



REQUEST FOR PROPOSALS (RFP)

TO LEASE LAND, CONSTRUCT AND OPERATE AIRCRAFT HANGARS AT THE LEESBURG EXECUTIVE AIRPORT

ISSUE DATE: Friday, April 21, 2023

RFP NO.: 100710-FY23-01

QUESTIONS DUE: Thursday, May 18, 2023; 5:00 p.m.

PROPOSALS DUE: Tuesday, June 13, 2023; 3:00 p.m.

DELIVERY ADDRESS: Town of Leesburg, Virginia
Town Attorney's Office
25 West Market Street
Leesburg, VA 20176

CONTACT: Scott Coffman, C.M.
Airport Director
Town of Leesburg, Virginia
Phone: 703-737-7125
Email: scoffman@leesburgva.gov

NOTICE OF ADDENDA: Any addenda to this RFP will be posted on the Town's website.

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I. PURPOSE AND INTENT

A. PURPOSE OF RFP

The Town of Leesburg (“Town”) is soliciting sealed proposals from businesses or individuals desiring to lease land at the Leesburg Executive Airport (“Airport”) to build and operate aircraft storage hangars, aprons, automobile parking, and all necessary utility infrastructure on an available future development site located at the Airport’s northeast corner. The intent of this Request for Proposals (“RFP”) is to solicit proposals and subsequently establish a long-term lease agreement for a business or individual to construct and operate corporate-style aircraft hangars at their sole expense. All hangars will be utilized for the storage of aircraft and authorized commercial aeronautical activities. The successful Offeror will be required to maximize the total amount of hangar space on the available site. The site will be leased in accordance with the Proposed Lease Agreement (“Lease”) appearing as Part II hereof, and all other provisions of this RFP.

B. PERIOD OF LEASE

The period of the Lease shall be 40 years.

C. DEFINITIONS

Undefined terms have their common meanings appropriate to their context.

1. **Acceptable Surety:** For any bond required under this RFP, an acceptable surety may be any of the following:
 - a. Corporate surety bond in form acceptable to the Town Attorney; or
 - b. Irrevocable letter of credit in form acceptable to the Town Attorney; or
 - c. Certified check or cash escrow.
2. **Airport Commission (“Commission”):** means the Leesburg Executive Airport Commission as created by Section Sec. 2-223 of the Town Code.
3. **Town’s Agent:** The Town employee or position listed on the cover sheet of this RFP.
4. **Town/Owner:** The Town of Leesburg, Virginia or its actually authorized agents. Unless the context clearly requires otherwise, such as for an affirmative vote of the elected body, the Town Manager, or other designee of Town Council “Council” may always act on behalf of the Town. Under Virginia law, no employee or agent may bind the Town unless he or she has actual authority to do so; the doctrine of apparent authority has no application to municipalities.
5. **Due Date:** The date stated on the cover page of this Request for Proposal (RFP) for receipt of Proposals.
6. **FAA:** The Federal Aviation Administration.

7. **Lease Policy:** Code of Virginia, Chapter 21, Franchise; Sale and Lease of Certain Municipal Public Property; Public Utilities (§§ 15.2-2100 through 15.2-2160)
7. **Insurance:** Has the meaning given in Virginia Code § 38.2-100.
8. **Nominal Value:** Having a fair market value or potential fair market value of no more than five dollars (\$5.00). Something has potential value if it may produce value in the future. Examples of items with potential value include lottery tickets, stock in privately held companies, and business opportunities.
8. **Offeror/Proposer:** Any individual, company, firm, corporation, partnership or other entity submitting a Proposal on RFPs issued by the Purchasing Agent and offering to enter into a Lease Agreement with the Town.
9. **Proof of Insurance:** A copy of the relevant portions of the insurance declaration page, or its equivalent, showing continuing coverage at the required amounts.
10. **Proposal:** The submission by an Offeror indicating its understanding of the terms of a Lease Agreement, how it plans to meet the obligations under the Lease and how it is qualified to meet those obligations.
11. **Request for Proposal (RFP):** A request which is made to prospective suppliers (offerors) for their proposal for something desired by the Town (in this case, an aircraft hangar development). The issuance of an RFP will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the Lease.

D. COMPETITION INTENDED

It is the Town's intent that this Request for Proposal (RFP) permits competition. It shall be the Offeror's responsibility to advise the Town Agent in writing if any language, requirements, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in the RFP to a single source. Such notification must be received by the Town Agent or appointed designee not later than seven (7) days prior to the Proposal due date.

E. TYPE OF AWARD

The Town of Leesburg expects to award a Lease Agreement.

F. ORDER OF PRECEDENCE

A Lease by the Town is governed by the Code of Virginia, Chapter 21 (15.2-2100 to 15.2-2160). If an inconsistency exists between the Specifications of this RFP, the General Provisions, draft Lease, or Technical Specifications of this RFP, the inconsistency shall be resolved by giving precedence to the following documents in the following order:

1. The Lease Agreement,
2. The Specifications of this Request for Proposal (Section II), except to the extent modified through negotiation,
3. The General Provisions of this Request for Proposal (Sections I, III-VI)

II. SPECIFICATIONS OF RFP

A. PURPOSE

The Town is soliciting sealed proposals from businesses or individuals desiring to lease land at the Airport to build and operate aircraft storage hangars, aprons, automobile parking and all necessary utility infrastructure on an available future development site located at the Airport's northeast corner. The intent of this RFP is to solicit proposals and subsequently establish a long-term lease agreement for a business or individual to construct and operate corporate-style aircraft hangars at their sole expense. All hangars will be utilized for the storage of aircraft and authorized commercial aeronautical activities. The successful Offeror will be required to maximize the total amount of hangar space on the available site. The taxiway serving the site has a maximum aircraft weight limit of 38,000 lbs. The site will be leased in accordance with the Lease appearing as Part II hereof, and all other provisions of this RFP.

B. BACKGROUND

1. The Leesburg Executive Airport (JYO) is a public-use airport owned and operated by the Town of Leesburg, Virginia. It is designated a General Aviation Reliever Airport and is located 35 miles west of Washington D.C. The Greenway toll road provides convenient access from the Airport to the Dulles Technology Corridor, Washington D.C., and Northern Virginia communities.



2. According to tower reports, the Airport sees more than 75,000 take-offs and landings each year and has approximately 255 based aircraft. Airport facilities include perimeter fencing, an 18,000 square foot public terminal, and a 5,500' x 100' single runway. Runway 17 is equipped with an Instrument Landing System to allow aircraft operations during periods of instrument meteorological conditions.
3. An air traffic control tower is currently in operation (10-hours daily) as a part of an FAA Remote Tower Pilot Program. The airport has been notified by the FAA that it will fund air traffic control services through September 30, 2023. The airport is seeking to continue air traffic control services indefinitely, however at this time a decision has not been determined.

4. The Airport is designated a US Customs landing rights airport and international clearance facilities are located in the public terminal.

C. SCOPE OF SERVICES

1. This RFP invites each potential Offeror to perform its own investigations and make its own assessments as to the extent and nature of the facilities and/or business suited for the Airport while adhering to the minimum standards as set forth in the Airport Rules, Regulations, and Minimum Standards, as well as the Airport requirements stated in the Airport Rules and Regulations, applicable FAA and Virginia Department of Aviation regulations and orders, Airport Improvement Program Grant Assurance, applicable FAA Advisory Circulars, and other applicable requirements.
2. The Town will not consider any Proposal that proposes to use or includes off Airport or “through the fence” property that is not located within the Airport property boundary as shown on the Airport Layout Plan.
3. The Town will not consider any Proposal that does not meet the minimum requirements set forth in the Airport Minimum Standards.
4. The Commission and Airport staff will make a recommendation of an award to the Leesburg Town Council. The final determination of an award will be made by the Council. Offerors may be required to make a personal presentation of their Proposal before the Commission and Airport staff. Before an award is made, the Lease must be advertised to the public and approved by Council. Pursuant to Virginia Code § 15.2-2100 et seq., the Town must invite bids for the Lease and shall award the Lease to the highest bidder unless some reason affecting the interest of the Town makes it advisable to accept a lower bid.
5. The term of the Lease will be 40 years.
6. The taxi lane serving the site has a maximum aircraft weight rating of 38,000 lbs., dual wheel and a design maximum wingspan of 79 feet.
7. In connection with the execution of a Lease and each subsequent year, the successful Offeror will be required to provide a bond or the appropriate security approved by the Town in an amount of at least 10% of the annual fee due to the Airport under the Lease sufficient to guarantee the construction, operation and maintenance of the plant or plants provided for in the Lease. However, the Council, with the recommendation of the Commission, may, at its sole discretion, establish a higher bond amount if necessary to guarantee such construction, operation and maintenance.
8. Additionally, the successful Offeror shall provide to the Town for each improvement to be constructed, payment and performance bonds or other appropriate security approved by the Town, equal to at least 100% of the total of the contract price for that improvement, in a format that is approved by the Town Attorney.

9. All construction on Airport will be required to meet or exceed applicable construction and engineering standard for airport facilities as required under applicable FAA guidelines and will be required to be commenced and completed within the specified time frames as provided in the Lease Agreement.
10. The draft Lease provided in the RFP provides for ground rental payments and escalators of the ground rent. The Lease also requires construction of aircraft hangar improvements which revert to the Town at the expiration of said Lease. The Offeror is responsible for reading the draft Lease included in the RFP, and accepting the terms and conditions outlined in the Lease prior to submitting a proposal. The Lease Agreement may be negotiated, but such negotiations are subject to and must be consistent with Town ordinances, Federal Aviation Administration Advisory Circulars, Code of Virginia, the Statewide Building Code, Loudoun County Building Code, and the Leesburg Executive Airport Rules, Regulations, and Minimum Standards. The Offeror shall include any suggested revisions to the draft Lease in a track-changes format in their bid proposal for consideration by the Airport Commission and Airport staff. There is no guarantee that any exceptions to the RFP will be accepted by the Town.
11. The Premises to be covered by the Lease is located on the northeast side of the Airport as approximately shown on the attached Future Development Site Exhibit. The Premises will encompass only the land for which Offeror furnishes a definite plan for development. No property shall be leased for non-aeronautical purposes as such use might inhibit the growth of aeronautical use of the Airport. The Offeror will have to show the proposed layout of buildings, ramps and parking areas and how they will fit on the Premises. The Town will select layouts that are in the best interest of the Airport and that maximize the use of space. The Town will consider proposals that require additional land, however, no plan for development will be approved that makes residual property unusable or restricts the use of other property. Rights of first refusal or other “land banking” options will not be accepted.
12. The selected Offeror shall finance, design, construct and manage corporate style hangar(s) facilities on the Future Development Site, at no cost to the Town including construction of all site work, utilities, ramps areas, and pavement connections to adjoining taxiways and taxilanes as necessary. The new hangar(s) shall not impinge up FAR Part 77 surfaces, taxiway safety areas, or taxiway object free areas (OFA) and shall conform to FAA, Loudoun County, and Town building standards, unless a waiver is granted by the Town. Proposed construction shall be consistent with the Airport Layout Plan as approved by the FAA and Virginia Department of Aviation. If a modification of the Airport Layout Plan is required, such modification must be approved by the Town, FAA, and Virginia Department of Aviation, including any required environmental study or evaluation.
13. The selected Offeror will finance, design, and construct all required utility extensions including water, sanitary sewer, telephone, and electrical power, as well as any necessary storm water management features at no cost to the Airport.

