

**THIRD AMENDMENT
TO
MANAGEMENT AND OPERATING AGREEMENT**

THIS THIRD AMENDMENT TO MANAGEMENT AND OPERATING AGREEMENT, hereinafter referred to as the “Third Amendment,” is made and entered into this _____ day of _____, 2017, (the “Effective Date”), by and between the **TOWN OF ERIE, COLORADO, a Colorado municipal corporation**, (“Town”), whose address is P.O. Box 750, Erie, Colorado 80516, and **VECTOR AIR MANAGEMENT, LLC, a Colorado limited liability company**, (“Operator”), whose address is 395 Airport Drive, Erie, Colorado 80516.

WHEREAS, Town and Operator entered into a Management and Operating Agreement, effective July 1, 2011, hereinafter referred to as the “Original Agreement;”

WHEREAS, Town and Operator entered into a First Amendment to Management and Operating Agreement, effective December 13, 2011, hereinafter referred to as the “First Amendment.” The Original Agreement and the First Amendment are herein together referred to as the “Amended Agreement;”

WHEREAS, Town and Operator entered into a Second Amendment to Management and Operating Agreement, effective December 1, 2016, hereinafter referred to as the “Second Amendment.” The Original Agreement, the First Amendment and the Second Amendment are herein after together referred to as the “Amended Agreement;”

WHEREAS, Town and Operator desire to amend certain provisions of the Amended Agreement; and,

WHEREAS, Town and Operator desire to enter into this Third Amendment in order to set forth herein below the terms of the amendment to the Amended Agreement.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter contained, and those contained within the Amended Agreement, the parties hereto agree as follows:

1. Terms and words used herein shall have the same definition and meaning as those terms and words set forth and defined in the Amended Agreement unless specifically stated otherwise herein.

2. Section 2, “Term,” of the Amended Agreement shall be deleted in its entirety, and replaced with a new Section 2 to read as follows:

2.0 TERM

2.1 Term. The term of this Operating Agreement ("Term") shall be for a period of five (5) years. The Term shall commence on January 1, 2018 ("Agreement Commencement Date"). The Operating Agreement shall expire on December 31, 2022 ("Agreement Expiration Date"), unless sooner terminated pursuant to the terms of this Operating Agreement.

2.2 Holdover. Upon expiration or sooner termination of this Operating Agreement, Operator shall surrender the Airport Movement Areas and Airfield Improvements to Town in as good, safe, and clean condition as practicable, reasonable wear and tear and acts of God excepted. The Operating Agreement shall terminate without further notice at the expiration of the Term. Any holding over by Operator after expiration shall not constitute a renewal or extension, or give Operator any rights in or to the Airport Movement Areas, except as expressly provided in this Operating Agreement.

3. Paragraph 4.2.2, "Monthly Fee," of the Amended Agreement shall be deleted in its entirety, and replaced with a new Paragraph 4.2.2 to read as follows:

4.2.2 Monthly Fee. Operator shall pay to Town a monthly fee of three thousand three hundred thirty-five and no/100s dollars (\$3,335.00) during the Term of the Operating Agreement ("Monthly Fee"). Said Monthly Fee shall be paid on the first day of each and every month during the Term of the Operating Agreement, and shall be payable to Town at the address as set forth in the Notice provision in Paragraph 18.1.1.

4. Paragraph 4.4, "Airport Operating Expenses," of the Amended Agreement shall be deleted in its entirety, and replaced with a new Paragraph 4.4 to read as follows:

4.4 Airport Operating Expenses. The Parties hereto acknowledge that it is their intent that all routine costs associated with the operation, management and/or maintenance of the Airport and the Airport Movement Areas and/or Airfield Improvements, including but not limited to taxes, insurance, and maintenance costs, are entirely the Operator's obligation, whether directly or as delegated to a third party.

As used in this Operating Agreement, the term "Operating Expenses" shall mean all reasonable and necessary operating and other costs incurred or expended by Operator in connection with or in any manner relating to the operation of the Airport, as well as all reasonable and necessary expenses incurred in connection with the operation, management and maintenance of the Airport Movement Areas, including (without limitation) the use, operation, repair and maintenance thereof. Operating Expenses shall specifically exclude the payments due hereunder as required by Paragraphs 4.2.1, 4.2.2, 4.2.3, and 4.2.5.

