



## **AGENDA**

Greater Asheville Regional Airport Authority Regular Meeting  
Friday, August 11, 2023, 8:30 a.m.  
Conference Room at Administrative Offices

NOTICE TO THE PUBLIC: The Airport Authority welcomes comments from the public on any agenda item. Comments are received prior to the Board's discussion of the agenda item. Comments are limited to five minutes. If you wish to comment on an agenda item, please deliver a request card (available in the meeting room) to the Clerk to the Board prior to the agenda item being called by the Chair.

- I. CALL TO ORDER
- II. SWEARING IN OF BOARD MEMBER – SUSAN RUSSO KLEIN
- III. SERVICE RECOGNITION AWARD: ROBBY RUSSELL
- IV. BOARD MEMBER INTRODUCTION
- V. AUTHORITY RECOGNITION
- VI. PRESENTATIONS: None
- VII. FINANCIAL REPORT ([document](#))
- VIII. CONSENT ITEMS:
  - A. Approval of the Greater Asheville Regional Airport Authority June 9, 2023 Regular Meeting Minutes ([document](#))
  - B. Approval of Amended Wage and Pay Structure Policy ([document](#))
  - C. Approval of Amended Budget with LAZ Parking to Operate Shuttle Buses for New South Parking Area ([document](#))
  - D. Approval of Supplemental Agreement No. 1 to Agreement for Professional Consulting Services with Avcon Engineers and Planners, Inc. for the South Parking Area Project ([document](#))



- E. Approval of Supplemental Agreement No. 1 to Agreement for Professional Consulting Services with GS&P, N.C. an Affiliate of Gresham Smith and Partners for the Terminal Modernization and Expansion Project ([document](#))
  - F. Approval of Supplemental Agreement No. 1 to Agreement for Professional Consulting Services with CHA Consulting, Inc. for the Airport Master Plan Update ([document](#))
  - G. Approval of the Greater Asheville Regional Airport Authority June 9, 2023 Closed Session Minutes
- IX. OLD BUSINESS: None
- X. NEW BUSINESS:
- A. Approval of Concession Agreement and Lease with Mountain Credit Union and the Greater Asheville Regional Airport Authority ([document](#))
  - B. Approval of a Ground Lease and Agreement with Sheetz, Inc. and the Greater Asheville Regional Airport Authority ([document](#))
  - C. Approval of Agreements for Professional Consulting Services 2023-2028 Capital Improvement Program (CIP) ([document](#))
- XI. PRESIDENT'S REPORT:
- A. Update on Parking
  - B. Update on Terminal Modernization and Expansion Project and Air Traffic Tower Project
  - C. Discussion of Proposed Strategic Plan Vision Statement
- XII. INFORMATION SECTION:  
(Staff presentations will not be made on these items. Staff will be available to address questions from the Board.)
- A. June 2023 Traffic Report ([document](#))
  - B. June 2023 Monthly Financial Report ([document](#))



C. August 2023 Development/Project Status Report ([document](#))

D. Potential Board Items for the Next Regular Meeting:

- None identified at this time

XIII. PUBLIC AND TENANTS' COMMENTS

XIV. CALL FOR NEXT MEETING: September 8, 2023

XV. CLOSED SESSION:

Pursuant to Subsections 143-318.11 (a) (3) and (4) of the General Statutes of North Carolina to Consult with Legal Counsel in Order to Preserve the Attorney-Client Privilege and to Discuss Matters Relating to the Location and/or Expansion of Industries or Other Businesses in the Area Served by the Authority, Including Agreement on a Tentative List of Economic Development Incentives that may be Offered by the Authority in Negotiations.

XVI. AUTHORITY MEMBER REPORTS:

A. Key Strategic Elements ([document](#))

XVII. ADJOURNMENT

*This agenda of the Greater Asheville Regional Airport Authority is provided as a matter of convenience to the public. It is not the official agenda. Although every effort is made to provide complete and accurate information in this agenda, the Greater Asheville Regional Airport Authority does not warrant or guarantee its accuracy or completeness for any purpose. The agenda is subject to change before and/or during the Board meeting.*

**Asheville Regional Airport  
Executive Summary  
June-23**

**AIRPORT ACTIVITY**

	Month	Variance to Prior Year	Calendar Year to Date	Variance to Prior Year
<b>Passenger Enplanements</b>	112,970	24.8%	487,897	22.0%
<b>Aircraft Operations</b>				
* Commercial	3,015	12.4%	13,465	18.0%
Scheduled Flights	1,171	5.1%		
Flight Cancellations	18			
Seats	133,683	31.0%	589,906	17.0%
Load Factor	85.0%	(4.5%)	83.0%	5.1%
General Aviation	4,029	(16.4%)	22,581	(0.1%)
Military	428	12.3%	1,759	(36.4%)

\* Current year commercial operations include charter flight data

**FINANCIAL RESULTS**

	Month	Variance to Budget	Fiscal Year to Date	Variance to Budget
<b>Operating Revenues</b>	\$ 2,430,077	43.6%	\$ 24,341,870	19.8%
<b>Operating Expenses</b>	2,024,815	71.8%	12,998,294	(10.3%)
<b>Net Operating Revenues before Depreciation</b>	<u>\$ 405,262</u>		<u>\$ 11,343,576</u>	
<b>Net Non-Operating Revenues</b>	<u>\$ 4,611,008</u> *		<u>\$ 12,339,502</u>	

\* Includes Series 2022A Bond Interest Expense \$819,897 to be paid from the Bond Capitalized Interest account semi-annually and ARPA grant funding of \$2,271,230.

<b>Grants:</b>	
FAA AIP Grants	\$ (1,089,260)
NC Dept of Transportation Grants	1,835,724
<b>Total</b>	<u>\$ 746,464</u>

**CASH**

Restricted - PFC Revenue Account	\$ 15,826,613
Restricted - BNY Mellon (Debt Service Series 2016)	\$ 1,538,058
Restricted - Bond Series 2022A	\$ 196,309,455
Restricted - Bond Series 2023	\$ 176,582,046
Designated for O&M Reserve	6,970,340
Designated for Emergency Repair	650,000
Unrestricted, Undesignated	32,828,045
<b>Total</b>	<u>\$ 430,704,557</u>

Note: Transferred \$10.3M from 2023 Bond to Unrestricted funds to reimburse terminal construction costs

**RECEIVABLES PAST DUE**

	Total	1-30 Days	31-60 Days	Over 60 Days
Advertising Customers	25,046	13,046	775	11,225
Delta	23,968	12,467	309	11,192
FAA	287	-	140	147
Paradies	5,513	5,513	-	-
Sun Country	512	512	-	-
TSA	1,790	1,020	-	770
Miscellaneous	4,411	2,116	210	2,085
<b>Total</b>	<u>\$ 61,527</u>	<u>\$ 34,674</u>	<u>\$ 1,434</u>	<u>\$ 25,419</u>
% of Total Receivables	<u>5.40%</u>			

Note: Excludes balances paid subsequent to month-end.

**REVENUE BONDS PAYABLE**

	Original Amount	Current Balance
Parking Garage Revenue Bond, Series 2016A	\$ 15,750,000	\$ 13,645,000
Parking Garage Taxable Revenue Bond, Series 2016B	5,250,000	-
Terminal Revenue Bond, Series 2022A	185,000,000	185,000,000
Terminal Revenue Bond, Series 2023	175,000,000	175,000,000
	<u>\$ 381,000,000</u>	<u>\$ 373,645,000</u>

**CAPITAL EXPENDITURES**

Annual Budget	\$ 449,316,384
Year-to-Date Spending	\$ 45,010,669



**REGULAR MEETING  
GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY  
June 9, 2023**

The Greater Asheville Regional Airport Authority ("Authority") met on Friday, June 9, 2023 at 8:30 a.m. in the Conference Room at the Authority's Administrative Offices, Asheville Regional Airport ("Airport"), 61 Terminal Drive, Suite 1, Asheville, NC 28732.

**MEMBERS PRESENT:** Brad Galbraith, Chair; George H. Erwin, Jr., Vice-Chair; Carl H. Ricker, Jr.; Susan Russo Klein; Britt Lovin; Nathan Kennedy; and Robby Russell

**MEMBERS ABSENT:** None

**STAFF AND LEGAL COUNSEL PRESENT:** Cindy Rice, Authority Legal Counsel; Lew Bleiweis, President & CEO ("president"); Michael Reisman, Chief Operating Officer; Tina Kinsey, VP - Marketing, Public Relations and Air Service Development; Janet Burnette, Chief Financial Officer; Shane Stockman, VP – Information Technology; John Coon, VP - Operations and Maintenance; Christina Madsen, VP – Business Development and Properties; Jared Merrill, VP – Planning; Samuel Sales, Chief of Public Safety; Angela Wagner, VP - Administration and Human Resources; and Ellen Heywood, Clerk to the Board

**ALSO PRESENT:** Dr. Laura Leatherwood, Blue Ridge Community College; Kathy Erwin; Travis Bird, Avcon, Inc.; John Mafera, McFarland Johnson; Chris Pair

**CALL TO ORDER:** The Chair called the meeting to order at 8:30 a.m. The Chair welcomed Mrs. Kathy Erwin to the Authority Board meeting and Dr. Laura Leatherwood as an incoming Board member.

**BOARD MEMBER INTRODUCTION:** Nathan Kennedy shared information about his family, career in banking, and his work in the community.

**SERVICE RECOGNITION AWARD:** The Chair recognized Mr. Erwin for his service on the Authority Board and read him the following resolution:

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*Greater Asheville Regional Airport Authority*

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*~ Resolution ~*

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**WHEREAS**, the Greater Asheville Regional Airport Authority was created in June 2012 by State statutes for the purpose of maintaining, operating, regulating, developing, and improving the Asheville Regional Airport; and

**WHEREAS**, George H. Erwin, Jr. served as Member of the Greater Asheville Regional Airport Authority from December 2017 through June 2023; and

**WHEREAS**, George H. Erwin, Jr. also served as Vice-Chair of the Greater Asheville Regional Airport Authority from June 2022 through June 2023; and

**WHEREAS**, during his service to the Authority, George H. Erwin, Jr. fulfilled his position with allegiance and perseverance, and with consistent concern for the welfare of employees; and

**WHEREAS**, George H. Erwin, Jr. put forth significant dedication in the collaboration of the Authority and Henderson County, with an emphasis on strengthened community relations; and

**WHEREAS**, during his tenure the Authority experienced unprecedented growth and development with a focus on significant improvements including completion of public parking facility, completion of an airfield re-development project, expansion of a south apron ramp, design of a new air traffic control tower, and design of a new terminal building project; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Greater Asheville Regional Airport Authority expresses its sincere thanks and gratitude for George H. Erwin, Jr.'s tireless and unwavering efforts in serving the needs of the Greater Asheville Regional Airport Authority and the Western North Carolina community.

**Adopted this 9th day of June, 2023.**

**Greater Asheville Regional Airport Authority**

**PRESENTATIONS:**

**A. Strategic Plan Update:** Steve Van Beek with Steer Davies and Gleave, Inc. updated the Board on the progress made with the Strategic Plan. Mr. Van Beek stated

that after input from all levels of staff a decision was made to replace the current Mission and Vision statements, in addition to working on the goals, objectives, performance measures, and action planning. The proposed Mission and Vision statements and core values were revealed followed by the strategic goals and objectives that have been identified for the strategic plan. Mr. Van Beek remarked that he will work with staff to create the plan to be shared with the community and that a framework is in place to implement the performance measures and action planning.

A discussion took place with regards to disseminating the core values to our partners to ensure outreach to passengers aligns with the Authority's core values to reflect a positive passenger experience. The expected rate of growth and flexibility needed to accommodate the growth was also considered.

A question was raised pertaining to the Authority's revenue stream calculated on a per passenger basis and how staff manages assets to diversify the Authority's non-aeronautical revenue stream for the property surrounding the airport. The president explained that all revenue, including non-aeronautical revenue, is calculated on a per passenger metric. The higher per passenger of non-aeronautical revenue represents a lower cost per enplanement for the airlines to operate. The revenue is kept separate but computed on a per passenger basis.

The Board thanked Mr. Van Beek for his presentation.

**FINANCIAL REPORT:** A review of enplanements, aircraft operations, and general aviation activity for the month of April was delivered by the president. Janet Burnette reported on the financial activity for the month of April.

**CONSENT ITEMS:**

**A. Approval of the Greater Asheville Regional Airport Authority May 12, 2023 Regular Meeting Minutes:**

**B. Approval of Resolution Accepting Grants:**

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*Greater Asheville Regional Airport Authority*

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*~ Resolution ~*

A RESOLUTION CONFERRING STANDBY AUTHORITY TO ACCEPT GRANTS BY THE  
GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY DURING THE FISCAL YEAR  
2023-2024

**WHEREAS**, the Greater Asheville Regional Airport Authority ("Authority") is a body corporate and politic organized and created by the North Carolina General Assembly pursuant to Session Law 2012-121, House Bill 552 known as the Greater Asheville Regional Airport Authority Act ("Act"); and

**WHEREAS**, the Authority operates the Asheville Regional Airport ("Airport"); and

**WHEREAS**, the Authority has the right under the Act to accept grants of money and/or materials or property of any kind for any existing or future airport facilities from the State of North Carolina, the United States, or any agency, department, or subdivision of either of them; and

**WHEREAS**, the Federal Aviation Administration ("FAA"), a division under the United States Department of Transportation, annually awards entitlement grants and discretionary grants to airports throughout the United States in support of airport capital improvement projects; and

**WHEREAS**, the Airport is eligible for such grants; and

**WHEREAS**, the window of time to accept such grants from the FAA is usually relatively short and may not fall within the schedule of Authority board meetings; and

**WHEREAS**, the President & CEO recommends that the Authority adopt this resolution so as not to be in a position whereby a grant is forfeited or denied.

**NOW, THEREFORE, BE IT RESOLVED** and Adopted by the Authority as follows:

Lew Bleiweis, A.A.E., President & CEO of the Greater Asheville Regional Airport Authority, Michael Reisman, A.A.E., Chief Operating Officer, the Chair of the Authority, and/or the Vice Chair of the Authority, or any of them or their successors in office (each an "Authorized Officer") be, and they hereby are, authorized to accept, on behalf of the Authority, any and all grant offers made to the Authority by the State of North Carolina, the United States, or any agency, department, or subdivision of either of them; to execute and deliver, for and on behalf of the Authority, any and all instruments necessary to

accept such grant offers; to ratify, accept, and adopt all assurances, statements, representations, warranties, covenants and agreements contained in any project application submitted by the Authority in connection with such grants; and to agree, on behalf of the Authority, to comply with any and all such assurances.

Adopted this 9<sup>th</sup> day of June, 2023

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Brad Galbraith, Chair

Attested by:

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Ellen M. Heywood, Clerk to the Board

**C. Approval of Amendment to the FY22/23 Budget:**

**BE IT ORDAINED** by the Greater Asheville Regional Airport Authority that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2023:

**Section 1.** To amend the appropriations as follows:

**EXPENDITURES:**

	<u>Decrease</u>	<u>Increase</u>
Executive Dept	_____	\$100,000.00
Totals	_____	\$100,000.00

This will result in a net increase of \$100,000.00 in the appropriations. Revenues will be revised as follows:

**REVENUES:**

	<u>Decrease</u>	<u>Increase</u>
Transfer from GARAA Cash	_____	\$100,000.00
Totals	_____	\$100,000.00

**Section 2.** Copies of this budget amendment shall be furnished to the Clerk to the Greater Asheville Regional Airport Authority, and to the Budget Officer and to the Finance Officer for their direction.

Adopted this 9<sup>th</sup> day of June, 2023.

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Brad Galbraith, Chair

Attested by:

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Ellen Heywood, Clerk to the Board

Mr. Russell moved to approve Consent Items A through C. Ms. Russo Klein seconded the motion and it carried unanimously.

**OLD BUSINESS:**

**A. Public Hearing and Adoption of Ordinance No. 202301 Establishing Rules and Regulations of the Asheville Regional Airport:** Michael Reisman informed the Board that the Airport Rules and Regulations, Ordinance No. 202301 has been available for public inspection since the Board's approval of the ordinance at the May 12, 2023 meeting. No public comments have been received to date. Mr. Reisman further stated that since the approval at the May 12<sup>th</sup> meeting, the document has been reformatted, primarily the paragraph numbering for easier reference and future updating, however, no changes were made to the material content of the document. Adoption of Ordinance 202301 will replace Ordinance 201701.

Ms. Russo Klein moved to approve the modification to the reformatting of the sections of the proposed Airport Rules and Regulations Ordinance 202301. Mr. Lovin seconded the motion and it carried unanimously.

Ms. Russo Klein moved to open the floor to public comments at 9:51 a.m. Mr. Erwin seconded the motion and it carried unanimously. There being no public comments, Mr. Lovin moved to close the floor to public comments at 9:52 a.m. Ms. Russo Klein seconded the motion and it carried unanimously.

Mr. Lovin moved to adopt the Airport Rules and Regulations Ordinance No. 202301. Ms. Russo Klein seconded the motion and it carried unanimously.



GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY

AIRPORT ORDINANCE NO. 202301

AIRPORT RULES & REGULATIONS

ADOPTED: JUNE 9, 2023

## **FORWARD**

Welcome to the Asheville Regional Airport (AVL). The Greater Asheville Regional Airport Authority, Owner and Operator of AVL, has established through ordinance, Airport Rules & Regulations necessary to ensure the safe and efficient operation of the Airport facilities.

This Airport Rules & Regulations Ordinance is provided to assist all tenants, employees, pilots, passengers, and other members of the general public with the information they need to understand the basic requirements, and safety procedures and practices in place at AVL for the benefit of safety and security of the Airport facility and those using it.

Questions concerning any information contained in this manual should be directed to the Greater Asheville Regional Airport Authority administrative offices, 61 Terminal Drive, Suite 1, Fletcher, North Carolina 28732.



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**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**

**AIRPORT ORDINANCE NO: 202301**

**RULES & REGULATIONS ADOPTED: JUNE 9, 2023**

**AN ORDINANCE, IN ACCORDANCE WITH SECTION 1.6(A) OF THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY ACT, NORTH CAROLINA SESSION LAW 2012-121, TO ESTABLISH THE RULES AND REGULATIONS OF THE ASHEVILLE REGIONAL AIRPORT, IN ORDER TO REGULATE THE CONDUCT OF PERSONS AND BUSINESSES AT THE ASHEVILLE REGIONAL AIRPORT; AND TO MAKE A VIOLATION OF THIS ORDINANCE OR ANY AIRPORT RULE OR REGULATION CONTAINED HEREIN, A MISDEMEANOR, CIVIL INFRACTION, OR ADMINISTRATIVE VIOLATION, AND TO PRESCRIBE THE PENALTIES AND MEANS OF ENFORCEMENT OF SAID RULES AND REGULATIONS.**

**Section 1. Citation**

- 1.1 This Ordinance may be cited as “**Authority Ordinance No. 202301**” or as the “**Airport Rules & Regulations.**”

**Section 2. Findings**

- 2.1 The Greater Asheville Regional Airport Authority was created by Session Law 2012-121, which was ratified by the General Assembly of North Carolina on June 28, 2012, and operates the Asheville Regional Airport.
- 2.2 Section 1.6(a)(7) of Session Law 2012-121, gives the GARAA the ability to, among other things, “[*m*]ake all reasonable rules, regulations, and policies as it may from time to time deem to be necessary, beneficial or helpful for the proper maintenance, use, occupancy, operation, and/or control of any airport or airport facility owned, leased, subleased, or controlled by the Authority.”
- 2.3 Section 1.6(a)(21) of the Session Law gives the GARAA the ability to: “[*e*]xercise all powers conferred by Chapter 63 of the General Statutes [*of the State of North Carolina*] or any successor Chapter or law.”
- 2.4 The powers conferred in North Carolina General Statue Section 63-53(2) specifically include the powers to: adopt and amend all needful rules, regulations and ordinances for the management, government, and use of any properties under its control and to fix by ordinance, penalties for the violation of said ordinances and enforce said penalties.
- 2.5 North Carolina General Statue Section 63-53(2) also specifically requires that such ordinances be published as provided by general law or the chapter of the municipality for the publication of similar ordinances, and that such ordinances conform to and be consistent with the laws of the

State of North Carolina, and the then current federal legislation governing aeronautics and the regulations promulgated thereunder.

- 2.6 The Greater Asheville Regional Airport Authority, consistent with that Resolution adopted on June 17, 2016, by the Authority Board (Greater Asheville Regional Airport Authority Policy and Procedure for the Adoption of Ordinance), may adopt these Airport Authority Rules & Regulations by ordinance.

### **Section 3. Purpose and Scope**

- 3.1 The purpose of these Airport Rules & Regulations is to establish, by ordinance, certain rules and regulations that will govern the use and activities that may take place on Airport Property.
- 3.2 Permission to use the Airport, Airport Property, or any part thereof, is conditioned upon strict compliance with these Airport Rules & Regulations, including payment of any fees or charges established hereby.
- 3.3 These Airport Rules & Regulations shall be applicable to every Person utilizing the Airport or Airport Property unless otherwise indicated and shall supersede all prior rules and regulations promulgated by the Authority.
- 3.4 These Airport Rules & Regulations shall be in addition to all other applicable contract terms, lease terms, Minimum Standards, policies, plans and Directives of the Airport, including, but not limited to the; Stormwater Pollution Prevention Plan, Spill Prevention Control and Countermeasures Plan, Airport Security Plan, Airport Emergency Plan, Airport Certification Manual, and Wildlife Hazard Management Plan.

### **Section 4. Effective Date**

- 4.1 These Airport Rules & Regulations shall take effect as of the **9<sup>th</sup>** day of **June 2023**. Any amendments hereto, shall be effective as of the Amended Date referenced above.

### **Section 5. Definitions**

- 5.1 Unless specifically defined otherwise herein, or unless a different meaning is apparent from the context, the terms used in these Airport Rules & Regulations shall have the meanings set forth in this Section.
- 5.2 Abandon – shall mean to forsake, desert, give up and/or surrender one’s claim or right, license, use or privilege.
- 5.3 Abandoned Property – shall mean any item, including but not limited to, Motor Vehicles, equipment, and personal belongings, that would appear to a reasonable person that it has been forsaken, deserted, given up, surrendered, or left without anticipation of the Owner or Operator returning to claim it within a reasonable period of time.

- 5.4 Airport Development Guidelines – shall mean the specific written documents detailing the design requirements of all new construction and development on Airport Property, and for modifications to existing Airport facilities, regardless of ownership.
- 5.5 Airport Movement Area (AMA) – shall mean the Runways, Taxilanes, or Taxiways and other areas of the Airport that are utilized for taxiing, air taxiing, takeoff, and landing of Aircraft, that are under the direct control of the air traffic control tower, including during periods when the tower is closed.
- 5.6 Air Operations Area (AOA) – shall mean the areas of the Airport used for Aircraft landing, takeoff, or surface maneuvering, including the areas around hangars, navigation equipment, and Aircraft parking areas.
- 5.7 Aircraft – shall mean any device used or designed for navigation or flight in the air including, but not limited to, an airplane, sailplane, glider, helicopter, gyrocopter, ultra-light, blimp, remotely piloted air vehicles, unmanned air vehicles, and other autonomous air vehicles.
- 5.8 Airport – shall mean the Asheville Regional Airport (AVL).
- 5.9 Airport Property – shall mean any and all real property owned by the Authority and used for aeronautical and aeronautical-related purposes, including but not limited to; the Airfield, the Airport Terminal, Terminal Drive, the Runway, all parking facilities, whether public or private, all general aviation facilities, all Public Safety facilities, and all Taxilanes and Taxiways.
- 5.10 Alcoholic Beverages – shall mean any beverage containing at least one-half of one percent (0.5%) alcohol by volume, including any Malt Beverage, Unfortified Wine, fortified wine, spirituous liquor, and mixed beverages, or as otherwise defined by the State of North Carolina.
- 5.11 Apron or Ramp – shall mean those areas of the Airport within the AOA designated for loading, unloading, servicing, or parking of Aircraft.
- 5.12 Authority – shall mean the Greater Asheville Regional Airport Authority.
- 5.13 Authority Board – shall mean the collectively appointed members of the Authority, that when acting in official capacity on behalf of the Authority, have the powers, authority, and jurisdiction conferred upon it by the North Carolina General Assembly.
- 5.14 Authorized Area(s) – shall mean a specified location or portion of the Airport, accessible only to specifically authorized Person(s).
- 5.15 Authorized Representative – shall mean an employee of the Authority, designated by the Authority Board or the President & CEO, to act in a particular capacity.
- 5.16 City – shall mean the City of Asheville, North Carolina.
- 5.17 Commercial Activity – shall mean the exchange, trading, buying, hiring or selling of commodities, goods, services, or tangible or intangible property of any kind, and/or any revenue producing activity on Airport Property.