**D. COMMUNICATIONS ABOUT AND REVISION OF SPECIFICATIONS;
RESPONSIBILITY OF OFFEROR**

1. An Offeror may submit questions and comments regarding this RFP only to the Town Agent. To receive an answer, the Offeror must submit all questions and comments in writing no later than seven (7) days before the due date. The Town Manager, Town Agent or Town Agent's designee may also issue clarifications or modifications of the terms of the RFP even if no Offeror requests it.
2. Only the Town Manager, Town Agent or Town Agent's designee may revise the terms of the RFP. If the Town revises the terms of the RFP, it will do so in the form of an addendum to the Request for Lease Proposal posted on the Town of Leesburg's website at www.leesburgva.gov. Each Offeror has the responsibility to insure it has any addenda that have been issued in connection with this RFP. The Offeror will not rely on any information provided orally, or from anyone other than the Town Manager, Town Agent or Town Agent's designee.
3. Each Offeror bears responsibility for thoroughly examining this RFP in its entirety. If an Offeror has any questions or comments regarding the proper meaning or intent of any aspect of the RFP or finds discrepancies in the plans and/or specifications, then it shall submit all such questions and comments in writing to the Town Agent.
4. By submitting a Proposal in response to this RFP, the Offeror represents that it has thoroughly examined this RFP and all its attachments and incorporated documents, that it has submitted any and all questions and comments it may have regarding the meaning or interpretation of this RFP to the Town in the manner prescribed herein, and that the Offeror understands the terms and conditions of the RFP.

E. METHOD FOR MAKING SUBMISSION

1. The Offeror shall submit one (1) original and four (4) copies of their Lease Proposal along with one (1) electronic copy in the form of a thumb drive or CD to the Town Attorney's Office. Offerors shall submit with their Proposal all pages of the completed Proposal Submission Form herein. The Offeror shall make no other distribution of the Proposal. Lease proposal shall be submitted to:

Town of Leesburg
25 West Market Street
Leesburg, VA 20176

No later than 3:00 PM local time June 13, 2023.

The Lease Proposal submissions with all the forms must be returned in a sealed envelope or packaged and identified with the following information on the envelope or package.

From:

_____ Name of Offeror	_____ Due Date	_____ Due Time
_____ Street/Box Number	_____ RFP Title	_____
_____ City	_____ State/Zip Code	_____ Town Agent

Lease Proposals sent via express delivery service should be sealed in an envelope inside the express container. The Offeror assumes the risk that an envelope not properly marked will be mistakenly opened, and thus rendered ineligible for consideration. No responsibility shall attach to the Town for the premature opening of a Proposal not properly addressed and identified as specified herein. The Town will not make any adjustments to the Proposal based on additions or deletions on the outside of the envelope. Faxed or emailed Proposals are not allowed.

2. Determination of deadline:

The official time used in the receipt of Lease Proposals is local time. Each Offeror must deliver its Proposal before the minute stated on the cover page of this Request for Lease Proposal. For example, a due time of 2:30 means that a Lease Proposal delivered at 2:29 is timely and one delivered at 2:30 is late.

3. Place for submission:

Lease Proposals must be received at the place stated on the cover page of the RFP. Offerors who use a delivery company, U.S. Mail, or courier bear the risk that the Proposal may not be received at the correct location by the deadline.

4. Extension of deadline:

Before the deadline passes or if the Town receives no Lease Proposals by the due date, the Town may extend the date and time for receipt of Lease Proposals or change the location of the receipt of Proposals if it believes it is necessary and in the best interest of the Town. If that happens, Offerors will be notified of the new date and time or new location and Lease Proposals already received will not be opened until the new date and time. If the Town of Leesburg or Leesburg Town Hall is closed unexpectedly on a Lease Proposal due date, the Lease Proposals will be opened at the same time and place the next business day that the Town Hall is open, or else notice will be provided by addendum of a new due date, time, and place.

5. Process for receipt of Proposals:

The Mayor shall receive and open the Lease Proposals and read aloud the names of the Offerors who submitted Proposals during a scheduled Town Council meeting. Thereafter, the provision on Examination of Documents herein applies to the release of Proposal data.

F. GENERAL PROPOSAL PREPARATION INSTRUCTIONS

1. All information requested should be submitted. Failure to submit all information requested may result in the Town requiring prompt submission of the missing information, and or giving a lowered evaluation of the Proposal. Lease Proposals that are incomplete or lack key information may be rejected by the Town. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
2. Lease Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
3. Each copy of the Lease Proposal should be bound or contained in a single volume where practical. All documentation submitted with the Proposal should be contained in that single volume.
4. Ownership of all data, materials and documentation originated and prepared for the Town pursuant to the RFP shall belong exclusively to the Town and be subjected to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to the public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire Proposal document, line item prices and/or total Proposal prices as proprietary or trade secrets is not acceptable and will result in rejection and return of the Proposal. The Town is not responsible for any expenses incurred by an Offeror in preparing and submitting a Proposal. By submitting its Proposal, the Offeror agrees not to claim as proprietary any site plan layout or architectural drawings submitted with a Proposal so as to be exempt from public disclosure; however, the Town will not allow the copying of architectural drawings except to the extent that such copying constitutes fair use.
5. The Offeror shall comply with all procedural instructions that may be issued by the Town.

G. LEASE PROPOSAL PREPARATION INSTRUCTIONS

Lease Proposals should be as thorough and detailed as possible so that the Town may properly evaluate the capabilities of the Offeror to provide the required services. Failure to provide all of the information requested will result in the rejection of the Lease Proposal and finding the Offeror nonresponsive to the RFP. Lease Offeror are required to submit the following items for a complete Lease Proposal arranged in order, tabbed, and with a table of contents:

- a. **Narrative** – Provide a narrative about why Offeror should be selected.

- b. **Intent of Use** – Furnish a written plan explaining your vision for the available Future Development Site. Briefly describe your approach in development of the site in terms of hangar product mix, milestones, and timeline until completed build out.
- c. **Site Plan** – Furnish a conceptual site plan and elevation drawing (s) showing location of the existing hangar and the new hangar to be constructed on the parcel, parking lots, legend, boundary lines, square footage of offices, hangars, ramps and proposed design of the hangar. An estimated schedule of construction should be included.
- d. **Business Plan** – Prepare and furnish a written business plan to explain how you intend to operate and generate revenue from use of the facilities.
- e. **Financial Information** – Provide the following financial information
- Development Cost Estimate to include: 1) Design and other Soft Costs 2) Site Preparation and Grading 3) Stormwater Management 4) Utilities 5) Ramp & Taxilane Improvement 6) Hangar Construction 7) Contingency 8) Other additional cost
 - Operating Pro-forma (includes proposed lease term and ground rent)
 - Financing Plan
 - Business Credit Report – Submit a credit report and at least five (5) credit references
 - Financial Statements
 - i. Three years of company's audited financial statement and interim financial statements if the prospective company is 6 months into another fiscal year.
 - ii. If audited financial statements are not available, then the company should provide CPA reviewed or compiled statements supported by signed company tax returns and signed interim financial statement if the prospective company is 6 months into another fiscal year.
 - iii. If the company is less than two years old then the following must be provided: 1) Three years of cash flow projections 2) Three years of projected balance sheets, and profit and loss statement 3) Evidence of equity and its sources 4) Schedule of debt and schedule of future debt needed to finance the project 5) Bank reference to include contact information
 - Proposed rents and fees to be paid to the Airport.
- f. **Management Plan** – Furnish a management plan to explain how the facility will be managed. Provide resume(s) for key employee(s) in management team.
- g. **Criminal History** – The Offeror shall provide a statement that the officers and on-site management team have/have not been convicted of any criminal activity or aviation violations within the last ten (10) years.
- h. **Business References** – The Offeror shall submit at least three (3) persons or firms with whom the Offeror has conducted business transactions during the past two years. Provide current names, phone numbers and addresses.

- i. **Architectural/Engineering References** – The Offeror shall identify the architectural/engineering firm they intend to use for the design and construction of the facility, and provide at least three references for that firm.
- j. **Services Offered** – A listing of all aeronautical products, facilities and services to be offered on day one of the operation.
- k. **Number of New Employees/Aircraft** – Estimated number of new employees and/or new aircraft to be based at the airport.

If the Proposal is being made by a subsidiary of a parent company or corporation, such subsidiary may submit the required financial information for the parent company, provided such parent company is bound jointly with the subsidiary in the Proposal and, if the subsidiary is awarded an Lease agreement, the parent company must acknowledge its joint obligations with its subsidiary and the Proposal must be accompanied by a certified copy of a resolution by the Board of Directors of the parent company authorizing such joint obligations.

H. OFFEROR CERTIFICATIONS

- 1. The Offeror shall certify, through its submission and signature on the Lease Proposal, that the following statements (paragraphs a. – f. inclusive, collectively “the Certifications”) are true and not misleading:
 - a. That its Proposal is made without any kickbacks or inducements or any prior understanding, agreement, or connection with any corporation, firm, or person submitting a Proposal, and is in all respects fair and without collusion or fraud;
 - b. That it is not currently debarred by the Federal Government, Commonwealth of Virginia or the Town from submitting Proposals or bids on contracts, nor is the Offeror an agent of any person or entity that is currently so debarred;
 - c. That it has not offered or conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than Nominal Value or minimal value, present or promised, unless consideration of substantially equal or greater value was exchanged;

That to the best of its knowledge no Town official or employee having official responsibility for this RFP or member of his or her immediate family has received or will receive any financial benefit of more than Nominal Value or minimal value relating to the award of this Lease. If such a benefit has been received or will be received, this fact shall be disclosed with the Proposal or as soon thereafter as it appears that such a benefit will be received;

- d. That it has submitted a single Lease Proposal. For purposes of this provision, the term “Offeror” includes all departments and divisions of a Business and all its Affiliates; and
 - e. That it is satisfied, from its own investigation of the conditions to be met, that it fully understands its obligations if the Town awards it a Lease, and that it will not have any claim or right to cancellation or relief from the Lease because of any misunderstanding or lack of information.
2. Duty to supplement:

If the Offeror becomes aware of any information which makes any part of the Offeror’s Certifications no longer accurate or complete or reveals that any part of my previously submitted information is misleading, the Offeror will immediately bring that information to the attention of the Town Agent.

3. Penalty for false certification:

The Town may declare an Offeror to be non-Responsible if the Town discovers that the Offeror’s Certifications contain any materially false statement.

III. EVALUATION OF RFP

A. REQUIRED ELEMENTS OF LEASE PROPOSAL PACKAGE

To be considered, a Lease Proposal must contain the completed Lease Proposal Submission Form(s) and any other documents, samples, or information required by the terms of the RFP. Any Offeror which submits a Lease Proposal agrees that such Proposal becomes the property of the Town and all costs incurred for its preparation are the responsibility of the Offeror.