Without limiting the foregoing, “Operating Expenses” shall be reasonable and as required and customary for airports in the metropolitan Denver area of similar size and usage, and shall be deemed to generally include the following expenses, which shall be calculated in accordance with Generally Accepted Accounting Principles (“GAAP”): (i) the cost of all operating equipment, operating supplies, inventories, wages, salaries and employee fringe benefits, advertising and promotional expenses, the cost of personnel training programs, utility and energy costs, operating licenses and permits, security costs, and grounds and landscaping maintenance costs; (ii) all expenditures made for maintenance and repairs to keep the Airport and the Airport Movement Areas in good condition and repair; (iii) premiums and charges on all insurance coverages specified in Section 9.0 of this Operating Agreement; (iv) all impositions and other property taxes and assessments levied on or attributable to the Airport and the Airport Movement Areas; (v) audit, legal and other professional or special fees reasonably and necessarily incurred in the management and operation of the Airport and the Airport Movement Areas; and, (vi) rentals payable under equipment leases of any fixtures, furnishings and equipment. Operating Expenses shall not include payments of services made to affiliates of Operator that are not commercially reasonable, or Debt Service or Capital Expenditures as such terms are defined in GAAP. Operating Expenses exclude any expenses currently incurred by the Operator for its existing business activities at the Airport which pre-date this Operating Agreement.

For purposes of this paragraph, the failure of equipment or airport assets which cannot be repaired or replaced for less than a combined total for all repairs within a calendar year of \$5,000 will be deemed to be an extraordinary cost for which the Operator shall not be responsible, except for any failure that was the result of Operator’s failure to perform its duties under this Operating Agreement. Airport equipment and assets include but are not limited to Runway and Airport lighting components and regulators, Aviation 100LL and Jet A fuel tanks and pumping systems, town owned snow removal and mowing equipment, Airport Automated Weather Observation System (AWOS), runway and taxiway markings, airport fencing, gates and signage, Airport Terminal FBO building, and airport surfaces, including runways, ramps, and taxiways.

Routine maintenance to airport equipment or airport assets are the responsibility of the operator. Examples of routine maintenance include but are not limited to Runway and Airport lighting system bulbs, globes and frangible base replacements, Aviation 100LL and Jet A fuel system filters and hoses, town owned snow removal and mowing equipment oil, filter and fluid changes, required tri-annual inspections of the Airport Automated Weather Observation System (AWOS) and replacement of backup power source batteries, minor repairs to airport fencing, gates and signage, Airport Terminal FBO building lighting, replacement of windsock and windsock lighting.

5. Paragraph 8.1.2, "Existing Equipment and Rolling Stock," of the Amended Agreement shall be deleted in its entirety, and replaced with a new Paragraph 8.1.2 to read as follows:

8.1.2 Equipment and Rolling Stock. Town shall provide Operator with the equipment and rolling stock, if any, to be furnished by Town as described in Exhibit "D" (Equipment and Rolling Stock), which is attached and incorporated by this reference.

6. Exhibit "D," "Existing Equipment and Rolling Stock," of the Amended Agreement shall be deleted in its entirety and replaced with a new Exhibit "D," "Equipment and Rolling Stock," as set forth in Attachment 1, attached hereto and incorporated herein by this reference.

7. Exhibit "E," "Operator Authority and Obligations," of the Amended Agreement shall be deleted in its entirety and replaced with a new Exhibit "E," "Operator Authority and Obligations," as set forth in Attachment 2, attached hereto and incorporated herein by this reference.

8. In the event of any conflict, inconsistency or incongruity between the provisions of this Third Amendment and any of the provisions of the Amended Agreement, the provisions of this Third Amendment shall in all respects govern and control.

9. Except as specifically amended herein, all other terms and conditions of the Amended Agreement shall remain in full force and effect.

[Signatures on following page]

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

TOWN:
TOWN OF ERIE, COLORADO,
a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy Parker, Town Clerk

OPERATOR:
VECTOR AIR MANAGEMENT, LLC,
a Colorado limited liability company

By: _____
Jason Hurd, Manager and Member

ATTACHMENT 1

EXHIBIT "D"

EQUIPMENT AND ROLLING STOCK

One (1) Volvo L90H Wheel Loader, having a Vehicle Identification Number of VCE0L90HL0S623472 with the following attachments:

- 1ea. Bucket attachment
- 1ea. Gjerstad 20 foot snow plow attachment
- 1ea. Forklift attachment

One (1) Kubota L6060HSTC Tractor s/n 42463 with the following attachments:

- 1ea. Kubota L4477 Sweeper attachment
- 1ea. Kubota L2184 Snow Plow Blade
- 1ea. Land Pride RC2515 Mower Deck
- 1ea. Land Pride RC2596 Mower Deck

ATTACHMENT 2

EXHIBIT "E"

