Applicable Law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by Applicable Law for the duration of the Term and following completion of the Term.

(d) Upon completion of the Term, keep and maintain public records required by the City to perform the services. The Operator must meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City custodian of public records, in a format that is compatible with the information technology systems of the City.

(e) IF OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS

AT BY TELEPHONE AT (863) 452-4405, BY EMAIL AT cityclerk@avonpark.city, OR AT THE MAILING ADDRESS BELOW:

**City Clerk
City of Avon Park
110 E. Main Street
Avon Park, FL 33825**

Section 12.3 Right of Audit

Upon reasonable notice to Operator, City, its agents, or the FAA may inspect, review, and audit any and all records of Operator pertaining to the Airport or this Agreement. Operator must immediately correct any errors, discrepancies, or omissions in records identified by City.

ARTICLE 13 DEFAULT

Section 13.1 Event of Default with Respect to Operator

(a) Subject to Section 13.1(b), the failure by Operator to perform any term or provision as required herein within fifteen (15) days after receipt of written notice of default given by the City or, with respect to events which are curable, but which are incapable of being cured within fifteen (15) days, Operator's failure to commence and thereafter diligently to continue efforts to cure such breach to the reasonable satisfaction of the City within 15 days, constitutes an "***Operator Default***" with respect to Operator and shall give the City the right to terminate this Agreement. The City must provide Operator with written notice of such termination and must specify the effective date of termination of this Agreement, which date of termination must be no earlier than the date of delivery of such notice to Operator.

(b) Section 13.1(a) notwithstanding, the cure period is three (3) days for the following:

- (i) Operator's failure to maintain required insurance;
- (ii) Operator's failure to keep the Airport in operation for more than 48 hours (subject to force majeure);
- (iii) Operator's creation or allowance of a security risk or safety hazard at the Airport or violation of applicable TSA regulations.

Section 13.2 Event of Default with Respect to the City

The failure by the City to perform any term or provision as required herein 30 days after receipt of written notice of default given by Operator or, with respect to events which are curable, but which are incapable of being cured within thirty (30) days, failure to commence and thereafter diligently to continue efforts to cure such breach to the reasonable satisfaction of Operator within such thirty (30) days, constitutes an "***City Default***" with respect to the City and must give Operator the right to terminate this Agreement. Operator must provide the City with written notice of such

termination and must specify the date of termination of this Agreement, which termination date shall be no earlier than the date of delivery of such notice.

Section 13.3 Remedies of the City or Operator in Event of Default

(a) In addition to any right to terminate this Agreement subject to occurrence of an Event of Default, Operator or the City, as the case may be, may pursue any and all other remedies available under Applicable Law or in equity in the Event of Default by the other party hereto.

(b) With respect to amounts owed by Operator to the City pursuant to an Operator Default, the City may withhold or deduct such amounts from the Management Fee.

(c) With respect to amounts owed by the City to Operator pursuant to a City Default, Operator may withhold or deduct such amounts from any amounts owed to the City pursuant to the Agreement, subject to Applicable Law.

ARTICLE 14 GOVERNMENTAL REQUIREMENTS

Section 14.1 Certificates and Licenses

With Operator's regular assistance and cooperation, the City must secure, or cause to be secured, from any and all Governmental Authorities having jurisdiction thereof, all applicable licenses, certificates, permits, or other authorizations and any and all renewals thereof, which must be in City's name as the owner of the Airport and which pertain to or apply to the operation, use, or maintenance of the Airport, or any part thereof. With City's regular assistance and cooperation, Operator must secure any such licenses, certificates, permits, or other authorizations which may or must be issued in Operator's name as the operator and manager of the Airport under Applicable Law. City, acting in its governmental capacity, does not guaranty that any licenses will be approved or issued over which City has jurisdiction or approval authority as the applicable Governmental Authority, but will consider such requests or application as it does any other similar application or request.