- 1. Required permits and licenses:
 - a. By submitting a Lease Proposal, Offeror represents that it will have all necessary federal, state and local permits and all necessary licenses, including licenses to use intellectual or real property. The date that Offeror shall have the necessary licenses and permits is the date of issuance of the Lease by Town Council unless otherwise required by law.
- 2. Acknowledgment of receipt of all addenda:

The Offeror must acknowledge receipt of addenda on the Lease Proposal Submission Form unless such failure to acknowledge constitutes an informality.

B. EVALUATION CRITERIA

1. Lease Proposals will be evaluated by the Town using the following criteria:

CRITERIA	MAXIMUM POINTS
a. Plan of Operations. Strength/quality of overall plan for provisions of aeronautical services, including considerations related to operational, business, marketing and concept of Proposal for provision of aviation services, and quality and range of aeronautical related products and services to be offered, facilities proposed to be offered on the Airport. Business philosophies and business practices. Scope and quality of products and services to be offered. Number of new employees. Number of new aircraft to be based at the Airport.	25
b. Relevant Experience. Experience and qualifications of management and other key personnel, business references, and successful experience with development and operations of aeronautical services and/or other aviation facilities at comparable airports. References.	20
c. Capital Improvements. Quality and value of the investment to the Town, the Airport, and Airport users of Airport improvements proposed for construction, and capacity to develop Airport property as proposed. Efficient use of the leased area. Proposed utilization of site and layout facilities. Development timeline for construction and phasing of the project.	25
d. Total Estimated Revenue and Financial Ability. Estimated total revenues that the Airport will receive from rents and fees. The Offeror’s demonstrated financial ability to develop hangar(s).	30

Total Possible Score (100)

C. DETERMINING IF OFFEROR IS RESPONSIBLE

1. Award only to a “Responsible Offeror”:

The Town will only award a Lease to an Offeror that, through evidence submitted or information available to the Town, has shown that it has the capability, in all respects, to perform fully the Lease requirements and the moral and business integrity and reliability

that will assure good faith performance. Prequalification by an entity other than the Town is not relevant to this determination.

2. Additional information:

If the Town requests it, the Offeror must present, within two business days, evidence satisfactory to the Town of the Offeror's ability to perform the Lease and possession of necessary facilities, pecuniary resources, and adequate insurance to comply with the terms of this RFP and any resulting Lease. The Town reserves the right to inspect the Offeror's physical facilities (if any) and conduct additional investigation prior to award to satisfy questions regarding the Offeror's capabilities.

3. Offeror in default:

No Lease Proposal will be accepted from or Lease awarded to any Offeror that is in arrears, or is in default to the Town upon any debt, or that is a defaulter as surety or otherwise upon any obligation to the Town, until all such debts are paid.

D. PROPOSAL ACCEPTANCE

Offeror agrees and understands that (except to the extent of the requirement to indemnify the Town for costs incurred in protection of the Offeror's confidential information) there is no binding agreement, no contractual relationship, no understanding nor mutual assent until a Lease is executed and exchanged by and between the Offeror and the Council. Only the Council has the authority to award a Lease.

IV. AWARD OF CONTRACT

All proposals will be referred to the Airport Commission for review and recommendation by the staff. All proposals will be formally opened at public hearing and the Airport Commission's recommendation will be presented to the Mayor and Council. After deliberation, the Mayor and Council will vote whether to award the contract.

V. FORM OF LEASE AGREEMENT

The Town will use a Lease Agreement in the form of the attached draft.

VI. MISCELLANEOUS

A. AUTHORITY OF AGENTS

1. Offeror's agent:

Each Lease Proposal, and any Lease, must be signed by a person authorized to bind the Offeror to a valid Lease with the Town. For a sole proprietorship, the principal may sign.

The Town may require that any agent submit a power of attorney or other appropriate documentation showing the authority of the agent to act on the Offeror's behalf.

2. Town's Agent(s):

The Town Manager, or Town Agent have the final responsibility and full authority for issuance of requests for lease proposals, negotiations, placing and modifying invitations, requests and recommendations of award issued by and for the Town of Leesburg. No other Town officer or employee is authorized to add to, vary, or waive terms of the RFP, or in any way obligate the Town for indebtedness. The Town will not honor or ratify any void action of its employees or agents.

B. EXAMINATION OF DOCUMENTS

Except as provided herein, all proceedings, records, Lease and other public records relating to transactions shall be open to the inspection of any citizen or representative of the news media in accordance with the Virginia Freedom of Information Act.

1. Estimates: Cost estimates relating to a proposed transaction prepared by or for a public body shall not be open to public inspection.
2. Prior to award: Any Offeror upon request shall be afforded the opportunity to inspect Proposal records within a reasonable time after the evaluation and negotiations of Proposals are completed but prior to award, unless the Town decides not to accept any of the Proposals and to reissue the RFP. Otherwise, Proposal records shall be open to public inspection only after award of the Lease. Any inspection of Procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
3. No requirement to state reasons for rejection: Nothing contained in this RFP shall be construed to require the Town to furnish a statement of the reasons why a particular Lease Proposal was not deemed to be the most advantageous to the Town.

C. NONDISCRIMINATION; PARTICIPATION OF SMALL, WOMEN-OWNED AND MINORITY-OWNED BUSINESSES AND SERVICE DISABLED VETERAN-OWNED BUSINESS AND EMPLOYMENT SERVICES ORGANIZATIONS

In general: The Town does not discriminate against Offerors on the basis of race, religion, color, sex, sexual orientation or gender identity, national origin, age, disability, status as a service disabled veteran, political affiliation, nor does it discriminate against faith-based organizations on the basis of the organization's religious character or impose conditions that restrict the religious character of the faith-based organization, except as permitted or required by law, or impair, diminish, or discourage the exercise of religious freedom. Any Offeror believing that it or another Offeror has been discriminated against on that basis should immediately make the Town Agent aware of the basis for that belief.

D. AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

Pursuant to Virginia Code §2.2-4311.2, an Offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its Proposal the identification number issued to it by the State Corporation Commission (“SCC”). Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its Proposal a statement describing why the Offeror is not required to be so authorized. Any Offeror described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Town Manager. The SCC may be reached at (804) 371-9733 or at <http://www.scc.virginia.gov>. Offerors should consult the Code of Virginia for more information.

VII. LEASE PROPOSAL SUBMISSION FORM

Offerors shall include in their RFP submission the proposed rents and fees to be paid to the Town in the following format:

LEASE PROPOSED ANNUAL RENT TO BE PAID

\$ _____ *

***The minimum acceptable bid for Future Development Site is \$1.00 per square foot annually, calculated on the total square feet of leased area.**

As described in Section 4.6 of the sample lease, the rent will be adjusted by Consumer Price Index (CPI) annually after the first twelve (12) months per the Lease.

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

I certify that I received and reviewed the following Addenda to this Lease Proposal and have included their provisions in this Proposal:

<u>Number</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

Please complete the following by checking the appropriate line that applies and providing the requested information.

- A. _____ Offeror is a Virginia business entity organized and authorized to transact business in Virginia by the SCC and such Offeror’s Identification Number issued to it by the SCC is _____.
 - B. _____ Offeror is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such Offeror’s Identification Number issued to it by the SCC is _____.
 - C. _____ Offeror does not have an Identification Number issued to it by the SCC and such Offeror is not required to be authorized to transact business in Virginia by the SCC for the following Reason: _____
-

D. _____ Offeror has listed all objections or exceptions to the RFP/Lease Agreement in their proposal. (Indicate below if you have no exceptions to the RFP or draft Lease Agreement):

CERTIFICATIONS

This RFP is subject to the provisions of § 15.2-2100 et seq of the Virginia Code, § 2.2-3100 et seq. of the Virginia Code, the Virginia State and Local Government Conflict of Interests Act, and Sections 2.2-4300 et seq. of the Code, the Virginia Public Procurement Act (VPPA).

By my signature on this form, I certify on behalf of the Offeror that I am not aware of any information bearing on the existence of any potential conflicts of interest or violation of ethics in public contracting provisions of the VPPA, Virginia Code §§ 2.2-4367 through 2.2-4377.

I further certify that this Lease Proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Proposal and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the state and Federal law and can result in fines, prison sentences, and civil damage awards.

I further certify that the statements regarding debarment, submission of a single Proposal, understanding of the conditions, and data on convictions contained in provision “Offeror Certifications” of the RFP are true and not misleading as to the Offeror.

I further certify that I have read and understand the attached draft Lease Agreement, Leesburg Executive Airport Rules & Regulations and Minimum Standards. If I have any objections or exceptions to the draft Lease, I have clearly outlined them in my Proposal.

I hereby certify that the responses to the above representations, certifications, and other statements, including all attachments, are accurate and complete. If after I sign these forms I learn of any information which makes any of the above representations, certifications or other statements inaccurate or incomplete, or reveals that any part of my previously submitted information is misleading, I will immediately bring it to the attention of the Town Agent. I agree to abide by all conditions of this RFP and certify that I am authorized to sign for the Offeror.

COMPANY NAME (Please Print)

TELEPHONE NUMBER

ADDRESS

E-MAIL ADDRESS

SIGNATURE:

DATE

NAME: (Please Print)

