

## **Management and Operating Agreement**

This Management and Operating Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of \_\_\_\_\_ (the "Town") and Vector Air Management, LLC, a Colorado limited liability company with an address of \_\_\_\_\_ ("Operator") (each a "Party" and collectively the "Parties").

Whereas, the Town is the owner and operator of the Erie Municipal Airport, more particularly described in **Exhibit A**, attached and incorporated by this reference (the "Airport");

Whereas, on July 1, 2011, the Parties executed a Management and Operating Agreement for the Erie Municipal Airport which Original Agreement was amended in 2011, 2016 and 2017 (collectively the "Original Agreement");

Whereas, the Parties wish to enter into this Agreement and terminate the Original Agreement; and

Whereas, Operator is qualified and willing to provide the following services: (i) the operation, management and maintenance of the movement areas of the Airport and Existing Airfield Improvements, as depicted on **Exhibit A-1**, attached and incorporated herein by this reference, and (ii) to develop and construct New Airfield Improvements as may be required to provide for the efficient, safe and orderly operation of the Airport.

Now, therefore, in consideration of the respective promises and mutual agreements, covenants and conditions herein, receipt of which is hereby acknowledged, the Parties agree as follows:

**1.0 Definitions.** For purposes of the Agreement, the following terms shall have the following meanings:

- 1.1 "Agreement for Services" means the agreement entered into by and between the Town and Vector Aircraft Services, LLC, dated March 24, 2009, providing for Vector Aircraft Services, LLC, an affiliate of Operator, to be responsible for certain services to the Airport.
- 1.2 "Airfield Improvements" means the Existing Airfield Improvements and New Airfield Improvements together, as defined herein.
- 1.3 "Airport Layout Plan" means the plan approved by the Federal Aviation Administration ("FAA") showing the layout of the physical areas of the Airport.
- 1.4 "Airport Movement Areas" means the movement areas of the Airport and Existing Airfield Improvements as depicted on **Exhibit A-1**, attached hereto and incorporated herein by this reference. In addition, the Airport Movement Areas shall incorporate any New Airfield Improvements constructed pursuant to this Agreement.
- 1.5 "Code" means the Erie Municipal Code, as amended.

- 1.7 "CDOT" means the Colorado Department of Transportation, Division of Aeronautics.
- 1.8 "Environmental Statutes" means: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* ("CERCLA"); the Solid Waste Disposal Act, 42 U.S.C. §6901 *et seq.*, as amended by and including the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA"); Superfund Amendments and Reauthorization Act of 1986, Public Law No. 99-499 ("SARA"); Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.* ("TSCA"); the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended; the Safe Drinking Water Act, 42 U.S.C. § 300f-300j; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Hazardous Materials Transportation Act, as amended; the Federal Water Pollution Control Act, the Rivers and Harbors Act of 1899, 33 U.S.C. § 401 *et seq.*; (x) the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*; the Refuse Act, 33 U.S.C. §407 *et seq.*; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §1101 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; and all Colorado Hazardous Waste control laws, safe drinking water acts, water quality acts, and Hazardous Substances acts.
- 1.9 "Existing Airfield Improvements" means all the improvements that exist on the Airport Movement Areas as of the Effective Date, as shown on **Exhibit A-1**.
- 1.11 "Fuel Tanks" means the above-grade 12,000 gallon fuel tanks located in the area designated on **Exhibit A-1**.
- 1.12 "GAAP" means the Generally Accepted Accounting Principles applicable to municipal governments as promulgated by the Governmental Accounting Standard Board ("GASB") or other sources required by GASB or its successor.
- 1.13 "Hazardous Materials" means any material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Statutes, or any other hazardous or toxic wastes or substances or other substances or materials which are now or in the future included under or regulated by any Environmental Statute or adopted by the United States Environmental Protection Agency, including petroleum and petroleum products and all hazardous or toxic substances or wastes, any substances which because of their quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including any asbestos (whether or not friable) and any ACM, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants and plating wastes, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes; provided, however, except as provided otherwise in immediately following sentence, the term "Hazardous Materials" shall not include reasonable quantities

of the foregoing substances used or stored at the Airport Movement Areas in compliance with all Environmental Statutes and in the ordinary course of operating and maintaining a general aviation airport (including common cleaning supplies located at the Airport Movement Areas).

- 1.14 "New Airfield Improvements" means any improvements constructed by Operator, for the benefit of the Town and the Airport, within the Airport Movement Areas and in accordance with the terms of this Agreement.
- 1.15 "Calendar Year" means the period beginning with the Effective Date and ending on December 31 of that same year, and then for each subsequent year, January 1-December 31.
- 1.16 "Net Revenues" means all revenues and income of any nature derived from the items set forth in the Management Fee, minus Operating Expenses.
- 1.17 "Operating Expenses" means 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 Sections 4.2.1, 4.2.2, 4.2.3., and 4.2.5.
- 1.18 "Unavoidable Delays" means delays due to strikes, lockouts, litigation stay orders, acts of God, inability to obtain labor or materials, governmental acts or restrictions, enemy action, civil commotion, fire, terrorism, acts of war, unavoidable casualties or any other causes beyond the reasonable control of Operator or the Town.

**2.0 Term.** The term of this Agreement shall be for a period of 5 years (the "Term"), commencing on the Effective Date and expiring on \_\_\_\_\_, unless sooner terminated as provided herein. Upon expiration or termination of this Agreement, Operator shall surrender the Airport Movement Areas and Airfield Improvements to the Town in as good, safe, and clean condition as practicable, reasonable wear and tear excepted. Any holding over by Operator shall not constitute a renewal or extension or give Operator any rights in or to the Airport Movement Areas.

### **3.0 Title to Improvements; Entry.**

- 3.1 Title. All Existing Airfield Improvements and New Airfield Improvements shall at all times during the Term be and remain the property of, with title being in the name of the Town for all purposes.
- 3.2 Entry. The Town reserves the right to enter the Airport at any time for any purpose necessary. The Town shall have the right to use any and all means which the Town may deem proper in an emergency, without any liability to Operator except for failure to exercise due care for Operator's property.