- 5.18 County – shall mean Buncombe County, and/or Henderson County, North Carolina.
- 5.19 Courtesy Vehicle – shall mean any Motor Vehicle used in Commercial Activity as herein defined, other than a taxicab, limousine, TNC Vehicle, Peer-to-Peer Vehicle Sharing Program, etc. to transport persons, baggage or goods, or any combination thereof, between the Airport and the business establishment owning or operating such motor vehicle, the operation of which is generally performed as a service without any direct or indirect costs to the passenger.
- 5.20 Designated Areas – shall mean those areas of the Airport, marked by signage where possible, where certain activities are limited, or where certain activities must occur, as specified elsewhere in these Airport Rules & Regulations.
- 5.21 Directives – shall mean the specific written documents detailing the approved methods of operations and directed by the Authority or his/her Authorized Representative.
- 5.22 Federal Aviation Regulation (FAR) – shall mean the rules prescribed by the Federal Aviation Administration (FAA) governing all aviation activities in the United States, as contained in Title 14 of the Code of Federal Regulations (CFR).
- 5.23 Flammable Liquids – Liquids that are capable of self-sustained combustion.
- 5.24 Foreign Object Damage/Debris (FOD) – shall mean any object, live or not, located in an inappropriate location in the Airport environment that has the capacity to injure the Airport or air carrier personnel and/or damage Aircraft.
- 5.25 Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device – shall mean any Motor Vehicle, tanker truck, trailer or other mobile or fixed device containing a tank of any size and/or pumping equipment, designed or used to deliver and supply fuel to Aircraft, Motor Vehicles, fuel farms, fuel tanks, or other equipment on Airport Property.
- 5.26 Hazardous Material – shall mean any item or agent (biological, chemical, radiological, and/or physical) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.
- 5.27 Helicopter – shall mean a rotorcraft that, for its horizontal motion, depends principally on its engine driven rotors.
- 5.28 Malt Beverage – shall mean beer, lager, malt liquor, ale, porter, or fermented beverage.
- 5.29 Minimum Standards – shall mean the specific written documents detailing the minimum requirements to be met as a condition for the privilege to conduct aeronautical or non-aeronautical services on Airport Property.
- 5.30 Motor Vehicle – shall mean every vehicle which is self-propelled, and every vehicle designated to run upon the highways, which is pulled by a self-propelled vehicle, except Aircraft or devices moved exclusively upon stationary rails or tracks.

- 5.31 NFPA – shall mean the National Fire Protection Association.
- 5.32 Non-Commercial Activity – shall mean activity undertaken not for profit, but solely for philanthropic, religious, charitable, benevolent, humane, public interest, or similar purpose and no consideration for same is received, pledged, or promised for any part of the respective activity.
- 5.33 Non-Operating Aircraft – shall mean any Aircraft located on the Airport, which does not possess a current certificate of air worthiness issued by the FAA, and/or is not operational or functional and is not actively being repaired in good faith to become an operating Aircraft.
- 5.34 Non-Public Parking Facilities – shall mean parking facilities that are limited to authorized users or permit only parking.
- 5.35 Open Container – shall mean a container whose seal has been broken or a container other than the manufacturer’s unopened original container.
- 5.36 Operator – shall mean the individual directly controlling or maneuvering equipment, Motor Vehicle or Aircraft.
- 5.37 Owner – shall mean the Person possessing a fee interest in real property or ownership interest in personal property.
- 5.38 Parade – shall mean any march, demonstration, ceremony, or procession of any kind, which moves from place to place completely or partially, in or upon any street, sidewalk, or other grounds or places, owned or under the control of the Authority, along a specified route.
- 5.39 Park – shall mean to put, leave, or let a Motor Vehicle or Aircraft stand or stop in any location, whether the Operator thereof leaves or remains in such Motor Vehicle or Aircraft, when such standing or stopping is not required by traffic controls or by conditions beyond the control of the Operator.
- 5.40 Peer-to-Peer Vehicle Owner – shall mean the registered owner of the Peer-to-Peer Shared Vehicle that is made available for sharing through a Peer-to-Peer Vehicle Sharing Program.
- 5.41 Peer-to-Peer Vehicle Sharing Program – shall mean an electronic business platform that connects shared vehicle owners and drivers to enable the sharing of vehicles for financial consideration.
- 5.42 Peer-to-Peer Vehicle Sharing Provider – shall mean any Person who operates, facilitates, or administers the provision of personal vehicle sharing through a Peer-to-Peer Vehicle Sharing Program.
- 5.43 Person – shall mean any individual, entity, firm, partnership, corporation, company, association, joint stock association or body politic, or other user of the Airport, and includes any trustee, receiver, committee, assignee or other representative or employee thereof. Person includes the singular and plural, whenever the context permits.

- 5.44 Picketing – shall mean the stationing of any Person by standing, lying, walking, sitting, kneeling, bending, or in any other similar manner, at a particular place so as to persuade, or otherwise influence another Person’s actions or conduct, or to apprise the public of an opinion or message.
- 5.45 Public Areas – shall mean areas and portions of the Airport, including buildings, intended to be accessible and open to the general public, exclusive of Authorized areas.
- 5.46 Public Parking Facilities – shall mean all parking facilities provided for the public on Airport Property.
- 5.47 Public Safety – shall mean the Department of Public Safety of the Greater Asheville Regional Airport Authority, which provides law enforcement, aircraft rescue and firefighting, and emergency medical services on the property of the Asheville Regional Airport.
- 5.48 Restricted Area(s) – shall mean any designated area of the Airport to which access or entry is limited to authorized Persons only.
- 5.49 Runway – shall mean a Restricted Area used solely for take-off and landing of Aircraft.
- 5.50 Service Animal – shall mean a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Animal species other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training are not Service Animals.
- 5.51 Solicitation or To Solicit – shall mean to repetitively or continuously, directly or indirectly, actively or passively, openly or subtly, ask orally, in writing, or otherwise, (or endeavor to obtain by asking) request, implore, plead for, importune, seek or try to obtain, and shall include, but shall not be limited to: panhandling and begging.
- 5.52 Street – shall mean any highway, road, lane, avenue, boulevard, alley, bridge, or other way within and/or under the control of the Authority and open to public use.
- 5.53 Taxilane or Taxiway – shall mean those portions of the AOA, authorized, or designated by the Authority, for the surface maneuvering of Aircraft, which are used in common, and which may or may not be under the control of an Air Traffic Control Tower (ATCT).
- 5.54 Taxicab, Taxi or Cab – shall mean any automobile that carries Person(s) for a fare, determined by a meter and that is appropriately licensed as a taxicab by the proper governmental authority.
- 5.55 Through-the-Fence Operations – shall mean a Commercial Activity or a Non-Commercial Activity that is directly related to the use of the Airport, but is developed or located off Airport Property, and that has access to the Airport for Aircraft across the property line.

- 5.56 Transportation Network Company (TNC) – shall mean citizens utilizing a privately owned motor vehicle for commercial ground transportation purposes that are dispatched through electronic means.
- 5.57 Ultra-Light Vehicle – shall mean an Aircraft that meets and operates under the requirements of 14 CFR, Part 103.
- 5.58 Unfortified Wine – shall mean wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar.
- 5.59 Weapon – shall mean a dirk, billy club, gun, knife, blackjack, slingshot, metal knuckles, tear gas, chemical weapon, any explosive device, electronic weapon, or any other substantiating instrument that can be utilized to coerce, intimidate, or injure a Person, and all other such instruments as defined by local, state, or federal law.

## **Section 6. General Regulations**

- 6.1 Commercial and Non-Commercial Activity. It shall be unlawful for any Person to occupy or rent space or conduct any business, commercial enterprise, or Commercial Activity, or other form of revenue or non-revenue producing Non-Commercial Activity, on Airport Property without first obtaining a written lease, contract, permit or other form of written authorization from the Authority and paying all fees.
- 6.2 Advertising and Display. It shall be unlawful for any Person to post, distribute, or display signs, advertisements, literature, circulars, pictures, sketches, drawings, or other forms of written material on Airport Property or in public rights-of-way, without the written permission of the Authority.
- 6.3 Commercial Speech. It shall be unlawful for any Person, for a commercial purpose, to post, distribute, or display signs, advertisements, circulars, pictures, sketches, drawings, or engage in other forms of commercial speech, without a written contract, permit or other form of written authorization from the Authority.
- 6.4 Commercial Photography. Except as provided for in Section 6.4.A, it shall be unlawful for any Person to take a still, motion or sound motion pictures, or make sound records or recordings of voices or otherwise on Airport Property, for commercial purposes or for the distribution to others for commercial purposes without written permission from and in a manner authorized by the Authority.
  - A. Section 6.4 does not apply to bona fide coverage by the news media conducting their business in an Authorized Area.
- 6.5 Through-The-Fence Activities. Except as described in Section 6.5.A and 6.5.B below, it shall be unlawful for any Person to access the Airport, including the Runway, Taxilane or Taxiway, Aprons, hangar, and Aircraft servicing areas, directly from any off Airport Property.
  - A. Exceptions to section 6.5 may be sought from the Authority on a case-by-case basis.



B. Access by exception to Section 6.5 shall only be allowed upon satisfaction of each of the following conditions.

- (1) The issuance of a permit, license, or written agreement by the Authority;
- (2) When lease terms and operating restrictions can ensure security, safety, equitable compensation to the Authority; and
- (3) When a fair competitive environment can be established for other comparable Airport tenants.

C. All Through-The-Fence Operations are subject to, and shall take place in, compliance with all FAR or FAA requirements.

6.6 Storage of Equipment. It shall be unlawful for any Person, unless otherwise provided for by lease, other agreement, or permit, to use any area on Airport Property, including buildings, either privately owned or publicly owned, for any storage of cargo or any other property or equipment, including Aircraft, without permission from the Authority.

A. The Authority shall, upon a violation of Section 6.6, have the authority to order the cargo, Aircraft, or any other property removed, or to cause the same to be removed and stored at the expense of the Owner or consignee, without the Authority having any responsibility or liability therefor.

6.7 Construction and Repair Activities on Airport Property. It shall be unlawful for any Person to undertake any form of construction or repair activities on Airport Property, including but not limited to, digging, changing, pouring concrete, erecting structures, repairing public utilities, installing or repairing pavement, or any other form of construction or repair work, without a valid easement and/or first obtaining permission from the Authority.

6.8 Animals.

A. It shall be unlawful to bring upon Airport Property any animal that is not properly restrained and controlled by the Owner, either on a leash or inside a suitable container.

B. Only Service Animals and animals traveling with passengers are allowed inside the Airport terminal. Animals traveling with passengers must be properly restrained and controlled by the Owner at all times and must remain on a leash or inside a suitable container at all times.

(1) Section 6.8.A shall not apply to public safety animals, Paws for Passengers animals, or other animals associated with an approved Airport program.

C. It shall be unlawful to hunt, pursue, trap, catch, injure, or kill any animal on Airport Property, without first obtaining permission from the Authority.

(1) Section 6.8.C shall not apply to the conduct and official acts of governmental officials, including wildlife management of the United States Department of Agriculture or of the

Authority, or when such activities are conducted by the Authority for Aircraft operational safety.

- D. It shall be unlawful for any Person to feed or do any other act to encourage the congregation of birds or other animals on Airport Property.
- E. It shall be unlawful for any Person to fish or boat from the Airport, on or in any lakes, ponds, or other bodies of water located on Airport Property.

#### 6.9 Preservation of Property.

- A. It shall be unlawful for any Person to destroy, injure, deface, or disturb any building, sign, equipment, marker, or other structure, tree, flower, lawn, and/or other tangible property on Airport Property.
- B. It shall be unlawful for any Person to travel on Airport Property, other than on roads, walks or other marked rights-of-way, provided for such a specific purpose.
- C. It shall be unlawful for any Person to alter, add to, or erect any buildings or sign on the Airport or make any excavation on Airport Property, without prior expressed written approval from the Authority.
- D. Any Person causing injury, destruction, damage, or disturbance to Airport Property of any kind, including buildings, fixtures, or appurtenances, whether through any incident, act or omission, shall immediately report such damage or destruction to the Authority.
- E. Any Person involved in any incident, whether personal, with an Aircraft, automobile, ground support equipment, or otherwise occurring anywhere on Airport Property, shall make a full report to Public Safety as soon as possible after the incident.
  - (1) All incident reports shall include, but not be limited to, the names and addresses of all principals and witnesses, if known, and a detailed statement of the facts and circumstances.
- F. Any Person, tenant, company, or organization causing damage to or destroying Airport Property of any kind, including buildings, fixtures, or appurtenances, whether through violation of these ordinance or through any incident, accident, act or omission, shall be fully liable to the Authority for all damages, losses, and costs for repair associated therewith.

#### 6.10 Lost, Found and Abandoned Property.

- A. Any Person finding any lost article(s) in the Public Areas on Airport Property, shall immediately deposit them with the Lost and Found located in Guest Services.
- B. Articles unclaimed by their proper Owner, within ninety (90) days, shall thereafter, upon request, be turned over to the finder in accordance with then provisions of any applicable North Carolina General Statutes.

- C. Articles to which the Owner or finder is not entitled to lawful possession, shall be forfeited to the Authority for disposal in accordance with provisions of any applicable North Carolina General Statutes.
- D. Nothing in Section 6.10 shall be construed to deny the right of Airport tenants to maintain “lost and found” services for property of their patrons, invitees, or employees.
- E. It shall be unlawful for any Person to abandon any property on Airport Property.
- F. Any Property which has been determined by the Authority to be Abandoned will be removed, stored, and/or disposed of, at the Owner’s expense, without the Authority having any responsibility or liability therefor.

6.11 Violations of Section 6.

- A. A violation of Section 6 shall not be a misdemeanor or infraction under North Carolina General Statutes § 14-4. A civil penalty shall be assessed, and a civil citation issued for the violation of any provision of Section 6, in accordance with the following:
  - (1) The civil penalty associated with each civil citation issued for a violation of Section 6 shall be \$150.00.
  - (2) Each day’s continuing violation of any provision of Section 6, is a separate and distinct violation.
  - (3) A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply: 15-30 days delinquent – Additional Penalty of \$50.00; Each additional 30 days delinquent - Additional Penalty of \$50.00; Maximum of 3 Additional Penalties assessed.
- B. [RESERVED]
- C. The Authority may order any Person to cease and desist any activities or conduct in violation of or in noncompliance with Section 6.
  - (1) The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from, or denied access to, the Airport.
  - (2) An order of removal from, or denial of access to, the Airport shall set forth the reasons for and dates on which removal, or denial of access, shall begin and end.

**Section 7. Personal Conduct**

7.1 Misdemeanors.

- A. Solicitation. It shall be unlawful for any Person to solicit, for any purpose, on Airport Property without prior authorization from the Authority.

B. Obstruction of Airport Use and Operations. No Person shall obstruct, impair, or interfere with the safe and orderly use of the Airport by any other Person, Motor Vehicle, or Aircraft.

C. Restricted Areas and Air Operations Area.

- (1) Except as otherwise provided in Section 7.1.C(2), it shall be unlawful for any Person to, without the prior written authorization of the Authority, enter the AOA or any Restricted Area on Airport Property.
- (2) The following Persons may enter the AOA or any Restricted Area on Airport Property without the prior written authorization of the Authority.
  - a. Persons assigned to duty thereon with proper training and identification media issued by, or acceptable to, the Authority.
  - b. Passengers who, under appropriate supervision by qualified and Airport badged personnel, enter upon the Apron for the purpose of enplaning or deplaning an Aircraft.
  - c. Persons engaged, or having been engaged, in the operation of Aircraft with proper identification, if located in a Restricted Area requiring such identification.
- (3) No Person shall walk or drive across the AMA of the Airport without specific permission from the Authority and, where applicable, the Federal Aviation Administration air traffic control tower on Airport Property, and without having first completed all Airport required training and background checks.

D. Compliance with Signs. It shall be unlawful for any Person to fail to observe and obey all posted signs, fences, permanent and temporary traffic control and barricades governing activities and/or demeanor of the respective Person while on Airport Property, and while operating an Aircraft or other equipment.

E. Use and Enjoyment of Airport Premises.

- (1) It shall be unlawful for any Person, singularly or in association with others, by his, her, or their conduct, or by congregating with others, to prevent any other Person lawfully entitled thereto from the use and enjoyment of the Airport and its facilities or any part thereof, or prevent any other Person lawfully entitled thereto from free and unobstructed passage from place-to-place, or through entrances, exits, or passageways on Airport Property.
  - a. Nothing in Section 7 is intended to prevent any Person from preventing another person, without authorization, from entering Authorized Areas or Restricted Areas.
- (2) It shall be unlawful for any Person to remain in or on any Public Areas, place or facility on Airport Property, in such a manner as to hinder or impede the orderly passage in or through or the normal or customary use of such area, place, or facility by any Person or Motor Vehicle entitled to such passage or use.

- (3) It shall be unlawful for any Person to commit any disorderly, obscene, or indecent act, or use profane or abusive language, or commit any nuisance within the boundaries of the Airport.
- (4) It shall be unlawful for any Person to throw, shoot, aim lasers at, or propel any object in such a manner as to interfere with or endanger the safe operation of any Aircraft taking off from, landing at, or operating on Airport Property, or any Motor Vehicle on Airport Property.
- (5) It shall be unlawful for any Person to camp, live, sleep, or otherwise remain overnight on Airport Property.
  - a. Nothing in Section 7.1.E(5) is intended to prevent any Person, who holds a ticket for airline travel for the same day or the next day, from sleeping in the Airport terminal.
- (6) It shall be unlawful for any Person to urinate or defecate on any Airport Property other than in restrooms or temporary restrooms specifically identified for that purpose.

F. Environmental Pollution & Sanitation.

- (1) To the maximum extent possible, each Person while on Airport Property shall limit activities thereon in such a manner as to not cause littering or any other form of environmental pollution and shall abide by the provisions of Section 7.1.F.
- (2) It shall be unlawful for any Person to dispose of garbage, papers, refuse, or other form of trash including cigarettes, cigars, and matches, except in receptacles provided for such a purpose.
- (3) It shall be unlawful for any Person to dispose of any fill or building materials or any other discarded or waste materials on Airport Property, except as approved in writing by the Authority.
- (4) It shall be unlawful for any Person to place any liquids in storm drains or the sanitary sewer system on Airport Property, which will damage such drains or system, or will result in environmental pollution passing through such drain or system.
- (5) It shall be unlawful for any Person to use a comfort station or restroom toilet or lavatory facility on Airport Property, other than in a clean and sanitary manner.
- (6) It shall be unlawful for any Person to burn any refuse on Airport Property, except with the written authorization of the Authority.
- (7) It shall be unlawful for any Person to unnecessarily, or unreasonably, or in violation of the law, cause any smoke, dust, fumes, gaseous matter, or particular to be emitted into the atmosphere or be carried by the atmosphere on Airport Property.

- (8) Any Person discarding chemicals, paints, oils, or any products on Airport Property, with authorization and in accordance with Section 7.1.E, must discard such materials in accordance with all other applicable state, local, or federal laws and regulations.

#### G. Firearms and Weapons.

- (1) For the purpose of Section 7.1.G, a firearm means: (i) any Weapon, including a starter gun, which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive other than flare guns, (ii) any firearm muffler or firearm silencer, or (iii) any destructive device.
- (2) It shall be unlawful for any Person, except those Persons to the extent authorized by federal law and/or state law, to carry or transport any firearm or Weapon on Airport Property, except when such firearm or Weapon is properly encased for shipment.
- (3) The Authority reserves the right to restrict the carrying of firearms and Weapons by watchman and guards on Airport Property.
- (4) It shall be unlawful for any Person to discharge any firearm or Weapon on Airport Property, except in the performance of official duties requiring discharge thereof.
- (5) It shall be unlawful for any Person to carry a firearm or Weapon in a Parade on Airport Property.

#### H. Alcoholic Beverages and Controlled Substances.

- (1) Except as provided in Sections 7.1.H(1)a and 7.1.H(1)b below, it shall be unlawful for any Person to consume Alcoholic Beverages on Airport Property.
  - a. It shall be lawful to consume Alcoholic Beverages in areas designated by the Authority for the sale and/or consumption of an Alcoholic Beverage, both permanent and temporary in nature, so long as all appropriate permits, licenses and permissions have been obtained.
  - b. It shall be lawful to consume an alcoholic beverage in areas designated under written agreement by the Authority, so long as all appropriate permits, licenses, and permission have been obtained.
- (2) Except as provided in Sections 7.1.H(1)a and 7.1.H(1)b above, it shall be unlawful for any Person to possess any Open Container of an Alcoholic Beverage on Airport Property.
- (3) It shall be unlawful to drive any Vehicle on Airport Property while under the influence of an impairing substance; (i) or after having consumed sufficient alcohol that the individual has, at any relevant time after the driving, an alcohol concentration of 0.08 or more, or (ii) with any amount of a Schedule I controlled substance, as listed in North Carolina General Statutes Section 90-89, or its metabolites in the individual's blood or urine.

- a. The relevant definitions contained in North Carolina General Statutes § 20-4.01 shall apply to Section 7.1.H(3).
- b. The fact that a Person charged with violating Section 7.1H.(3) is, or has been, legally entitled to use alcohol or a drug is not a defense to a charge under Section 7.1.H(3).
- c. In any prosecution for operating a Vehicle while impaired on any Airport Property, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges that the defendant operated the Vehicle within the State and on the Airport while subject to an impairing substance.
- d. Any Person who operates a Vehicle on Airport Property gives consent to chemical analysis if he is charged with the offense of operating a Vehicle while impaired. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when he has reasonable grounds to believe that the Person charged has committed the specific crime. The chemical analysis shall be performed pursuant to the procedures established under Chapter 20 of the North Carolina General Statutes applying to other motor vehicle violations. The results of any chemical analysis will be admissible into evidence at the trial on the offense charged and shall be deemed sufficient evidence to prove a person's alcohol concentration.

I. Picketing, Marching and Demonstration.

- (1) It shall be unlawful for any Person to walk in a picket line as a picketer, or take part in any form of demonstration including, but not limited to a Parade, on Airport Property, except in or at the place specifically assigned by means of prior arrangements in writing by the Authority for such Picketing or other permitted demonstration and in accordance with the provisions of Section 7.1.I(2).
- (2) Any permitted Picketing or demonstration shall be conducted in accordance with the provisions of Sections 7.1.I(2)a and 7.1.I(2)b below.
  - a. Picketing or demonstration shall be in the peaceful and orderly manner contemplated by law, without physical harm, molestation, threat, or harassment of any Person, without obscenities, any violence, any breach of the peace, or other unlawful conduct whatsoever.
  - b. Picketing or demonstration shall be without obstructing the use of the Airport by others and without hindrance to or interference with the proper, safe, orderly, and efficient operation of the Airport and activities conducted thereupon.

J. Interfering with Passenger Screening Process. It shall be unlawful for any Person to intentionally interfere with, disrupt, or delay the process of passenger screening conducted in accordance with any federal, state, or local regulation or procedure, which is being carried out by any federal, state, or local agency or contractor.

K. Smoking.

- (1) It shall be unlawful to smoke or carry lighted smoking materials or to strike matches or other incendiary devices on Airport Apron areas, within 100 feet of parked Aircraft, during fueling or de-fueling, during the loading or unloading of fuel transport Vehicle, within 100 feet of a flammable liquid spill, in any area of the AOA, and in a hangar, shop, or other building in which Flammable Liquids are stored.
- (2) It shall be unlawful to smoke within the cab of a Fuel Transporting Vehicle, Fuel Delivery Truck or Fuel Delivery Device.

L. Fire Extinguishers.

- (1) It shall be unlawful to tamper with, at any time, fire extinguishing equipment on Airport Property.
- (2) It shall be unlawful to use, at any time, fire extinguishing equipment on Airport Property for any purpose other than firefighting or fire prevention.

M. Violations of Section 7.1.

- (1) Unless otherwise expressly specified herein, a Person found to have violated any provision of Section 7.1 shall be guilty of a Class 3 misdemeanor in accordance with North Carolina General Statutes § 14-4, and shall be subject to a fine, as specified in Section 7.1.M(1)a below.
  - a. Violation of any provision in Section 7: **\$250.00** fine.
- (2) Public Safety Officers are authorized to enforce violations of Section 7.1 of these Airport Rules & Regulations under North Carolina General Statutes §14-4.

7.2 Infractions.

A. Smoking.

- (1) It shall be unlawful to smoke, including the use of e-cigarette, vape pens or other like devices, in all enclosed areas of the Airport, including all restrooms, break rooms, offices, any Authority owned Motor Vehicle, and inside any portion of the passenger terminal building.
- (2) Smoking outside of the passenger terminal building by the general public shall only be permitted in a Designated Area.

B. Violations of Section 7.2.



- (1) Unless otherwise expressly specified herein, violation of any provision of Section 7.2 shall constitute an infraction and shall subject the violator to a fine not to exceed \$50.00, in accordance with North Carolina General Statutes §14-4.