TITLE

EXHIBIT 1 – FUTURE DEVELOPMENT SITE

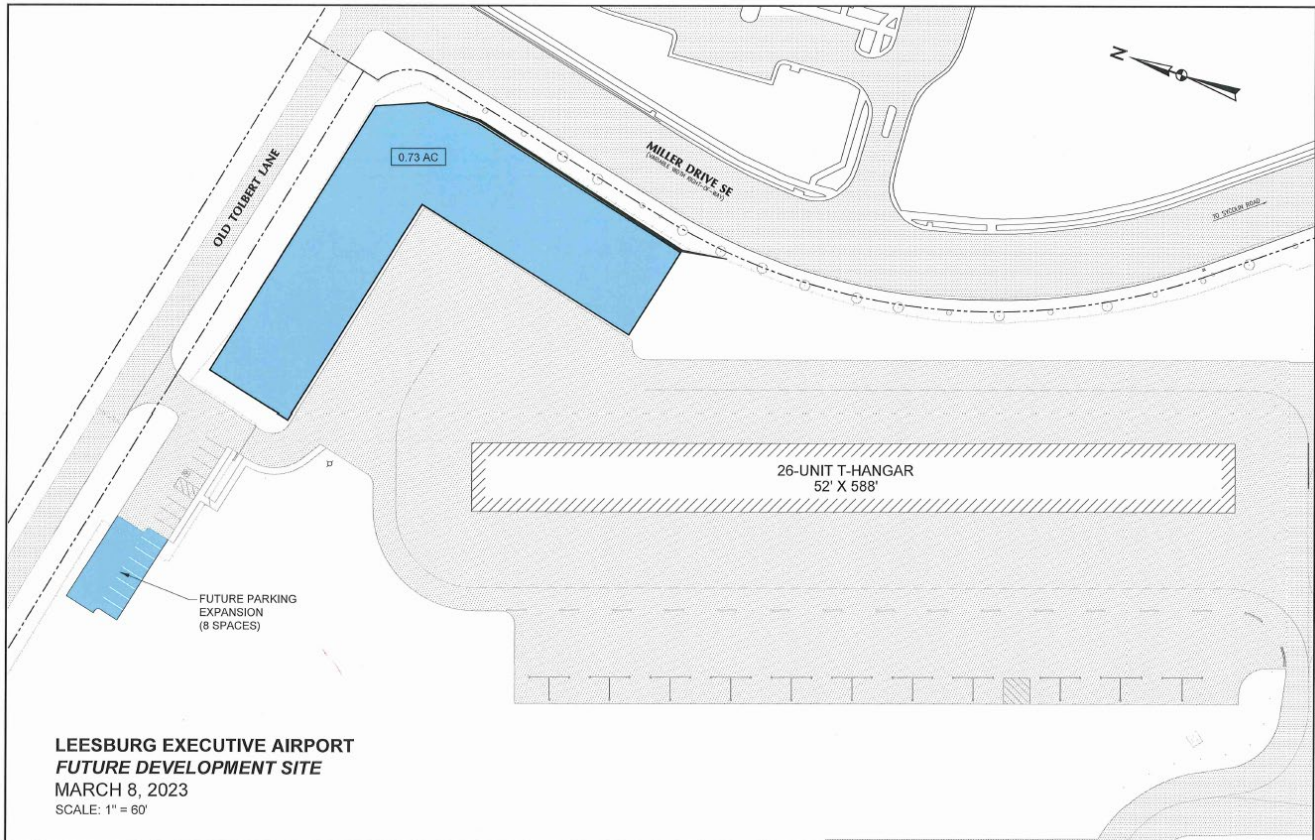


EXHIBIT 2 - SAMPLE AIRPORT LEASE AGREEMENT

**LEASE AGREEMENT
LEESBURG EXECUTIVE AIRPORT**



Effective:

**TO LEASE PROPERTIES BETWEEN
THE TOWN OF LEESBURG AND

FOR HANGAR SITE**

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Article

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LEASE AGREEMENT

This lease Agreement with Exhibit (s) A & B and Appendix (s) A, B, D and D, entered into this _____ day of _____, 2023, by and between:

THE TOWN OF LEESBURG, a municipal corporation, hereinafter referred to as the "TOWN" and, _____, hereinafter referred to as the "LESSEE".

WITNESSETH THAT:

WHEREAS, the TOWN is the owner of the premises known as the Leesburg Executive Airport located in the TOWN of Leesburg, Virginia, and wherever "Airport" is used in this Lease Agreement it shall be construed to mean Leesburg Executive Airport as it may be expanded from time to time; and

WHEREAS, the TOWN owns **Future Development Site** a partially improved Parcel located at the Northeast corner of the Leesburg Executive Airport in the TOWN; and

WHEREAS, the LESSEE desires to construct an aircraft hangar on a portion of the Parcel for the storage of aircraft and other uses permitted under airport Minimum Standards; and

WHEREAS, the TOWN and the LESSEE are mutually desirous of entering into a Lease Agreement to permit such activities,

NOW, THEREFORE, in consideration of the premises and of the rents, covenants and conditions herein contained in this Lease Agreement (hereinafter referred to as "Agreement"), the TOWN hereby leases to the LESSEE the area of the Airport described in Article 2 hereof (hereinafter referred to as "the Leased Premises"), as indicated below.

ARTICLE 1 – TERM

1.1 The Term of this Agreement shall be for a period of 40 (forty) years commencing on _____, 2023 and expiring at midnight on _____, 2063 hereinafter "the Term", unless otherwise cancelled as herein provided.

ARTICLE 2 - LEASED PREMISES

2.1 The Leased Premises consist of:
A parcel of land described in Exhibit A attached hereto and made a part hereof. This parcel includes approximately _____ **square feet** of undeveloped land; and,

All Improvements now or hereafter constructed on the aforementioned land are a part of the Leased Premises, subject to LESSEE's leasehold interest.

ARTICLE 3 - USE OF LEASED PREMISES

- 3.1 The LESSEE shall occupy and use the Leased Premises for the following purposes and for no other purpose whatsoever:

For construction of a corporate/commercial style hangar with a floor size of _____ **sq. feet** with the primary purpose of storing aircraft and other uses permitted under the Airport Rules, Regulations, and Minimum Standards.

- 3.2 **Monthly** and upon request, LESSEE shall provide a listing of all aircraft based in the hangar to the Airport Director.
- 3.3 Aircraft access to the Site from the runway is limited to only those aircraft with a maximum wingspan of 79' and a maximum of 38,000 pounds (dual wheel) weight.

ARTICLE 4 - RENTAL

- 4.1 For use and occupancy of the Leased Premises and privileges herein granted, the LESSEE agrees to pay to the TOWN the following Annual Rent: a base rate of \$_____ per square foot times _____ square feet. Payments shall begin when the Lessee receives a building permit from the Town or within ninety (90) days after this Lease has been executed by both parties, whichever comes first. Such Annual Rent shall be subject to Annual Rental Rate Adjustment based upon the annual Consumer Price Index (CPI) as provided for in Section 4.5.
- 4.2 The annual rental payable hereunder shall be paid in equal monthly installments due on the first (1st) day of each month in advance at the Office of the Finance Director or at such other office as may be directed in writing by the TOWN.
- 4.3 If any installment of rent is not paid to the TOWN within a period of ten (10) calendar days after the day when such payment is due, the LESSEE shall pay to the TOWN a late charge equal to ten percent (10%) of such payment. Additionally, any rent which is thirty (30) days delinquent shall bear interest at the rate of eighteen percent (18%) per annum from the date the payment is due until paid.
- 4.4 The LESSEE shall construct or have constructed at the LESSEE's cost a corporate/commercial style hangar with _____ **square feet** of floor space, automobile parking spaces and all other necessary site improvements at the Leased Premises. Said construction shall be generally in accordance with the drawing and layout plan is attached hereto as Exhibit B, and made part of this Lease. Promptly upon execution of this Lease, LESSEE shall submit plans and specifications to the TOWN and shall complete construction of such improvements within nine (9) months of TOWN approval thereof. Title to all these improvements shall vest in the TOWN at the termination of this Lease. Prior to such time, title to such improvements shall be vested in the LESSEE.
- 4.5 The Annual Rent for the Term of this Lease shall be as provided in Subsection 4.1 hereof. Such Annual Rent shall be subject to adjustment each year, the first adjustment to be effective on a day that is one (1) year after the Effective Date, with subsequent adjustments to occur each year thereafter. The amount of said adjustments shall be determined as set forth in Subsection 4.6 hereof.
- 4.6 The Annual Rent shall be adjusted during the Renewal Term as follows: The base for computing the adjustment shall be the Consumer Price Index for the Washington DC metropolitan area

consumers for the United States, published by the United States Department of Labor, Bureau of Labor Statistics, which is in effect on the Effective Date The Index published for the Month most immediately preceding the adjustment date in question shall be the amount of the adjustment.

ARTICLE 5 - ACCEPTANCE, CARE, MAINTENANCE, IMPROVEMENTS AND REPAIR

- 5.1 LESSEE warrants it has inspected the Leased Premises and accepts possession of the Leased Premises and any improvements thereon "as is" in its present condition, subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration, Virginia Department of Aviation, Loudoun County and by the TOWN, and admits its suitability and sufficiency for the uses permitted hereunder. Except as may otherwise be provided for herein, the TOWN shall not be required to maintain nor to make improvements, repairs or restoration upon or to the Leased Premises or to any of the improvements presently located thereon. The TOWN shall never have any obligation to repair, maintain or restore, during the term of this Agreement, any improvements placed upon the Leased Premises by the LESSEE, its successors and assigns.
- 5.2 The LESSEE shall throughout the term of this Agreement assume the entire responsibility, cost and expense for all repair and maintenance whatsoever on the Leased Premises and all improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, the LESSEE, without limiting the generality hereof, shall:
 - 5.2.1 Keep at all times, in a clean and orderly condition and appearance, the Leased Premises, all improvements thereon and all of the LESSEE's fixtures, equipment and personal property which are located on any part of the Leased Premises.
 - 5.2.2 Maintain the level of quality of the improvement equal or greater than the original construction, normal wear and tear excepted. The Airport Director may enter upon the Leased Premises any time during regular working hours to determine if maintenance performed is satisfactory to LESSOR. If in the Airport Director's reasonable judgment, the LESSEE is not undertaking, or has not undertaken the necessary maintenance of improvements, he or she shall notify the LESSEE in writing, giving specifics of his or her findings. LESSEE's failure to complete the necessary maintenance of improvements within thirty (30) days, or such longer time as the Airport Director may reasonably allow, will result in LESSEE being in default under Article 18 of this Lease Agreement.
 - 5.2.3 Provide and maintain on the Leased Premises all obstruction lights, security lights and similar devices, and safety equipment required by law.
 - 5.2.4 Repair any damage caused by LESSEE to paving or other surface of the Leased Premises caused by any oil, gasoline, grease, lubricants or other flammable liquids and substances having a corrosive or detrimental effect thereon, normal wear and tear excepted.

- 5.2.5 Take measures to prevent erosion, including but not limited to, the planting and replanting of grasses with respect to all portions of the Leased Premises not paved or built upon, and in particular shall plant, maintain and replant any landscaped areas.
- 5.2.6 Be responsible for the maintenance and repair of all utility service lines placed on the Leased Premises and used by the LESSEE exclusively, including, but not limited to, water lines, gas lines, electrical power and telephone conduits and sanitary sewers and storm sewers.
- 5.3 In the event the LESSEE fails: (a) to commence to maintain, clean, repair, replace, rebuild or repaint within a period of thirty (30) days after written notice from the TOWN to do any maintenance or repair work required to be done under the provisions of this Agreement, other than preventive maintenance; (b) or within a period of ninety (90) days if the said notice specifies that the work to be accomplished by the LESSEE involves preventive maintenance only; (c) or to diligently continue to complete any repairs, replacement, rebuilding, painting or repainting as required under this Agreement; then, the TOWN may, at its option, and in addition to any other remedies which may be available to it, enter the premises involved, without such entering causing or constituting a cancellation of this Agreement or an interference with the possession of the Leased Premises, and repair, replace, rebuild or paint all or any part of the Leased Premises or the improvements thereon, and do all things reasonably necessary to accomplish the work required. The cost and expense thereof shall be payable to the TOWN by the LESSEE on demand. Provided, however, if in the opinion of the TOWN, the LESSEE's failure to perform any such maintenance endangers the safety of the public, the employees or property of the TOWN or other tenants at the Airport, and the TOWN so states same in its notice to the LESSEE, the TOWN may at its sole option, in addition to all other remedies which may be available to it, elect to perform such maintenance at any time after the giving of such notice, and the LESSEE agrees to pay to the TOWN the cost and expense of such performance on demand. The TOWN's costs and expenses shall include, but not be limited to, all direct and indirect costs and expenses of the TOWN, its agents, contractors, and employees and all financing charges, if any, and all allocations of fringe benefits, overhead, and legal charges.