#### **4.0. Consideration.**

##### **4.1 Management Fee.**

- 4.1.2 **Tie Downs.** Operator shall retain all revenue realized from the rental of tie-downs numbered 11 through 37, and 40 through 46, as designated on **Exhibit A-1** and such additional new tie-downs as may be added during the Term. The Town shall set the tie-down rental rate from time to time pursuant to the Code and to FAA regulations and requirements. Operator may propose its recommendation for the amount of the tie-down rental rate to the Town, however, the determination of the tie-down rental rate and the establishment of the tie-down rental rate shall be at the commercially reasonable discretion of the Town, in accordance with its Code and with FAA regulations and requirements. Operator's right to the revenue for such tie-downs shall terminate at the end of the Term. No other tie-downs in any other location on the Airport are permitted for use by Operator, unless agreed to in writing in advance by the Town.
- 4.1.3 **Fuel Sales.** Operator shall keep all profits from fuel sales after payment of the expenses related to fuel sales, service and maintenance, subject to payment of the Fuel Flowage Fee. Operator's right to the revenue of such fuel sales shall terminate on the Agreement Expiration Date. Operator may set and adjust retail fuel prices, and offer such discounts as it believes appropriate, in its commercially reasonable discretion.
- 4.1.4 **Fuel Tanks.** The Town hereby grants to Operator a royalty-free license to use the above-ground Fuel Tanks as depicted on **Exhibit A-1**, subject to the terms and restrictions as set forth herein, which license shall terminate or expire when this Agreement terminates or expires. Operator shall have sole responsibility for the maintenance of the Fuel Tanks and shall keep the same in good operating condition. Operator shall contract with the fuel vendors; arrange for delivery of all fuel; oversee the transfer of fuel from supply trucks to the fuel farm; pay for all fuel delivered to the fuel farm; sell and collect payment for fuel sold from the fuel farm; collect and pay all state and federal taxes and other costs directly associated with the sale of fuel from the fuel farm; manage the fuel farm and island; perform daily maintenance of the fuel system; maintain and repair the above-ground and below-ground fuel equipment, including point-of-sale equipment, hoses, and nozzles. Operator shall download the automated fuel system leak check report monthly and keep a logbook of the entries. When the State Fuel Inspector visits the Airport for inspections, Operator shall show the Inspector the areas the Inspector is in need of locating. For purposes of this Agreement, replacement of hoses, nozzles, filters and other parts necessary to the day-to-day functioning of the above-ground and below-ground fuel equipment shall be considered to be maintenance and repair.

- 4.1.5 Through the Fence Fees. Operator shall receive the proceeds from the collection of the Through the Fence Fees ("TTF Fees"). Operator's right to the revenue of such TTF Fees shall terminate on the Agreement Expiration Date. The Town shall set the amount of the TTF Fees from time to time pursuant to the Code and to FAA regulations and requirements. Operator may propose its recommendation for the amount of the TTF Fee to the Town, however, the determination of the TTF Fee and the establishment of the TTF Fee shall be at the sole discretion of the Town, in accordance with its Code and with FAA regulations and requirements. Operator shall collect the TTF Fees from the users of the Airport as required by the Code and by FAA regulations and requirements.
- 4.1.6 Other Sources. Operator shall keep the proceeds from other sources of revenue that Operator may create at the Airport in conformance with the obligations of this Agreement. Operator's right to the revenue from these other sources shall terminate on the Agreement Expiration Date.
- 4.2 Payments to the Town.
- 4.2.1 Fuel Flowage Fee. Operator shall pay monthly to the Town a fuel flowage fee per gallon of fuel for all gallons sold by Operator at the Airport. The Fuel Flowage Fee for the Term shall be \$0.07 per sold gallon of fuel. The Fuel Flowage Fee is payable based solely upon the number of gallons of fuel sold by Operator at the Airport.
- 4.2.2 Monthly Fee. Operator shall pay to the Town a monthly fee of \$3,335.00 during the Term of the Agreement ("Monthly Fee"). Said Monthly Fee shall be paid on the first day of each month during the Term of the Agreement and shall be payable to the Town at the address as set forth in the Notice provision herein.
- 4.2.3 Portion of Net Revenues. Operator shall pay to the Town 50% of the Net Revenues realized by Operator from the Management Fee, over and above the initial \$86,000 of Net Revenues realized by Operator per Calendar Year during the Term. The distribution of Net Revenues, if any, for each Calendar Year or part thereof, shall be determined by Operator on a preliminary basis, and verified and adjusted as a result of the annual audit. The amount determined on the preliminary basis shall be distributed to the Town by Operator no later than 90 days following the end of the Calendar Year. Once the audited amount is determined, the corrected amount (or difference) shall be paid to the Town or repaid to Operator within 30 days after the financial statements are issued. Neither the Monthly Fee or Fuel Flowage fee are included in the Net Revenues.
- 4.2.4 Town Staff Time. If Operator fails to perform its obligations hereunder, Operator shall pay to the Town the actual cost of any Town staff time spent performing any such obligations ("Town Staff Time"), as well as the

actual cost of any Town Staff Time for Town staff work requested by Operator during the Term. The actual cost of any Town Staff Time shall be determined by the hourly rate (including overtime, if applicable), times 1.3. Town Staff Time shall be billed to Operator and shall be payable within 30 days.

4.2.5 Interest. Any fees, payments and expenses due hereunder not paid to the Town by Operator when due shall earn interest at the rate of 12% per annum.

4.2.6 Payment for Services. Operator shall be responsible for payment of all fees and costs of utility services (AWOS system, water, sewer, electric, gas, trash, telephone, internet, cable television, etc.) as used by Operator on the Airport, either directly to the utility provider if the Airport is separately metered or billed, or to the Town if utilities are provided to the Airport without separate meter or billing for the Airport. Operator shall pay, prior to delinquency and directly to the applicable supplier, for all services and utilities supplied to the Airport and separately metered or billed, together with any taxes thereon. If any services are not separately metered or billed to Operator, Operator shall pay to the Town the cost of the services billed to the Town. Operator shall arrange in advance for the transfer all services into the name of Operator for such billing purposes, to be effective on the Effective Date.

4.3 Operating Expenses. All routine costs associated with the operation, management and maintenance of the Airport and the Airport Movement Areas and Airfield Improvements, including without limitation taxes, insurance, and maintenance costs, are entirely Operator's obligation, whether directly incurred or delegated to a third party.

4.3.1 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 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; (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 for services made to affiliates of Operator that are not commercially reasonable, or Debt Service or Capital Expenditures as such terms are defined in GAAP.