Section 14.2 Disputes Over Applicability

Operator has the right to contest by appropriate legal proceedings, in the name of Operator or City or both, without cost or expense to City, the validity or application of any Applicable Law and, if by the terms of any such law, compliance therewith pending the prosecution of any such proceeding may legally be held in abeyance without the incurrence of a lien, charge or liability of any kind against the Airport, and without subjecting Operator or City to any liability, civil or criminal, of whatsoever nature for failure so to comply therewith, Operator may postpone compliance therewith until the final determination of any proceedings, provided that all such proceedings must be prosecuted with all due diligence and dispatch.

Section 14.3 Rules and Regulations

Operator must comply with the current Avon Park Executive Airport Rules and Regulations ("**Rules and Regulations**"), a copy of which are attached to this Agreement as **Exhibit J**. Within 60 days of the Handover Date, Operator must submit revised Rules and Regulations to

the City for consideration and approval by the City Council. Until such time as any new Rules and Regulations are approved, Operator must continue to comply with the current existing Rules and Regulations. After the revised Rules and Regulations are approved, the existing Exhibit J shall be replaced with the approved revised version. City reserves the right to modify the Rules and Regulations from time to time. City agrees that it will provide Operator with prior written notice and reasonable opportunity to be heard as to any change, modification or addition to the existing Rules and Regulations. Operator must take reasonable measures to compel others at the Airport and those doing business with it with respect to the Airport to observe and obey such Rules and Regulations. At any time, Operator may recommend such additional rules, regulations and fees relating to the governing or conduct of operations at the Airport as Operator deems appropriate for such purposes , and the City may or may not adopt such amendments in its reasonable discretion.

Section 14.4 Security

Operator and its Operator Parties must comply with (i) the provisions of any TSA-approved airport security plan for the Airport as from time to time existing, and (ii) applicable regulations of the TSA, as from time to time existing. If Operator or any Operator Party fails or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other terms of this Agreement, Operator will be responsible and must reimburse the City in the full amount of any such monetary penalty or other damages as Additional Rent.

ARTICLE 15 MISCELLANEOUS

Section 15.1 City's Right to Act in Operator's Place

Operator acknowledges that, as the owner and sponsor of the Airport, the City is obligated to comply with the assurances set forth in its Grant Agreements and that the City must retain sufficient rights and powers in order to do so. If Operator fails to operate the Airport in accordance with the requirements of this Agreement, including without limitation, in violation of any Grant Assurance, as determined by the FAA or the City in its or their sole discretion, the City must provide written notice to Operator setting forth the specific failures and/or violations. No later than thirty (30) days from Operator's receipt of such notice (or a shorter period if required by any Governmental Authority having jurisdiction), Operator must prepare and deliver to City a written corrective action plan designed to remedy all such failures and/or violations, which must be reviewed and approved by the City in its reasonable discretion, and is subject to review and approval by the FAA. Upon such approvals, Operator must promptly commence and diligently complete the tasks and other requirements of such plan. If Operator fails to provide such compliance action plan within thirty (30) days (or a shorter period if required by any Governmental Authority having jurisdiction) or promptly and diligently undertake reasonable steps to fulfill the compliance plan thereafter, City may take such actions as it may determine to be necessary under the circumstances to cure such failure or violation and continue for such period of time as may be necessary to complete such cure. Any and all costs incurred by City in effecting any such cure must be reimbursed by Operator, plus an additional 15% for administrative overhead, within thirty (30) days after City provides an invoice therefor.

Section 15.2 No Encumbrance

Operator must not enter into any agreement which could result in an encumbrance of any portion of the Airport, Existing Improvements, or any other facility at the Airport without prior written approval from the City. Operator is not permitted to use this Agreement as collateral or security for any financing or loan without prior written approval from the City.

Section 15.3 Relationship of Parties

Nothing herein contained is intended or shall be construed to in any respect create or establish any relationship other than that of owner and service provider, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Operator the general representative or agent of the City for any purpose whatsoever except as expressly provided herein.

Section 15.4 Amendment

Except as otherwise expressly provided herein, this Agreement, including the attached exhibits and endorsements, may not be changed, modified, discharged, or extended except by written amendment duly executed by the parties.