### 7.3 Civil Citations.

#### A. Motor Vehicles.

- (1) It shall be unlawful for any Person or Motor Vehicle to enter the movement areas or cross the Runway or the Taxilane or Taxiway unless the Person or Motor Vehicle Operator has received and satisfactorily completed required training and authorization from the Authority to operate on the movement area.
  - a. Each Motor Vehicle authorized by the Authority to access the AMA shall be marked and lighted with company names, logos, strobe, or rotating lights of appropriate colors, or have a permit issued and displayed by the Authority.
  - b. Each Person or Motor Vehicle Operator with authorized access to the AOA or AMA shall be directly responsible for the activities of each additional Person or passenger they bring into the AOA or AMA, as each such Person shall be considered under their escort.

#### B. Access.

- (1) The security of Motor Vehicle and pedestrian gates, doors, fences, walls, and barricades leading from a tenant or lessee, or contractor's use area, to or from the AOA, or any other Restricted Area, shall be the responsibility of the tenant, lessee, or contractor abutting the AOA or the tenant presently using such gate, door, fence, wall or barricades.
- (2) Each Person or Motor Vehicle Operator using an Airport perimeter security gate on Airport Property shall ensure that the gate closes fully and is secure prior to leaving the vicinity of the gate, and that no unauthorized Persons gain access to the AOA through the gate while the gate is open.
- (3) Any authorized Person utilizing any gate, door, fence, wall, or barricade shall be individually responsible for ensuring the security of the same while utilizing such in the course of their business or activities on Airport Property, while present in any Restricted Area of the Airport, and while utilizing or operating any such devices.

#### C. Smoking.

- (1) Smoking outside of the passenger terminal building by Authority and tenant employees is only permitted in a Designated Area.

D. Fire Extinguishers.

- (1) All tenants or lessees or any other occupants of hangars, Aircraft maintenance buildings, or shop facilities, shall supply and maintain readily accessible fire extinguishers in numbers, and at locations, that meet the requirements of applicable local codes or ordinances.
  - a. All fire extinguishing equipment shall conform to and be maintained in accordance with current NFPA standards.
  - b. Tags showing the date of the last inspection shall be attached to each unit or immediately available records acceptable to Fire Underwriters shall be kept nearby showing the current status of such piece of equipment.

E. Communications with Authority.

- (1) It shall be unlawful for any Person to knowingly or willfully, make any false statement or report to the Authority or to any Authorized Representative of the Authority.

F. Violations of Section 7.3.

- (1) A violation of Section 7.3 shall not be a misdemeanor or infraction under North Carolina General Statutes § 14-4. Civil penalties shall be assessed, and civil citations issued for the violation of any provision of Section 7.3 in accordance with the following:
  - a. The civil penalty associated with each civil citation issued for a violation of Section 7.3 shall be \$50.00.
  - b. Each day's continuing violation of any provision of Section 7.3 is a separate and distinct violation.
  - c. A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply: 15-30 days delinquent – Additional Penalty of \$50.00; Each additional 30 days delinquent - Additional Penalty of \$50.00; Maximum of 3 Additional Penalties assessed.
- (2) The Authority may order any Person to cease and desist any activities or conduct in violation of or in noncompliance with Section 7.3.
- (3) The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from, or denied access to, the Airport.
  - a. An order of removal from or denial of access to the Airport shall be issued by the Authority in writing and shall be hand delivered or sent by certified mail to the Person's last known address.

- b. An order of removal from or denial of access to the Airport shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

## **Section 8 Safety Regulations.**

### **8.1 General.**

- A. All Persons using the Airport or any facilities on Airport Property shall exercise the utmost care to guard against fire and injury to Persons and/or property.
- B. All Persons using the Airport or any facilities on Airport Property shall comply with all local, state, or federal laws and any rules and regulations of the FAA and/or all applicable NFPA requirements.

### **8.2 Fueling Operations.**

#### **A. Aircraft Engines.**

- (1) It shall be unlawful for any Person to fuel an Aircraft with any fuel while one or more of its engines are running or the Aircraft is then being warmed by external heat (Hot Fueling), without advanced approval and standby of Public Safety.
- (2) It shall be unlawful for any Person to de-fuel an Aircraft with one or more of its engines running or the Aircraft is then being warmed by external heat.
- (3) It shall be unlawful for any Person to start the engine of an Aircraft if there is any gasoline or other volatile fluid on the ground or otherwise within the vicinity of the Aircraft.
- (4) It shall be unlawful for any Person to fuel an Aircraft inside of any hangar or building on Airport Property, regardless of whether the Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device is parked outside of the hangar or building. All fueling operations shall take place outdoors.

#### **B. Distance from Buildings.**

- (1) Aircraft being fueled shall be positioned so that Aircraft fuel system vents or fuel tank openings are not closer than ten (10) feet from any terminal building, hangar, service building or enclosed passenger concourse other than a passenger boarding bridge.
- (2) Each Fuel Transporting Vehicle, Fuel Truck, and Fuel Delivery Device, whether loaded or empty, shall never be in hangars nor be parked unattended within a distance of less than fifty (50) feet from hangars, paint and dope shops, fuel storage systems, or any other building or structure where any Person may be present therein.

C. Spillage of Fuel and Other Liquids.

- (1) No fuel, grease, oil, dopes, paints, solvents, acid, flammable liquid, or contaminants of any kind shall be suffered or allowed to flow into or be placed in any Airport sanitary or storm drain system.
- (2) Any Person causing overflowing or spilling of fuel, oil, grease, or other contaminants anywhere on Airport Property, shall be responsible for expeditious notification to Public Safety of said spillage and will be held responsible for immediate cleanup of the affected area.
- (3) When fuel spills occur, fueling shall stop immediately.
- (4) In the event of spillage, each Fuel Transporting Vehicle, Fuel Truck, and Fuel Delivery Device, and all other Motor Vehicles, shall not be moved or operated in the vicinity of the spill until the spillage is removed, and a fireguard shall be promptly posted.
- (5) Each Person authorized to store, handle, and dispense fuel on Airport Property shall follow and remain compliant with all current and applicable environmental and fire safety measures of the U.S. Environmental Protection Agency, North Carolina Department of Environmental Quality, current NFPA standards, local laws and requirements.
- (6) Each Person authorized to store, handle, and dispense fuel on the Airport shall have an approved Spill Prevention Control and Countermeasures (SPCC) Plan, and have emergency spill control materials and supplies stored on each mobile Fuel Transporting Vehicle, Fuel Truck, and Fuel Delivery Device, ready for rapid deployment in the event of a spill.
- (7) All Persons authorized to operate a Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device and other fueling equipment, shall be properly trained and familiar with their company's SPCC Plan and shall deploy such means, materials, and measures in the event of a spill if safe to do so.
- (8) Each tenant or company that stores and/or handles fuel on Airport Property shall be responsible for ensuring that all employees, who directly handle fuel, are properly trained to all company and fuel branding requirements, as well as all Authority requirements, and have satisfactorily completed all Authority required training.

D. Passengers. It shall be unlawful for any Person to fuel or de-fuel an Aircraft while any passenger is on board unless all of the conditions of Section 8.2.D(1) through 8.2.D(3) are met.

- (1) A passenger-boarding device is in place at the cabin door of the Aircraft and the canopy is extended, if present.
- (2) The cabin door is open.
- (3) A flight crew member is on board the Aircraft.

- (4) Section 8.2.D shall not apply to general aviation. Fueling or de-fueling Aircraft while any passenger is on board a general aviation Aircraft shall be in compliance with current NFPA standards.

E. Static Bonding/Aircraft Grounding.

- (1) Prior to the fueling of an Aircraft, the Aircraft and the transfer fuel apparatus shall be adequately bonded and/or grounded as specified in Section 8.2.E.
- (2) Prior to making any fueling connection to the Aircraft, the fueling equipment shall be physically bonded or grounded to the Aircraft being fueled by use of a cable, thus providing a conductive path to equalize the potential between the fueling equipment and the Aircraft.
- (3) The bond or ground shall be maintained until fueling connections have been removed.
- (4) When fueling over a wing, the nozzle shall be bonded or grounded with a nozzle bond or ground cable, having a clip or plug to a metallic component of the Aircraft that is metallically connected to the tank filler port.
  - a. When fueling over a wing, the bond or ground connection shall be made before the filler cap is removed.
  - b. When fueling over a wing, if there is no plug receptacle or means for attaching a clip, the Operator shall touch the filler cap with the nozzle spout before removing the cap so as to equalize the potential between the nozzle and the filter port.
  - c. When fueling over a wing, the spout shall be kept in contact with the filler neck until the fueling is completed.
- (5) When a funnel is used in Aircraft fueling, it shall be kept in contact with the filler neck and the fueling nozzle spout, or the supply container to avoid the possibility of a spark at the fill opening.
- (6) Only metal funnels shall be used to fuel an Aircraft.
- (7) Each hose, funnel, or apparatus used in fueling or de-fueling Aircraft, shall be maintained in good condition, and must be properly bonded to prevent ignition of volatile liquids.

F. Positioning of Equipment for Fueling.

- (1) Positioning of Aircraft Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall be in accordance with this Section 8.2.F.

- (2) Each Aircraft Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall be positioned so that they can be moved promptly after all Aircraft fuel hoses have been disconnected and stowed.
  - (3) The drive engine of the fuel pump of the Aircraft Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall not be positioned under the wing of Aircraft during over wing fueling or where Aircraft fuel system vents are located on the upper wing surface.
  - (4) Each Aircraft Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall not be positioned within a ten (10) feet (3 meters) radius of Aircraft fuel system vent opening.
  - (5) Hand brakes shall be set, and wheel chocks shall be placed on each fuel servicing Vehicle before the Operators leave the Vehicle.
  - (6) No Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall be backed within twenty (20) feet of an Aircraft without the Operator having taken those precautions necessary to ensure an appropriate level of safety, which may include ground walkers to assist and guide the Vehicle or fueling object.
- G. Fire While Fueling. When a fire occurs in a Fuel Delivery Device while servicing an Aircraft, fueling shall be discontinued immediately and all emergency valves and dome covers shall be shut down at once and Public Safety shall be notified immediately.
- H. Operation of Fuel Trucks on Runways and Taxilane and Taxiway. No Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device designed for and/or employed in the transportation of fuel shall be operated on a Runway, Taxilane, or Taxiway at any time without expressed prior permission from the Authority to operate that Motor Vehicle in that place at that time and without being under escort by the Authority.
- I. Fire Extinguishers.
- (1) No Person shall engage in Aircraft fueling or de-fueling operations without adequate and fully functioning fire extinguishing equipment being there and being readily accessible at the points of fueling.
  - (2) All fire extinguishing equipment shall be recertified annually and all Persons shall be trained in the use of the equipment annually.
  - (3) Each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device operating on Airport Property shall be equipped with a minimum of two (2) fully charged BC fire extinguishers, with one (1) located on each side of the Motor Vehicle, and with current annual certifications that conform to applicable and current NFPA standards and FAR as may be appropriate.
- J. Parking Areas for Fuel Trucks. Parking areas for a Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall be arranged in accordance with the provisions of this Section 8.2.J.

- (1) To facilitate dispersal of the Motor Vehicle in the event of an emergency;
- (2) To provide at least ten (10) feet of clear space between each parked Motor Vehicle for accessibility for fire control purposes;
- (3) To prevent any leakage from draining on the ground or to any building or structure;
- (4) To minimize exposure to damage from any and all out-of-control Aircraft;
- (5) To provide at least fifty (50) feet from any Airport terminal building, Aircraft cargo building, Aircraft hangar or other Airport structure housing any Person or any member of the public, and which has windows or doors in the exposed walls; and
- (6) Each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device when not in use, shall be stored in a designated area that provides secondary containment protection from a leak or spill from the Motor Vehicle within the parking area.

K. Use of Radio, Radar, and Electrical Systems. It shall be unlawful for any Person to operate a radio transmitter or receiver or switch electrical appliances on or off in an Aircraft while the Aircraft is being fueled or being de-fueled.

L. Thunderstorm Activity. It shall be unlawful for any Person to conduct fueling or de-fueling operations during periods of thunderstorm and/or lightning activity on or in the vicinity of the Airport.

M. Authority to Dispense Fuel.

- (1) Only those Persons who have then been authorized by the Authority, via a current self-fueling permit, or those Persons who have authority through the issuance of a permit or lease by the Authority, may dispense fuel into any Aircraft, Vehicle, or ground support equipment on Airport Property.
- (2) It shall be unlawful for any Person to dispense or sell aviation fuel for automotive purposes.

N. Fuel Farms and Bulk Fuel Installations.

- (1) All fuel farms and bulk fuel installations shall conform to the applicable and current NFPA standards, County Fire Codes, federal, state or local laws.
- (2) There shall be NO SMOKING within one hundred (100) feet of a fuel farm or a bulk fuel installation.
- (3) Person(s) using fuel farms and bulk fuel installations shall ensure that such areas are free of weeds, grass, shrubs, trash and other debris at all times.
- (4) Fire extinguishers shall always be maintained in an accessible position, and in an operable condition with a then un-expired certification date.

- (5) No fuel or Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall be left unattended during loading or unloading of fuel at a fuel farm or bulk fuel installation.
- (6) All fuel farms and bulk fuel installations shall be operated under a quality control, maintenance, and inspection program of a licensed and bonded fuel supplier, or the State of North Carolina.

O. Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device.

- (1) Each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall be conspicuously marked on both sides and rear of the cargo tank with the words "FLAMMABLE," "NO SMOKING," and with an appropriate placard identifying the type of fuel contained within the tank.
- (2) Emergency shut-off devices shall be required on each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device and shall be conspicuously marked "EMERGENCY SHUT-OFF."
- (3) The propulsion and pumping engine on each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall have safeguards to reduce ignition sources to a minimum.
- (4) The carburetor on each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall be fitted with an approved back-flash arrester.
- (5) The wiring on each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall be adequately insulated and fastened to eliminate chafing and affixed to terminal connections by tight-fitting snap or screw connections with rubber or similar insulating and shielding covers and molded boots.
- (6) Two (2) fire extinguishers shall be conspicuously apparent on each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device, as specified in Section 8.2.1(3).
- (7) Each hose, funnel, or apparatus on a Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device used in fueling or de-fueling Aircraft shall be maintained in good condition.
- (8) Maintenance and testing of Aircraft fueling systems shall be conducted under controlled conditions and in accordance with applicable and current NFPA standards.
- (9) Each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device shall be stored and maintained outdoors in areas authorized by the Authority, and when not in use, within an area that is protected by secondary containment measures.
- (10) Each Fuel Transporting Vehicle, Fuel Truck, or Fuel Delivery Device based on Airport Property and utilized for the delivery of fuel into Aircraft or authorized Vehicle, shall carry an emergency spill response kit upon it containing materials and supplies to be used by the Operator in the event of a fuel spill.



- a. Any emergency fuel spill kit materials and supplies that are used shall be immediately replaced.

(11) Regeneration Pad operations for Fuel Trucks must be in compliance with the current NFPA 407.

### 8.3 Open Flame Operation.

- A. Except as provided in Section 8.3.A(1) through 8.3.A(3), it shall be unlawful to engage in any lead and carbon burning, fusion gas and electric welding, blow-torch work, reservoir repairs, engine testing, battery charging, and all operations involving open flames on Airport Property.
  - (1) Such operations shall be allowed in the repair shop sections of any hangar, or in any Airport maintenance facility, or other building under the control of the Authority.
  - (2) During such operations, the shop shall be separated from the storage section by closing all doors and openings to the storage section.
  - (3) Any such operations upon any other portions of the Airport shall only be performed after notification and coordination with Public Safety and after receiving permission from the Authority.
- B. It shall be unlawful to engage in any “hot work” including, but not limited to, welding, brazing, or any other process resulting in a spark being produced, in any indoor area on Airport Property without being in compliance with current NFPA standards.
- C. Outdoor “hot work” shall not occur on Airport Property without a permit issued by the Authority at least twenty-four (24) hours in advance.

### 8.4 Storage of Materials.

- A. It shall be unlawful to keep or store materials or equipment in such a manner as to constitute a fire hazard or be in violation of applicable, local codes or ordinances, or operational Directives of the Authority.
- B. Gasoline, kerosene, ethyl, jet fuel, ether, lubricating oil or other flammable liquid or gas, including those used in connection with the process of “doping” shall be stored in accordance with the local codes or ordinances.
- C. It shall be unlawful to keep, transport, or store lubricating oils on Airport Property, except in containers and receptacles designed for such purposes and in areas specifically approved for such storage in compliance with applicable local codes or ordinances and FAR.

## 8.5 Hazardous Materials.

- A. It shall be unlawful for any Person, without prior permission from the Authority, to transport, handle, or store on Airport Property any cargo of explosives or other Hazardous Materials which is barred from loading in, or for transportation by Civil Aircraft in the United States under the current provisions of Regulations promulgated by the Department of Transportation (DOT), the FAA, Transportation Security Administration (TSA), or by any other governing authority.
- B. Compliance with said regulations shall not constitute or be construed to constitute a waiver of the notice required in Section 8.5.A or as an implied permission to keep, transport, handle or store such explosives or other dangerous articles on Airport Property.
- C. Twenty-Four (24) hours advance notice shall be given to the Authority in order to investigate and clear any operation requiring a waiver of this Section 8.5.A.
- D. It shall be unlawful to offer, or to knowingly accept, any Hazardous Materials for shipment on Airport Property unless the shipment is handled and stored in full compliance with the current provisions of any local, state, or federal law regulating the handling and storage of Hazardous Materials.
- E. Any Person engaged in transportation of Hazardous Materials shall have designated personnel on Airport Property authorized and responsible for receiving and handling such shipments in compliance with the prescribed regulations.
- F. Any Person engaged in the transportation of Hazardous Materials shall provide storage facilities which reasonably insure against unauthorized access, or exposure to persons and against damage to shipments while on Airport Property.
- G. Any Person transporting or storing Hazardous Materials on Airport Property shall, a minimum of twenty-four (24) hours in advance of such transportation or storage, provide current Safety Data Sheets (SDS) documentation on the Hazardous Materials to the Authority.
- H. Safety Data Sheets (SDS) documentation shall be maintained by the Person responsible for the Hazardous Materials and readily available at all times while the Hazardous Materials are present on Airport Property.
- I. The spill of any Hazardous Materials on Airport Property shall immediately be cleaned up by the Person responsible for such spillage, in accordance with all local, state, or federal regulations governing the handling and storage of such Hazardous Materials, and shall be immediately reported to the Authority.

- 8.6 Motorized Ground Equipment Around Aircraft. It shall be unlawful for any Person to Park motorized ground equipment near any Aircraft in such manner so as to prevent it or the other ground equipment from being readily driven or towed away from the Aircraft in case of an emergency.

8.7 Aircraft Electrical and Electronic Systems.

- A. It shall be unlawful to test or operate radio transmitters and similar equipment in Aircraft within a hangar with dynamotors running unless all parts of the antenna system are at least one (1) foot removed from any other object.
- B. It shall be unlawful to place an Aircraft, at any time, such that any fabric-covered surface is within one (1) foot of an antenna system.
- C. It shall be unlawful to operate, or ground test, in any area on Airport Property, airborne radar equipment that will interfere with any high intensity radar site.

8.8 Electrical Equipment and Lighting Systems.

- A. It shall be unlawful to use a portable lamp assembly, without a proper protective guard or shield over the lamp to prevent breakage.
- B. It shall be unlawful to leave any power operated equipment or electrical devices on when not in actual use.
- C. It shall be unlawful to do any work on any Aircraft in a hangar or structure without de-energizing or disconnecting the battery or power source.

8.9 Aprons, Building and Equipment.

- A. All Persons on Airport Property shall keep all areas of the premises leased or used by them, clean and free of oil, grease and other Flammable Liquids or Hazardous Materials.
- B. The floors of hangars and other buildings shall be kept clean and continuously kept free of rags, waste materials, or other trash or rubbish, unless such rags and other waste materials are kept in proper and approved containers.
- C. Approved metal receptacles with a self-extinguishing cover shall be used for the storage of oily waste rags and similar materials.
  - (1) The contents of these receptacles shall be removed daily by Persons occupying the space and kept clean at all times.
- D. Clothes lockers shall be constructed of metal or fire-resistant material.
- E. Only approved containers shall be stored in or about a hangar or other buildings on Airport Property.
- F. It shall be unlawful to use Flammable Liquids or other substances for cleaning hangars or other buildings on Airport Property.

#### 8.10 Containers.

- A. No Person, tenant, licensee, lessee, concessionaire, or other occupant or user of an Airport facility on Airport Property, or agent thereof doing business on Airport Property, may keep uncovered trash containers adjacent to sidewalks or roads in any Public Areas on Airport Property.
- B. It shall be unlawful for any Person to spill dirt or any other material from a Motor Vehicle operated or to produce or create FOD in AOA's without promptly reporting and cleaning up the same.
- C. In the event a spill occurs, the Owner of the Motor Vehicle will be responsible for cleaning up the spill at his/her expense.
- D. The Owner or Operator of any trash dumpster or large scale container shall ensure that the container remains covered at all times in a manner so that trash and debris from the container do not leave the container.

#### 8.11 Repairing Aircraft.

- A. Aircraft repairs in storage areas of hangars shall be limited to replacements of parts and repairs incidental thereto, provided such repairs do not involve appliances using any open flame or any heated parts.
- B. It shall be unlawful to start or operate an Aircraft engine inside any hangar.
  - (1) Section 8.11.B shall not prohibit use of tractors with applicable and current NFPA approved exhaust systems when moving planes within any hangar.
- C. It shall be unlawful to undertake repairs to any Aircraft, or other equipment, for commercial purposes on the Airport unless first obtaining any and all required leases or permits from the Authority.
- D. It shall be unlawful to solicit the services of, or to accept the services of, any Person who undertakes repairs to any Aircraft or other equipment for commercial purposes on Airport Property, knowing that the Person has not first obtained all required leases or permits from the Authority to operate on Airport Property.
- E. Unless approved by the Authority in advance, it shall be unlawful to engage in any repair or maintenance of an Aircraft in areas that will block or cause a delay in operations of the Airport, other Aircraft, or that would block access of any loading gate or vehicle.

#### 8.12. Violations of Section 8.

- A. A violation of Section 8 shall not be a misdemeanor or infraction under North Carolina General Statutes § 14-4. Civil penalties shall be assessed, and civil citations issued for the violation for any provision of Section 8 in accordance with the following:

- (1) The civil penalty associated with each civil citation issued for a violation of Section shall be \$250.00.
  - (2) Each day's continuing violation of any provision of Section 8 is a separate and distinct violation.
  - (3) A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply: 15-30 days delinquent – Additional Penalty of \$50.00; Each additional 30 days delinquent – Additional Penalty of \$50.00; Maximum of three (3) Additional Penalties assessed.
- B. The Authority may order any Person to cease and desist any activities or conduct in violation of or in noncompliance with Section 8.
- (1) The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from, or denied access to, the Airport.
  - (2) An order of removal from or denial of access to the Airport shall be issued by the Authority in writing and shall be hand delivered or sent by certified mail to the Person's last known address.
  - (3) An order of removal from or denial of access to the Airport shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

## **Section 9. Aeronautical Regulations**

9.1 Compliance with Orders. It shall be unlawful to conduct aeronautical activities on Airport Property that are not in compliance with the then current and applicable FAR, and with these Airport Rules & Regulations.

9.2 Negligent Operations. It shall be unlawful for any Person to operate Aircraft on Airport Property in a careless manner or in disregard of the right and safety of others.

A. All Persons using the Airport shall be held liable for any property damage caused intentionally or by carelessness or negligence on Airport Property.

9.3 Denial of Use of Airport.

A. The Authority shall have the right, at any time, to close the Airport in its entirety or any portion thereof to air traffic, and/or to delay or restrict any flight or other Aircraft operation, to direct refusal of takeoff permission to Aircraft, and to deny the use of the Airport or any portion thereof to any specified class of Aircraft, or to any Person(s) or group(s), when he (or she) considers any such action(s) to be necessary or desirable to avoid endangering any Persons or any property, and to be consistent with the safe and proper operation(s) of the Airport.

- B. In the event the Authority believes the condition on Airport Property to then be unsafe for landings or takeoffs, it shall be within his or her authority to issue, or cause to be issued, a Notice to Air Missions (NOTAM) closing the Airport or any portion thereof until such time that such restrictions are terminated.

#### 9.4 Aircraft Incidents.

- A. Upon the occurrence of an Aircraft incident the Authority shall be notified immediately.
- B. The pilot or Operator of any Aircraft involved in an incident on Airport Property causing personal injury and/or any property damage, in addition to all other reports required by other agencies, shall make a prompt and complete written report concerning said incident to the office of the Authority.
  - (1) When a written report of any incident is required by FAR, a copy of such report may be submitted to the Authority in lieu of the report required in Section 9.4.B.
- C. Each written report to be submitted in accordance with Section 9.4.B shall be submitted to the Authority within forty-eight (48) hours from the time the incident first occurred.