Furthermore, should the TOWN, its officers, employees or agents undertake any work hereunder, the LESSEE hereby waives any claim for damages, consequential or otherwise, as a result therefrom except for claims for damages arising from the sole negligence of the TOWN, its agents and contractors. The foregoing shall in no way affect or alter the primary obligations of LESSEE as set forth in this Agreement, and shall not impose or be construed to impose upon the TOWN any obligations to maintain the Leased Premises, unless specifically stated otherwise herein.

- 5.4 Plans and specifications for all major structural repairs, construction, alterations, modifications, additions or replacements (hereinafter referred to as "Improvements") shall be submitted to the TOWN for review and approval, and no such work shall be commenced until such written approvals are obtained from the TOWN which approval shall not be unreasonably withheld or delayed. The TOWN shall advise the LESSEE within thirty (30) days after receipt of the written request, together with copies of the plans and specifications for the proposed Improvements in sufficient detail to make a proper review thereof, of its approval or disapproval of the proposed work, and in the event it disapproves, stating its reasons therefore. The criteria for the TOWN's review shall include without limitations, consistency with TOWN ordinances, Federal Aviation

Administration Advisory Circulars, Aviation Code of Virginia, the Statewide Building Code, Loudoun County Building Code, Leesburg Executive Airport Rules, Regulations, and Minimum Standards and compatibility with the Airport's architecture, and functionality for present and future uses appropriate to the Airport.

- 5.5 If the LESSEE makes any Improvements without TOWN approval that are disapproved of by the TOWN, then, upon notice the LESSEE shall remove the Improvement or at the option of the TOWN cause the same to be changed to reasonable satisfaction of the TOWN. If the LESSEE fails to comply with such notice within thirty (30) days or to commence to comply and pursue diligently to completion, the TOWN may effect the removal or change and the LESSEE shall pay the cost (as defined in Section 5.3) thereof to the TOWN.
- 5.6 Upon expiration or termination of this Agreement, the complete and unencumbered title to all Improvements located on the Leased Premises shall immediately vest in the TOWN free and clear of all claims on the part of the LESSEE on account of any repair or Improvement work done or to be done under the terms hereof by the LESSEE. This vesting of title in the TOWN at the time specified is a part of the consideration for this Agreement. The TOWN shall not be liable to the LESSEE or the LESSEE's contractors, sub lessees or third party interests for the value of any Improvements constructed or located on the Leased Premises.
- 5.7 LESSEE shall, prior to constructing any improvements pursuant to this Agreement, furnish the LESSOR with a performance bond and labor and materials payments bond. Each for the construction contract amount and conditioned, respectively, on (1) the faithful performance of the construction contract in strict conformity with the plans, specifications and contract provisions; and, (2) on the prompt payment for all labor and materials. The bonds shall be in a form acceptable to the Town Attorney.

ARTICLE 6 - ADDITIONAL OBLIGATIONS OF LESSEE

- 6.1 The LESSEE shall conduct its operations hereunder in an orderly and proper manner, considering the nature of such operation so as not to unreasonably annoy, disturb, endanger or be offensive to others.
- 6.2 Further, the LESSEE shall take all reasonable measures not to produce on the Airport through the operation of machinery or equipment any electrical, electronic or other disturbance that interferes with the operation by the TOWN or the Federal Aviation Administration's operation of navigational, communication or flight equipment on the Airport or on aircraft using the Airport, or with ground transportation communications.
- 6.3 The LESSEE shall control the conduct and demeanor of its officers, agents, employees, invites and, upon objection from the TOWN concerning the conduct or demeanor of any such person, the LESSEE shall immediately take all lawful steps necessary to remove the cause of the objection. If the TOWN shall so request, the LESSEE agrees to supply and require its employees to wear suitable attire and to wear or carry badges or other suitable means of identification, which shall be subject to the prior and continuing approval of the Airport Director.
- 6.4 The LESSEE agrees to require its employees to wear suitable attire. Either Uniforms or Business-like apparel approved by the Airport Director.

- 6.5 The LESSEE agrees to require its employees to wear or carry badges or other suitable means of identification, which shall be subject to the prior and continuing approval of the Airport Director.
- 6.6 The LESSEE shall comply with all health and safety laws and requirements and any other federal, state or municipal laws, ordinances, rules, regulations and requirements, applicable to the Leased Premises and/or the improvements thereon and its operations at the Airport hereunder.
- 6.7 LESSEE shall be responsible for removal from the Airport, or otherwise disposing of in a manner approved by the TOWN, all garbage, debris and other waste materials (whether solid or liquid) arising out of its occupancy of the Leased Premises or out of its operations. The LESSEE shall dispose of its sewage through the TOWN's system.
- 6.8 The LESSEE shall provide and use suitable covered metal or other rigidly and sturdily constructed receptacles, suitably screened from public view, for all garbage, trash and other refuse created on or arising in connection with the activities conducted on the Leased Premises. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Leased Premises is forbidden. The manner of handling and disposing of trash, garbage and other refuse and the frequency of removal thereof from the Airport premises shall at all times be subject to the rules, regulations and approval of the TOWN. LESSEE shall use extreme care when effecting removal of all such waste to prevent littering the Airport premises. In order to prevent animals and birds from spreading trash and debris, the LESSEE shall keep all sliding or hinged doors closed on all trash containers at all times.
- 6.9 The LESSEE shall commit no nuisance, waste or injury on the Leased Premises, and shall not do, or permit to be done, anything that may result in the creation, commission or maintenance of such nuisance, waste or injury on the Leased Premises.
- 6.10 The LESSEE shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of the drainage system, sewerage system, fire protection system, sprinkler system, alarm or security system and fire hydrants and hoses, if any, installed or located on the Leased Premises.
- 6.11 The LESSEE shall not overload any floor, structure, structural member or paved area on the Leased Premises, or paved area elsewhere on the Airport, and shall repair at the LESSEE's expense any floor, structure, structural member, or any paved area damaged by overloading without limiting the LESSEE's obligations pursuant to Article 5 above.
- 6.12 The LESSEE shall not do, nor permit to be done, any act or thing upon the Leased Premises:
 - 6.12.1 Which will invalidate or conflict with any fire insurance policies as applicable to the Leased Premises or any part thereof; or other contiguous premises at the Airport; nor,
 - 6.12.2 Which may constitute a hazardous condition that increases the risks attendant upon the operations permitted by this Agreement.
- 6.13 If LESSEE uses flammable liquids then LESSEE shall use only a working supply of flammable liquids within any covered or enclosed portion of the Leased Premises. Any other supplies of such liquids shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories. The term "working supply" as used in this Paragraph shall mean the amount consumed by the LESSEE and other parties using the Leased Premises during any normal workday.

- 6.14 The LESSEE shall maintain all required fire extinguishing apparatus in accordance with appropriate NFPA standards, subject to inspections by the COUNTY Fire Marshall and Airport staff.
- 6.15 Except for the accommodation of its employees and guests, the LESSEE shall not install, maintain, operate or permit the installation, maintenance or operation of any restaurant, kitchen, stand or other establishment of any type for the sale of food, services or merchandise of any kind to the general public.
- 6.16 Except for services permitted under Article 3 hereof to be performed by the LESSEE or the LESSEE's subcontractors, the LESSEE shall provide prompt written notice to the TOWN of any person, firm or corporation performing aircraft maintenance work, flight instruction of any sort, air taxi, aircraft charter or aircraft leasing of any sort on the Leased Premises for commercial purposes without the written approval of the TOWN.
- 6.17 It is the intent of the parties hereto that noise, including but not limited to noise caused by aircraft engine operation, shall be held to a reasonable minimum. To this end, except for the purpose of taking off, and only in designated areas, the LESSEE shall not conduct aircraft engine run-ups between the hours of 10:00 p.m. and 6:00 a.m.
- 6.18 In its use of the Leased Premises, the LESSEE shall take all possible care, caution and precaution and shall use its best efforts to minimize prop or jet blast interference to aircraft operating on a taxiway or to buildings, structures and roadways, now located on areas adjacent to the Leased Premises.
- 6.19 The LESSEE understands that outside storage is prohibited unless the Lease specifically designates an area for that purpose. In this regard, it is specifically understood and agreed that no vehicles, trailers or equipment such as campers, boats, recreational vehicles, or tractor-trailers are to be stored on the Airport. Vehicles, trailers, tugs, auxiliary power units, de-icing units and any other equipment that is owned by the LESSEE or his tenants and that is used in conjunction with approved business uses are excluded from this provision. At no time will the LESSEE or his tenants park any vehicle, aircraft or equipment in any Airport safety area, taxi lane or taxiway that may obstruct the use of such taxiway or taxi lane.
- 6.20 The LESSEE expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Federal Aviation Regulations, Part 77, and/or any other regulations promulgated by proper authority.
- 6.21 The LESSEE agrees to provide adequate control of rodents and insects and other pests in its Leased Premises.
- 6.22 The LESSEE, at its own expense, agrees to remove all snow and ice from the sidewalks, parking lots, and aircraft aprons located on its Leased Premises. The LESSEE or its contractors will not interfere with any snow or ice removal operations conducted by the Airport or its contractors.
- 6.23 The LESSEE shall be prohibited from keeping any animals, domestic or otherwise, within the Lease Premises, except for those animals such as Seeing Eye dogs and others protected by federal accessibility standards.

- 6.24 The LESSEE shall comply with, and require its subtenants to comply with, the Airport's Storm Water Pollution Prevention Plan and all applicable requirements of the Airport's VPDES permit or license. Further, Lessee agrees to participate in training, survey, and inspection activities conducted by or for the Airport and related to storm water and waste collection and disposal.

ARTICLE 7 - INGRESS AND EGRESS

- 7.1 The LESSEE shall have the right of ingress and egress between the Leased Premises and public landing areas at the Airport by means of connecting taxiways, and between the Leased Premises and the entrance(s) to the Airport by means of connecting paved roads. The LESSEE's right to ingress and egress shall be in common with others having rights of passage thereon, and may be used except when the Airport is closed to the public.
- 7.2 The TOWN may, at any time, temporarily or permanently close, consent to, or request the closing of any such roadway or taxiway or access gate and any other way at, in or near the Leased Premises presently or hereafter used as such, so long as a reasonable means of ingress and egress as provided above remains available to the LESSEE. The LESSEE shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Leased Premises or in any streets or roadways or access gates near the Leased Premises.

ARTICLE 8 - AIRPORT SECURITY

- 8.1 It is understood and agreed that while the TOWN will make reasonable efforts to provide a safe and secure airport environment, the TOWN makes no warranty, expressed or implied, that security measures will avert or prevent occurrences, or the consequences there from, which may result in loss or damage to the LESSEE.
- 8.2 LESSEE agrees that the TOWN shall not be liable for any loss or damage of a security related nature, irrespective of origin, to person or to property, whether directly or indirectly caused by the performance or nonperformance of security service personnel.
- 8.3 The LESSEE shall be responsible for securing its area and its aircraft at all times and will make every effort to prevent unauthorized personnel or vehicles from entering on any aircraft movement areas. The LESSEE shall abide by the Airport's Security Plan as written and as amended in the future.