Section 15.5 Counterparts

This Agreement may be executed in one or more counterparts each of which will be deemed an original and all of which together will constitute one instrument.

Section 15.6 Exhibits

All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms. In the event of inconsistency between the terms of the Agreement and the exhibits, the terms of the Agreement will prevail.

Section 15.7 No Personal Liability

No shareholder, director, officer, employee (or Employee with respect to Operator), or agent of the City or Operator will be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach hereof or because of its or their execution of this Agreement.

Section 15.8 Agreements with the United States

(a) Operator covenants and agrees that this Agreement is subject and subordinate to the provisions of any existing or future agreement between the City and the United States Government or any other Governmental Authority, including those agreements relative to the development, operation, or maintenance of the Airport, and including, but not limited to, those for which the terms and execution of have been or may be required as a condition precedent to the expenditure,

granting, or reimbursement to the City of federal funds for the development of the Airport (“**Grant Assurances**”). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates such Grant Assurances, the City has the right to amend, alter, or otherwise modify the terms of this Agreement in order to resolve such conflict or violation. Operator further agrees that it must not take any action or fail to take action that would cause the City to violate any Grant Assurances made by the City to the federal government in connection with the granting of such federal funds.

(b) All provisions of this Agreement are subordinate to the rights of the United States of America to operate all of the Airport or any part thereof during time of war or national emergency. Such rights shall supersede any provisions of this Agreement inconsistent with the operation of the Airport by the United States of America.

Section 15.9 Governing Law

This Agreement is made and entered into in Highlands County, Florida, and Florida law shall govern and apply to this Agreement. In the event of a dispute or disputes between the parties hereto, and in the event litigation is instituted, such litigation must be commenced only in a state court in Highlands County, Florida. Operator hereby consents to the jurisdiction and venue of such courts and waives personal service of any and all process upon Operator herein, and consents that all such service of process must be made by certified mail, return receipt requested, directed to Operator at the address herein stated, and service so made must be completed seven (7) days after the same must have been posted as aforesaid.

Section 15.10 Notices

When either party desires to give notice to the other in connection with and according to the terms of this Agreement, such notice must be given by certified mail, return receipt requested, recognized overnight delivery service, or by hand delivery, and it will be deemed given three (3) days after it is deposited in the United States Mails with sufficient postage prepaid thereon to carry it to its addressed destination and such notices must be addressed as follows:

For the City:

City of Avon Park
Attn. City Manager
City Hall Building – 2nd Floor
110 E. Main street
Avon Park, FL 33825

For the Operator:

Florida Airport Management
Attn: General Counsel
450 S. Orange Ave. Floor 3
Orlando, Florida 32801

with a copy to:

Shuffield & Lohman
Attn: Jason Davis
1000 Legion Place
Suite 1700
Orlando, Florida 32801

Nothing herein contained shall be construed as prohibiting the parties respectively from changing the place at which notice is thenceforth to be given, but no such change shall be effective unless and until it is accomplished by written notice given in the manner set forth in this Section.

Section 15.11 Entire Agreement

This Agreement, including the attached exhibits, embodies the entire agreement between the City and Operator relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, express or implied, between the City and Operator relating thereto.

Section 15.12 Force Majeure

Except for Operator's obligation to remit payments to City and City's obligations to disburse payments to Operator, it is not an Event of Default and all deadlines will be extended on a day-for-day basis, if City or Operator is prevented from performing any of the other obligations imposed under this Agreement by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, natural disasters, riots, rebellion, sabotage, epidemics, pandemics, public health emergencies, declarations of emergency, or any other circumstances for which it is not responsible or which is beyond its control (each an event of "force majeure"). The occurrence of a force majeure event notwithstanding, the parties must use diligent efforts to perform their respective obligations under this Agreement.

Section 15.13 Invalid Provisions

In the event any covenant, condition, or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition, or provision is deemed amended to conform to Applicable Law so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement will remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Operator in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

Section 15.14 No Waiver

No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party. Nor shall any custom or practice which may evolve between the parties in the administration of

the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement.