#### 9.5 Disabled Aircraft.

- A. The Owner of an Aircraft which is disabled on Airport Property and causing the closure of the airfield or any part thereof, or otherwise impacting safe and/or efficient Airport operations, shall be responsible for the prompt and immediate removal of the disabled Aircraft and its parts when directed by the Authority.
- B. If the Owner is not present on site, or in the event of the Owner's inability, failure, or refusal to comply with the removal orders, all disabled Aircraft or any and all the parts thereof may be removed by employees of the Authority or by Persons contracted to do so, all at the Owner's expense, and without the Authority having responsibility or liability for damage to the Aircraft that may occur as a result of such removal.

#### 9.6 [RESERVED].

- 9.7 Cleaning, Maintenance, and Repair of Aircraft. It shall be unlawful for any Person to clean, paint, wash, polish, or otherwise maintain an Aircraft, other than in areas approved (and in a manner designated) by the Authority, and designated for such purpose, whether on or off any tenant leasehold area.

#### 9.8 Hand Propping of Aircraft.

- A. Hand propping shall be unlawful, unless there is then no other means of starting the Aircraft.
- B. The pilot of the Aircraft remains responsible for any and all liability resulting from hand propping.

9.9 Certification of Aircraft and Licensing of Pilots.

- A. It shall be unlawful for any Person to operate an Aircraft on Airport Property without displaying on board the Aircraft a valid Airworthiness Certificate issued by the Federal Aviation Administration (FAA) or appropriate foreign government.
- B. It shall be unlawful for any Person to operate an Aircraft on Airport Property without displaying on the exterior of the Aircraft a valid registration number issued by the FAA or appropriate foreign government.
- C. It shall be unlawful for any Person to operate an Aircraft on Airport Property without possessing an appropriate certificate or license, issued by the FAA or appropriate foreign government, and all medical certificates required by the FAA.
- D. All Persons shall, upon request of the Authority, produce a valid Operator's license, Airworthiness Certificate, and provide other valid photo proof of identification issued by a government agency.

9.10 Violations of Section 9.

- A. A violation of Section 9 shall not be a misdemeanor or infraction under North Carolina General Statutes § 14-4. Civil penalties shall be assessed, and civil citations issued for the violation of any provision of Section 9 in accordance with the following.
  - (1) The civil penalty associated with each civil citation issued for a violation of Section 9 shall be \$400.00.
  - (2) Each day's continuing violation of any provision of Section 9 is a separate and distinct violation.
  - (3) A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply; 15-30 days delinquent – Additional Penalty of \$100.00; Each additional 30 days delinquent – Additional Penalty of \$100.00; Maximum of three (3) Additional Penalties assessed.
- B. The Authority may order any Person to cease and desist any activities or conduct in violation of or in noncompliance with Section 9.
- C. The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from, or denied access to, the Airport.
  - (1) An order of removal from or denial of access to the Airport shall be issued by the Authority in writing and shall be hand delivered or sent by certified mail to the Person's last known address.
  - (2) An order of removal from or denial of access to the Airport shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

## **Section 10. Airport Operational Restrictions**

- 10.1 Except to the extent prohibited by applicable FAR, the Authority shall have the ability to designate or restrict the use of a Runway, Taxilane or Taxiway, and/or other operational areas of the Airport, in connection with construction and maintenance activities on Airport Property, or for the benefit of efficient Airport operations and safety, or when the Authority determines it is in the best interest of the Airport, with respect to, but not limited to, the following types of operations; Touch and Go Flights, Training Flights, Experimental Flights, Equipment Demonstration, Air Shows, Maintenance Flight Checks, Compliance with FAR's Part 36, Noise Standards, Aircraft Type and Airworthiness Certification, Skydiving, Banner Towing, and Hot Air Balloons.
- 10.2 It shall be unlawful to engage in an Aircraft engine run up in any location except those specifically Designated Areas.
- 10.3 No equipment or Motor Vehicle supporting the operation of hot air balloons shall be permitted on Airport Property without the proper escort or other permission of the Authority.
- 10.4 Gliders.
- A. It shall be unlawful to conduct glider operations not in accordance with current FAR's Part 91 and current Directives and approved in advance by the Authority.
- B. It shall be unlawful to bring equipment or Motor Vehicle supporting the operation of gliders on Airport Property without the proper escort and permission of the Authority.
- 10.5 Ultra-Light Vehicle. It shall be unlawful to operate an ultra-light vehicle on Airport Property without meeting or exceeding all requirements contained in FAR's Part 103.
- 10.6 Take-Offs and Landings.
- A. Except as provided for in Section 10.6.A(1) below, it shall be unlawful for any Person to cause an Aircraft to takeoff or land, except on a Runway.
- (1) Helicopters are an exception to Section 10.6.A, as they may operate from an approved location other than a Runway.
- B. It shall be unlawful for any Person to cause an Aircraft to takeoff or land from a closed Runway, or on or from any Apron or Ramp area or Taxilane or Taxiway.
- C. Persons landing an Aircraft on Airport Property shall make the landing Runway available to other Aircraft by leaving said Runway as promptly as possible, consistent with safety.
- D. Any Person operating or controlling an Aircraft landing at or taking off from the Airport shall maintain engine noise within applicable Aircraft engine noise limits as promulgated by the FAR, the federal government, or the Authority, whichever is the most restrictive.



- 10.7 Banner Towing. It shall be unlawful to undertake tow banner pick-ups and drop-offs from or on Airport Property, without prior written authorization of the Authority.
- 10.8 Kites, Models, Drones, Balloons. It shall be unlawful for any Person to operate on or within the vicinity of the Airport, a kite, model airplane, balloon, drones, or other objects constituting a hazard to Aircraft operations, without the prior written authorization of the Authority and full compliance with North Carolina state laws and FAR's Part 107.
- A. Section 10.8 shall not apply to drones associated with an approved Airport program.
- 10.9 Parachute Jumping.
- A. It shall be unlawful for any Person to initiate a parachute jump from the Airport or over Airport Property, or to engage in a parachute landing on Airport Property, without the prior written approval of the Authority and full compliance with FAR's Part 105.
- 10.10 Violations of Section 10.
- A. A violation of Section 10 shall not be a misdemeanor or infraction under North Carolina General Statutes § 14-4. Civil penalties shall be assessed, and civil citations issued for the violation of any provision of Section 10 in accordance with the following.
- (1) The civil penalty associated with each civil citation issued for a violation of Section 10 shall be \$400.00.
- (2) Each day's continuing violation of any provision of Section 10 is a separate and distinct violation.
- (3) A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply; 15-30 days delinquent – Additional Penalty of \$100.00; Each additional 30 days delinquent – Additional Penalty of \$100.00; Maximum of three (3) Additional Penalties assessed.
- 10.11 The Authority may order any Person to cease and desist any activities or conduct in violation of or in noncompliance with Section 10.
- A. The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from, or denied access to, the Airport.
- B. An order for removal from or denial of access to the Airport shall be issued by the Authority in writing and shall be hand delivered or sent by certified mail to the Person's last known address.
- C. An order of removal from or denial of access to the Airport shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

## **Section 11. Taxi and Ground Rules**

### **11.1 Aircraft Parking.**

- A. It shall be unlawful for any Person to Park an Aircraft in any area on Airport Property except those designated, and in the manner prescribed, by the Authority.
- B. If any Person uses unauthorized areas for Aircraft parking, the Aircraft so parked may be removed by or at the direction of the Authority. The Authority shall not be liable to the Owner for any damage to the Aircraft, and the removal shall be at the expense of the Owner thereof.
- C. No Aircraft shall be left unattended on Airport Property unless it is in a hangar or adequately locked and tied down.
- D. Articles left in Aircraft are the sole responsibility of the Aircraft Owner and pilot.

### **11.2 Derelict Aircraft.**

- A. It shall be unlawful for any Person to Park or store any Aircraft in non-flyable condition on Airport Property, including leased premises, for a period in excess of ninety (90) days, without written permission from the Authority.
- B. It shall be unlawful for any Person to store or retain Aircraft parts or components, being held as inventory, anywhere on Airport Property, other than in an enclosed, authorized facility, or in a manner approved by the Authority, in advance and in writing.
- C. In the event of violations of Section 11.2.A and 11.2.B, the Authority shall notify the Owner or Operator thereof by certified or registered mail, requiring removal of said Aircraft within fifteen (15) days of receipt of notice.
  - (1) In the event the Owner or Operator is unknown or cannot be found for purposes of notice, the Authority shall conspicuously post and affix the notice on said Aircraft, requiring removal of said Aircraft within fifteen (15) days from the date of posting.
  - (2) In the event the Owner or Operator fails to remove the Aircraft within fifteen (15) days from the date of posting, the Authority or Authorized Representative may, in addition to all other penalties and enforcement methods allowed for herein or by law, elect to remove the Aircraft from the Airport and store the Aircraft elsewhere, and invoice the Owner or Operator for the expense associated with such removal or storage.

### **11.3 Violations of Section 11.**

- A. A violation of Section 11 shall not be a misdemeanor or infraction under North Carolina General Statutes § 14-4. Civil penalties shall be assessed and civil citations issued for the violation of any provision of Section 11 in accordance with the following.

- (1) The civil penalty associated with each civil citation issued for a violation of Section 11 shall be \$400.00.
  - (2) Each day's continuing violation of any provision of Section 11 is a separate and distinct violation.
  - (3) A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply; 15-30 days delinquent – Additional Penalty of \$100.00; Each additional 30 days delinquent – Additional Penalty of \$100.00; Maximum of three (3) Additional Penalties assessed.
- B. The Authority may order any Person to cease and desist any activities or conduct in violation of, or in noncompliance with, Section 11.
- (1) The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from, or denied access to, the Airport.
  - (2) An order of removal from or denial of access to the Airport shall be issued by the Authority in writing and shall be hand delivered or sent by certified mail to the Person's last known address.
  - (3) An order of removal from or denial of access to the Airport shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

## **Section 12    Helicopter Operations**

- 12.1 It shall be unlawful to taxi, tow, or otherwise move a Helicopter, with rotors turning, unless there is a clear area of at least thirty (30) feet in all directions from the outer tips of the rotors.
- 12.2 It shall be unlawful to operate a Helicopter in any manner that creates any safety hazard or impacts personnel, unsecured Aircraft, closed areas of the Airport, or other equipment or materials.
- 12.3 Violations of Section 12.
- A. A violation of Section 12 shall not be a misdemeanor or infraction under North Carolina General Statutes § 14-4. Civil penalties shall be assessed and civil citations issued for the violation of any provision of Section 12 in accordance with the following.
- (1) The civil penalty associated with each civil citation issued for a violation of Section 12 shall be \$250.00.
  - (2) Each day's continuing violation of any provision of Section 12 is a separate and distinct violation.

- (3) A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply; 15-30 days delinquent – Additional Penalty of \$100.00; Each additional 30 days delinquent – Additional Penalty of \$100.00; Maximum of three (3) Additional Penalties assessed.

B. The Authority may order any Person to cease and desist any activities or conduct in violation of, or in noncompliance with, Section 12.

- (1) The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from, or denied access to, the Airport.
- (2) An order of removal from or denial of access to the Airport shall be issued by the Authority in writing and shall be hand delivered or sent by certified mail to the Person's last known address.
- (3) An order of removal from or denial of access to the Airport shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

### **Section 13 Use of T-Hangars and Storage Hangars**

- 13.1 It shall be unlawful to utilize T-Hangars and storage unit hangars for any purpose that would constitute a nuisance or interferes in any way with the use and occupancy of other buildings and structures in the neighborhood of the leased premises.
- 13.2 T-Hangars and unit storage hangars, whether owned by the Authority or by a commercial entity, shall be used for storage of Aircraft and a minimal amount of other items that support Aircraft operations. Vehicles may be stored in T-Hangars and unit storage hangars, only while Aircraft are in use.
- 13.3 It shall be unlawful to attach items of any nature to the building, either interior or exterior, without the permission of the Authority and in full compliance with Airport Development Guidelines.
- 13.4 It shall be unlawful to suspend or lift Aircraft, or Aircraft component, utilizing the building or any component of the building.
- 13.5 It shall be unlawful to make any alterations to the hangar structure without written approval by the Authority.
  - A. Any approved alterations to the hangar are subject to removal by the Authority at the occupant's expense, upon thirty (30) days written notice, for the purpose of repair, construction, or other purposes deemed necessary by the Authority.
- 13.6 Except as provided in Section 13.6.A below, it shall be unlawful to store or to allow to accumulate in any hangar, Flammable Liquids, flammable material, or other flammable refuse.
  - A. Storage of no more than ten (10) gallons of Flammable Liquids, inclusive of Aircraft lubricants, within the premises, shall not be considered a violation of Section 13.6, so long

as all such storage is in applicable and current NFPA approved containers, or unopened original containers.

- 13.7 It shall be unlawful to wash Aircraft with running water in hangars when such washing will cause drainage into its hangar or through or to any other hangar.
- 13.8 It shall be unlawful to spray paint of any kind in any hangar, unless inside an approved paint booth.
- 13.9 It shall be unlawful to use any tools, equipment, or materials in any hangar that could constitute a fire hazard.
- 13.10 It shall be unlawful to smoke in any hangar.
- 13.11 All Occupants shall exercise care to keep oil, grease, etc., off the floor(s).
- 13.12 Occupants of each hangar shall see that electric current and water, if available, is not used excessively.
- 13.13 It shall be unlawful to erect, paint, or otherwise display any sign on the exterior of any hangar without the written approval of the Authority.
- 13.14 It shall be unlawful for any Aircraft or Motor Vehicle to be parked by a hangar, in such a manner as to block access to adjoining hangar space(s), or to cause inconvenience(s) to other Occupants.
- 13.15 A Motor Vehicle parked for more than a twenty-four (24) hour period must be parked inside the T-Hangar.
- 13.16 It is unlawful for any Person to use any hangar for Commercial Activity whatsoever, including, but not by way of limitation, the sale of products or services of any kind, and whether or not such actions are transacted for profit, without written approval of the Authority, and after having satisfied all of the necessary requirements of the Authority for conducting a Commercial Activity on Airport Property.
- 13.17 It shall be unlawful to permit or to perform repair service on automobiles or automotive equipment of any kind, other than an authorized motorized towing Motor Vehicle or Aircraft ground support equipment in any hangar.
- 13.18 Violations of Section 13.
  - A. A violation of Section 13 shall not be a misdemeanor or infraction under North Carolina General Statutes § 14-4. Civil penalties shall be assessed and civil citations issued for the violation of any provision of Section 13 in accordance with the following.
    - (1) The civil penalty associated with each civil citation issued for a violation of Section 13 shall be \$250.00.

- (2) Each day's continuing violation of any provision of Section 13 is a separate and distinct violation.
- (3) A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply; 15-30 days delinquent – Additional Penalty of \$100.00; Each additional 30 days delinquent – Additional Penalty of \$100.00; Maximum of three (3) Additional Penalties assessed.

B. The Authority may order any Person to cease and desist any activities or conduct in violation of, or in noncompliance with, Section 13.

- (1) The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from, or denied access to, the Airport.
- (2) An order of removal from or denial of access to the Airport shall be issued by the Authority in writing and shall be hand delivered or sent by certified mail to the Person's last known address.
- (3) An order of removal from or denial of access to the Airport shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

#### **Section 14. Motor Vehicles**

14.1 Traffic Signs and Signal Devices. It shall be unlawful for any Person to fail to comply with the directions and instructions indicated on all parking and traffic signs, markers or devices, erected or placed on Airport Property.

14.2 Pedestrian Right-of-Way. Except as specified in Section 14.2.A below, it shall be unlawful for any Person operating a Motor Vehicle to fail to yield the right-of-way to a pedestrian who crosses within a pedestrian crosswalk.

A. Section 14.2 shall not apply when the movement of traffic is being actively regulated by on-site law enforcement officers, traffic specialists, or traffic control devices.

14.3 Motor Vehicle Condition. It shall be unlawful for any Person to operate anywhere on Airport Property any Motor Vehicle which; (i) is so constructed, equipped or loaded, or which is in such unsafe condition as to endanger any Persons or any property; (ii) which has attached thereto any object or equipment (including that which is being towed) which drags, swings, or projects so as to be hazardous to any Person(s) or any tangible property; or (iii) does not meet all current North Carolina state required safety and emission standards or does not have a current North Carolina state inspection certification, if applicable, to the Motor Vehicle.

14.4 Closing or Restricting Use of Airport Roadways. The Authority is authorized to close or restrict the use of any or all Airport roadways to Motor Vehicle traffic in the interest of safety.

#### 14.5 Storing, Parking or Repairing Motor Vehicles.

- A. Except as specified in Section 14.5.A(1) and 14.5.A(2) below, it shall be unlawful for a Motor Vehicle to be stored or repaired on Airport Property.
  - (1) The Authority may designate specific areas where a Motor Vehicle may be stored or repaired on Airport Property.
  - (2) Minor repairs necessary with respect to a temporarily disabled Motor Vehicle shall not be in violation of Section 14.5.A; however, the Authority can immediately tow or otherwise remove any Motor Vehicle that is causing a safety hazard or creating a traffic flow problem.
- B. A Motor Vehicle abandoned on Airport Property, including any Motor Vehicle located within a paid parking lot, shall be towed at the Owner's expense.

#### 14.6 Other Vehicles.

- A. It shall be unlawful to operate any off road Motor Vehicle, including but not limited to, dirt bikes and 3 and 4 wheelers, on Airport Property, except for Airport operational purposes.
- B. It shall be unlawful to operate any skateboard, hoverboard, one-wheel, recreational scooter, or other similar device on Airport Property, except for Airport operational purposes.
- C. Bicycles may operate on Airport Property in accordance with all Motor Vehicle and traffic rules and regulations. It shall be unlawful to operate a bicycle on the sidewalk of any Airport Property.

14.7 License. It shall be unlawful for any Person to operate a Motor Vehicle or motorized equipment on Airport Property without valid authorization for use of the Motor Vehicle or equipment, and without holding a license or permit for said use, if required. Such license or permit must be issued by a state-licensing agency, or by the employer through a company training/certification program.

#### 14.8 Procedure in Case of Incident.

- A. The Operator of any Motor Vehicle involved in an incident on Airport Property, which results in injury to or death of any Persons, or property damage, shall immediately stop such Motor Vehicle at the scene of the incident and shall render reasonable assistance.
- B. The Operator shall immediately, by the quickest means of communications, give notice of the incident to Public Safety.
- C. The Operator of each Motor Vehicle involved shall furnish the name and address of Owner and the driver of the Motor Vehicle, the Operator's license and the Motor Vehicle registration and the name of the liability insurance carrier for the Motor Vehicle, to any Person injured, the driver or occupant of the Motor Vehicle damage, to any police officer, and to the Authority or any representative thereof, if requested.

#### 14.9 Safe Speed.

- A. It shall be unlawful to drive or operate a Motor Vehicle on Airport Property at a speed greater than is reasonable and prudent under the existing conditions and having due regard to actual and potential hazards.
- B. The speed limit on AOA Apron areas shall be 10 MPH unless otherwise posted. The speed limit on all other Airport Property shall be 25 MPH unless otherwise posted.
- C. Except as provided for in Section 14.9.C(1), it shall be unlawful to drive a Motor Vehicle at such a slow speed as to impede or block the normal and reasonable movements of traffic.
  - (1) It shall not be a violation of Section 14.9.C if the reduced speed is necessary for safe operation or in compliance with the law.
- D. It shall be unlawful to drive a Motor Vehicle on the streets and other vehicular traffic areas on Airport Property, including parking areas, in excess of the speed limits indicated on signs posted by the Authority or on behalf of the Authority.

#### 14.10 Motor Vehicle Operations on Airport Operations Area.

- A. Unless express permission has been granted by the Authority, it shall be unlawful for any Person to operate a Motor Vehicle on the AOA.
- B. Except for an Authority Vehicles, and trucks and any other vehicle necessary for the servicing and maintenance of Aircraft and transportation of passengers on Airport Property, it shall be unlawful to Park a Motor Vehicle on any portion of the AOA.
- C. It shall be unlawful for any Person to Park a Motor Vehicle in any manner so as to block or obstruct; (i) fire hydrants and the approaches thereto; (ii) the gates or emergency exits, and/or (iii) building entrances or exits.
- D. It shall be unlawful to Park a Motor Vehicle under loading bridges.
- E. Aircraft taxiing on any Runway, Taxilane or Taxiway, or Apron area, shall always have the right-of-way over any and all Motor Vehicle traffic.
- F. Two-way radio communications with the air traffic control tower is required for each authorized Motor Vehicle or escort Motor Vehicles traversing or operating on the AMA during periods of tower operation or on the common traffic advisory frequency when the tower is closed.

#### 14.11 Violations of Section 14.

- A. Unless otherwise expressly specified herein, violation of any provision of Section 14 shall constitute an infraction and shall subject the violator to a fine not to exceed \$50.00, in accordance with North Carolina General Statutes § 14-4.



B. Violations Sections 14.10.D, 14.10.E, and 14.10.F, and violations of the posted speed limit in the AOA, shall not be an infraction under North Carolina General Statutes § 14-4. Civil penalties shall be assessed, and civil citations issued for the violation of Section 14.10.D, 14.10.E, and 14.10.F, and the posted speed limit in the AOA, in accordance with the following.

- (1) The civil penalty associated with each civil citation issued for a violation of Section 15.8 below shall be \$50.00.
- (2) A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply; 15-30 days delinquent – Additional Penalty of \$25.00; each additional 30 days delinquent – Additional Penalty of \$25.00; Maximum of three (3) Additional Penalties assessed.

### **Section 15. Motor Vehicle Parking.**

- 15.1 Operators of a Motor Vehicle using the Public Parking Facilities on Airport Property, shall observe and comply with all signs and markings, and a Motor Vehicle shall never be permitted to block, obstruct, or interfere with Aircraft operations.
- 15.2 It shall be unlawful for any Motor Vehicle to remain in any of the Public Parking Facilities on Airport Property for more than thirty (30) consecutive days, and each Motor Vehicle remaining in excess of thirty (30) consecutive days, may be considered Abandoned.
  - A. A Motor Vehicle that is Abandoned shall be towed from the Airport at the Owner's expense.
- 15.3 It shall be unlawful for any Person utilizing those Public Parking Facilities that require hourly or daily fees to exit or otherwise remove their Motor Vehicle from said parking areas without first paying the fees that are rightfully due.
- 15.4 The owners or Operator of a Motor Vehicle who is granted permission to Park in employee parking lots or other designated areas on Airport Property, shall display the Authority issued permit on the Motor Vehicle at all times.
- 15.5 It shall be unlawful for any Person, at any time, to park a Motor Vehicle in any area not specifically designated for the parking of a Motor Vehicle, whether on or off any tenant leasehold on Airport Property.
- 15.6 Except for an authorized service Motor Vehicle, while the Operator is performing official functions on behalf of the Airport, a utility company, contractor, or other authorized agent, it shall be unlawful for any Person to Park a Motor Vehicle on any public roadway on Airport Property at any time.

- 15.7 Except for an authorized service Motor Vehicles while the Operator is performing official functions on behalf of the Airport, a utility company, contractor, or other authorized agent, it shall be unlawful for any Person to Park a Motor Vehicle on sidewalks, greenways, or other landscaped areas.
- 15.8 It shall be unlawful for any Person to leave a Motor Vehicle unattended in front of the passenger terminal building, along the curbside, or any portion of the terminal roadway for any period of time whatsoever.
- 15.9 It shall be unlawful for any Person to Park any Motor Vehicle in any reserved parking area without a valid permit issued by the Authority, permitting such parking in the respective reserved area.
- 15.10 [RESERVED]
- 15.11 Public Safety personnel may remove or cause to be removed from any restricted or reserved areas, any roadway or right-of-way, or any other unauthorized area or structure on Airport Property, any property which is disabled, Abandoned, or which interferes with aircraft operations, creates another operational problem, nuisance, security, or safety hazard, or which otherwise is placed in an illegal, improper, or unauthorized manner.
- A. Any property removed under Section 15.11 shall be relocated to an official impound area or such other area designated by the Authority.
- B. Any property impounded by the Authority shall be released to the Owner or Operator thereof, upon proper identification of the property, after all towing, removal, or storage charges and any other fees have been paid.
- 15.12 Public Safety, and other Airport personnel authorized by the Authority, may also wheel boot or otherwise immobilize Motor Vehicles that are in violation of or in noncompliance with Section 15.
- 15.13 Violations of Section 15.
- A. Unless, otherwise expressly specified herein, violation of any provision of Section 15 shall constitute an infraction and shall subject the violator to a fine not to exceed \$50.00, in accordance with North Carolina General Statutes § 14-4.
- B. Violation of Section 15.4 and 15.8 shall not be an infraction of North Carolina General Statutes § 14-4. Civil penalties shall be assessed, and civil citations issued for the violation of Section 15.4 and 15.8, in accordance with the following.
- (1) The civil penalty associated with each civil citation issued for a violation of Section 15.8 shall be \$50.00.
- (2) Each day's continuing violation of any provision of Section 15.8 is a separate and distinct violation.

- (3) A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply; 15-30 days delinquent – Additional Penalty of \$25.00; each additional 30 days delinquent – Additional Penalty of \$25.00; Maximum of three (3) Additional Penalties assessed.