ARTICLE 9 - LIABILITIES AND INDEMNITIES

- 9.1 The TOWN shall not in any way be liable for any cost, liability, damage or injury occurring on the Leased Premises or the Airport including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever, or occurring on the Leased Premises, or the Airport, or as a result of any operations, works, acts or omissions performed on the Leased Premises or the Airport, by the LESSEE, its sublessees or tenants, or their guests or invitees.
- 9.2 The LESSEE agrees to indemnify, save and hold harmless, the TOWN its officers, agents, servants and employees from any and all costs, liability, damage and expense (including costs of suit and attorney fees) claimed or recovered by any person, firm or corporation by reason of injury to, or

death of, any person or persons, and damage to, destruction or loss of use of any and all property, including TOWN personnel and property, directly or indirectly arising from, or resulting from, any operations, works, acts or omissions of LESSEE, its agents, servants, employees, contractors, sublessees or tenants. In any case in which such indemnification would violate Virginia laws, or any other applicable legal prohibition, the foregoing shall not be construed to indemnify the TOWN, its officers, employees or agents for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the TOWN, its officers, employees or agents.

- 9.3 Upon the filing with the TOWN by anyone of a claim for damages arising out of incidents for which the LESSEE herein agrees to indemnify and hold the TOWN harmless, the TOWN shall notify the LESSEE of such claim and in the event that the LESSEE does not settle or compromise such claim, then the LESSEE shall undertake the legal defense on behalf of the LESSEE and on behalf of the TOWN. It is agreed the TOWN at its own cost and expense, may participate in the legal defense of any such claim. Any final judgment rendered against the TOWN for any cause for which the LESSEE is liable hereunder shall be conclusive against the LESSEE as to liability and amount upon the expiration of the time for appeal.
- 9.4 The LESSEE represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in any way connected with this Agreement.

The LESSEE agrees to save and hold the TOWN, its officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages, including attorney fees, in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the LESSEE under or in any way connected with this Agreement.

ARTICLE 10 - RULES AND REGULATIONS AND MINIMUM STANDARDS

- 10.1 All provisions regarding lease clauses set forth in the Leesburg Executive Airport Rules, Regulations and Minimum Standards as approved on December 13, 2011 and on attached as Appendix D are incorporated herein by reference. From time to time, the TOWN and the Leesburg Airport Commission may adopt, amend and enforce rules and regulations and minimum standards with respect to the occupancy and use of the Airport. The LESSEE agrees to observe and obey any and all such rules and regulations and minimum standards and all other Federal, Commonwealth and municipal rules, regulations and laws, as amended, and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. The TOWN reserves the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules, regulations or laws.

ARTICLE 11 – SIGNS

- 11.1 The LESSEE shall have the right to install and maintain one or more signs on the Leased Premises identifying it and its operations, provided, however, the subject matter, type, design, number,

location and elevation of such signs, and whether lighted or unlighted, shall be subject to and in accordance with the written approval of the TOWN. All signs must comply with the TOWN's sign ordinance and all airport rules, regulations and minimum standards. No sign will be approved that may be confusing to aircraft pilots or automobile drivers or to the traffic, or which fails to conform to the architectural scheme of the Airport or meet the requirements of the TOWN.

ARTICLE 12 - ASSIGNMENT AND SUBLEASE

- 12.1 Except as permitted by Paragraph 1.3, The LESSEE covenants and agrees that it will not sell, convey, transfer, mortgage, pledge or assign this Agreement or any part thereof, or any rights created thereby, without the prior written consent of the TOWN.
- 12.2 Any assignment or transfer of this Agreement, or any rights of the LESSEE hereunder, without the consent of the TOWN, shall entitle the TOWN at its option to forthwith cancel this Agreement.
- 12.3 Any assignment of this Agreement approved and ratified by the TOWN shall be on the condition that the assignee accepts and agrees to all of the terms, conditions and provisions of this Agreement, and agrees to accept and discharge all of the covenants and obligations of the LESSEE hereunder, including but not limited to, the payment of all sums due and to become due by LESSEE under the terms hereof.
- 12.4 Subject to all of the terms and provisions hereof, the LESSEE may sublet hangar space and office space to a person, partnership, firm or corporation engaged in a business that is, in the sole opinion of the TOWN compatible with LESSEE's authorized Airport business.
- 12.5 No consent by the TOWN to subleasing by the LESSEE of portions of the Leased Premises shall in any way relieve the LESSEE of any of its obligations to the TOWN set forth or arising from this Agreement and termination of the LESSEE's rights hereunder shall ipso facto terminate all subleases.
- 12.6 Any change in the ownership of LESSEE if a non-public corporation or any changes in the power to vote the majority of the outstanding capital stock of said corporation, shall be subject to the requirements of this Article 12 in the same manner as if such change were an assignment of this Agreement, and any such attempted change without the prior written consent of the TOWN, which shall not be unreasonably withheld, shall be regarded as a material default hereunder entitling the TOWN to exercise any and all of the remedies as provided in this Agreement in the event of LESSEE's default.

ARTICLE 13 – CONDEMNATION

- 13.1 In the event that the Leased Premises or any part thereof shall be condemned and taken by authority of eminent domain for any purpose during the term of this Agreement or sold to such authority in lieu of a taking (collectively, a "condemnation"), any award which shall be made as a result of such condemnation shall be paid to the TOWN, it being understood that title to all real property and all improvements thereon remains fully vested in the TOWN free and clear of any liens or encumbrances; provided, however, that the LESSEE, consistent with its rights under applicable

law, may appear in any such condemnation proceeding and present its claims for damages, if any, arising from such condemnation.

- 13.2 Rentals for that portion of the Leased Premises condemned shall be abated from the date that the LESSEE is dispossessed there from; provided, however, if all of the Leased Premises are condemned or if a portion of the Leased Premises are condemned and in the LESSEE's judgment, the remaining portion of the Leased Premises is insufficient for the LESSEE's operations authorized hereunder, the LESSEE may terminate this Agreement and all of its rights and unaccrued obligations hereunder effective as of the date it is dispossessed of the condemned portion (or effective) as of the date thereafter and within 90 days of the date of such dispossession by giving the TOWN 30 days written notice of such termination.
- 13.3 The LESSEE shall be entitled to the award made for a temporary taking of possession of all or part of the Leased Premises for any period of time within the term of this Agreement. Such award shall be full compensation to the LESSEE for such temporary taking and no claims for damages arising out of the temporary taking shall be made against the TOWN.

ARTICLE 14 - NON-DISCRIMINATION

- 14.1 The LESSEE, for it, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises, for a purpose for which a United States Government program or activity is extended, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the TOWN - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- 14.2 The LESSEE, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the ground of race, creed, color, national origin, sex or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the LESSEE shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- 14.3 In this connection, the TOWN reserves the right to take whatever action it might be entitled by law to take in order to enforce this provision. This provision is to be considered as a covenant on the part of the LESSEE, a breach of which, continuing after notice by the TOWN to cease and desist and after a determination that a violation exists made in accordance with the procedures and

appeals provided by law, will constitute a material breach of this Agreement and will entitle the TOWN, at its option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.

- 14.4 The LESSEE shall include the foregoing provisions in every agreement or concession pursuant to which any person or persons, other than the LESSEE, operates any facility at the Leased Premises providing service to the public and shall include thereon a provision granting the TOWN a right to take such action as the United States may direct to enforce such covenant.
- 14.5 The LESSEE shall indemnify and hold harmless the TOWN from any claims and demands of third persons including the United States of America resulting from the LESSEE's noncompliance with any of the provisions of the Section and the LESSEE shall reimburse the TOWN for any loss or expense incurred by reason of such noncompliance.
- 14.6 The LESSEE assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participation in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it will require that its covered sub-organizations provide assurances to the LESSEE that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- 14.7 LESSEE shall not discriminate against any otherwise qualified person with a disability in violation of the American with Disabilities Act.

ARTICLE 15 - GOVERNMENTAL REQUIREMENTS

- 15.1 The LESSEE shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the LESSEE's operations at the Leased Premises which may be necessary for the LESSEE's operations thereat. This includes but is not limited to the Federal Aviation Administration and Virginia Department of Aviation.
- 15.2 The LESSEE shall pay all taxes, licenses, certification, permit and examination fees and excise taxes which may be assessed, levied, exacted or imposed on the Leased Premises or operation hereunder or on the gross receipts or gross income to the LESSEE there from, and shall make all applications, reports and returns required in connection therewith.
- 15.3 In addition to compliance by the LESSEE with all laws, ordinances, governmental rules, regulations and orders now or at any time in effect during the term hereunder which as a matter of law are applicable to the operation, use or maintenance by the LESSEE of the Leased Premises or the operations of the LESSEE under this Agreement, the LESSEE agrees that it shall conduct all its operations under the Agreement and shall operate, use and maintain the Leased Premises in such manner that there will be at all times a practicable minimum of air pollution.

ARTICLE 16 - RIGHTS OF ENTRY RESERVED

- 16.1 The TOWN, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the Leased Premises for any and all purposes not inconsistent with this Agreement, provided, such action by the TOWN, its officers, employees, agents, representatives and contractors does not unreasonably interfere with the LESSEE's use, occupancy, or security requirements of the Leased Premises.
- 16.2 In the event that any personal property of the LESSEE shall obstruct the access of the TOWN, its officers, employees, agents or contractors, the LESSEE shall move such property, as directed by the TOWN or said utility company, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If the LESSEE shall fail to so move such property after direction from the TOWN or said utility company to do so, the TOWN or the utility company may move it, and the LESSEE hereby agrees to pay the cost of such moving upon demand, and further the LESSEE hereby waives any claim against the TOWN for damages as a result except for claims for damages arising from the TOWN's sole negligence.
- 16.3 Exercise of any or all of the foregoing rights in this Article, by the TOWN, or others under right of the TOWN, shall not be, nor be construed to be, an eviction of the LESSEE, nor be made the grounds for any abatement of rental nor any claim or demand for damages against the TOWN, consequential or otherwise, except claims for damage to person or property caused solely by the negligence of the TOWN.

ARTICLE 17 - ADDITIONAL RENTS AND CHARGES

- 17.1 If the TOWN elects to pay any sum or sums or incur any obligation or expense by reason of the failure, neglect or refusal of the LESSEE to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement, or as the result of any act or omission of the LESSEE contrary to said conditions, covenants or agreements, the LESSEE hereby agrees to pay the sum or sums so paid or expense so incurred by the TOWN as the result of such failure, neglect or refusal of the LESSEE, including interest, at a rate of ten percent (10%) per annum, together with all costs, damages and penalties including reasonable attorney fees.
- 17.2 In such event, the total of such amounts may be added to any installment of rent thereafter due hereunder, and each and every part of the same shall be and become additional rent recoverable by the TOWN in the same manner and with like remedies as if it were originally a part of the rent provided for in this Agreement.
- 17.3 In the event it is necessary for the airport to increase security because special threats or Federal mandates beyond the control of the TOWN, the TOWN may establish fees or charges that are shared by all the airport users.
- 17.4 LESSEE shall be responsible to pay any property taxes or any Leasehold Improvement Taxes assessed upon improvements placed on the property by LESSEE. In addition, LESSEE shall be responsible for all personal property taxes, gross receipt taxes, etc., levied with respect to LESSEE's business operations conducted on the property.