- 4.3.2 For purposes of this Section, 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 Operator shall not be responsible, except for any failure that was the result of Operator's failure to perform its duties under this 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.
- 4.3.4 Routine maintenance to airport equipment or airport assets are the responsibility of Operator. Examples of routine maintenance include without limitation 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.
- 4.4 New Agreements. The Town is expressly prohibited from entering into any new agreements, leases, contracts or other arrangements with third parties with respect to the Airport Movement Areas during the Term. This prohibition excludes any agreements required by the FAA. Operator is authorized to terminate, renew, negotiate and enter into new agreements, leases, contracts or other arrangements with respect to the Airport Movement Areas and New Airfield Improvements during the Term, and to bring any legal action necessary to enforce any such agreement; provided, however, that any new agreements, leases, contracts or other arrangements with third parties with respect to the Airport Movement Areas or New Airfield Improvements shall be subject to the prior written approval of the Town, which approval may be withheld in the reasonable discretion of the Town.
- 4.5 Agreement for Services. As of the Effective Date, the Agreement for Services shall be terminated.

## **5.0 Improvements/Alterations.**

5.1 Capital Improvement Plan. Operator shall prepare and file with the FAA, as and when required by the FAA, a Capital Improvement Plan ("CIP"), which shall seek to improve, modernize and renovate Existing Airfield Improvements and develop and construct New Airfield Improvements, so as to provide for the efficient, safe and orderly operation of the Airport. Upon FAA approval of a CIP, Operator shall promptly thereafter deliver to the Town a copy of each such CIP.

5.1.1 Implementation. As the Parties may agree, Operator shall diligently, and subject to the receipt of the airport aid referenced in Section 5.1.2, use reasonable efforts to implement the existing CIP and continue such implementation until such time as the FAA shall approve a subsequent CIP for the Airport prepared by Operator. Notwithstanding the foregoing, and subject to FAA approval, if required, Operator may alter the existing CIP by making changes to the nature and phasing of individual projects within the CIP.

5.1.2 FAA Grants and Government Financing. The Town encourages, authorizes and charges Operator to seek funding from the FAA for improvement and upgrade of the Airport Movement Areas and Airfield Improvements, and shall consider such funding proposals brought to it by Operator. Further, the Town agrees to cooperate, to the extent required, and assist Operator in securing other types of applicable government financing for the Airfield Improvements during the Term. Operator agrees to be primarily responsible in the application for and administration of such funding, and the Town shall assist Operator as necessary. The Town shall be solely responsible for serving as the sponsor of such funding and for the payment of the sponsor's share. The Parties agree that any federal or state funds received shall be disbursed and accounted for in accordance with the terms and conditions of the applicable grant or loan program.

5.1.3 FAA Funding. Notwithstanding anything contained herein to the contrary, in no event shall Operator be deemed to have any obligation in this Agreement to undertake any project or portion thereof, in an approved CIP, unless and until FAA funding is available to finance such improvements and the Town has committed to the sponsor's share of the funding such that the entire project is fully funded. In no event shall Operator be obligated to finance any portion of the renovation of Existing Airfield Improvements or the construction of New Airfield Improvements.

5.1.4 Operator Investment. If the Town is unable to fulfill the FAA funding requirements contained in Section 5.1.3, Operator may elect to pay the FAA's required sponsor's share up to an amount not exceeding \$5,000 per year on behalf of the Town. Operator shall have no authority to pay the FAA's required sponsor's share in any amount exceeding \$5,000 on behalf of the Town without first obtaining the prior written permission and consent



of the Town, which consent may be withheld in the reasonable discretion of the Town. In the event Operator makes such a permitted investment, all amounts paid by Operator shall be considered to be a loan and shall be repaid to Operator as funds are available to the Town for repayment. However, in no event shall the Town commit to fund or repay more than the Town has currently available to spend on the project.

## 5.2 Construction.

- 5.2.1 Generally. The Town hereby grants to Operator the right and power to renovate or construct Airfield Improvements within the Airfield Movement Areas in accordance with an approved CIP. Operator agrees to construct Airfield Improvements in accordance with the terms of this Section 5.2 and once commenced, to use reasonable efforts to cause the completion of Airfield Improvements.
- 5.2.2 Plans and Specifications. If required by any governmental agency, Operator shall prepare working drawings and specifications ("Plans"), submit them to the appropriate governmental agencies for approval, and shall deliver to the Town one complete set as approved by such governmental agencies. Operator must comply with all Town Code and UDC requirements, as well as all building permit and building code construction requirements.
- 5.2.3 Notice of Intent to Construct. Operator shall notify the Town of Operator's intention to commence work on Airfield Improvements at least 30 days before the commencement of any such work.
- 5.2.4 Completion. Once any work on the Airfield Improvements is begun, Operator shall, with reasonable diligence, secure completion of all construction of Airfield Improvements. All work shall substantially comply with all legal requirements, permitted use requirements set forth in Section 7.0 and insurance requirements set forth in Section 9. Any work performed by Operator shall be deemed to have satisfied the foregoing if such new work has been approved in writing by the applicable governmental agencies, including the Town, with jurisdiction over same.
- 5.2.5 Ownership. On completion of Airfield Improvements, Operator shall timely file, or cause to be filed, a notice of completion with Town. Airfield Improvements shall remain the property of Operator until accepted by the Town. All Existing Airfield Improvements and any New Airfield Improvements shall remain the sole and separate property of the Town.
- 5.2.6 Runway 9/27. Operator shall not perform or authorize any Capital Improvement, maintenance, repair, construction, demolition, upkeep, snow removal or work of any kind on Runway 9/27 without first obtaining the approval of the Town's Board of Trustees authorizing such work or action. The only exceptions to this requirement shall be that Operator may eradicate weeds and mow grass on Runway 9/27 and may remove snow

and FOD from the portions of Runway 9/27 used as taxiway without first obtaining such approval and authorization.

5.3 Alterations. At any time during the Term, Operator is authorized to make such changes and alterations, structural or otherwise, to the Airport Movement Areas and Airfield Improvements as Operator, subject to FAA approval, shall deem necessary or desirable, ("Alterations"). All Alterations shall be in conformance with the Airport Layout Plan and the CIP and shall be subject to the same terms and conditions as set forth in this Section 5.

5.4 Bonds. Operator shall require appropriate performance bonds by third parties in connection with any work, labor, services or materials provided in connection with the Airfield Movement Areas or Airfield Improvements.