C. The Authority may order any Person to cease and desist any activities or conduct in violation of or in noncompliance with section 15.8.

- (1) The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from, or denied access to, the Airport.
- (2) An order of removal from or denial of access to the Airport shall be issued by the Authority in writing and shall be hand delivered or sent by certified mail to the Person's last known address.
- (3) An order of removal from or denial of access to the Airport shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

D. A Person found to have violated Section 15.3 shall be guilty of a Class 3 misdemeanor in accordance with North Carolina General Statutes § 14-4, and shall be subject to a fine, as specified in Section 15.13.D(1) below.

- (1) Violation of Section 15.3: **\$250.00** fine.

## **Section 16. Ground Transportation Vehicles**

16.1 It shall be unlawful for any Person to operate a Motor Vehicle on Airport Property for the purposes of providing commercial ground transportation, including but not limited to, a Taxicab, Taxi or Cab, Limousine, Peer-to-Peer Vehicle Sharing Program, Transportation Network Company, Courtesy Vehicle or Shuttle Van/Bus, for pickup of passengers, without first obtaining a ground transportation permit from the Authority.

16.2 It shall be unlawful for any commercial ground transportation, including but not limited to, a Taxicab, Taxi or Cab, Limousine, Peer-to-Peer Vehicle Sharing Program, Transportation Network Company, Courtesy Vehicle or Shuttle Van/Bus, to pick up or drop off passengers or vehicles at any place on Airport Property other than the areas specifically designated for such purpose.

16.3 A violation of Section 16 shall not be a misdemeanor or infraction under North Carolina General Statutes §14-4. Civil penalties shall be assessed, and civil citations issued, for the violation of any provision of Section 16 in accordance with the following.

- A. Unless otherwise expressly specified herein, the civil penalty associated with each civil citation issued for a violation of Section 16 shall be \$250.00.
- B. Except as otherwise specified herein, each day's continuing violation of any provision of Section 16 is a separate and distinct violation.

C. A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply; 15-30 days delinquent – Additional Penalty of \$100.00; Each additional 30 days delinquent - Additional Penalty of \$100.00; Maximum of three (3) Additional Penalties assessed.

16.4 The Authority may order any Person to cease and desist any activities or conduct in violation of or in non-compliance with Section 16.

A. The Authority may order any Person who knowingly fails to comply with a cease and desist order removed from or denied access to the Airport.

B. An order of removal from or denial of access to the Airport shall be issued by the Authority in writing and shall be hand delivered or sent by certified mail to the Person's last known address.

C. An order of removal from or denial of access to the Airport shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

## **Section 17. Free Speech**

17.1 The Airport is designed, operated, and maintained as a facility for public air transportation, and was not designed, nor is it intended for use a forum for public free speech or expressive activities including carrying or displaying signs or placards, leafletting, campaigning, marches, rallies, parades, demonstrations, protests, assemblies, speeches, circulation of petitions, proselytizing, and/or public demonstration on the Airport. Accordingly, no Person shall engage in free speech or expressive activities on Airport Property without first obtaining a permit from the Authority.

17.2 No Person shall engage in free speech or expressive activities:

A. Without a permit issued by the Authority.

B. In a manner that obstructs entrance to or exit from the Terminal, walkways, roadways, parking, or concourses, etc.

C. That physically or verbally obstruct, delay or interfere with the free movement of any Person, Motor Vehicles, or Aircraft on Airport Property or otherwise prevent the orderly and efficient use of the Airport for its primary purpose.

D. That impair or interfere with the rights of other Persons or the transportation function of the Airport.

E. On Airport Property outside of the Terminal.

F. In those portions of the Terminal not open to the general public.

G. Within ten (10) feet of any Person waiting in line or any Person loading and unloading baggage.

- H. That utilizes sound or voice amplifying apparatus, chants, dance, or other similar conduct.
  - I. That utilizes tables, stands, chairs, or other structures.
  - J. That collects money or gather of signatures.
  - K. Involving signs larger than 22” by 28”.
  - L. Involving stick or rigid holders.
  - M. Involving physical obstructions.
- 17.3 Upon request, reasonable accommodations can be made for Persons with a disability.
- 17.4 Permits for free speech or expressive activities shall:
- A. Be issued only for designated spaces inside the Airport Terminal.
  - B. Be issued for a maximum of ten (10) Persons at one location in the Airport Terminal.
  - C. Be limited in number per day and shall be granted by the Authority on a first come first served basis.
  - D. Be valid for a period not to exceed seven (7) successive days.
  - E. Be obtained from the Authority at least three (3) business days in advance.
- 17.5 There is no charge for a permit under this Section.
- 17.6 Persons with a permit for free speech or expressive activities, must obey all directions of Public Safety Officers and other authorized Authority personnel, designated to facilitate the movement of Airport Customers and traffic in, to, and from the Terminal, walkways, and roadways.
- 17.7 Anyone engaging in free speech or expressive activities on Airport Property must have a copy of their permit on their Person and be able to present it, if requested by a Public Safety Officer, or an Authority employee.
- 17.8 Permits may be denied if the Authority determines that the activity does not constitute legally protected free speech.
- 17.9 The Authority may suspend a permit in the event of an emergency at the Airport impacting, or potentially impacting the safety of Persons and property, or when necessary to implement required emergency security procedures.

- 17.10 A violation of Section 17 shall not be a misdemeanor or infraction under North Carolina General Statutes §14-4. Civil penalties shall be assessed, and civil citations issued, for the violation of any provision of Section 17 in accordance with the following.
- A. Unless otherwise expressly specified herein, the civil penalty associated with each civil citation issued for a violation of Section 17 shall be \$50.00.
  - B. Except as otherwise specified herein, each day's continuing violation of any provision of Section 17 is a separate and distinct violation.
  - C. A civil penalty is delinquent if not paid by the 30<sup>th</sup> day from the date the civil citation is issued. Thereafter, the following additional civil penalties shall apply; 15-30 days delinquent – Additional Penalty of \$50.00; Each additional 30 days delinquent - Additional Penalty of \$50.00; Maximum of three (3) Additional Penalties assessed.

## **Section 18. Enforcement and Appeals**

### 18.1 Infractions.

- A. Public Safety Officers are authorized to enforce violations of these Airport Rules & Regulations under North Carolina General Statutes § 14-4 that constitute infractions.

### 18.2 Misdemeanors.

- A. Public Safety Officers are authorized to enforce violations of these Airport Rules & Regulations under North Carolina General Statutes § 14-4 that constitute misdemeanors.

### 18.3 Administrative Violations/Civil Citations.

- A. The Authority shall authorize specific Authority personnel to enforce all administrative violations of these Airport Rules & Regulations by civil citation.
- B. Upon any administrative violation of these Airport Rules & Regulations, personnel designated in accordance with Section 18.3.A shall cause a civil citation to be issued to the violator.
- C. All civil citations shall be hand delivered to the violator or shall be mailed by first class mail addressed to the last known address of the violator. The violator shall be deemed to have been served upon hand delivery or the mailing of the civil citation.
- D. Civil citations issued by GARAA are recoverable in a civil action in the nature of a debt when the civil citation is not paid within the time period prescribed.

### 18.4 Appeal of Civil Citation.

- A. Any Person may submit, within ten (10) days of receipt of a civil violation, a written request that the President & CEO review the civil citation, in accordance with Sections 18.4.B

through 18.4.D below. Additional penalties shall be stayed while an appeal of a civil citation is pending.

- B. A request to the President & CEO shall be in writing and shall be hand delivered to the Office of the President & CEO and must be signed for by an employee of the Authority or shall be mailed to the President & CEO by certified mail, return receipt requested.
- C. A request to the President & CEO must specify in detail, all of the reasons why the civil citation should be modified or withdrawn and must provide a mailing address for the President & CEO to submit a response to the request.
- D. Within ten (10) days of receipt of the request, in accordance with Section 18.4.A, the President & CEO shall mail a written decision to the requesting party at the address provided.
- E. If a written request for review is appealed and the civil citation is affirmed, payment of the civil penalty shall be due and payable to the Authority within thirty (30) days of issuance of the President & CEO's written decision to the violator. Thereafter, additional penalties shall be assessed as provided for herein.

- 18.5 In addition to any civil or criminal penalties set out in any Section or subsection herein, these Rules & Regulations may be enforced by an injunction, order of abatement, or other appropriate equitable remedy issuing from a court of competent jurisdiction.
- 18.6 The Airport Rules & Regulations may be enforced by one, all, or a combination of the penalties and remedies authorized and prescribed herein, except that any provision, the violation of which incurs a civil penalty, shall not be enforced by criminal penalties.
- 18.7 The Authority may take such other action as may be necessary to enforce all Airport Rules & Regulations and to safeguard the public on Airport Property.
- 18.8 All Persons on Airport Property shall cooperate with the Authority employees responsible for enforcing these Airport Rules & Regulations.

#### **Section 19. Miscellaneous.**

- 19.1 Conflict. These Airport Rules & Regulations supersede and control all the Minimum Standards and all of the Authority's other Policies, to the extent of any conflicts, unless the Minimum Standard is required by the FAR. If the Minimum Standard is required by the FAR, the Minimum Standard will have the force and effect as required by the FAR.
- 19.2 Severability. If any provision of these Airport Rules & Regulations is held by any court of competent jurisdiction to be invalid, then the invalid provision shall be considered a separate and distinct and independent part of the ordinance, and such invalidity shall not affect the validity or enforcement of the ordinance as a whole or any other part contained therein.

- 19.3 Amendment. The Greater Asheville Regional Airport Authority reserves the right to adopt such amendments to these Airport Rules & Regulations, from time to time, as it determines are necessary or desirable for the benefit of the general public or the operation of the Airport.
- 19.4 Notice. When notice is required under this Ordinance, such notice shall be delivered as follows:
- A. To the Authority.
  - B. To Public Safety.
  - C. To the President & CEO



**NEW BUSINESS:**

**A. Award of Contract with Tennoca Construction Company for South**

**Parking Lot:** Jared Merrill informed the Board that construction of the south parking lot includes grading, storm drainage, new drive lanes, four bus stops, striping, fencing, landscaping and the infrastructure for a parking control system. The new parking lot will add 600 parking spaces. The project was bid on May 23, 2023 and only one bid was received. The project was readvertised and re-bid on May 30, 2023, and three bids were received. The lowest responsible bid was received from Tennoca Construction Company in the amount of \$8,388,839.20. Staff recommends including a 10% construction allowance of \$838,884.00. Mr. Merrill reported that the original estimated project budget was \$7,790,000, however, the most current engineer's estimate prior to the bid date was \$10,892,125. With the increase in cost of materials and an additional \$1,600,000.00 for stream mitigation measures, the total project budget is \$10,827,723.20. The project will be funded with airport funds and will require the following budget ordinance amendment:

**BE IT ORDAINED** by the Greater Asheville Regional Airport Authority that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2024:

**Section 1.** To amend the appropriations as follows:

**EXPENDITURES:**

	<u>Decrease</u>	<u>Increase</u>
Capital Improvements	_____	\$3,037,723.20
Totals	_____	\$3,037,723.20

This will result in a net increase of \$3,037,723.20 in the appropriations. Revenues will be revised as follows:

**REVENUES:**

	<u>Decrease</u>	<u>Increase</u>
Transfer from GARAA Cash	_____	\$3,037,723.20
Totals	_____	\$3,037,723.20

**Section 2.** Copies of this budget amendment shall be furnished to the Clerk to the Greater Asheville Regional Airport Authority, and to the Budget Officer and to the Finance Officer for their direction.

Adopted this 9<sup>th</sup> day of June 2023.

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Brad Galbraith, Chair

Attested by:

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Ellen Heywood, Clerk to the Board

Mr. Kennedy moved to approve the award of the contract with Tennoca Construction Company in the amount of \$8,388,839.20 and a total project budget of \$10,827,723.20; authorize the President & CEO to execute the necessary documents; and amend the FY2023/2024 Budget by adopting the budget ordinance amendment as presented by staff. Mr. Russell seconded the motion and it carried unanimously.

**PRESIDENT'S REPORT:** The president stated that he had an additional item to address that was not included on the agenda.

**A. Conserving Carolina Grant:** The president reminded the Board that approval was given in the fall of 2021 for staff to work with Conserving Carolina on a conservation easement along Cane Creek on the Broadmoor Golf Course. Conserving Carolina has recently received a \$593,000 grant to purchase the conservation easement and to restore the banks along the creek.

**B. Airport Security Worker Screening:** TSA issued Amendment 2302 for aviation worker screening. The president stated that this is an unfunded mandate for airports to implement employee screenings when going from the public side of the terminal to the secure side. TSA requires that the screening program be implemented by September 25, 2023. Staff is working to establish a team to randomly screen workers. 17 hours of screenings must be conducted each week. In 2025 the TSA will require explosive detection screening equipment be included in the screenings. The president stated that it is anticipated that the Authority will spend approximately \$50,000 per year for additional staffing to perform the screenings plus approximately \$1,000 for equipment. The cost of the explosive detection screening equipment was unknown but will be an additional purchase when required.

**C. Independent Authority Legislation:** The president reported that Ms. Rice has worked with the state legislators on amending the legislation that formed the independent Authority regarding an issue with the title of property reverting to the original owners when land is transferred by the Authority. Senate Bill 208 was recently passed and provides flexibility for the transfer of Authority property without reverting to the City of Asheville or Buncombe County.

**INFORMATION SECTION:** No comments

**PUBLIC AND TENANTS COMMENTS:** None

**CALL FOR NEXT MEETING:** The Chair stated that the next regular meeting of the Board will be held on July 14, 2023.

**AUTHORITY MEMBER REPORTS:** Ms. Russo Klein gave a brief report on her recent attendance at the ACI-NA Legal Affairs Conference.

**CLOSED SESSION:** At 10:10 a.m. Mr. Lovin moved to go into Closed Session Pursuant to Subsections 143-318.11 (a) (3), (4), and (6) of the General Statutes of North Carolina to Consult with Legal Counsel in Order to Preserve the Attorney-Client Privilege; to Discuss Matters Relating to the Location and/or Expansion of Industries or Other Businesses in the Area Served by the Greater Asheville Regional Airport Authority, Including an Agreement on a Tentative List of Economic Development Incentives that may be Offered by the Authority in Negotiations, and to Consider Personnel Matters. Ms. Russo Klein seconded the motion and it carried unanimously.

The Chair indicated they would break for a few minutes at which time the Board would resume in Closed Session.

Open Session resumed at 11:35 a.m.

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY JUNE 9, 2023 CLOSED SESSION MINUTES:** Mr. Lovin moved to seal the minutes for the Closed Session just completed and to withhold such Closed Session minutes from public inspection so long as public inspection would frustrate the purpose or purposes thereof. Ms. Russo Klein seconded the motion and it carried unanimously.

**PRESIDENT AND CEO COMPENSATION:** Mr. Russell moved to increase the President & CEO's compensation by 10% effective July 1, 2023. Ms. Russo Klein seconded the motion and it carried unanimously.

**STRATEGIC PLAN PRESENTATION:** A discussion took place concerning the proposed vision statement. It was agreed that the Board would continue the conversation at the next Authority Board meeting.

**ADJOURNMENT:** Ms. Russo Klein moved to adjourn the meeting at 11:44 a.m. Mr. Kennedy seconded the motion and it carried unanimously.

Respectfully submitted,

Ellen Heywood  
Clerk to the Board

Approved:

Brad Galbraith  
Chair



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## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Angela Wagner, Vice President of Administration and Human Resources

DATE: August 11, 2023

### **ITEM DESCRIPTION – Consent Item B**

Approval of Amended Wage and Pay Structure Policy

### **BACKGROUND**

The Greater Asheville Regional Airport Authority maintains a Wage and Pay Structure policy to administer pay for employees and to remain competitive in the market.

The Wage and Pay Structure Policy is being amended to allow additional flexibility in administering pay to assist in staying competitive in a volatile and competitive market.

The Authority is a smaller organization with little room for existing employees to promote up the hierarchy. Long tenured employees as well as highly skilled and high performing employees may reach the maximum of their grade without an option to promote higher. Capping an employee's base pay can have a long term, overall negative impact on their state pension and the Authority risks losing valuable employees to other organizations offering promotional opportunities. In an effort to retain highly valuable employees, it is proposed to authorize the President & CEO to permit existing employees to exceed the maximum of their range in some circumstances.

### **ISSUES**

Permitting employees to exceed the maximum of their range can degrade the integrity of the pay structure if too many employees are permitted to exceed the maximum of their range.

Consent – Item B



## **ALTERNATIVES**

The Authority Board could decide to make additional changes or modifications, or to not amend the current Wage and Pay Structure Policy.

## **FISCAL IMPACT**

None. Any future impact is contained within the Board approved budget.

## **RECOMMENDED ACTION**

It is respectfully requested that the Airport Authority Board resolve to (1) approve the attached amended Policy; and (2) authorize the President and CEO to implement the necessary documents.

## Wage and Pay Structure

**OBJECTIVE** The Greater Asheville Regional Airport Authority desires to maintain a Pay Structure competitive with similar local government jurisdictions in Western North Carolina.

The President & CEO will make recommendations from time to time for amendments to the Pay Structure, when changes in responsibilities of work, economic conditions, prevailing wage rates, financial conditions or other economic considerations indicate a need for such actions.

### **METHOD OF OPERATION**

**Description of Plan** The Pay Structure is a system in which Authority positions are assigned pay levels based on the job duties and responsibilities, the level of work required, and the job value to the Authority Rates within each level are determined by the job market and labor trends.

The Pay Structure consists of Levels 11 through 29, each level having a minimum, mid-point, and maximum salary.

Employees are not hired at a pay rate below the established minimum level for that position. Exceptions are trainee, intern/co-op employees, and temporary employees.

A request for a starting salary above the minimum level is submitted, with justification in writing, to the VP - Administration & HR or designee for action.

The following guidelines are applied when submitting a request:

- The starting salary for **new hires exempt positions** will not exceed the midpoint of established salary level without the President & CEO's approval.
- ~~The starting salary for non-exempt positions will not exceed the first quartile of the established quartile of the established salary without the President & CEO's approval.~~
- ~~Salary increases from minimum rate are accomplished by merit increase, adjustments for salary inequities, promotions, or reclassifications, according to policy.~~ Salary increases for existing employees may exceed the maximum of the range with approval of the President & CEO. The VP - Administration & HR, with the approval of the President & CEO, has the authority to correct salary inequities.

The VP - Administration & HR is responsible for the administration of the Pay Structure. The VP - Administration & HR or designee reviews the Pay Structure at least annually and establishes a time frame to consider changes during the budget process. The VP - Administration & HR or designee then presents recommendations to the President & CEO for submission to the Authority in order to maintain a competitive Pay Structure.

- Administration** In the administration of the Pay Structure, the VP - Administration & HR is responsible for:
- Adjusting (with the approval of the President & CEO) salaries to correct demonstrated inequities,
  - Ensuring that employee salaries are not changed without the department head's approval and/or notification. Department heads are responsible for ensuring that funds are available in the appropriate account for salary adjustments,
  - Evaluating, revising, and updating changes in salary structure that affect the wage and salary system of positions, based on the local job market and labor trends,
  - Recommending changes in the Pay Structure to the President & CEO for Board Consideration.

The President & CEO and other employees that are contract employees shall be employed and paid in accordance to the contract and/or as approved by the Authority.

All persons shall be employed and paid in accordance with the rates established in the Pay Structure for the classification to which the appointment is made.

The VP - Administration & HR shall have the responsibility for day-to-day administration of the Pay Structure, to include confirming that all hiring rates, salary adjustments, and other payroll changes are in accordance with the policy.

**New Appointment Starting Rates** ~~Appointments below the normal hiring range may be offered when the candidate is hired as a trainee, intern or student worker.~~

~~If a candidate's training, experience or other qualifications are directly related to and substantially exceed the minimum requirements of the position; and the candidate is unwilling to accept a salary in the normal hiring range; and there are no other eligible candidates with comparable qualifications; the President & CEO may approve appointment at a rate not to exceed twenty (20%) percent above the normal hiring pay range.~~

**Salary Increase** An employee may receive a salary increase by means of a cost-of-living adjustment (COLA), merit increase, pay grade adjustment, special pay adjustment, promotion or reclassification.



**Cost of Living Adjustment**

The economy performance, or cost of living adjustment, is to be set by the Authority pursuant to applicable economic indicators, trends by public and private employers in Buncombe and Henderson Counties ~~County~~ and surrounding areas, and fiscal restraints established by budget adoption.

An employee will become eligible for consideration of a cost-of-living adjustment upon completing a minimum of 3 months of service to the Authority.

When a cost-of-living adjustment is implemented, the pay ranges will be adjusted accordingly.

**Merit Increases**

The purpose of these increases is to recognize those employees who meet or exceed their job standards over a specified period of time. Merit increases are not automatic but are earned and based upon documented evidence that an employee has met or exceeded a satisfactory level of performance during the rating period. Such evidence must be documented by a written employee performance evaluation.

1. An employee will become eligible for consideration of a merit increase upon completing a minimum of 3 months ~~12 months~~ of service to the Authority,
2. The President & CEO or designee shall determine the amount and award of merit increases, based on the annual budget approved by the Board.

The amount of any merit pay awarded shall be based on each employee's performance evaluation and shall not exceed the limits prescribed by the Authority for the fiscal year.

Performance evaluations are not subject to the grievance procedure.

~~Employees at the maximum of their pay range are not entitled to receive a merit increase.~~ The President & CEO is authorized to approve a merit increase and/or permit an employee to exceed the maximum of their range based on significant performance, longevity or other special circumstances.

**Longevity**

Full-time and part-time employees receive an annual longevity payment based on years of continuous service. Service is calculated from the latest date of employment. In the event there is a break in service, the last date of employment is used.

To be eligible for the longevity bonus (50% for part-time employees), the employee must complete the specified number of years of service. The following schedule of payment is used and is based on the annual salary of the employee:

- 5-9 years 2.0%
- 10-14 years 3.0%
- 15 years or more 3.5%

The bonus payment is made by direct deposit in a lump sum each year, in the pay period following the anniversary date. Federal and State Income Tax and Social Security tax deductions are applicable.

This bonus continues accordingly to retirement or resignation date. The Authority has the right to discontinue the benefit at any time.

**Pay Upon**

Upon promotion, a fully qualified employee shall have his or her salary increased to at least the minimum of the normal hiring pay range of the classification to which the promotion is made or, at the President & CEO's or designee discretion, up to the midpoint of the salary range. The employee would not receive a merit increase if the promotion is within ~~3 months~~ 4 months of the end of the Fiscal year.

Upon promotion to a trainee, an employee shall have his or her salary adjusted to a rate below the minimum of the classification ~~if on~~ the degree of the employee's training, experience and other qualifications are below the minimum requirements of the class, unless the employee's rate is already at or above the normal hiring range.

The date the employee achieves the minimum of the pay range under a training schedule shall determine the anniversary date for the employee while he/she remains in that pay range.

**Special Adjustments**

Should unusual conditions arise which would justify a pay increase not provided elsewhere in these rules, the President & CEO is authorized to approve the pay adjustment.

**Overtime Pay**

Overtime pay refers to compensation paid for a work performed in excess of the normal 40-hour workweek for non-Public Safety employees. Employees in non-exempt positions are to be paid an overtime rate of one and one-half times regular pay for all hours worked in excess of the standard (40 hours) workweek for non-Public Safety employees. Public Safety Officers, Lieutenants and Firefighters will receive an overtime rate of one and on-have times regular pay for all hours worked over 171 during a 28-day period. This provision is for full-time, non-exempt positions only.

Overtime work will be performed only with prior approval of the responsible supervisor and/or department head, Chief Operating Officer, or President & CEO. Overtime is to be used only to meet essential operational requirements.

For purposes of computing overtime, holidays shall be counted as hours worked provided the employee completes the regular workweek. Annual leave, sick leave, FMLA leave PTO, jury duty and other such absences from work will not be counted as time worked for overtime computations.

**Call Back**

A ~~non-exempt~~ employee who is "Called Back" to work for a Call Back situation, outside his or her regularly scheduled hours, shall be paid from the time they arrive on site, a minimum of two (2) hours.

**Issuance of NOTAM(s) after normally scheduled hours** A non-exempt employee who is required to issue a Notice to Air Missions (NOTAM) outside his or her regularly scheduled hours, shall be paid a flat payment no less than 1.5 times their hourly rate for issuance and closure of the NOTAM. The rate will be reviewed and determined by the Department Head annually and included in the annual budget approved by the Board.

**Pay in Lieu of** When determined to be in the best interest of the Authority, the President & CEO may authorize pay in lieu of notice to an employee being dismissed or resigning.

Employees who have obtained regular status may be authorized up to two (2) weeks' pay in lieu of notice. Employees who have not completed the original introductory period may be authorized up to one (1) week pay in lieu of notice. At the sole discretion of the President & CEO, amounts in excess of two weeks may be authorized.