OPERATOR AUTHORITY AND OBLIGATIONS

MAINTENANCE

1. Runway, taxiway, intersection and threshold, sign repair, bulb replacement.
2. Mow and edge all grass areas and control weeds on Airport property.
3. Maintenance and repair of vehicle entrances.
4. Maintenance and repair of gates.
5. Maintain all signage.
6. Keep all areas clean of debris and litter.
7. Enforce all airport rules and regulations, and propose new Airport rules and regulations which Operator believes would promote safety or efficiency.
8. Coordinate with the Town regarding maintenance of all concrete and asphalt surfaces.
9. Take care of all aspects of storm water monitoring for Water Quality, including yearly permitting, State required monthly inspections and yearly reporting.
10. File reports and documents for spraying weeds and applying pesticides.
11. Runway Inspection - daily reporting, as required.
12. Maintenance for runway and taxi system regulators, relays, transmitters for pilot-controlled lighting.

GENERAL

1. Assist the Town in developing annual Airport operating budgets for Town approval.
2. Account for all income and expenses associated with the Airport.
3. Hire, oversee and manage all vendors for the Airport.
4. Coordinate with the Town to purchase all materials and equipment for use at the Airport.
5. Hire, oversee and manage all technical service providers for the Airport (architect, engineers, contractors, etc).
6. Manage Airport personnel.

7. Market new and future hangar development and Airport improvements to potential tenants.
8. Manage the leasing program for all facilities at the Airport.
9. Undertake property management and payment of maintenance, insurance, taxes and utilities associated with the Airport.
10. Provide NOTAMS and monitor Airport radio.
11. Keep daily safety reports and periodic inspections.
12. Oversee wildlife management at the Airport.
13. Plow and clear snow from runways, taxiways, gate entrance area, parking areas and around the FBO building.
14. Sell fuel, maintain and inspect the fuel system.
15. Comply with all FAA grant assurances.
16. Manage ramps and manage, operate, maintain, repair & replace worn or broken aircraft tie-down areas, cables and fasteners.
17. Repair and replace signage and light bulbs on the runway and maintain and repair the lighting system.
18. Provide inspection, maintenance, repair, and calibration of the PAPI, AWOS and REIL systems.
19. Develop emergency plans that shall include coordination with the Town Police Department and the Mountain View Fire Protection District, and other off-Airport resources, as may be required to address any incident or emergency at the Airport.
20. Maintain a wind sock.
21. Coordinate with utilities (i.e., Xcel, Comcast, and Town of Erie Water and Sewer).
22. To the extent possible in compliance with FAA database requirements, keep records of aircraft on field for filing, billing and security reasons on a regular basis
23. Maintain landscaping, irrigation systems, fencing and parking lots.

24. Coordinate and enforce all agreements including subleases and through-the-fence agreements.
25. Enforce all EIK rules, regulations and minimum standards.
26. Maintain FAA certification to the extent FAA airport certification rules apply to the Airport at any time.
27. Bill for and collect all Through the Fence Fees.
28. Perform 6 year CIP Planning (coordinating with the CDOT Dept of Aeronautics and presenting to Town board of Trustees)
29. Grant Applications and Planning (CDOT Dept of Aeronautics and FAA)
30. Consultant Management
31. Coordinate with the Town to process Grants
32. Create Board of Trustees Memos and Presentations to Board of Trustees regarding the Airport
33. Attend Monthly meetings with Town staff as required by Paragraph 8.2.2 of the Amended Agreement
34. Correspondence with FAA and CDOT Dept of Aeronautics
35. AWOS Contracts/Evaluating AWOS Maintenance Proposals
36. Development Review
37. Coordinating Vector Control
38. Address miscellaneous Questions/Task as directed by the Town Board of Trustees and Airport Users
39. Coordinate CDOT Dept of Aeronautics Yearly Inspections
40. Order parts and equipment necessary.
41. Project Management (includes meetings with airport users, board memos and presentations, processing design contracts, FAA Independent Fee Analysis, Fee Reviews, consultant management, Design Meeting, Plan Review, Pre Bid Meeting and preparation,

Bid Opening, Construction Contract processing, Preconstruction Meeting, Construction Meetings, processing pay estimates and change orders, participating in final walk through and developing punch list items, and project closeout with the FAA and CDOT Dept of Aeronautics)

42. Sweeping - Airport and surrounding area
43. Terminal Building, Building Maintenance – Perform basic Water, Plumbing and other repairs as needed
44. Annual walk through at airport site with insurance provider.
45. Comply with TSA regulations and requirements.
46. Coordinate with the Town website administrator to provide Airport information, services and events on the Town website.
47. Periodic testing and certification of the Fuel Tanks and Fuel Farm which may be required by any governmental agency or as a condition to insurance
48. Work with town staff with the goal of securing a long term lease on the FBO building at a rate that allows for a significant renovation of the terminal building and hangar.