**6.0 Use.** The Parties intend that the Airport Movement Areas shall continue to be operated as a municipal airport during the Term in substantially the same manner as the Airport Movement Areas have been operated prior to the Effective Date, subject to the terms and provisions hereof. Upon performance of the agreements, provisions and conditions contained in this Agreement, Operator will have the use of the Airport Movement Areas for the purposes of the operation and maintenance of the Existing Airfield Improvement, for the construction and operation of the New Airfield Improvements, and for other business activities directly related.

## **7.0 Responsibilities.**

7.1 Town. The Town shall be responsible for providing the following to and for the benefit of the Airport Movement Areas during the Term:

7.1.1 FAA Grants and Government Financing. In accordance with the terms and conditions of this Agreement, Town will consider, in the exercise of its reasonable discretion, funding from the FAA during the Term, as such funding is necessary and appropriate to improve and upgrade the Airport Movement Areas. Moreover, the Town agrees to cooperate to extent required to assist Operator in securing applicable government financing for the Airfield Improvements during the entire Term hereof once the Town has agreed to the improvements and upgrades, subject to the availability of matching funds.

7.1.2 Equipment and Rolling Stock. The Town shall provide Operator with the equipment and rolling stock, if any, to be furnished by Town as of the Effective Date as described in **Exhibit C**, attached hereto and incorporated by this reference.

7.2 Operator. Operator shall manage and operate the Airport as a public airport, and perform all work and furnish all services required for such operation, in an orderly and proper manner and in accordance with all applicable federal, state and local laws, rules and regulations, FAA agreements, FAA and state assurances, FAA grant assurance, TSA regulations and requirements, Erie Airport Rules and Regulations,

and the terms and conditions of this Agreement. The intent of this Agreement is to have Operator be 100% responsible for all management, maintenance and operations at the Airport - to provide a "turnkey" operation of the Airport, and that Operator is authorized to take all actions necessary to manage, operate and maintain the Airport. Operator shall be solely responsible for providing the following to and for the benefit of the Airport Movement Areas during the Term.

- 7.2.1 Operator Services. Operator is authorized and required to perform the responsibilities for management and operation of the Airport in accordance with the operation of a first-class airport of similar size and type located in the Denver metropolitan area, and in accordance with all FAA rules, regulations, grant assurances and requirements. Operator, by way of example and not of limitation, shall perform those roles and responsibilities as set forth on **Exhibit D**, attached hereto and incorporated by this reference.
- 7.2.2 Airport Movement Areas. Operator is responsible for and authorized to ensure that the Airport Movement Areas are maintained and operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state and local agencies for maintenance and operation.
- 7.2.3 Airfield Maintenance. Operator is authorized to and shall maintain, repair and keep in good working order all runways, tarmacs, taxiways, and other areas of the Airport Movement Area. More specifically, Operator shall be required to undertake, at a minimum, the maintenance obligations set forth in **Exhibit D**.
- 7.2.4 Airfield Improvements. Operator is authorized and directed to seek funding from the FAA to maintain, improve and modernize the Existing Airfield Improvements and to construct New Airfield Improvements, as necessary and appropriate, subject to the availability of matching funds, and shall develop, construct and manage such Airfield Improvements.
- 7.2.5 FAA Certification. Operator shall maintain FAA certification to the extent FAA airport certification rules apply to the Airport at any time.
- 7.2.6 Recordkeeping. Operator shall be required to maintain separate financial accounting records to properly record and categorize expenses incurred in connection with this Agreement on a basis that is consistent with GAAP and of sufficient detail to assure the Town of the safeguarding of the assets being managed, and in accordance with the standards required by the FAA. The Town or its agent shall have the right, at the Town's expense and at reasonable times upon prior notice to Operator, to examine the books and records of Operator.
- 7.2.7 Annual Audit and Financial Statements. Operator understands that its activities pursuant to this Agreement may result in the activities being

accounted for as a Fund or as a Component Unit of Town under GAAP, which requires Operator to maintain separate records for its specific activities under this Agreement. Operator shall meet with Town's independent auditors prior to the Effective Date and determine the record-keeping necessary to legally account for its performance under this Agreement. Operator agrees to maintain such records in a format suitable to Town's auditors and to make those records available to the auditors no later than 90 days after December 31 of each Calendar Year. The audited account balances from Operator's records will then be provided by the auditors to Town Staff. At the Town's expense, Town Staff will be responsible for preparing the Airport Fund's financial statements and related footnotes and other information in accordance with GAAP. Operator agrees to cooperate with Town Staff in the preparation of this information. Operator shall be required to maintain any applicable books and records for such period of time as requested by the auditors. Operator's records shall include a list of all expenses and revenues, and a clear accounting of Town Staff Time directly related to the Agreement responsibilities of Operator.

- 7.2.8 Airport Personnel. Operator is authorized and responsible for the hiring, discharge, management, training and all other matters relating to personnel required to operate and maintain the Airport and Airport Movement Areas pursuant to this Agreement. Operator is authorized and responsible for ensuring that airport personnel receive all FAA and state-required training throughout the Term. Operator shall have controls in place for allocating its personnel time between activities performed outside of the Agreement, and activities performed pursuant to this Agreement.
- 7.2.9 Emergency Plans. The Town of Erie Local Emergency Operations Plan ("LEOP") provides general guidelines and principles for managing and coordinating the Town's overall mitigation, preparedness, response and recovery activities before, during and after emergencies and disasters that affect the Town including Erie Municipal Airport. Operator shall designate a member of Operator's on-airport staff responsible for emergency preparedness activities; this staff member shall be responsible for maintaining and developing emergency plans that shall be included in the Town's LEOP. This staff member shall work in coordination with the Town of Erie Emergency Manager, the Town of Erie Emergency Preparedness Coordinator, Erie Police Department and the Mountain View Fire Protection District as well as other off-airport resources that may be required in the event of an emergency on the Airport. All emergency communications shall be in accordance with the Town's LEOP and shall be conducted in coordination with the Town's Information Coordinator.
- 7.2.10 Community Relations. Operator shall develop a community relations program, including the designation of a member of Operator's on-airport

staff responsible for community liaison activities. Such community relations program shall be presented to the Town within 120 days following the Effective Date.