**Pay Upon Termination** Employees terminating employment from the Greater Asheville Regional Airport Authority will normally receive their final paycheck on the next regularly scheduled payday following the date of termination. Final paychecks shall include any unused annual leave balance earned by the employee as of the date of termination. In addition, all employees who properly resign, are laid off, or otherwise separate from the Authority in good standing shall be entitled to be paid for thirty-three (33%) percent of any unused sick leave balance earned by them not to exceed 240 hours. The Finance Department will issue a final paycheck in advance of a scheduled payday only as authorized by the President & CEO. Employees must return any and all items that are Authority owned. If items are not returned, costs will be deducted from employee's final paycheck.

**Wages Due Deceased** In the event of an employee's death, the designated beneficiary will normally receive the employee's final paycheck on the next regularly scheduled payday following the date of death. Final paychecks shall include any unused annual leave balance earned by the employee as of the date of death. In addition, the beneficiary will receive thirty-three (33%) percent of up to 240 hours of earned but unused sick leave. The Finance Department will issue a final paycheck in advance of a scheduled payday only as authorized by the President & CEO. In no beneficiary has been designated, payment may be made in accordance with North Carolina Law.

**APPROVAL AND UPDATE HISTORY:**

**Approval** July 1, 2022  
**Supersedes** October 10, 2014, Effective November 1, 2014, March 13, 2009, December 11, 2006 & April 19, 2004



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## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: John G. Coon, A.A.E.  
Vice President of Operations and Maintenance

DATE: August 11, 2023

### **ITEM DESCRIPTION – Consent Item C**

Approval of Amended Budget with LAZ Parking to Operate Shuttle Buses for New South Parking Area

### **BACKGROUND**

With the anticipation of the opening of the new south parking area in November of this year, LAZ Parking has amended their budget to include shuttle service to this new parking area. LAZ has submitted an amended budget to operate the shuttle buses at a cost of \$178,377.00. This expense will be for the remainder of the 2023-2024 fiscal year and allows for the labor and insurance associated to operate the Authority provided buses. The proposed agreement reflects operating the buses for approximately 20 hours per day 7 days a week, depending upon demand, and contingent upon the additional parking areas being necessary.

### **ISSUES**

None.

### **ALTERNATIVES**

None.

### **FISCAL IMPACT**

The total expense of \$178,337.00 will be funded from the Parking Management Shuttle account.

Consent – Item C



**RECOMMENDED ACTION**

It is respectfully requested that the Greater Asheville Regional Airport Authority Board resolve to amend the FY2023/2024 budget in the amount of \$178,337.00 by adopting the following budget ordinance amendment:

**BE IT ORDAINED** by the Greater Asheville Regional Airport Authority that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2024:

**Section 1.** To amend the appropriations as follows:

**EXPENDITURES:**

	<u>Decrease</u>	<u>Increase</u>
Parking Management Shuttle	_____	\$178,337.00
Total	=====	\$178,337.00

This will result in a net increase of \$178,337.00 in the appropriations. Revenues will be revised as follows:

**REVENUES:**

	<u>Decrease</u>	<u>Increase</u>
Transfer from GARAA Cash	_____	\$178,337.00
Totals	=====	\$178,337.00

**Section 2.** Copies of this budget amendment shall be furnished to the Clerk to the Greater Asheville Regional Airport Authority, and to the Budget Officer and to the Finance Officer for their direction.

Adopted this 11th day of August 2023.

\_\_\_\_\_  
 Brad Galbraith, Chair

Attested by:

\_\_\_\_\_  
 Ellen Heywood, Clerk to the Board



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## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Jared Merrill  
Vice President - Planning

DATE: August 11, 2023

### **ITEM DESCRIPTION – Consent Item D**

Approval of Supplemental Agreement No. 1 to Agreement for Professional Consulting Services with Avcon Engineers and Planners, Inc. (Avcon) for the South Parking Area Project

### **BACKGROUND**

The Authority entered into an Agreement for Professional Consulting Services with Avcon on August 13, 2018 for projects associated with the 2018-2023 Capital Improvement Program (CIP). This five-year agreement is set to expire on August 13, 2023. Through Scope of services No. 7 dated October 7, 2022, Avcon was assigned the design & construction administration services for the South Parking Area Project, presently under construction, and scheduled for overall completion in early 2024. As a result of the current construction schedule, it is necessary to extend the term of this agreement for the continuation of engineering services beyond the current contract period until completion of the project. This contract extension is specific to this South Parking Area Project only.

### **ISSUES**

None.

### **ALTERNATIVES**

None.

Consent – Item D



## **FISCAL IMPACT**

There is no fiscal impact directly associated with this action.

## **RECOMMENDED ACTION**

It is respectfully requested that the Airport Authority Board resolve to (1) Approve Supplemental Agreement No. 1 to Agreement for Professional Consulting Services with Avcon Engineers and Planners, Inc. for the South Parking Area Project; and (2) authorize the President & CEO to execute the necessary documents.

**SUPPLEMENTAL AGREEMENT NO. 1**

**TO AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES  
BETWEEN THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY AND  
AVCON ENGINEERS AND PLANNERS, INC.**

**THIS SUPPLEMENTAL AGREEMENT NO. 1** ("Supplemental Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023 by and between **The Greater Asheville Regional Airport Authority** (AUTHORITY), with offices located at 61 Terminal Drive, Suite 1, Fletcher, North Carolina, 28732 and **AVCON ENGINEERS & PLANNERS, INC.** a Corporation with offices located at 10115 Kincey Avenue, Suite 140, Huntersville, North Carolina, 28078 (AVCON) (AUTHORITY and AVCON are collectively referred to as "the Parties").

**WHEREAS**, AVCON and the Authority entered into an Agreement for Professional Consulting Services dated August 13, 2018 (the "Agreement") whereby the Authority retained AVCON to furnish certain services therein described; and

**WHEREAS**, the Authority has determined it necessary to amend the Agreement;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the Parties agree as follows:

The term of the Agreement shall be extended to that date when all work associated with the Engineering Design and Construction Administration services for the South Parking Area Project is completely closed out, and no additional billable work remains. The Scope of Services associated with this Supplemental Agreement No. 1 shall be limited solely to work items directly related to Engineering Design and Construction Administration services for the South Parking Area Project (Scope of Services No. 7).

Except as hereby modified, amended, or changed, all of the remaining terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Supplemental Agreement to be executed by their duly authorized representatives, under seal, as of the day and year first above written.

**AVCON:**

AVCON Engineers & Planners, Inc.:

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

Print Name: James A. Kriss, P.E.  
Title: Vice-President

**CLIENT:**

The Greater Asheville Regional Airport Authority

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

Print Name: Lew Bleiweis, A.A.E.  
Title: President & CEO

**ATTEST:**

By: Thomas McDonnell

Print Name: Tom McDonnell

Title: Professional Services Billing

Associate

**ATTEST:**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_





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## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Jared Merrill  
Vice President - Planning

DATE: August 11, 2023

### **ITEM DESCRIPTION – Consent Item E**

Approval of Supplemental Agreement No. 1 to Agreement for Professional Consulting Services with GS&P, N.C. an Affiliate of Gresham Smith and Partners (Gresham Smith) for the Terminal Modernization and Expansion Project

### **BACKGROUND**

The Authority entered into an Agreement for Professional Consulting Services with Gresham Smith on August 14, 2018 for projects associated with the 2018-2023 Capital Improvement Program (CIP). This five-year agreement is set to expire on August 14, 2023. Through Scope of Services No. 2 dated November 22, 2019, Gresham Smith was assigned the design & construction administration services for the Terminal Modernization and Expansion Project, presently under construction, and scheduled for overall completion in 2027. As a result of the current construction schedule, it is necessary to extend the term of this agreement for the continuation of engineering services beyond the current contract period until completion of the project. This contract extension is specific to this Terminal Modernization and Expansion Project only.

### **ISSUES**

None.

### **ALTERNATIVES**

None.

Consent – Item E



## **FISCAL IMPACT**

There is no fiscal impact directly associated with this action.

## **RECOMMENDED ACTION**

It is respectfully requested that the Airport Authority Board resolve to (1) Approve Supplemental Agreement No. 1 to the Agreement for Professional Consulting Services with Gresham Smith for the Terminal Modernization and Expansion Project; and (2) authorize the President & CEO to execute the necessary documents.

**SUPPLEMENTAL AGREEMENT NO. 1**

**TO AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES  
BETWEEN THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY AND  
GRESHAM SMITH AND PARTNERS**

**THIS SUPPLEMENTAL AGREEMENT NO. 1** ("Supplemental Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023 by and between **The Greater Asheville Regional Airport Authority** (AUTHORITY), with offices located at 61 Terminal Drive, Suite 1, Fletcher, North Carolina, 28732 and **GS&P, N.C. an Affiliate of Gresham Smith and Partners** a Corporation with office located at 620 South Tryon Street, Suite 500 Charlotte, NC 28202 (GRESHAM SMITH) (AUTHORITY and GRESHAM SMITH are collectively referred to as "the Parties").

**WHEREAS**, Gresham Smith and the Authority entered into an Agreement for Professional Consulting Services dated August 14, 2018 (the "Agreement") whereby the Authority retained Gresham Smith to furnish certain services therein described; and

**WHEREAS**, the Authority has determined it necessary to amend the Agreement.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the Parties agree as follows:

The term of the Agreement shall be extended to that date when all work associated with the Design and Construction Administration Services associated with the Terminal Modernization and Expansion Project is completely closed out, and no additional billable work remains. The Scope of Services associated with this Supplemental Agreement No. 1 shall be limited solely to work items directly related to the Terminal Modernization and Expansion Project (Scope of Services No. 2).

Except as hereby modified, amended, or changed, all of the remaining terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Supplemental Agreement to be executed by their duly authorized representatives, under seal, as of the day and year first above written.

**GRESHAM SMITH:**

Gresham Smith

By: King, David

Digitally signed by King, David  
Date: 2023.08.09  
21:45:25 -04'00'

Print Name: David King, AIA, NCARB  
Title: Senior Vice President

**CLIENT:**

The Greater Asheville Regional Airport Authority

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

Print Name: Lew Bleiweis, A.A.E.  
Title: President & CEO

**ATTEST:**

By: Sucher, Brad

Digitally signed by Sucher, Brad  
Date: 2023.08.09  
22:19:10 -04'00'

Print Name: Brad Sucher

Title: Principal

**ATTEST:**

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



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## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Jared Merrill  
Vice President - Planning

DATE: August 11, 2023

### **ITEM DESCRIPTION – Consent Item F**

Approval of Supplemental Agreement No. 1 to Agreement for Professional Consulting Services with CHA Consulting, Inc. (CHA) for the Airport Master Plan Update

### **BACKGROUND**

The Authority entered into an Agreement for Professional Consulting Services with CHA on August 16, 2018 for projects associated with the 2018-2023 Capital Improvement Program (CIP). This five-year agreement is set to expire on August 16, 2023. Through Scope of Services No. 9 dated July 27, 2021 CHA was assigned the planning services for the Airport Master Plan Update, presently in progress, and scheduled for overall completion in late 2023. As a result of the current schedule, it is necessary to extend the term of this agreement for the continuation of planning services beyond the current contract period until completion of the project. This contract extension is specific to this Airport Master Plan Update only.

### **ISSUES**

None.

### **ALTERNATIVES**

None.

### **FISCAL IMPACT**

There is no fiscal impact directly associated with this action.

Consent – Item F



## **RECOMMENDED ACTION**

It is respectfully requested that the Airport Authority Board resolve to (1) Approve Supplemental Agreement No. 1 to the Agreement for Professional Consulting Services with CHA for the Airport Master Plan Update; and (2) authorize the President & CEO to execute the necessary documents.

**SUPPLEMENTAL AGREEMENT NO. 1**

**TO AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES  
BETWEEN THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY AND  
CHA CONSULTING, INC.**

**THIS SUPPLEMENTAL AGREEMENT NO. 1** ("Supplemental Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023 by and between **The Greater Asheville Regional Airport Authority** (AUTHORITY), with offices located at 61 Terminal Drive, Suite 1, Fletcher, North Carolina, 28732 and **CHA CONSULTING, INC.** a Corporation with offices located at 4080 Lafayette Center Drive, Suite 210A, Chantilly, VA 20151 (CHA) (AUTHORITY and CHA are collectively referred to as "the Parties").

**WHEREAS**, CHA and the Authority entered into an Agreement for Professional Consulting Services dated August 16, 2018 (the "Agreement") whereby the Authority retained CHA to furnish certain services therein described; and

**WHEREAS**, the Authority has determined it necessary to amend the Agreement.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the Parties agree as follows:

The term of the Agreement shall be extended to that date when all work associated with the Planning Services for the Airport Master Plan Update is completely closed out, and no additional billable work remains. The Scope of Services associated with this Supplemental Agreement No. 1 shall be limited solely to work items directly related to the Planning Services for the Airport Master Plan Update (Scope of Services No. 9).

Except as hereby modified, amended, or changed, all of the remaining terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Supplemental Agreement to be executed by their duly authorized representatives, under seal, as of the day and year first above written.

**CHA:**  
CHA Consulting, Inc.:

**AUTHORITY:**  
The Greater Asheville Regional Airport Authority

By: *Paul Puckli*

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

Print Name: Paul Puckli  
Title: VP Market Dev Leader - Aviation

Print Name: Lew Bleiweis, A.A.E.  
Title: President & CEO

ATTEST:

ATTEST:

By: *Michael DeVoy*

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

Print Name: Michael DeVoy

Print Name: \_\_\_\_\_

Title: Sr VP - Aviation BL Director

Title: \_\_\_\_\_



## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Christina M. Madsen, VP Business Development and Properties

DATE: August 11, 2023

### **ITEM DESCRIPTION – New Business Item A**

Approval of Concession Agreement and Lease with Mountain Credit Union, and the Greater Asheville Regional Airport Authority

### **BACKGROUND**

ATM services are considered an essential amenity for Airport customers. A Request for Proposal(s) was issued for ATM services at the Asheville Regional Airport (AVL) on April 20, 2023, and proposals were due on July 13, 2023.

The ATM business opportunity was advertised locally and nationally and sent directly to 14 individual companies who were on the Authority's interest list for these services.

Two proposals were received from Baumtech, LLC., a Louisiana Company, and Mountain Credit Union a North Carolina state chartered credit union. Staff evaluated each proposal and Mountain Credit Union ranked higher due to stronger financials and a higher revenue proposed to Authority. Staff recommends Authority entering into a Concession Agreement and Lease with Mountain Credit Union for a five-year term, with five, one-year options to renew.

This opportunity will provide ATM services pre-security at one defined location, and a post-security location may be added in the future at the sole discretion of the Authority. ATM services will be provided 24 hours a day, seven days a week including holidays. ATM will accept multiple credit/debit card companies including, but not limited to: Visa, MasterCard, and American Express. Passengers will have the ability to complete cash withdrawals, conduct account inquiries and other customary services.

New Business - Item A



## **ISSUES**

None

## **ALTERNATIVES**

The Board could 1) reject all proposals and the agreement and 2) forego ATM services in the Terminal.

## **FISCAL IMPACT**

The projected revenue to the Authority annually is estimated to be \$1,900. Mountain Credit Union will charge an ATM transaction fee of \$3.50.

## **RECOMMENDED ACTION**

It is respectfully requested that the Greater Asheville Regional Airport Authority Board resolve to (1) approve the Concession Agreement and Lease as described above with Mountain Credit Union, and (2) authorize the President & CEO to execute the necessary documents.

Attachment



CONCESSION AGREEMENT  
GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY



CONCESSION AND LEASE AGREEMENT  
BETWEEN  
GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY  
AND  
MOUNTAIN CREDIT UNION

Effective Date: September 1, 2023

**CONCESSION and LEASE AGREEMENT**  
**AUTOMATED TELLER MACHINE**

THIS Concession Agreement ("Agreement") is made and entered into by and between the Greater Asheville Regional Airport Authority ("Authority"), created pursuant to Session Law 2012-121 by the General Assembly of North Carolina on June 28, 2012, and owner and operator of the Asheville Regional Airport ("Airport") and Mountain Credit Union ("Lessee"), a North Carolina State-chartered credit union operating as a not-for-profit financial institution. Authority and Lessee are referred to herein as the Parties and individually as a Party. This Lease is effective when signed by Authority ("Lease Effective Date").

WITNESSETH:

WHEREAS, the AUTHORITY is owner and operator of the Asheville Regional Airport, hereinafter referred to as "Airport"; and

WHEREAS, Lessee is a North Carolina State-charted credit union operating as a not-for-profit credit union and engaged in the operation of Automated Teller Machines, and is authorized to do business in the State of North Carolina; and

WHEREAS, the Authority wishes to grant to Lessee the right to install, maintain and operate at its sole cost and expense Automated Teller Machines (ATM(s)) at the Airport under mutually satisfactory terms and conditions;

NOW, THEREFORE, in consideration of the proposal dated July 13, 2023, submitted by Lessee for the operation of the ATM(s) at the Airport, attached hereto and made a part hereof, the Authority's acceptance of said proposal, and the mutual covenants, terms, conditions, privileges, obligations and agreements herein contained, the Authority and Lessee hereby mutually undertake, promise and agree, each for itself, and its successors and assigns, as follows:

ARTICLE 1  
DEFINITIONS

- 1.1 "Agreement", as used herein, contemplates leasing property hereinafter referred to as the Premises and permission for Lessee to use such Authority owned property for the operation of ATM(s) within the Premises under the terms and conditions expressly set forth herein.
- 1.2 "Airport Terminal" and "Terminal" shall mean the Terminal Building at Asheville Regional Airport.
- 1.3 "President and CEO" shall mean the President & CEO of the Authority and shall include from time to time such person or persons as may be authorized to act on

behalf of the President & CEO with respect to any or all matters pertaining to this Agreement.

## ARTICLE 2 TERM

- 2.1 The term of this Agreement shall become effective at midnight (EDT) on September 1, 2023 and shall continue for a period of five (5) years until 11:59 P.M. (EDT) on August 31, 2028, unless terminated sooner pursuant to the provisions of this Agreement.
- 2.2 The Authority shall have the option, at its sole discretion, to extend this Agreement for five, one-year periods subject to negotiation of rent and fees.

## ARTICLE 3 PRIVILEGES AND OBLIGATIONS OF LESSEE

- 3.1 The Lessee shall have the exclusive right, privilege and obligation to operate an ATM within the Airport Terminal, according to the terms and conditions of this Agreement. The operation of the ATM(s) shall include the right to provide normally accepted ATM(s) banking services to the traveling public, subject to the laws of the State of North Carolina and the United States Government. In order to provide maximum service to the traveling public, Lessee shall provide all the advantages of ATM(s) services normally expected by the public and shall be federally insured. As a minimum, Lessee shall provide users with the ability to withdraw funds from checking and savings accounts, perform balance inquiries from checking and savings accounts, obtain credit card cash advances, and transfer funds between accounts. Moreover, Lessee shall provide, install and maintain the ATM(s) at the Leased Premises which shall be incorporated into a regional teller system and a national interchange system (e.g. Cirrus, Plus, etc.). Lessee shall be required to honor, as a minimum, VISA, MasterCard and American Express.
- 3.2 All instructions, specification, statements accompanying the proposal, and the proposal itself, all of which do not conflict with the provisions contained herein shall be considered a part of this Agreement and Lessee shall operate its ATM(s) in accordance with, and subject to, all of the terms and conditions of this Agreement and the proposal documents.
- 3.3 The ATM(s) shall be made available to the public twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. Exception shall be granted for routine maintenance and repair, and for any instance in which the Airport is closed to the public, such as during or following a natural disaster.
- 3.4 The Lessee has the rights of ingress and egress from its Leased Premises over Airport roadways, including common use roadways, subject to any rules and regulations which may have been established or shall be established in the future

by the Authority. Such rights of ingress and egress shall apply to Lessee's employees, guests, patrons, invitees, suppliers and other authorized individuals.

3.5 During the term of this Agreement, Lessee shall report to the Authority the number of monetary transactions occurring on a monthly basis through the ATM(s), excluding rejects. The reports shall indicate total transactions per ATM, and foreign transactions per ATM.

3.6 Lessee covenants and agrees:

3.6.1 To provide, install, operate and maintain to provide reliable service, at its own cost and expense, all equipment, including telephone connections, necessary for the conduct of its business on the Airport, which equipment shall be subject to concurrence by the Authority in the Lessee's selection as to location, design, quality, signing, color, arrangement, size and general condition.

3.6.2 To permit the Authority to inspect and examine the equipment installed by Lessee under this Agreement at any and all times and do any and all things with reference thereto which the Authority is obligated to do, as set forth herein, or which may be deemed necessary or desirable for the proper conduct and operation of the Airport.

3.6.3 To promptly remove, relocate, or replace its ATM(s) at its own cost and expense if requested by the Authority in accordance with Article 21.2. A period of longer than sixty (60) days from receipt of written notification shall not be considered prompt removal, relocation, or replacement and shall be considered a violation of the terms of this Agreement.

3.6.4 To inspect its ATM(s) periodically (at least once every thirty (30) days) and repair or replace parts or accessories damaged or worn due to normal wear and tear.

3.6.5 To respond to service calls within twenty-four (24) hours after the call is received and to take immediate and continuing steps to effect repairs so as to minimize downtime.

3.6.6 To make arrangements acceptable to the Authority for the refund to users of any monies lost as a result of malfunctioning of its ATM.

3.6.7 To provide routine custodial care of its ATM.

3.6.8 To provide services only at the initial prices or fees set forth in the proposal documents. Any proposed increases, decreases and additions or deletions of customer service fees paid by card holders for use of Lessee's ATM(s) must be forwarded to the President & CEO or his or her designee, for review

and approval prior to implementation. The Lessee must provide information substantiating the proposed increase. When reviewing a request to increase prices or fees, the President & CEO shall take into account the information substantiating the increase, the amount of the proposed increase, and the amount of time elapsed between the increase request and either the commencement of the concession or any previously approved increases.

3.6.9 To provide the Authority with a list of employees and agents authorized to service and maintain the ATM, in addition to emergency notification procedures.

3.6.10 To respond to questions or complaints regarding the quality of service, whether raised by patrons or at the Authority's initiative or otherwise. At the Authority's request, Lessee shall meet with the President & CEO or his/her designee to review any complaints or concerns and to promptly correct any deficiencies.

#### ARTICLE 4 PREMISES

4.1 For and in consideration of the fees and covenants contained herein, the Authority hereby leases unto Lessee, its successors and assigns, the following described premises (the "Premises") with the appurtenances: approximately 15 square feet of space pre-security of the Airport Terminal initially, and if determined, approximately 15 square feet of space post-security of the Airport Terminal as further identified on the attached **Exhibit A**.

4.2 The Leased Premises shall be taken by Lessee in the AS IS condition, subject to all defects, latent and patent, and shall be improved, maintained and operated at Lessee's sole cost and expense except as may otherwise be specifically provided in this Agreement. It is the express intention of the parties hereto that the Lessee's improvements, use and occupancy of the Leased Premises, and all costs associated therewith, shall be and remain the financial obligation of the Lessee.

#### ARTICLE 5 IMPROVEMENTS BY THE AUTHORITY

5.1 The Authority shall provide existing electrical hook-up and conduits for utility needs of the ATM(s). Any additional requirements, including phone lines, shall be the responsibility of the Lessee.

5.2 Authority has, has had and shall continue to have the absolute right to develop, expand, improve and renovate the Airport, including but not limited to, the Airfield Area, the Terminal Building and other Airport facilities, regardless of the desires or views of Lessee and without interference or hindrance from Lessee and without any liability to Lessee; and Authority may continue to so develop, expand, improve

and renovate the Airport, including but not limited to, the Airfield Area, Terminal Building and other Airport facilities throughout the term of this Agreement.

- 5.3 Authority reserves the right from time to time as may be reasonably necessary to close, relocate, reconstruct, change, alter or modify Lessee's Leased Premises for purposes of maintaining or constructing improvements, modifications or expansions to the Airport, provided that at least sixty (60) days prior written notice of any such action is given by Authority to Lessee.