Section 15.13 Construction of Agreement

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against the City by reason of the preparation of this Agreement by the City.

Section 15.14 Timing

The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

Section 15.15 Representatives

City and Operator agree that communication and coordination for most purposes under this Agreement shall take place primarily through their respective Representatives. Operator acknowledges and agrees that certain City approvals contemplated in this Agreement may only be granted by City's City Council. The specific approvals that must be provided by City's City Council are set forth on **Exhibit K**, and any approval (express or implied) from City's Representative with respect to the items listed on Exhibit K will not operate to bind City. Any City approvals not listed on Exhibit K may be granted by City's Representative, but the City, in its sole discretion, reserves the right to instead require final approval of any City approval from City Council.

Section 15.16 Prohibition Against Exclusive Rights

It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privileges and right of conducting any or all activities of an aeronautical nature.

Section 15.17 Assignment; Successors and Assigns

Operator may not assign, transfer, or encumber its interest in this Agreement or any other right, privilege or license conferred by this Agreement without prior written consent of the City. Any transfer of voting control of Operator or its parent is considered an assignment or transfer of this Agreement. Any assignment or encumbrance will be void *ab initio* and of no effect and, at the City's election, will constitute an Event of Default. No consent to any assignment or encumbrance will constitute a further waiver of the provisions of this section.

Section 15.18 Operator Authorized

The person(s) executing this Agreement on behalf of Operator warrants to the City that Operator is a duly authorized and existing corporation, that Operator is qualified to do business in the State of Florida, that Operator has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Operator is authorized to do so.

Section 15.19 Survival of Indemnities

Expiration or termination of this Agreement will not affect the right of the City Indemnitees to enforce any and all indemnities given by Operator under this Agreement, nor will it affect any provision of this Agreement that expressly states it will survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to Operator's indemnification of the City Indemnitees contained in this Agreement, Operator has an immediate and independent obligation to defend the City Indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Operator by the City Indemnitee.

Section 15.20 Federal Right to Reclaim

In the event a United States governmental agency demands and takes over the entire facilities of the Airport for public purposes, then this Agreement will terminate and City shall be released and fully discharged from any and all liability hereunder. In the event of such termination, nothing herein shall be construed as relieving Operator from any of its liabilities relating to events or claims of any kind whatsoever prior to such termination under this Article.

Section 15.21 Non-Discrimination.

Operator acknowledges that the City is required by the Federal Government under the terms of certain agreements between the City and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the grant or receipt of federal funds for the development of the Airport, to include in this Agreement certain required contract provisions, attached as **Exhibit L-1** hereto ("**General Required Federal Provisions**"). Operator also acknowledges that City is required by the Federal Government under the terms of any Grant Agreement for funds specifically dedicated to construction to include certain contract provisions, attached as **Exhibit L-2** hereto ("**Construction Required Federal Provisions**," and together with the General Required Federal Provisions, the "**Required Federal Provisions**"). Operator agrees to comply with the General Required Federal Provisions at all times and include the General Required Federal Provisions in each of its subcontracts without limitation or alteration. Furthermore, where Operator is conducting construction on the City's behalf that is funded in whole or in part through a federal Grant Agreement, Operator agrees to comply with the Construction Required Federal Provisions and, where applicable, include the Construction Required Federal Provisions in each of its subcontracts without limitation or alteration. Operator further agrees to comply with any modification to or interpretation of the Required Federal Provisions that may from time to time be required by the FAA or other agency with jurisdiction, within ten (10) days of receiving notice from the City of such required modifications.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Avon Park Executive Airport Management Agreement to be executed as of the dates set forth in the signature blocks below.

CITY OF AVON PARK, FLORIDA, a Florida municipal body:

By: [Signature]

Name: Garrett Anderson

Title: Mayor

Date: 4/22/2022

FLORIDA AIRPORT MANAGEMENT, L.L.C., a Florida corporation:

By: [Signature]

Name: Jonathan T. CLARK

Title: Chief Executive Officer

Date: 21 APR 22

[Signature Page to Avon Park Executive Airport Management Agreement]