- 7.2.11 Noise Abatement Officer. For the purposes of providing and maintaining good relationships with Airport neighbors consistent with safe aircraft operation and applicable law, Operator shall designate a noise abatement officer who shall serve as the primary liaison with the community. The noise abatement officer shall maintain a log of all noise complaints and shall provide information to complaining parties regarding applicable airport noise law. Operator shall publish maps of commonly used Airport traffic entries and patterns depicting the location of noise sensitive areas.
- 7.2.12 Meetings. Operator and Town Staff shall establish a regular meeting schedule, which meetings shall be held no less frequently than once a month. Among other business, at such meetings Operator shall present for review and discussion a written list with a short narrative explanation of maintenance, repair, construction, and demolition work which Operator anticipates being conducted at the Airport in the following 30 days.
- 7.2.13 Reporting. Operator shall report to the Town's Board of Trustees and staff, as the Town requires, with respect to all matters relating to the use and operation of the Airport.
- 7.2.14 General Responsibility. Operator shall be responsible for, and have authority regarding, all management, operations, maintenance and costs associated therewith required for the Airport's operation beyond those specifically listed herein as the responsibility of Town.
- 7.3 Subcontracting. Nothing contained herein shall preclude Operator from subcontracting the performance for any work or services to others or purchasing utilities, supplies or services from others in a prudent manner, provided that the overall administration and control of the Airport and Airport Movement Areas is exercised by Operator. Operator shall contract with and pay any and all subcontractors used by Operator; the Town shall in no event have any liability to any subcontractor, and Operator shall hold the Town harmless with respect to any payments alleged to be due to Operator's subcontractors.
- 7.4 Operator Obligations. Operator shall comply and shall use reasonable efforts to inform and encourage all users of the Airport and Airport Movement Areas to comply with all applicable laws, all regulations imposed by and all other matters relating to the FAA that affect the Airport and Airport Movement Areas, Airport Improvement Program grant assurances, and any other rules or regulations imposed by governmental agencies with jurisdiction over the Airport, including the Town. Operator shall promptly notify the Town of any problems regarding FAA regulations or grant assurances at the Airport.

- 7.5 Closure. The Town shall have the right to temporarily suspend operations at the Airport, in the case of emergencies, for so long as reasonably required to meet the emergency conditions, or as otherwise permitted or required by the FAA for up to 10 calendar days each Calendar Year. The Town shall, except in the case of emergencies, give Operator written notice of any such suspension not less than 30 days prior to the date of such suspension. Except in the case of emergencies, Town shall have no right to suspend operations or close the Erie Airport: (i) for more than 2 times during any 30-day period; or, (ii) for more than 10 days in any Calendar Year, without the prior written consent of Operator, which consent shall not be unreasonably withheld. The Parties acknowledge that the FAA may require closure of the Airport for any length of time for any purpose it deems necessary.
- 7.6 FAA Requirements. The Parties hereby acknowledge and agree that the Airport shall be operated in accordance with the terms and conditions set forth in any applicable FAA grant assurances and as set forth on **Exhibit E**, attached hereto and incorporated by this reference, as well as all FAA regulations and requirements. The grant assurances set forth in **Exhibit E** were provided by the Town as a condition of the Town's acceptance and use of federal grant funds from the FAA. Within the areas of its control and responsibility, Operator agrees to comply with those assurances.

## **8.0 Insurance/Indemnification.**

- 8.1 Operator shall, during the entire Term, procure and maintain, and shall cause any subcontractor of Operator to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to Town in the exercise of its reasonable discretion. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Operator pursuant to this Agreement. In case of any claims made policy, Operator shall procure "tail" insurance for the period Operator performed services under this Agreement to maintain continuous coverage. Operator shall be solely responsible for payment of all deductible payments required by such policies.
- 8.1.1 Worker's Compensation Insurance and Employer's Liability Insurance to cover obligations imposed by applicable laws for any employee of Operator or a subcontractor engaged in the performance of work under this Agreement.
- 8.1.2 Aviation Commercial General Liability insurance with minimum combined single limits of \$5,000,000 each occurrence and \$5,000,000 aggregate. The policy shall be applicable to all premises used by, and operations undertaken by Operator in performing this Agreement. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employees' acts), blanket contractual, products, completed operations,

and hangar keepers' legal liability (as further defined in Section 8.1.3). The policy shall contain a severability of interests provision.

- 8.1.3 The Aviation Commercial General Liability insurance as required herein shall have a sublimit of \$1,000,000 for Hangar Keepers Legal Liability.
- 8.1.4 Comprehensive Automobile Liability insurance within single limits for bodily injury and property damage of not less than \$1,000,000 each occurrence and \$1,000,000 aggregate with respect to each of Operator's owned, hired or non-owned vehicles assigned to or used in the performance of this Agreement. The policy shall contain a severability of interests provision.
- 8.1.5 Storage Tank Guard Liability insurance with minimum combined single limits of \$2,000,000 each occurrence and \$2,000,000 aggregate and self-insured retention of \$5,000 for each incident. The policy shall be applicable to Operator's operations, tank and fueling equipment and ancillary fueling equipment for the Fuel Tanks and shall cover On-Site clean-up of new conditions; third-party claims for on-site Bodily Injury and Property Damage; third-party claims from on-site clean-up from new condition; and third-party claims for on-site Bodily Injury and Property Damage. The policy shall contain a severability of interests provision and name the Town as Additional Insured. The Parties acknowledge and agree coverage will be extended to all newly installed above-ground tank systems as they are placed into operation.
- 8.1.6 Builder's Risk Insurance. Before commencement of any demolition or construction work, Operator shall procure a policy of builder's "all risk" insurance including vandalism and malicious mischief coverage, in a form and with a company reasonably acceptable to the Town, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, to be maintained in force until completion and acceptance of the work.
- 8.2 The policies required herein shall be endorsed to include the Town and the Town's officers and employees as an additional insured. Every policy required above shall be primary insurance. Operator shall be solely responsible for any deductible losses under any policy required above. Operator agrees to waive subrogation against Town in the event of a loss.
- 8.3 A certificate of insurance shall be completed by Operator's insurance agent and provided to the Town as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Town prior to the Effective Date. Such certificates of insurance shall be provided to the Town annually thereafter during the Term. The certificate shall identify this Agreement and shall provide that the coverages afforded under

the policies shall not be cancelled until at least 30 days prior written notice has been given to Town. Operator shall notify the Town within 10 days if the coverages afforded under the policies are materially changed.