## ARTICLE 6 IMPROVEMENTS BY LESSEE

- 6.1 Lessee shall be required to install at its own cost all necessary equipment that may be required for the ATM operation.
- 6.2 All equipment, wiring and installation needs of the ATM(s) shall conform to all applicable statutes, ordinances, building codes, and rules and regulations.
- 6.3 No structural alterations or improvements shall be made to or upon the Leased Premises unless prior written approval has been given by the President & CEO, or his or her designee.
- 6.4 Lessee shall not paint, erect, or install any signs, logos, or advertising displays upon the Leased Premises, or in or on any improvements or additions on the Leased Premises, without the prior written approval of the Authority. Signs identifying Lessee shall conform to reasonable standards established by the Authority, with respect to type, size, design, condition and location.
- 6.5 Upon the expiration or sooner termination of this Agreement, for any reason whatsoever, Lessee shall peaceably surrender to the Authority possession of the Leased Premises, together with any improvements, alterations, or fixtures previously constructed by Lessee or the Authority within said Leased Premises, and any of the Authority's personal property located thereon, in as good a condition as the Leased Premises and improvements, alterations and fixtures constructed thereon were initially provided to, or constructed by, the Authority or Lessee, ordinary wear and tear excepted, without any compensation whatsoever, and free and clear of any claims or interests of Lessee or of any mortgages or any other third party whose position was derived from or through Lessee. If any of said improvements, alterations or fixtures are encumbered by a mortgage or lien at the time of expiration or sooner termination of this Agreement, Lessee shall be responsible for eliminating said mortgage or lien and shall hold the Authority harmless therefrom.
- 6.6 Lessee shall have the right to remove its items of personal property from the Leased Premises through the close of business on the day of expiration or sooner termination of this Agreement. Should Lessee fail to remove its personal property within said time, the Authority shall have the right to remove said personal property

and to place said personal property into storage on Lessee's behalf and at Lessee's sole cost and expense. The Authority shall be entitled to reasonable rental from Lessee for the use of the Leased Premises occupied by Lessee's personal property, until the Authority places said property into storage.

- 6.7 Title to all personal property not removed by Lessee from the Leased Premises or claimed from storage within thirty (30) days of the expiration or sooner termination of this Agreement shall be subject to the Authority taking ownership of such personal property, without payment by the Authority to Lessee of any compensation whatsoever, and said personal property shall thereafter be owned by the Authority free and clear of any claim or interest by Lessee or of any mortgagee or any third party whose position was derived from or through Lessee.

## ARTICLE 7 RENTALS, FEES & CHARGES

- 7.1 Lessee shall be authorized to charge a transaction fee to customers an amount not to exceed \$3.50 per transaction. Lessee shall pay to the Authority a transaction fee of \$1.00 per transaction charged to customers usage of the ATM. The amount shall be paid monthly to the Authority. The transaction fee applies to all transactions involving surcharges and/or fees charged to ATM customers for transactions conducted at ATM(s) located at the Airport pursuant to the Concession Agreement. The transaction fee is not applicable to rejected transactions or transactions where no surcharge and/or fee is charged to ATM customers for transactions conducted on ATM(s) located at the Airport. In the event any additional ATM(s) are allowed, with the expansion of the new terminal, rents and fees shall be negotiated for the additional locations. The transaction fee is due by the tenth (10th) day of each month for transactions that occurred in the prior month.
- 7.2 Lessee shall be responsible for and shall promptly pay all property taxes; personal property taxes; all sales and other taxes measured by or related to the payments hereunder required under law; all license fees; and any and all other taxes, charges, imposts or levies of any nature, whether general or special, which, at any time, may be in any way imposed by local, state, or federal authorities, or that become a lien upon Lessee, the Authority, the Leased Premises, or any improvements thereon, by reason of this Agreement or Lessee's activities in, or improvements upon, the Leased Premises pursuant to this Agreement.
- 7.3 Without waiving any other right of action available to the Authority in the event of default in payment of any and all fees, charges, or taxes hereunder, in the event that Lessee is delinquent in paying to the Authority any fees payable to the Authority pursuant to this Agreement, Lessee shall pay to the Authority interest at the rate of one and one-half percent (1.5%) per month, or the amount allowed by law, from the date such fees are due until such time payment of fees is received by the Authority.

ARTICLE 8  
OPERATIONAL STANDARDS

- 8.1 The management, maintenance and operation of the ATM(s) by Lessee, its employees, invitees, suppliers and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb, or be offensive to others. All employees of Lessee must conduct themselves at all times in a courteous manner toward the public and in accordance with the rules, regulations and policies developed by Lessee.
- 8.2 The Lessee's employees will be appropriately dressed at all times, and maintain a clean, neat, well-groomed appearance. Lessee shall provide its employees with identification tags with Lessee's logo and Airport identification badges (as may be required), subject to the approval of the Authority.
- 8.3 The Lessee will be obligated to control the actions of its employees and cooperate with the Authority in controlling any employee whose conduct the Authority feels is detrimental to the best interest of the Airport and public.
- 8.4 Lessee may not do anything in or upon the Leased Premises, nor bring or keep anything therein, which shall unreasonably increase or tend to increase the risk of fire, or cause a safety hazard to persons, or obstruct or interfere with the rights of any other tenant(s) or in any way injure or annoy them, or which violates or causes violation of any applicable health, fire, environmental, or other regulation of any level of government. The Authority may inform Lessee of such violation and set a date for abatement.

ARTICLE 9  
MAINTENANCE AND UTILITIES

- 9.1 The Authority shall not be required to make repairs or improvements of any kind at Lessee's ATM(s) if said repairs or improvements are the result of any willful or negligent act of Lessee, its employees, or those under the control of Lessee.
- 9.2 The Authority agrees to provide:
  - 9.2.1 Structural repairs to the roof, floor and exterior walls and windows of the terminal.
  - 9.2.2 General maintenance and upkeep of the terminal building's interior common use areas and external areas.
- 9.3 Lessee shall be liable for any damage to its leased area and fixtures therein and to the Airport and to any improvements thereon caused by Lessee, its partners, officers, agents, employees, invitees, contractors, subcontractors, assigns,



subtenants, or anyone acting under its direction and control, ordinary wear and tear excepted.

- 9.4 The Authority shall not be liable to Lessee, the Lessee's employees, patrons, or vendors for any damage to their merchandise, trade fixtures, or personal property caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment unless caused by the sole negligence of the Authority, its employees or agents.
- 9.5 Lessee agrees to provide at its sole cost and expense such janitorial and cleaning services and supplies as may be necessary or required in the operation and maintenance of the ATM(s). Lessee agrees to maintain any necessary repairs to the ATM(s) as may be needed during the term of this Agreement.
- 9.6 During the term of this Agreement, the Authority shall provide, at its expense, existing power, air conditioning, and heating for the leased area. The Authority shall not be obligated to provide for the extension of these utilities or to provide for the installation of any other utilities. The Lessee, at the Lessee's sole cost and expense, shall arrange for the extension of these utilities as needed. Throughout the term of this agreement, the Lessee shall not render any utility lines inaccessible.
- 9.7 The Authority shall not invoice the Lessee for power, air conditioning and heating. The Lessee shall be solely liable for the cost of telephone services from the Leased Premises and the Lessee shall obtain a separate account accordingly.
- 9.8 The Authority reserves the right to install, maintain, repair, replace, or remove and replace any utility lines located on the Leased Premises as necessary or appropriate, along with the right to enter the Leased Premises at all reasonable time in order to accomplish the foregoing, provided, however, that the Authority shall take reasonable precautions to avoid the disruption of the Lessee's authorized activity.

#### ARTICLE 10 COMPLIANCE

- 10.1 Lessee, its officers, agents, servants, employees, contractor, licensees and any other person whom Lessee controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules and regulations of the United States of America, the State of North Carolina, the Authority, the U.S. Treasury Department, the Office of the Comptroller, Federal Reserve Board, Federal Deposit Insurance Corporation and their respective agencies, departments, authorities, or commissions which may either directly or indirectly affect Lessee or its operations on or in connection with its ATM at the Airport.
- 10.2 The Lessee shall obtain and maintain in force all licenses, permits and other certificates required by Federal, State, County, or Municipal authorities for its operation under the terms of this Agreement.

ARTICLE 11  
ASSIGNMENT

- 11.1 Lessee shall not assign its interest herein without the written consent of the Authority. The consent of the Authority shall not be unreasonably withheld. If an assignment is made, Lessee/Assignor shall continue to be liable, jointly and severally, with the Assignee for the fulfillment of all terms and conditions arising under this Agreement subsequent to the assignment, unless the Authority specifically releases Lessee/Assignor from said future liability, in writing. The release shall be effective only if made in writing. All subsequent assignors and assignees shall be subject to this Article as if they were the original Lessee.
- 11.2 In no case may the activities, uses, privileges and obligations authorized herein be assigned, for any period or periods, after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Lessee.

ARTICLE 12  
INSURANCE AND INDEMNIFICATION

- 12.1 Prior to taking possession of the premises, the Lessee shall procure and maintain insurance of the types and to the limits specified.
- 12.2 The term Authority as used in this section of the Agreement is defined to mean the Greater Asheville Regional Airport Authority itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.
- 12.3 Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to the Authority, for the Authority's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

Automobile Liability	<b>\$1,000,000</b>
Commercial General Liability	<b>\$1,000,000</b>
Workers Compensation	<b>As required by the laws of North Carolina</b>
<u>Employer's Liability</u>	<b>\$100,000 each accident, \$500,000 disease-policy limit and \$100,000 disease-policy – each employee</b>

12.3.1 WORKER'S COMPENSATION

Workers compensation insurance as required by the laws of North Carolina; provided, however, that Provider may self-insure its workers compensation

liability, if in compliance with North Carolina law. Employers Liability coverage is also required with limits of liability not less than \$500,000 for each accident, \$500,000 disease policy limit and \$500,000 disease-each employee.

### 12.3.2 COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE COVERAGES

Automobile liability insurance (any auto, including owned autos, non-owned autos and hired autos), and Commercial general liability insurance (including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, Independent Contractors, Broad Form Property Damage and Personal Injury coverage, as applicable), protecting Lessee, the Greater Asheville Regional Airport Authority, and the members (including, without limitation, members of Authority Board), officers, agents and employees of each, all of whom shall be named as additional insureds, from and against any and all liabilities arising out of or relating to Lessee's use or occupancy of, or the conduct of its operations on, the Leased Premises and any improvements thereto, and on the Airport, in such form and with such company or companies as the Authority may reasonably approve, with a combined single limit (or its equivalent) per occurrence of not less than the amount of \$1,000,000, with a deductible reasonably acceptable to the Authority, with a waiver of any right of subrogation that the insurer may have against the Authority, with contractual liability coverage for Lessee's covenants to and indemnification of the Authority under this Agreement, and with the insurance company obligated to use counsel reasonably acceptable to the Authority in carrying out its obligations to the Authority. This insurance shall provide that it is primary insurance as respects any other valid and collectible insurance Authority may possess, including any self-insured retention or deductible Authority may have, and that any other insurance Authority does possess shall be considered excess insurance only. This insurance shall also provide that it shall act for each insured and each additional insured as though a separate policy has been written for each; provided, however, that this provision shall not operate to increase the policy limits of the insurance.

### 12.3.3 CERTIFICATES OF INSURANCE

At least three (3) business days prior to the commencement of the term of this Agreement and at least ten (10) days prior to the expiration of any policy or policies provided hereunder by Lessee, Lessee shall cause a certificate or certificates of insurance to be furnished to Authority evidencing all such coverage, and such certificate shall provide that the policy or policies will not be cancelled nor the limits thereunder be materially changed without first providing at least thirty (30) days' written notice thereof to Authority.

The Greater Asheville Regional Airport Authority shall be named on each Certificate as an Additional Insured and this contract shall be listed. If required by the Authority, the Lessee shall furnish copies of the Lessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies if requested by the Authority.

#### 12.4 INSURANCE OF THE LESSEE PRIMARY

The Lessee required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above Lessee's coverage. The Lessee's policies of coverage will be considered primary as relates to all provisions of the agreement.

#### 12.5 INDEMNIFICATION

The Lessee agrees to indemnify, defend and hold completely harmless the Authority, and its members (including, without limitation, members of the Authority's Board), officers, employees and agents of each, from and against all liabilities (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq., or any other federal, state or local environmental statute, ordinance regulation or rule), losses, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels), which may be incurred by, charge to or recovered from any of the foregoing (i) by reason or on account of damage to or destruction of any property of the Authority, or any property of, injury to or death of any person resulting from or arising out of the use, occupancy, or maintenance of the Leased Premises or any improvements thereto, of Lessee's operations thereon, or the acts or omissions of Lessee's officers, agents, employees, contractors, subcontractors, invitees or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was proximately caused solely by Authority's negligence or by the joint negligence of Authority and any person other than Lessee or its officers, agents, employees, contractors, subcontractors, invitees or licensees, or (ii) arising out of the failure of Lessee to keep, observe or perform any of the covenants or agreements in this Agreement to be kept, observed or performed by Lessee. The provisions of this Paragraph shall survive the expiration of earlier termination of the term of this Agreement with respect to any acts or omissions occurring during the term of this Agreement.

The foregoing provisions of this Paragraph are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which Authority otherwise would be entitled as an additional insured under any liability

insurance maintained or required to be maintained by Provider under this Agreement.

ARTICLE 13  
NONDISCRIMINATION POLICY

- 13.1 Lessee, for itself, its personal representatives, successors in interest, assigns and subtenants, as part of the consideration hereof, does hereby covenant and agree that:
- 13.1.1 No person on the grounds of race, creed, color, sex, national origin or disability shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Leased Premises or the Airport under the provisions of this Agreement.
  - 13.1.2 In the course of construction any improvements on, over or under the Leased Premises and the furnishing of services thereon, that no person on the grounds of race, creed, color, sex, national origin or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Premises and any improvements thereon.
  - 13.1.3 Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination 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.
  - 13.1.4 Lessee shall comply with the laws of the State of North Carolina prohibiting discrimination because of race, color, religion, sex, national origin, age, disability, or marital status.
- 13.2 Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service, PROVIDED THAT Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar type of price reductions to volume purchasers, if any.
- 13.3 Lessee shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, creed, color, sex, age, national origin, or disability.
- 13.4 Non-compliance with the above paragraphs, after written findings, shall constitute a material breach thereof and in the event of such non-compliance, the Authority shall have the right to terminate this Lease Agreement and the estate hereby

created without liability therefore or at the election of the Authority or the United States, with one or both said governments shall have the right to judicially enforce above paragraphs, and all applicable procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

- 13.5 Lessee assures that it will undertake an affirmative action program to ensure that no person shall on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E, Federal Aviation Administration, Non-Discrimination in Airport Aid Program. 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. Lessee assures that it will require that its covered suborganization provide assurances to Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by the aforesaid regulations, to the same effect.

#### ARTICLE 14 DEFAULT

- 14.1 In the event that Lessee shall fail to remit any payment due to Authority under, or shall fail to submit any financial report required to be submitted in connection therewith, within five (5) days after the same shall become due, or in the event that Lessee or any of its officers, employees, agents, invitees or licensees violates any other term, covenant or condition of this Agreement and such violation continues or reoccurs after Authority has given written notice thereof to Lessee, the Authority shall have the right to declare the entire balance of the consideration due to Authority under Article 7 this Agreement due and payable forthwith; or Authority may elect to terminate this Agreement and resume possession of the Leased Premises, thereafter using the same for its own purposes without having to account to Lessee therefor; or Authority may elect to retake possession of and relet the Leased Premises as agent for the Lessee, collecting and applying the proceeds first, toward the payment of all costs and expenses incurred in connection with such reletting, and next, toward the payment of any consideration and other charges due Authority under this Agreement, in which event Lessee shall be responsible for paying any deficiency to Authority. In addition, Authority shall have any and all other rights or remedies available to it as a landlord under the applicable laws of the State of North Carolina by reason of any such default. Lessee shall be in default if during the term of this Lease Agreement Lessee shall:
- (a) Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its interests;
  - (b) File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;

- (c) Make a general assignment for the benefit of creditors;
  - (d) File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
  - (e) File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Lease Agreement an order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Lessee bankrupt or insolvent, or approving a petition seeking a reorganization of Lessee, and such order, judgment, or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.
- 14.2 Lessee shall be in default if abandonment of Lessee's operations, which shall be defined as Lessee's failure to conduct regular and continuing operations at the Airport in accordance with the requirements of this Agreement for five (5) consecutive days.
- 14.3 Lessee shall be in default if the management, ownership, or operation of the Lessee should change to such an extent that it would not satisfactorily perform, then the Authority shall have the right to terminate this agreement.

## ARTICLE 15 SECURITY

- 15.1 The Lessee agrees to observe all security requirements of Transportation Security Administration 49 CFR 1542 and the Airport Rules & Regulations, as may be applicable, and as the same may, from time to time, be amended, and to take such steps as may be necessary or directed by the Authority to ensure that employees, invitees, agents and guests observe these requirements.
- 15.2 If the Authority incurs any fines and/or penalties imposed by Federal, State, County, or Municipal authorities as a result of the acts or omissions of Lessee, its partners, officers, agents, employees, contractors, subcontractors, assigns, subtenants, or anyone acting under its direction and control, then Lessee shall be responsible to pay or reimburse the Authority for all such reasonable costs and expenses.
- 15.3 The Lessee shall be responsible for servicing its units and shall work with the Airport to determine the most appropriate times and methods.

ARTICLE 16  
PERFORMANCE SECURITY

- 16.1 Lessee shall deposit Six-Hundred Fifty and NO/100 Dollars (\$650.00) with Authority upon execution of this Agreement, and such sum shall be retained by Authority as security for the faithful performance of Lessee's obligation hereunder. Authority shall have the right, but not the obligation, to apply said security deposit to the payment of any sum due to Authority which has not been paid, including, but not limited to, reimbursement of any expenses incurred by Authority in curing any default of Lessee, or to the cost of restoring the Leased Premises or its furnishings, fixtures or equipment to their original condition, reasonable use and wear excepted. In the event that all or any portion of the security deposit is so applied, Lessee shall promptly upon demand by Authority remit to Authority the amount of cash required to restore the security deposit to its original sum, and Lessee's failure to do so within five (5) days after its receipt of such demand shall constitute a default under this Agreement. If said deposit shall not have been applied for any of the foregoing purposes, it shall be returned to Lessee, without interest, within sixty (60) days after the end of the term of this Agreement or any option periods. The Authority will not pay interest on any security deposit. In its sole discretion the Authority shall have the right to adjust the security deposit based on the level of activity conducted by the Lessee and its payment history.

ARTICLE 17  
ATTORNEY'S FEES

- 17.1 In the event that the Authority elects to engage the services of an attorney to collect any sums due hereunder from Lessee, or in the event the Authority is the prevailing party in any action to enforce any provision of this Agreement or in any other legal proceeding at law or in equity arising hereunder or in connection herewith, Lessee shall reimburse Authority for all reasonable costs, attorneys' fees and all other actual expenses incurred by the Authority in the defense and/or prosecution of such legal proceeding and in any appeals, including, but not limited to, fees and expenses for paralegals, investigators, legal support personnel and expert witnesses.

ARTICLE 18  
NOTICES

- 18.1 Any notice permitted or required to be given to Lessee or Authority hereunder shall be in writing and delivered by email, nationally recognized overnight courier service or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, to the address outlined below of this Agreement or such other address as provided by Lessee or Authority from time to time. Either Lessee or Authority shall obtain a written acknowledgment of receipt therefor from Authority or Lessee, by nationally recognized overnight courier service or by U.S. Certified Mail, Return Receipt



Requested, postage prepaid:

**Notices to Authority:**

Greater Asheville Regional Airport Authority  
Attention: President & CEO  
61 Terminal Drive, Suite 1  
Fletcher, North Carolina 28732  
Email: [pr@flyavl.com](mailto:pr@flyavl.com)

**Notices to Lessee:**

Mountain Credit Union  
Attention: VP Marketing & Business Development  
PO Box 390  
1700 Russ Avenue  
Waynesville, NC 28786  
[www.mountaincu.org](http://www.mountaincu.org)

The parties may from time to time designate, in writing, changes to the addresses stated.

ARTICLE 19  
RELATIONSHIP OF PARTIES

- 19.1 It is understood that the Authority is not in any way or for any purpose a partner or joint venturer with, or agent of, Lessee in the conduct of the ATM operation or for any other purpose.

ARTICLE 20  
GOVERNING LAW

- 20.1 This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. It is agreed that if any covenant, condition or provision contained herein is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.

ARTICLE 21  
GENERAL PROVISIONS

- 21.1 Right To Amend - This Agreement may be amended only in writing and such amendment must be signed by both parties.
- 21.2 Right of Relocation - The Authority reserves the right to relocate the area or areas

in which Lessee is granted the privilege to conduct its ATM operations in the terminal. Such relocation demands shall be reasonably exercised by the Authority and the Authority shall provide to Lessee with thirty (30) days written notice of such relocation. If such action is taken, the Authority shall substitute comparable areas within the terminal building to provide Lessee, to the extent possible, with the same visibility had a relocation of the area not occurred. Should Lessee determine that such relocation would place its ATM operation in adverse location Lessee shall have the right to terminate this Lease without being considered in default of the same. Costs of such relocation from the area originally leased to Lessee shall be borne by Lessee; and subsequent relocations will be borne by the Authority.

- 21.3 Successors – The provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.
- 21.4 Representations Regarding Authority – The Authority represents that it has the Authority to enter into this Agreement and grant the rights contained herein to Lessee.
- 21.5 Subordination – This agreement shall be subordinate to existing and future Airport Bond Resolutions. This agreement shall also be subject to and subordinate to agreements between the Authority and State and Federal agencies for grants-in-aid and to the provisions of any agreements heretofore made between the Authority and the United States, relative to the operation or maintenance of the airport, the execution of which has been required as a condition precedent to the transfer of federal rights of property to the Authority for airport purposes, or to the expenditure of federal funds for the extension, expansion, or development of the airport, including the expenditure of federal funds for the development of the airport in accordance with the provision of the Federal Airport Act of 1958, as it has been amended from time to time. Any agreements hereafter made between the Authority and the United States will not be inconsistent with rights granted to Lessee herein.
- 21.6 Headings - The headings contained in this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provision of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
- 21.7 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any representation or statements heretofore made with respect to such subject matter, whether oral or written, are merged herein. This Agreement may be altered or amended only by written instrument executed by both parties hereto.

21.8 In the event of a conflict between the terms and conditions of this Agreement and any Airport Rules and Regulations, this Agreement shall control.

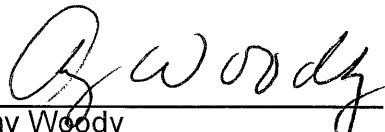
21.9 As required by North Carolina law, Authority hereby includes the following notifications as part of this Agreement:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in North Carolina. Additional information regarding radon and radon testing may be obtained from your county public health unit.

21.10 Lessee hereby consents to the jurisdiction of the courts of the State of North Carolina and of the Federal District Court for the Western District of North Carolina with respect to any action instituted by the Authority and arising against Lessee under this Agreement, and waives any objection which Lessee may have at any time to the laying of venue of any such action brought in any such court, waives any claim that such action has been brought in an inconvenient forum and further waives the right to object, with respect to such action, that such court does not have any jurisdiction over Lessee. Lessee further irrevocably consents to the service of process by certified or registered mail (airmail if overseas) or the equivalent (return receipt requested), or the service of process in any other manner permitted by law, in any action instituted by the Authority and arising against Lessee under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**MOUTAIN CREDIT UNION**

BY:   
Amy Woody  
CEO

8-1-2023  
Date

**GREATER ASHEVILLE REGIONAL  
AIRPORT AUTHORITY**

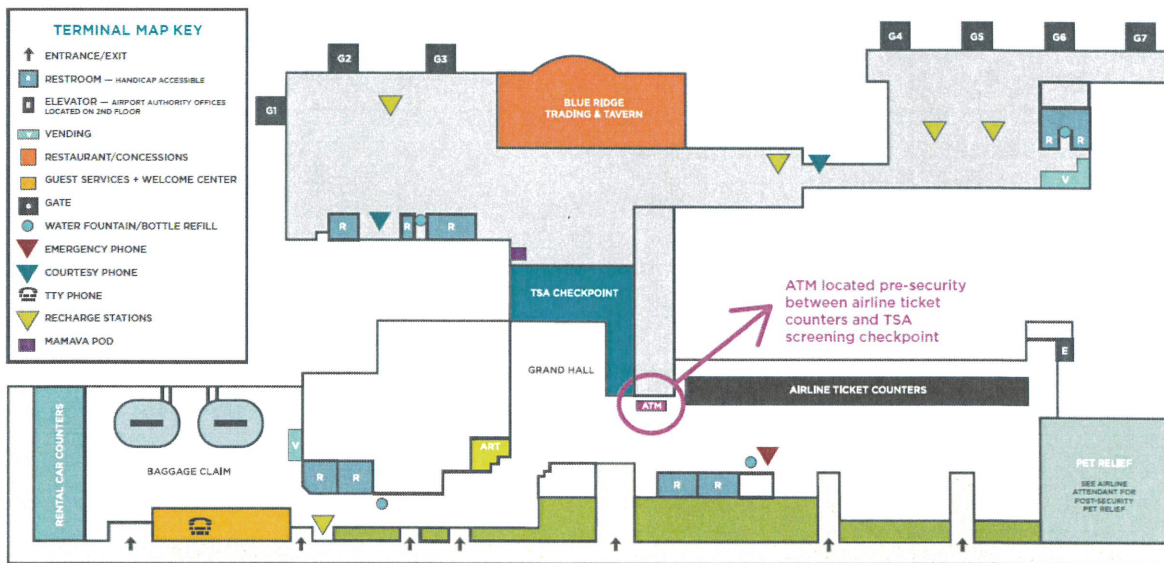
BY: \_\_\_\_\_  
Lew Bleiweis, A.A.E.  
President & CEO

\_\_\_\_\_  
Date

# EXHIBIT A

Leased Premises.