ARTICLE 18 - TERMINATION & DEFAULT

- 18.1 In the event of a default on the part of the LESSEE in the payment of rents, arrears or any other charges required by this Agreement to be paid to the TOWN, the TOWN shall give written notice to the LESSEE of such default, and demand full payment of amounts due there under, including all arrears and interest thereon. If, within ten (10) days after the date the TOWN gives such notice of non-payment, the LESSEE has not corrected said default, and paid the delinquent amounts in full, the TOWN may, by written notice to the LESSEE, terminate this Agreement and all rights and privileges granted hereby in and to the Leased Premises.
- 18.2 This Agreement together with all rights and privileges granted in and to the Leased Premises shall terminate automatically, upon the happening of any one or more of the following events:
- 18.2.1 The filing by the LESSEE of a voluntary petition in bankruptcy, under chapter 7 of the United States Code (11 U.S.C § 701 et seq.) or any assignment for benefit of creditors of all or any part of the LESSEE's assets; or,
 - 18.2.2 Any institution of proceedings in bankruptcy against the LESSEE; provided, however, that the LESSEE may defeat such termination if the petition is dismissed within six (6) months after the institution thereof; or
 - 18.2.3 The filing of a petition requesting a court to take jurisdiction of the LESSEE or its assets under the provision of any Federal reorganization act which, if it is an involuntary petition is not dismissed within six (6) months after its being filed; or
 - 18.2.4 The filing of a request for the appointment of a receiver or trustee of the LESSEE's assets by a court of competent jurisdiction, which if the request is not made by the LESSEE, is not rejected within six (6) months after being made, or the request for the appointment of a receiver or trustee of the LESSEE's assets by a voluntary agreement with the LESSEE's creditors; or
 - 18.2.5 The abandonment by LESSEE of the conduct of its authorized business at the Airport and in this connection, suspension of operations for a period of sixty (60) days will be considered abandonment in the absence of a satisfactory explanation, which is accepted in writing by the TOWN; or
- 18.3 Upon the default by the LESSEE in the performance of any covenant or conditions required to be performed by the LESSEE, and the failure of the LESSEE to remedy such default for a period of thirty (30) days or such other period as is provided in the Lease Agreement, after receipt from the TOWN of written notice to remedy the same, except default in the payment of any money due the TOWN, as outlined in section 18.1, the TOWN shall have the right to cancel this Agreement for such cause by notice to the LESSEE.
- 18.4 Upon the default by LESSEE, and the giving of notice of the default and cancellation by the TOWN as provided for elsewhere herein, the notice of cancellation shall become final; provided, however, that should the TOWN determine that the LESSEE is diligently remedying such default to completion, and so advises the LESSEE in writing, said notice of cancellation may be held in

abeyance. If, however, the TOWN determines that such default is no longer being diligently remedied to conclusion, the TOWN shall so advise the LESSEE in writing, and said notice of cancellation shall no longer be held in abeyance for any reason and shall become final without further notice to the LESSEE. The determination of the TOWN in this regard shall in all events be conclusive and binding upon the LESSEE.

- 18.5 Upon the cancellation or termination of this Agreement for any reason, all rights of the LESSEE, tenants and any other person in possession shall terminate, including all rights or alleged rights of creditors, trustees, assigns, and all others similarly so situated as to the Leased Premises. Upon said cancellation or termination of this Agreement for any reason, the Leased Premises, except for such personal property which may be removed from said Leased Premises as provided elsewhere herein, shall be free and clear of all encumbrances and all claims of the LESSEE, its tenants, creditors, trustees, assigns and all others and the TOWN shall have immediate right of possession to the Leased Premises.
- 18.6 Failure by the TOWN to take any authorized action upon default by the LESSEE of any of the terms, covenants or conditions required to be performed, kept and observed by the LESSEE shall not be construed to be, nor act as, a waiver of said default nor of any subsequent default of any of the terms, covenants and conditions contained herein to be performed, kept and observed by the LESSEE. Acceptance of rentals by the TOWN from the LESSEE, or performance by the TOWN under the terms hereof, for any period or periods after a default by the LESSEE of any of the terms, covenants and conditions herein required to be performed, kept and observed by the LESSEE shall not be deemed a waiver or estoppel of any right on the part of the TOWN to cancel this Agreement for any subsequent failure by the LESSEE to so perform, keep or observe any said terms, covenants or conditions.

ARTICLE 19 - SURRENDER AND RIGHT OF REENTRY

- 19.1 Upon the expiration, cancellation or termination of this Agreement pursuant to any terms hereof, the LESSEE agrees peaceably to surrender up the Leased Premises to the TOWN in the same condition as they may hereafter be repaired and improved by the LESSEE; save and except, (a) such normal wear and tear thereof as could not have been prevented by ordinary and usual repairs and maintenance, (b) obsolescence in spite of repair, and (c) damage to or destruction of the leasehold improvements for which insurance proceeds are received by the TOWN. Upon such cancellation or termination, the TOWN may re-enter and repossess the Leased Premises together with all improvements and additions thereto, or pursue any remedy permitted by law for the enforcement of any of the provisions of this Agreement, at the TOWN's election. Furthermore, upon such cancellation or termination, and for a reasonable time thereafter (not exceeding thirty (30) days after such cancellation or termination, and for which period the LESSEE will pay to the TOWN current Agreement rentals), or during the term of this Agreement, if the LESSEE is not in default in rentals or any other charges or obligations due the TOWN, the LESSEE shall have the right to remove its personal property, fixtures and trade equipment which it may have on the Leased Premises, provided the removal thereof does not impair, limit or destroy the utility of said Leased Premises or building for the purpose for which they were constructed or improved, and provided, further, that the LESSEE repairs all damages that might be occasioned by such removal, and restore the building and site to the condition above required.

ARTICLE 20 - SERVICES TO LESSEE

- 20.1 The TOWN covenants and agrees that during the term of this Agreement it will operate the Airport as such for the use and benefit of the public provided however, that the TOWN may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public. The TOWN further agrees to use its best efforts to maintain the runways and taxiways in good repair including the removal of snow. The TOWN agrees to keep in good repair hard-surfaced public roads for access to the Leased Premises and remove snow there from. The TOWN also agrees to provide and maintain water and sanitary sewer services in areas designated for utilities or easements adjacent to the Leased Premises for access thereto by the LESSEE in accordance with the TOWN policy governing same.

ARTICLE 21 - SURVIVAL OF THE OBLIGATIONS OF THE LESSEE

- 21.1 In the event that the Agreement shall have been terminated in accordance with a notice of termination as provided in Article 18 hereof, all the obligations of the LESSEE under this Agreement shall survive such termination, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the TOWN to the same extent, at the same time or times, and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. The TOWN may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency less the proper discount, for the entire unexpired term of this Agreement.

ARTICLE 22 - LIMITATION OF RIGHTS AND PRIVILEGES GRANTED

- 22.1 Except the exclusive right of the LESSEE to possession of the Leased Premises, no exclusive rights at the Airport are granted by this Agreement and no greater rights or privileges with respect to the use of the Leased Premises or any part thereof are granted or intended to be granted to the LESSEE by this Agreement, or by any provision thereof, than the rights and privileges expressly and specifically granted hereby.

ARTICLE 23 – NOTICES

- 23.1 All notices, consents and approvals required or desired to be given by the parties hereto shall be sent in writing, and shall be deemed given when received at the recipient's notice address except that notice that must be given by a certain time to be effective and is sent registered or certified mail, postage prepaid, return receipt requested, addressed to the recipient's address shall be deemed given when posted. Notice that starts the running of a time period and is delivered on a non-business day shall be deemed delivered on the next business day, if left at the notice address, or the next business day on which it is redelivered if it is not left at the notice address.
- 23.2 The notice addresses of the parties are as follows:

To the TOWN: Town Manager
Town of Leesburg
25 W. Market Street
Leesburg, Virginia 20176

With a copy to:
Airport Director
Leesburg Executive Airport
1001 Sycolin Road, STE 7
Leesburg, Virginia 20178

The LESSEE: _____

Such addresses shall be subject to change from time to time to such other addresses as may have been specified in written notice given by the intended recipient to the sender.

ARTICLE 24 - HOLDING OVER

- 24.1 No holding over by the LESSEE after the termination of this Agreement shall operate to extend or renew this Agreement for any further term whatsoever; but the LESSEE will by such holding over become the tenant at will of the TOWN and after written notice by the TOWN to vacate such premises, continued occupancy thereof by the LESSEE shall constitute trespass.
- 24.2 Any holding over by the LESSEE beyond the thirty (30) day period permitted for removal of fixtures without the written consent of the TOWN shall make the LESSEE liable to the TOWN for damages equal to double the rentals provided for herein and which were in effect at the termination of the Agreement. These damages are in the nature of liquidated damages and are not a penalty.

ARTICLE 25 - INVALID PROVISIONS

- 25.1 Any provisions, articles, paragraphs, portions, or clauses of this Agreement that are considered to be invalid or unenforceable shall have no effect upon any other part or portion of this Lease Agreement.

ARTICLE 26 - MISCELLANEOUS PROVISIONS

Remedies to be Nonexclusive.

- 26.1 All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the TOWN, or the LESSEE, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Non-Waiver of Rights.

26.2 The failure by either party to exercise any right, or rights accruing to it by virtue of the breach of any covenant, condition or agreement herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by such other party, nor shall such other party be relieved thereby from its obligations under the terms hereof.

Force Majeure.

26.3 Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority or other circumstances for which it is not responsible or which is not in its control; provided, however, that this section shall not excuse LESSEE from paying the rentals herein specified.

Non-liability of Individuals.

26.4 No director, officer, agent or employee of either party hereto shall be charged personally or held contractually liable by or to the other party under any term or provision of the Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of this or their execution or attempted execution of the same.

Quiet Enjoyment.

26.5 The TOWN covenants that as long as the LESSEE is not in default of any provision of this Agreement, the LESSEE shall and may peaceably and quietly have, hold and enjoy the Leased Premises exclusively to it and the rights appurtenant to the Leased Premises granted in this Agreement during the term hereof unless sooner canceled as provided in this Agreement.

Estoppel Certificate.