- 8.4 Notwithstanding any other portion of this Agreement, failure on the part of Operator to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement for which the Town may terminate this Agreement, or, at its discretion, the Town may elect to continue the Agreement and procure or renew any such policy or any extended reporting period and may pay any and all premiums in connection therewith, and all money so paid by the Town shall be repaid by Operator to Town upon demand, or Town may offset the cost of the premiums against any money due to Operator from Town.
- 8.5 Review of Insurance Requirements. The amount and types of insurance to be maintained pursuant to this Agreement shall be reviewed by the Parties periodically to consider whether, in the Town's reasonable discretion, the amount of coverage shall be increased or decreased and whether the type of coverage should be modified consistent with generally accepted insurance practices of similar airports with comparable operations.
- 8.6 Policies. All insurance shall be issued by insurers of recognized responsibility and licensed to do business in the State of Colorado, by a company (or companies) having a general policyholder's rating in Best's Rating Guide of A- or better. Certificates evidencing all such policies shall be delivered to the Town. All such policies shall contain a non-cancellation clause, except upon 30 days' prior written notice to each named insured and loss payee. All such policies shall contain language to the effect that the insurer waives the right of subrogation against the Town, and the policies are primary and noncontributing with any insurance that may be carried by Operator.
- 8.6.1 All policies shall name the Parties as the insureds as their respective interests may appear.
- 8.6.2 Any loss paid under Builder's Risk Insurance to Operator shall be held by Operator in trust for application first to the Restoration of the Airport Movement Areas and Airfield Improvements to the extent required (with any balance remaining thereafter to become Town's sole property, subject, however, to the rights of any mortgagee). Any loss so paid to the Depository shall be disbursed by it in accordance with the provisions of Section 9 below.
- 8.6.3 Operator shall be entitled to maintain any insurance under a blanket policy or policies of insurance that covers other properties owned, leased or operated by Operator or its affiliates, provided that no insurance required hereunder is limited, decreased or modified as a result thereof (whether as



the result of any co-insurance, excess coverage or other term or provisions of such blanket policy).

8.7 Waiver of Subrogation. Operator waives its right of recovery against the Town for any loss covered by insurance policies required by this Agreement.

8.8 Indemnification. Operator hereby agrees to indemnify and hold harmless the Town, its officers, employees, agents and servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of Operator, or of any other person or entity for whose act or omission Developer is liable, with respect to Operator's activities or obligations under this Agreement (the "Claims"); and Operator shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim arising out of or related to Claims.

## **9.0 Damage to or Destruction of Property.**

9.1 Notice. In case of any material damage to or destruction of the Airport Movement Areas or any part thereof, Operator shall promptly give written notice to the Town generally describing the nature, extent and cause of such damage or destruction.

9.2 Restoration. In case of any damage to or destruction of the Airport Movement Areas or Airfield Improvements or any part thereof, subject to the provisions of Section 5 and Section 9.4 below, Operator shall, subject to the availability of FAA or insurance funds, promptly commence and complete (subject to Unavoidable Delays) the restoration, replacement or rebuilding of the Airport Movement Areas or Airfield Improvements ("Restoration"). These efforts will restore, replace, or rebuild the Airport Movement Areas or Airfield Improvements so that they are equivalent, to the greatest extent possible, to their value, condition and character immediately prior to such damage or destruction, with such Alterations as may be made at Operator's election pursuant to and subject to the terms of this Agreement.

### **9.3 Insurance Proceeds.**

9.3.1 Insurance proceeds received by a Depository shall be paid to Operator according to Depository's standard procedures for disbursing construction loan proceeds, from time to time, as Restoration progresses, to pay (or reimburse Operator for) the cost of Restoration. Any excess (i.e., beyond all sums necessary for such Restoration) shall be paid to the Town as its sole and separate property with respect to Alterations and Airfield Improvements.

9.3.2 Any such Casualty Insurance proceeds paid to Operator shall be applied by Operator first directly toward such Restoration.

9.4 Termination Due to Damage. In the event the Airport Movement Areas shall be damaged as a result of: (i) any casualty during the last year of the Term, to the

extent the Airport Movement Areas cannot be reasonably repaired or restored: or (ii) as a result of any earthquake or other casualty not covered by any insurance that is required to be carried on the Airport Movement Areas, Operator may, subject to the satisfaction of those conditions set forth below, elect to terminate this Agreement and all of its obligations hereunder effective as of the date that is the last calendar day of the (4th month following such event of destruction, provided that such notice of termination must be delivered to the Town within 30 days after the occurrence of such damage or destruction. Operator's right to terminate this Agreement as provided in this Section shall be subject to each of the following conditions:

- 9.4.1 Operator shall give the Town notice of the damage or destruction promptly but not later than 15 days after such event of destruction, detailing facts that qualify the casualty under this provision;
- 9.4.2 Operator delivers possession of the Airport Movement Areas and Airfield Improvements to the Town, and promptly thereafter ceases to operate or do business on the Airport Movement Areas;
- 9.4.3 Operator causes to be discharged all liens and encumbrances resulting from any act or omission of Operator that are not consented to by Town in writing;
- 9.4.4 Operator complies with the provisions of this Agreement relating to the application of insurance proceeds; and
- 9.4.5 Operator uses all available insurance proceeds to pay the costs of removing all debris and remains of the damaged Airfield Improvements from the Airport Movement Areas.

## **10.0 Default.**

10.1 Operator's Default. The occurrence of any one or more of the following events shall be deemed an Event of Default by Operator:

- 10.1.1 Default in the payment of any amount due hereunder on the part of Operator to be paid within the time periods specified herein if such default continues for a period of 5 days after written notice, specifying such default, is given to Operator;
- 10.1.2 Default in the performance of any other covenant or agreement on the part of Operator to be performed hereunder, within the time periods specified herein, but subject to Unavoidable Delays, if such default continues for a period of 30 days after written notice, specifying such default, is given to Operator. However, in the case of a default which cannot with due diligence be remedied by Operator within such period of 30 days, if Operator proceeds as promptly as may reasonably be possible after the service of such notice and with all due diligence to remedy such default, and thereafter prosecutes the remedying of such default with all due diligence,

the period of time after the giving of such notice within which Operator may remedy such default shall be extended for such period as may be necessary to remedy the same with all due diligence (including any period of Unavoidable Delays);

- 10.1.3 The making by Operator of any assignment for the benefit of creditors, the filing by or against Operator of a petition to have Operator adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy or insolvency (unless in the case of a petition filed against Operator, the same is dismissed within 90 days), the appointment of a trustee or receiver to take possession of all or substantially all of Operator's assets or of Operator's interest under this Agreement where possession is not restored to Operator within 90 days, or the attachment, execution or other judicial seizure of all or substantially all of Operator's assets or of Operator's interest under this Agreement, where such seizure is not discharged within 90 days; or
- 10.1.4 Operator's abandonment or surrender of the Airport Movement Areas or any portion thereof.
- 10.2 Town's Remedies. Upon the occurrence of any Event of Default by Operator, the Town may exercise anyone or more of the following remedies, or any other remedy provided in this Agreement or by law or equity, to which Town may resort cumulatively or in the alternative:
- 10.2.1 Termination. The Town may, at its option, terminate this Agreement. Upon such termination, any and all right, title and interest of Operator hereunder in and to the Airport Movement Areas will expire and Operator will then quit and surrender the Airport Movement Areas to Town. Operator will pay and reimburse Town for its reasonable transition costs to replace Operator's contractual obligations. Additionally, Operator agrees to pay Town all monies due and owing to Town under this Agreement as of the date of said termination.
- 10.2.2 Other Remedies. In the event of a default by Operator under this Agreement, the Town has all rights and remedies available to the Town, whether at law or in equity, including the right to terminate this Agreement and the right to recover damages, and the right seek to specific performance of Operator's obligations hereunder.
- 10.3 Town Default. The Town shall be in default in the performance of any covenant or agreement on the part of the Town to be performed hereunder (within the time periods specified, subject to Unavoidable Delays), including without limitation the Town's responsibilities throughout the Term, if such default continues for a period of 45 days after written notice thereof, specifying such default, is given to the Town. However, in the case of a default which cannot with due diligence be remedied by the Town within such period of 45 days, if the Town proceeds as

promptly as may reasonably be possible after the service of such notice and with all due diligence to remedy such default and thereafter prosecutes the remedying of such default with all due diligence, the period of time after the giving of such notice within which Operator may remedy such default shall be extended for such period as may be necessary to remedy the same with all due diligence (including any period of Unavoidable Delays).

- 10.4 Operator's Remedies. In the event of a default by the Town under this Agreement, Operator has all rights and remedies available to Operator, whether at law or in equity, including the right to terminate this Agreement and the right to recover damages. Operator shall not have the right to seek specific performance of the Town's obligations hereunder.

## **11.0 Warranties.**

- 11.1 Town's Covenants, Representations and Warranties. The Town hereby represents, warrants, and covenants to Operator as follows:

11.1.1 The Town has full power and authority to execute this Agreement and neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any agreement to which the Town is a Party or by which it may be bound or any agreement affecting the Airport Movement Areas of which Town has actual knowledge.

11.1.2 Subject to the terms of this Agreement, upon performing all the terms, covenants and conditions of this Agreement on Operator's part to be performed, Operator shall and may peaceably and quietly have, hold, occupy, possess and enjoy the Airport Movement Areas during the Term, subject to this Agreement and applicable FAA regulations and requirements.

- 11.2 Operator's Warranties. Operator hereby represents and warrants to the Town that Operator is a limited liability company, validly in existence and in good standing pursuant to the laws of the State of Colorado and will remain as such during the Term. Operator has the right and power to enter into this Agreement and to perform its obligations hereunder.

## **12.0 Fuel Tanks.**

- 12.1 Fuel Tanks. The Parties acknowledge that the Town has previously installed above-ground aviation Fuel Tanks depicted on **Exhibit A-1**. The Parties agree that the Town owns the Fuel Tanks. The Town hereby grants Operator a license to use the Fuel Tanks, subject to the terms of this Agreement, which license shall terminate or expire when this Agreement terminates or expires.

- 12.2 Testing. The Parties agree that the soil surrounding the above-ground aviation fuel tanks shall be regularly tested for the presence of hydrocarbons and Hazardous Materials. This testing shall be conducted by a qualified, independent testing organization mutually agreed upon by the Parties. The scope of the testing shall be in accord with the recommendations of the testing organization. The

Parties acknowledge that the purpose of the testing shall be to determine if the soil under and around the tanks has been contaminated by hydrocarbons or Hazardous Materials, and, if so, the extent of the contamination and the likely costs of remediating it. If the soil is found to contain hydrocarbons or Hazardous Materials which do not comply with the applicable standards of the U.S. Environmental Protection Agency or the Colorado Department of Public Health and Environment ("CDPHE"), then the Parties shall determine the Party responsible, and the responsible Party shall pay any uninsured cost to have the soil decontaminated so as to comply with applicable Federal and State statutes, regulations and standards and have all leaks in the aviation fuel system repaired.

12.3 Certification. The Town shall meet annually with the Colorado Department of Labor and Employment for certification of the Fuel Tanks.

12.8 Removal and Indemnity by Operator. To the extent required by any Environmental Statute or other applicable law, Operator shall remove any Hazardous Materials that are brought onto or released at the Fuel Tanks site during the Term by Operator, Operator's employees, direct tenants or Subtenants, contractors, licensees or invitees (collectively, "Operator Affiliates") during the Term (collectively, "Operator-Caused Hazardous Materials"). In addition to Operator's obligation to remove any Operator-Caused Hazardous Materials as set forth in the preceding sentence, Operator hereby covenants and agrees to remove any Hazardous Materials which are brought on to the Airport and Airport Movement Areas by Operator and Operator Affiliates.

12.8.1 At any time during the Term, if Operator does not remove any Hazardous Materials from the Airport and Airport Movement Areas that are required to be removed by Operator in accordance with this Agreement, then notwithstanding anything contained herein to the contrary, the Town's remedies shall include, but not be limited to, the remedies set forth in Sections 12.8.1 (a) or 12.8.1 (b) below:

- a) The Town shall have the right and authority, but not the obligation, to undertake Operator's obligations pursuant to Section 18.12 above on behalf of Operator ("Self-Help"), including to remove any such Hazardous Materials from the Airport and Airport Movement Areas. All costs and expenses incurred by the Town in connection with the performance of such actions (including without limitation, attorney fees, costs and other litigation expenses) shall be collectively referred to herein as "Self-Help Costs". The Town shall be entitled to full reimbursement from Operator of all Self-Help Costs.
- b) If, in the Town's reasonable judgment, if the Town is unable to use any portion of the Airport Movement Areas because of the presence or suspected presence of Hazardous Materials (regardless of the original source thereof, unless caused by Town), then the Town shall

have the right, but not the obligation, to terminate this Agreement in its entirety.