26.6 At the request of the LESSEE in connection with an assignment of its interest in this Agreement, the TOWN shall execute and deliver a written statement identifying it as the Lessor under this Agreement and certifying: (a) the documents that then comprise this Agreement; (b) that this Agreement is in full force and effect; (c) the then current annual amount of rent and the date through which it has been paid; (d) the expiration date of this Agreement; (e) that no amounts are then owed by the LESSEE to the TOWN (or, if amounts are owed, specifying the same); and, (f) to the knowledge of the TOWN, there are not defaults by the LESSEE under this Agreement or any facts which but for the passage of time, the giving of notice or both would constitute such a default.

Short Form of Lease.

26.7 This Agreement shall not be recorded, but at the request of either party, the other shall execute a memorandum or short form of lease for recording.

General Provisions.

26.8 LESSEE shall not use, or permit the use of, the Leased Premises, or any part thereof, for any purpose or use other than those authorized by this Agreement.

26.9 This Agreement shall be performable and enforceable in Leesburg, Virginia, and shall be construed in accordance with the laws of the Commonwealth of Virginia.

- 26.10 This Agreement is made for the sole and exclusive benefit of the TOWN and the LESSEE, their successors and assigns, and is not made for the benefit of any third party.
- 26.11 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
- 26.12 All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.
- 26.13 The titles of the several articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.
- 26.14 Nothing herein contained shall create or be construed to creating a co-partnership between the TOWN and the LESSEE or to constitute the LESSEE an agent of the TOWN.
- 26.15 This Agreement shall not become effective until it has been fully and properly executed by both parties hereto and has been approved by the TOWN.
- 26.16 The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws principals. Any litigation with respect thereto shall be brought in a court within Loudoun County unless a federal court has exclusive subject matter jurisdiction.

ARTICLE 27 - SUBORDINATION CLAUSES

- 27.1 This Agreement is subject and subordinate to the following:
- 27.1.1 The TOWN reserves the right to develop and improve the Airport as it sees fit, regardless of the desires or view of the LESSEE, and without interference or hindrance by or on behalf of the LESSEE, provided, the LESSEE is not deprived of the use or access to the Leased Premises. Accordingly, nothing contained in this Agreement shall be construed to obligate the TOWN to relocate the LESSEE.
- 27.1.2 The TOWN reserves the right to take any action it considers necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent LESSEE from erecting or permitting to be erected any building or other structure on the Airport which, in the opinion of the TOWN, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- 27.1.3 This Agreement is and shall be subordinate to the provision of existing and future agreements between the TOWN and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the obtaining or expenditure of Federal funds for the benefit of the Airport.
- 27.1.4 During the time of war or national emergency, the TOWN shall have the right to lease all or any part of the landing area or of the Airport to the United States for military or

naval use, and if any such lease is executed, the provisions of this Agreement insofar as they may be inconsistent with the provisions of such lease to the Government, shall be suspended, but such suspension shall not extend the term of this Agreement. Abatement of rentals shall be reasonably determined by the TOWN in proportion to the degree of interference with the LESSEE's use of the Leased Premises.

- 27.1.5 Except to the extent required for the performance of any obligations of the LESSEE hereunder, nothing contained in this Agreement shall grant to the LESSEE any rights whatsoever in the airspace above the Leased Premises other than those rights which are subject to Federal Aviation Administration rules, regulations and orders currently or subsequently effective.

ARTICLE 28 - INSURANCE REQUIREMENTS, DAMAGE OR DESTRUCTION

- 28.1 To safeguard the interest and property of the TOWN, the LESSEE at its sole cost and expense, shall procure and maintain throughout the term of this Agreement insurance protection for all risk coverage on the structure and improvements of which the Leased Premises is a part, to the extent of one hundred percent (100%) of the actual replacement cost thereof. Such insurance shall be written by insurers of recognized financial standing. If said insurers become financially incapable of performing under the terms of said policy, the LESSEE shall promptly obtain a new policy issued by a financially responsible carrier and shall submit such new policy as previously provided.
- 28.2 The above stated property insurance shall name the TOWN of Leesburg as an additional insured, and provide thirty (30) days' notice of cancellation or material change, by registered mail, to the TOWN, Attention: Airport Director.
- 28.3 The LESSEE shall provide certificates of insurance evidencing existence of all insurance required to be maintained prior to the inception of the Agreement term. Upon the failure of the LESSEE to maintain such insurance as provided, the TOWN may give notice of default hereunder pursuant to Article 18 herein.
- 28.4 In the event any Improvements on the Leased Premises are damaged or destroyed to the extent that they are unusable by the LESSEE for the purposes for which they were used prior to such damage, or same are destroyed, the LESSEE shall have the election of repairing or reconstructing the Improvements substantially as they were immediately prior to such casualty or in a new or modified design, subject to applicable building codes existing at the time of repairing or rebuilding, or not to construct the Improvements. The LESSEE shall give the TOWN written notice of its election hereunder within sixty (60) days after the occurrence of such casualty or the adjustment of the claim, whichever is later. In the event of damage or destruction to any of the Improvements upon the Leased Premises, the TOWN shall have no obligation to repair or rebuild the Improvements or any fixtures, equipment or other personal property installed by the LESSEE pursuant to this Agreement.
- 28.5 If the LESSEE elects to repair or reconstruct the damaged Improvements, to the extent that any loss is recouped by actual payment to the TOWN of the proceeds of the insurance, the amount of

such proceeds will be paid to the LESSEE necessary to cover its costs of rebuilding or repairing the portion or all the Leased Premises which have been damaged or destroyed.

Such payment will be made by the TOWN to the LESSEE in installments as work progresses provided that as to each request for payment the LESSEE shall certify by a responsible officer or authorized representative that the amounts requested are due and payable to its contractor for work completed. Upon completion of all the work, the LESSEE shall certify by a responsible officer or authorized representative that such rebuilding and repairs have been completed, that all costs in connection therewith have been paid by the LESSEE and said costs are fair and reasonable and said certification shall also include an itemization of costs. If the insurance proceeds are not sufficient, the LESSEE agrees to bear and pay the deficiency. Nothing herein contained shall be deemed to release the LESSEE from any of its repair, maintenance or rebuilding obligations under this Agreement.

- 28.6 In the event the LESSEE elects to repair or reconstruct as aforesaid, LESSEE, if it elects to continue its operation on the Airport, shall, at its expense, replace and repair any and all fixtures, equipment and other personal property necessary to properly and adequately continue its airport business on the Airport, but in no event shall LESSEE be obligated to provide equipment and fixtures in excess of those existing prior to such damage or destruction except for requirements of construction codes existing at the time of repair or replacement. During such period of repair or replacement, the rentals provided for elsewhere herein shall be proportionately abated during the period from the date of such damage, destruction or loss until the same is repaired, replaced, restored or rebuilt. The TOWN will determine the proportional amount of reduction of rentals. The LESSEE agrees that such work will be promptly commenced and prosecuted to completion with due diligence, subject to delays beyond the LESSEE's control.
- 28.7 LESSEE shall, at its own cost and expense, take out and maintain such insurance for the term of this Agreement as the LESSEE is required under the Workers' Compensation Act; and also take out and maintain such public liability insurance as will protect the LESSEE, the TOWN from any claims for damage to persons, property, etc., arising out of, occurring or caused by operations under this Agreement by the LESSEE or otherwise arising out of this Agreement. The policy will provide the amounts of insurance specified in Paragraph 29.8 hereof. Before execution of this Agreement, certificates of insurance in form acceptable to the TOWN must be submitted to the TOWN. Each certificate shall have endorsed thereon:
“No cancellation or change in the policy shall become effective until after thirty (30) days’ notice by registered mail to the Airport Director, Leesburg Executive Airport, P.O. Box 560, Leesburg, Virginia 20108.”
- 28.8 The TOWN will review the minimum insurance coverage required every three (3) years during the term of this Agreement.

The TOWN shall have the right to direct LESSEE to increase the minimum insurance requirement every three- (3) years. All required insurance must be in effect and so continue during the life of this Agreement in not less than the following amounts for the first three (3) years of the Agreement:

- A. Workers' Compensation Unlimited - Statutory - in compliance with the Workers Compensation Law of the Commonwealth of Virginia.
- B. General Liability Insurance with a maximum combined single limit of \$3,000,000 per occurrence. This insurance shall indicate on the Certificate of Insurance the following applicable coverage:
 - 1. Premises and Operations including Hangar keepers
 - 2. Independent Contractor and Subcontractors
 - 3. Products Liability and Completed Operations
 - 4. Broad Form Contractual
 - 5. Death and Personal Injury
- C. Automobile Liability Insurance with maximum limits of liability (single limit per occurrence) of \$1,000,000 for bodily injury and \$500,000 for property damage. This insurance shall include for bodily injury and property damage the following coverages:
 - 1. Owned Automobiles
 - 2. Hired Automobiles
 - 3. Non-Owned Automobiles
- D. Disability Benefits: The Contractor shall provide proof of compliance with the Disability Benefits Law.
- E. Location of operation shall be "All locations in the TOWN of Leesburg, Virginia".
- F. "Builders all risk" insurance to provide coverage during construction.

28.9 Nothing herein contained shall prevent the LESSEE from taking out any other insurance for protection of its interest which it deems advisable or necessary.

ARTICLE 29 - HAZARDOUS MATERIALS

- 29.1 LESSEE warrants that no industrial, toxic or hazardous waste will be disposed in the sewer system, dumpster or any other location on the Airport. Disposal shall be in accordance with all appropriate TOWN, county, state and federal regulations. Lessor may require a bond or insurance sufficient to guarantee clean up in the event of a spill.
- 29.2 LESSEE further warrants that no industrial, toxic or hazardous waste will be stored on or upon the demised Premises without the prior written consent and approval of the Lessor which under no circumstance will be given absent LESSEE's first obtaining all studies or reports required by the respective local, state and federal governmental agencies, all permits, authorization and licenses required by the respective local, state and federal governmental agencies, and without LESSEE having first obtained, constructed or otherwise provided, at LESSEE's own expenses, storage facilities meeting all requirements of all local, state and federal governmental agencies who have jurisdiction.
- 29.3 Should LESSEE's activities on or upon the demised Premises result in toxic or hazardous waste contamination of the Premises, LESSEE agree to take full responsibility for the cost of the clean up of the same, further agrees to indemnify and hold harmless the Lessor for the same, and to defend Lessor at the LESSEE's expense in any proceeding arising from, or resulting from such

contamination. LESSEE further agrees to compensate Lessor for any loss or diminution in value of the demised Premises resulting from or arising out of such contamination.

29.4 No painting of aircraft or aircraft parts will be allowed on the premises without the LESSEEs first obtaining all permits and licenses required by the respective local, state and federal governmental agencies.

ARTICLE 30 - ENTIRE AGREEMENT

30.1 This Agreement consists of Articles 1 to 30, inclusive, Exhibits A and B, and Appendix A, B and C.

30.2 It constitutes the entire agreement of the parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the TOWN and the LESSEE. The parties agree that no representations or warranties shall be binding upon the TOWN or the LESSEE unless expressed in writing in this Agreement.

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

THE TOWN OF LEESBURG

Kelly Burk, MAYOR

ATTEST:

Town Clerk

LEESEE (Insert full legal name)

By: _____

Title: _____

Approved as to form:

Town Attorney