- 12.8.2 Operator agrees to defend, indemnify and hold the Town harmless from and against any and all causes of actions, suits, demands or judgments of any nature whatsoever, losses, damages, penalties, expenses, fees, claims, costs (including response and remedial costs), and liabilities (including liabilities arising under a claim of strict liability), including without limitation, attorneys' fees and costs of litigation, arising out of or in any matter connected with: (i) Operator and Operator Affiliates violation of any Environmental Statute or other applicable federal, state or local environmental Law with respect to any Hazardous Materials (other than Town-Caused Hazardous Materials); or (ii) the presence, "release" or "threatened release" of or failure to remove by Operator of Hazardous Materials brought on to the Airport Movement Areas by Operator and Operator Affiliates.
- 12.9 Removal by Town. Excluding only the liability previously assumed by the Operator, the Town shall remove any Hazardous Materials that are brought onto or released at the Airport and Airport Movement Areas during the Term by the Town ("Town-Caused Hazardous Materials"). During the Term, if the Town does not remove any Hazardous Materials from the Airport and Airport Movement Areas that are required to be removed by the Town in accordance with this Agreement, and Operator is unable to use any portion of the Airport Movement Areas because of the presence or suspected presence of Hazardous Materials (regardless of the original source thereof, unless caused by Operator), then Operator shall have the right, but not the obligation, to terminate this Agreement.
- 12.10 Third Parties. To the extent that any Hazardous Materials are discovered on, under or about the Airport and Airport Movement Areas and the presence thereof is attributable to the actions or omissions of any third-party, then Operator shall diligently pursue and use its best efforts to cause such third-party to remove such Hazardous Materials in accordance with all applicable laws (including all applicable Environmental Statutes). If Operator does not diligently pursue and use its best efforts to cause any responsible third-party to remove any Hazardous Materials located at the Airport and Airport Movement Areas which are attributable to such third-party in accordance with this Agreement, the Town shall have the right, but not the obligation, to undertake Operator's obligations pursuant to this Section on behalf of Operator, including removal of any such Hazardous Materials from the Airport and Airport Movement Areas.

**13.0 FAA Review.** Operator shall submit this Agreement to the FAA's regional office to allow the FAA to review the Agreement and note any terms that are inconsistent with FAA policy. However, it is stated FAA policy not to "approve" agreements between third parties, and this Agreement is not contingent on an FAA statement of approval. If the FAA, during its review of the Agreement as provided for herein, disapproves of the

Agreement or any portion thereof, the Parties shall revise and, if necessary, renegotiate those terms found by the FAA to be unacceptable to fully address the FAA objections. Operator specifically agrees to comply with the notification and review requirements covered in Part 77 of the FAA Regulations (as may be amended from time to time, or such other regulation replacing Part 77 as may be adopted pursuant to federal authority) prior to the construction of the Improvements described herein, or any other on-site construction, which includes the modification or alteration of existing structures.

**14.0 Nonexclusive Right.** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958, 49 U.S.C. §1349.

## **15.0 Termination.**

15.1 By the Town. The Town reserves the right to terminate this Agreement for cause in the event of a material breach to the terms of this Agreement by Operator by giving Operator 120 days' prior written notice of the Town's intent to terminate. Such Agreement shall then be terminated provided Operator has not cured such breach within said 120-day period, or, if such breach is not capable of being cured within said period, Operator has not diligently commenced such cure within such period or has not continued prosecuting the same with due diligence.

15.2.1 Operator Obligations. Following receipt of a notice to terminate, and except as otherwise directed by the Town, Operator shall: cease operations under this Agreement as of the termination date; (to the extent specific obligations of Operator are not terminated by such notice, Operator shall continue and complete performance of such obligations; and return to Town all records and any money owing hereunder.

15.2.2 Town Obligations. In the event the Town terminates this Agreement for any reason, the Town agrees to pay Operator all monies due and owing to Operator under this Agreement as of the date of said termination.

15.3 By Operator. Operator reserves the right to terminate this Agreement for cause in the event of a material breach to the terms of this Agreement by the Town by giving the Town 120 days' prior written notice of Operator's intent to terminate. Such Agreement shall then be terminated provided the Town has not cured such breach within 120-day period, or, if such breach is not capable of being cured within said period, the Town has not diligently commenced such cure within said period or has not continued prosecuting the same with due diligence.

15.4 Eminent Domain. If at any time during the Term, Operator is deprived of the Airport Movement Areas, any part thereof, or any interest therein, by condemnation or like proceedings or by conveyance in lieu thereof, this Agreement and each and all of the obligations shall terminate proportionately with the portion of the Airport Movements Areas so taken, but shall remain in full force and effect as to the remainder of the Airport Movement Areas, subject to Operator's termination rights herein. However, nothing herein shall be construed to deprive

Operator of any right it may have under law to just compensation or damages for the value of the unexpired Term or for Operator's trade fixtures, personal property, reasonable expenses or remaining rights of use of the Airfield Improvements.

## **16.0 Miscellaneous.**

- 16.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, and wherever a reference in this Agreement is made to either of the Parties such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such Party. Notwithstanding the foregoing, this Agreement shall not be assigned by Operator in whole or in part without the prior written authorization of the Town, which may be withheld by the Town in its sole discretion.
- 16.2 Notice. Notices under this Agreement shall be sufficiently given if sent by regular U.S. mail, postage prepaid, to the address on the first page of this Agreement.
- 16.3 No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.
- 16.4 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and venue shall be in the Weld County, Colorado or the federal court for the District of Colorado.
- 16.5 Integration. This Agreement, together with all exhibits attached hereto, constitutes the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein, and supersedes all negotiations or previous arrangements between the Parties with respect to the subject matter hereof.
- 16.6 Modification. This Agreement may be changed, waived or discharged only by an instrument in writing signed by the Parties.
- 16.7 Independent Contractor. This Agreement shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or any other association between the Parties.
- 16.8 No Waiver. No failure by either Party to insist upon the strict performance of any provision of this Agreement or to exercise any right, power or remedy consequent upon a default hereunder shall constitute a waiver of any such default or of any other existing or subsequent default of the same type or any other type, nor shall such failure preclude either Party's right to at any time thereafter insist upon the other Party's strict performance under any term or provision of this Agreement.
- 16.9 No Third-Party Beneficiaries. This Agreement is not intended to benefit, and does not benefit, any person or entity other than the Parties.



- In Witness Whereof**, the Parties have executed this Agreement as of the Effective Date.

Justin Brooks, Mayor

Debbie Stamp, Town Clerk

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

The foregoing instrument was subscribed, sworn to, and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

(S E A L)

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Notary Public