## AIRPORT TERMINAL LAYOUT





## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Christina M. Madsen, VP Business Development and Properties

DATE: August 11, 2023

### **ITEM DESCRIPTION – New Business Item B**

Approval of a Ground Lease and Agreement between Sheetz, Inc., and the Greater Asheville Regional Airport Authority

### **BACKGROUND**

This item requests leasing approximately three acres of property to Sheetz, Inc. ("Sheetz"), to design, develop, construct, and finance a convenience store with drive through food service lane, gasoline pumps, and storage tanks ("Lessee Improvements"). Sheetz will make a minimum investment of \$7,000,000. The term of the Ground Lease and Agreement ("Lease") will be for fifteen years, with three, five-year options to renew.

Currently, there is vehicle parking on the property Sheetz will lease from the Greater Asheville Regional Airport Authority ("Authority"). Therefore, Sheetz has agreed to relocate the existing vehicle parking ("Relocated Parking") to adjacent property shown on Attachment A, at their sole cost and expense. In addition, the Authority has requested additional vehicle parking spaces to be constructed ("Additional Parking") at the same time as the Relocated Parking and Sheetz has agreed to design and construct this additional parking and the Authority will either reimburse Sheetz or provide a rent credit upon the pre-approved and completed Additional Parking, shown on Attachment A. Sheetz will also be granted a right of way access to their leasehold as shown on Attachment A.

The Lease will provide Sheetz 120 days from the execution date to complete due diligence on the Premises, and an additional 240 days to obtain the required permits for the development and parking improvements from other governmental entities. The Due

New Business - Item B



Diligence Period and Permitting Period shall terminate upon written notification by Sheetz to Authority of said finalization of governmental approvals.

Sheetz will also deposit \$69,696 security deposit in escrow. The deposit amount will be fully refundable to Sheetz if the lease is terminated within the Due Diligence Period. However, after the Due Diligence Period and throughout the Permitting period the security deposit will be released incrementally over the next 180 days to the Authority and shall become non-refundable in the event the lease is terminated.

If during the due diligence period, there is any environmental contamination found on the property, the Authority has agreed to pay up to \$20,000 for remediation activities, otherwise, Sheetz may determine to continue to proceed and pay any difference beyond the \$20,000 for environmental clean-up.

**ISSUES**

None

**ALTERNATIVES**

The Board could deny the request to enter into the Lease.

**FISCAL IMPACT**

This Lease will increase nonaeronautical revenues as well as enhance the area for future development opportunities.

Sheetz will pay fair market ground rent to the Authority for the leased premises beginning at \$1.60 per square foot per year, which will commence eighteen months from the Lease Effective Date or the date the Relocated Parking has been completed, whichever occurs first. The ground rental rate will be escalated every five years as outlined in Table 1:

Table 1 Fair Market Value Ground Rent based on 130,680 square feet (3 acres)			
Lease Years	Per Square Foot Rental Rate	Annual Rent	Monthly Rent
1 - 5	\$ 1.60	\$ 209,088.00	\$ 17,424.00
6 - 10	\$ 1.76	\$ 229,996.80	\$ 19,166.40
11 - 15	\$ 1.94	\$ 253,519.20	\$ 21,126.60
16 - 20	\$ 2.13	\$ 278,348.40	\$ 23,195.70
21 - 25	\$ 2.34	\$ 305,791.20	\$ 25,482.60
26 - 30	\$ 2.57	\$ 335,847.60	\$ 27,987.30



In addition, percentage rent in the amount of 1.5% of gross receipts shall be paid monthly to the Authority throughout the lease term and any option periods.

Based on the information included above, and the forecasted financial projections for gross revenues, the first-year estimated revenue to Authority is \$287,000. Revenues to the Authority estimated over the term of the lease and option periods, is \$10.4M.

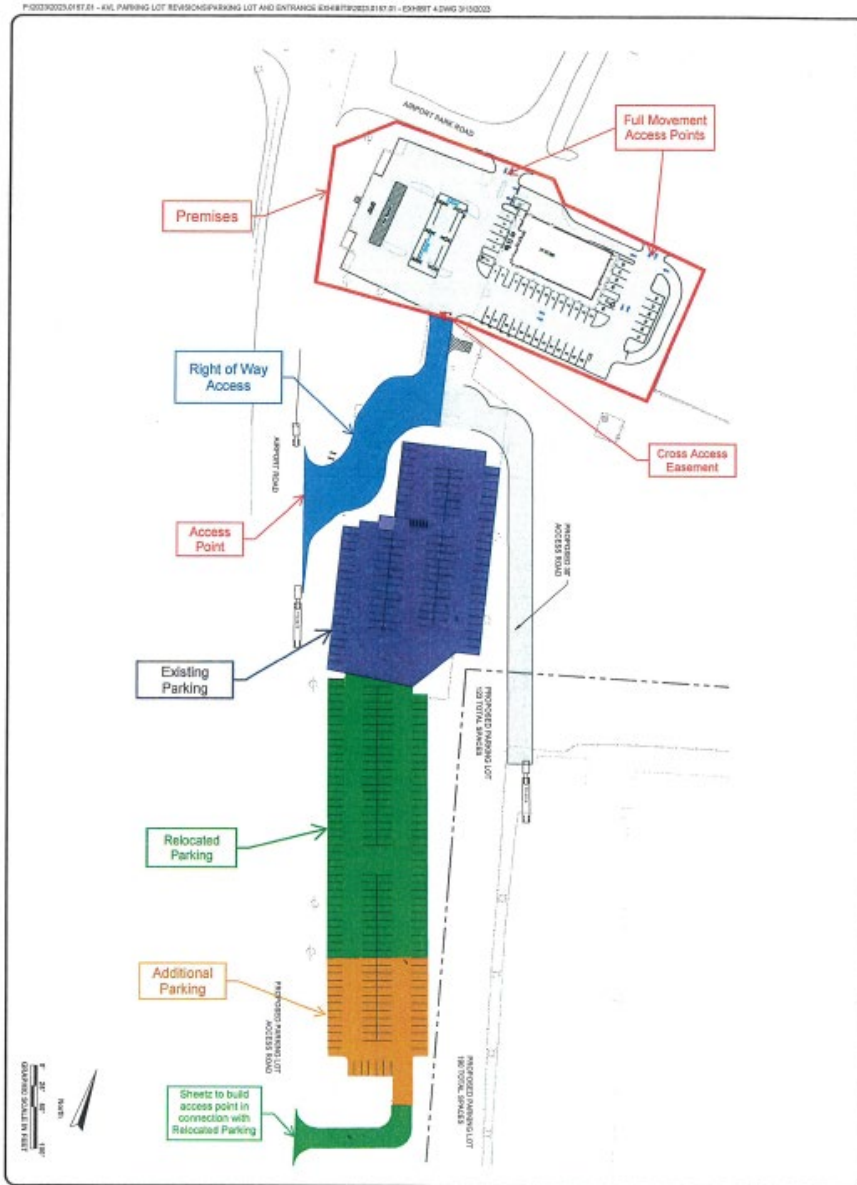
### **RECOMMENDED ACTION**

It is respectfully requested that the Greater Asheville Regional Airport Authority Board resolve to (1) approve the Ground Lease and Agreement as described above with Sheetz LLC., and (2) authorize the President & CEO to execute the necessary documents.





## Attachment A Conceptual Plan for Premises, Relocated Parking and Additional Parking



ASHEVILLE REGIONAL AIRPORT FLETCHER NORTH CAROLINA	
PROJECT: PARKING LOT REVISIONS EXHIBIT 4	
SHEET NUMBER: EX-04	
DESIGNER: JCM DRAWN BY: JCM CHECKED BY: JAM APPROVED BY: JAM DATE: MARCH 2024 STATE LICENSE # N.C. 40498 PROJECT NO. 2023A1027H	
SCALE: 1" = 20' / 1" = 100'	
SHEET NUMBER: EX-04	



**GROUND LEASE AND AGREEMENT**

**BETWEEN**

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**

**AND**

**SHEETZ, INC.**

**Lease Effective Date: August 11, 2023**

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## GROUND LEASE AND AGREEMENT

This Ground Lease and Agreement ("Lease") is made and entered into by and between the Greater Asheville Regional Airport Authority ("Authority"), created pursuant to Session Law 2012-121 by the General Assembly of North Carolina on June 28, 2012, and owner and operator of the Asheville Regional Airport ("Airport"), and Sheetz, Inc., LLC ("Lessee"), a Pennsylvania corporation, authorized to do business in the State of North Carolina. Authority and Lessee are referred to herein as the Parties and individually as a Party. This Lease is effective when signed by Authority ("Lease Effective Date").

### RECITALS

A. WHEREAS, the Authority owns approximately three (3) acres of real property located in Fletcher, North Carolina, 28732 ("Premises") and as graphically depicted on **Exhibit A** attached hereto and made a part hereof.

B. WHEREAS, the Lessee desires to lease the Premises for the development and construction of a convenience store building with drive-thru service lane, gasoline pumps, underground storage tanks (collectively, "Improvements") as well as relocate the Authority's vehicle parking spaces which shall meet or exceed what currently exists on the Premises ("Relocated Parking"); and,

C. WHEREAS, the Authority desires additional automobile parking ("Additional Parking") to be included in the Relocated Parking project completed by Lessee, and the Authority agrees to reimburse Lessee for the actual costs pre-approved by the Authority for such Additional Parking; and,

D. WHEREAS, the Lessee desires to design, develop, finance, and construct the (a) Improvements and Relocated Parking, at Lessee's sole cost and expense, and (b) Additional Parking, at the Authority's sole cost and expense, and (c) operate and maintain the Improvements in accordance with the terms of this Lease.

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein, it is understood and agreed by the Parties hereto as follows:

### AGREEMENT

#### ARTICLE 1 - DEFINITIONS

Definitions. As used in this Lease, the following words and terms have the following meanings:

1.1. *A/E* means a licensed contractor, engineer, or architect, and who is licensed to do business in the State of North Carolina.

1.2. *ACDBE* means the Airport Concession Disadvantaged Business Enterprise.

1.3. *Additional Parking* means the area depicted, highlighted in orange, on **Exhibit B**, as the additional vehicle parking area that will be constructed by the Lessee, at the Authority's sole cost and expense, for the Authority's use.

1.4. *Additional Payments* mean all costs and expenses relating to the Premises and Lessee's use and occupation thereof, which may arise or become due during the Term, including:

- a. Real estate taxes and assessments relating exclusively to the Premises.
- b. Insurance premiums in connection with insurance policies covering the Premises and/or Lessee's use and operation thereof which are required to be maintained by Lessee under this Lease or otherwise obtained by Lessee in its discretion.
- c. All utility and/or municipal charges or assessments relating exclusively to the Premises.
- d. All costs associated with the maintenance, repair or replacement of any of Lessee's Improvements (subject to Article 31).
- e. Any costs incurred or owing with respect to the Premises under any required development, project, FAA or other agreements required to be entered into by Lessee pursuant to this Lease.

1.5. *Adjacent Authority Property* shall have the meaning ascribed to it in Article 3.1.1.

1.6. *Authority* is the Greater Asheville Regional Airport Authority.

1.7. *Casualty* means substantial damage or destruction of structural components of the Lessee Improvements on the Premises as described in Article 21.

1.8. *Condition Assessment Report* means a report of the useful life remaining of the structures and systems of the Lessee Improvements and opinion of repairs, replacements, or refurbishments recommended to maintain the operationally useful state and condition of the Premises as defined and required by Article 10.

1.9. *Construction Completion Date* means the date of completion of the Project as defined in Article 14.1.

1.10. *Convenience Store* means a retail business offering for sale:

- a. Motor fuels including regular, mid-grade, high grade and automobile diesel.

- b. Fast food, including carry-out service with limited indoor and outdoor seating, and fast food items that may also be sold via the drive-thru service lane, all available 24-hours a day.
- c. Lessee's branded specialty coffee concept available 24-hours a day.
- d. Snacks, fountain or pre-packaged beverages, pre-packaged foods, cigarettes and other merchandise typical to a convenience store operation, except for pornographic materials, which are prohibited.
- e. Beer and wine products for sale to the extent allowed by North Carolina Alcoholic Beverage Control Commission regulations (and subject to applicable permit/license and all other applicable Laws) with the following restrictions and/or prohibitions: (1) beer and unfortified wine may only be sold for off-site consumption; and (2) fortified wines may not be sold.

1.11. *Delinquency Charge* shall mean the delinquency interest charge for late or failure to pay Rent as described in Article 5.3.1.

1.12. *Effective Date* means the date the Authority accepts and executes the Lease after receiving an executed Lease from Lessee.

1.13. *Encumbrance* means any lien, cloud, charge, or encumbrance as described in Article 20.

1.14. *Environmental Laws* is as defined in Article 11.4.1.1

1.15. *Exit Audit* means the environmental audit of the Premises as required by Article 11.2.

1.16. *Gross Receipts* means all amounts received, billed, delivered and/or realized by the Lessee, whether by cash, credit or otherwise received from customers and clients of Lessee for all operating revenues occurring in, at or from the Premises (and only at the Premises) including but not limited to inside sales for the convenience store and drive through concessions, gaming, merchandise, food and beverages, etc., authorized by this Lease. All revenue is included in the definition of Gross Receipts unless specifically excluded as provided below. In determining whether an amount is or is not Gross Receipts the burden of proof is on the Lessee and all exclusions below will be construed narrowly and adjusted by the deduction of the following, provided that separate records are maintained for such deductions:

1.16.1. Sale of fuel on the Premises;

1.16.2. Proceeds from the sale of capital assets or expendables as defined by generally accepted accounting principles;

1.16.3. Credits and refunds to customers for items purchased on the Premises;

1.16.4. Receipts from the sale or trade-in value of any equipment or materials not constituting an item inventoried by Lessee for sale to the public or used on the Premises by the Lessee.

1.16.5. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other locations of business of Lessee, where such exchange or transfer is not made for the purpose of avoiding inclusion of a transaction which would otherwise be made from or at the Premises.

1.16.6. Receipts in the form of rebates, refunds from, or the value of merchandise, supplies or equipment returned to, shippers, suppliers, or manufacturers.

1.16.7. Taxes – Any fee or other charge levied by federal, state, county or municipal government that is explicitly identified by the taxing authority as a tax levied on the customer and required by law to be separately stated.

1.17. *Ground Rent* shall be that portion of Rent as defined in Article 5.1.2.

1.18. *Hazardous Materials* is as defined in Article 11.4.1.2.

1.19. *Institutional Lender* means any savings bank, bank or trust company, savings, and loan association, provided the Institutional Lender is organized under federal or state law, or a real estate investment trust as defined in Section 856 of the Internal Revenue Code of 1986 (26 U.S.C. § 856(a)).

1.20. *Insurance Requirements* are the insurance requirements for the Premises as defined in Article 8.1 and set forth in Exhibit E.

1.21. *Lease* means this Ground Lease and Agreement between the Authority and the Lessee dated as of the Effective Date and containing the terms and conditions for the operation of a Convenience Store with drive-thru food service lane, gasoline pumps and underground storage tanks.

1.22. *Lease Books and Records* means books, records, and accounts of all transactions pertaining to this Lease and as described in Article 6.1.1.

1.23. *Lessee Improvement(s)* means any building(s) (including the Convenience Store), structure(s), alteration(s), landscaping, pipes, underground storage tanks, impervious surface, conduit(s), infrastructure, and/or fixture(s) that Lessee constructs or installs on the Premises pursuant to the provisions of this Lease, and includes all subsequent Lessee Improvements, modifications, and additions that Lessee makes to any Lessee Improvement.

1.24. *Lease Term Commencement Date* means the earlier of: (i) the date the Certificate of Beneficial occupancy is received and Lessee opens to the public on the Premises, or (ii) thirty (30) months after the Lease Effective Date.

1.25. *Lease Year* means July 1 through June 30, of each year.

1.26. *Lessee* is Sheetz, Inc.

1.27. *Lessee Parties* means Lessee's employees, contractors, agents, customers, invitees and permittees and other representatives present at the Premises.

1.28. *Operating Standards* means the operational standards as set forth in Article 7.1 and **Exhibit D**.

1.29. *Percentage Rent* shall mean that portion of Rent as described in Article 5.1.3.

1.30. *Permitted Mortgage* means any mortgage, deed of trust, and other security interest held by an Institutional Lender or private lender that constitutes a lien on the Lessee's Improvements that complies with Article 23 (Assignment, Subletting, Mortgage).

1.31. *Permitted Uses* means those certain uses and restrictions for use of the Premises as set forth in Article 4.

1.32. *Phase I Assessment* means the environmental assessment of the Premises as described in Article 11.1.

1.33. *Plans* means the plans and specifications for the Project as described in Article 14.2.

1.34. *Preliminary Site Plan* means those preliminary plans and specifications for the Lessee Improvements attached hereto as **Exhibit A**.

1.35. *Premises* means the approximate three (3) acre-site, outlined in red, shown on **Exhibit A**.

1.36. *Project* means the design, development, financing, and construction of the Lessee Improvements, Relocated Parking, Lessee's Right of Way Access, and Additional Parking on the on the Site, that meets federal requirements for compatible land uses, as conceptually shown on **Exhibit B**.

1.37. *Records* means the books, records, and accounts of all financial transactions in the operation of all business activities on the Premises as set forth in Article 6.1.1.

1.38. *Release* is as defined in Article 11.4.1.3.

1.39. *Relocated Parking* is the current vehicle parking spaces of the Authority that will become the Premises after Lessee designs and constructs, at Lessee's sole cost and expense, the Authority's vehicle parking area to equal or exceed the number of the current vehicle parking spaces to the relocated parking area depicted, highlighted in green, on **Exhibit B** attached hereto and made a part hereof.

1.40. *Rent* shall be as set forth in Article 5.



1.41. *Rent Commencement Date* shall mean the earlier of: (i) the date the Relocated Parking has been completed and the Authority delivers the Premises to Lessee to construct Lessee's Improvements, or (ii) eighteen (18) months following the Effective Date.

1.42. *Security Deposit* means the amount delivered to Authority as a security deposit for this Lease as described in Article 5.4.

1.43. *Term* means the term of this Lease as defined in Article 2.

1.44. *Transfer(s)* means the sale, assignment, pledge, transfer, mortgage, or sublease of any interest in this Lease or right of use of any portion of the Premises to any third party by Lessee by any means as set forth in Article 23.1.

1.45. *UST System* means Lessee's underground fuel storage tanks and related improvements to be installed by Lessee, including (but in no event less than that required by any applicable Environmental Laws): (i) double wall tanks, (ii) double wall product lines, (iii) containment sumps on all submersible motors, tank manway openings and dispensers, (iv) overfill spill buckets at fuel drop openings and Stage I vapor recovery points, (v) emergency shut-off system, and (vi) 24-hour electronic tank monitoring system(s).

## ARTICLE 2 - TERM

2.1 Initial Term. The Initial Term of this Lease is fifteen years ("Term"). The Term shall begin on the Lease Term Commencement Date and expire at 12:00 midnight EST fifteen (15) years later, unless sooner terminated pursuant to the provisions of this Lease.

2.2 Option Periods. There shall be three (3) consecutive option periods of five (5) years each to continue this Lease upon the same terms and conditions hereof ("Option Period(s)"). Provided Lessee is not in default under any term hereof, the Option Periods may be exercised by Lessee upon at least six (6) months' advance written notification to Authority of its intent to exercise any Option Period.

2.3 Due Diligence Period. Commencing upon the Lease Effective Date, Lessee will have a one hundred and twenty (120) day due diligence period ("Due Diligence Period") from the Effective Date of the Lease to complete further inspections and general due diligence related to the feasibility of the Premises. The Lessee and the Authority shall agree upon the design for the Relocated Parking and Additional Parking areas as conceptually shown on **Exhibit B** attached hereto and made a part hereof. Lessee shall have the right to enter upon the Premises and perform, at its sole cost and expense, customary due diligence activities, including, without limitation, obtain a preliminary title report/commitment, obtain an ALTA land title survey, obtain acceptable environmental audit(s) (including a Phase I Environmental Audit and, if desired by Lessee, a Phase II Environmental Subsurface Investigation Study ("Phase II") and/or ground penetrating

radar (GPR) testing, collectively, "Environmental Studies"), and/or obtain an acceptable geotechnical report, and all reports and/or studies completed during the Due Diligence Period will be shared with the Authority. In the event Lessee's Phase II and/or geotechnical report cannot be completed during the Due Diligence Period, upon written notice from Lessee to be received by the Authority prior to expiration of the Due Diligence Period, the Due Diligence Period shall automatically extend for sixty (60) days solely for purposes of allowing Lessee to obtain and review such reports; provided, however, any such extension shall not delay the commencement of the Permitting Period nor shall delay and/or prevent the Deposit Release to the Authority. Lessee shall notify the Authority in writing upon completion of the Due Diligence Period. Lessee shall have the right to terminate the Lease for any reason or no reason during the Due Diligence Period and restore the property to its original condition within thirty (30) days from said written notification to Authority.

2.4 Permitting Period. Lessee will have a two hundred and forty (240) day permitting period upon the expiration of the Due Diligence Period, beginning no later than December 11, 2023, during which Lessee shall, at its sole cost and expense, use its best efforts to obtain all necessary, applicable and appropriate permits, consents and approvals from those governmental agencies having jurisdiction or oversight that will allow Lessee to proceed with the development and construction of the Project and Lessee's Improvements for the use and occupancy of the Premises, including, but not limited to (i) a lot reconfiguration/consolidation plat creating the Premises as a single, separate legal tax parcel, (ii) land development plan, building plan and site plan approval(s) for the Premises (inclusive of construction document approval); (iii) any zoning and/or land use permit(s)/approval(s) necessary or desired in order to allow the Premises to be used for all of Lessee's Permitted Uses, including, to the extent applicable, any rezoning approval, zoning variance(s), special exception(s), administrative exception(s) and/or conditional, special or auxiliary use permit(s)/approval(s), (iv) signage permits/approvals; (v) fuel pump island canopy permit(s)/approval(s); (vi) National Pollutant Discharge Elimination System ("NPDES"), Erosion and Sediment Control ("E&S"), and grading permits; (vii) state and local highway and driveway access permits/approvals (including any necessary traffic impact analysis/study and required Buncombe County, Henderson County, and/or NCDOT permits/approvals), and (viii) all other necessary, applicable and/or desired permits and approvals for the construction of Lessee's Improvements on the Premises, the Relocated Parking and Additional Parking (collectively, "Governmental Approvals"). All Governmental Approvals, and any and all conditions and/or proffers attached thereto, as applicable, shall be to the satisfaction of Authority and Lessee, including, without limitation, acceptable building size, acceptable number of fueling pumps, acceptable and adequate ingress and egress consistent with the Preliminary Site Plan, acceptable and adequate signage, acceptable and adequate parking, acceptable design, layout and color scheme, acceptable impact fees and otherwise general financial acceptability, and consistent with Lessee's prototypical convenience stores and auto fueling facilities recently or currently being constructed, as designed by Lessee. The Governmental Approvals shall be deemed obtained when they have been issued to Lessee by the proper entity/authority and all applicable appeal periods have fully expired without the filing of an appeal by any other party, or, if an appeal has been filed, then such appeal shall have been dismissed, settled, adjudicated or otherwise finally resolved in favor of Lessee, to Lessee's and Authority's satisfaction,

without possibility of any further appeal. The Authority shall cooperate with Lessee (as necessary, and at no cost to the Authority) in obtaining the Governmental Approvals. Notwithstanding the foregoing, all necessary permits for the Relocated Parking and the Additional Parking shall be obtained prior to Lessee commencing any construction on the Premises.

2.4.1. Extension of Permitting Period: Provided Lessee is not in default under any provision of this Lease at the time, Lessee shall have the right and option to extend the Permitting Period for two (2) additional periods of forty-five (45) days each for the sole purpose of obtaining any outstanding Governmental Approvals, which may be exercised by delivering written notice thereof to the Authority on or before the last day of the Permitting Period (as previously extended, as applicable).

2.4.2. Notice of Termination / Notice of Satisfaction. Promptly upon Lessee's determination or receipt thereof, Lessee shall provide written notice to the Authority (a) if any Governmental Approvals are not or cannot be satisfied during the Permitting Period (as may be extended), and, as a result thereof, Lessee is electing to terminate this Lease (a "Notice of Termination"), or (ii) if all Governmental Approvals are completed to Lessee's satisfaction, or otherwise waived by Lessee, and Lessee is electing to proceed to the Lease Term Commencement Date (a "Notice of Satisfaction"). The date on which Lessee delivers a Notice of Satisfaction (if applicable) is hereinafter referred to as the "Notice of Satisfaction Date". Upon delivery of a Notice of Satisfaction, Lessee shall not thereafter have the right to terminate this Lease on the basis of non-satisfaction of any Governmental Approvals, except as otherwise agreed to by the Parties. In the event Lessee has not delivered a Notice of Termination or Notice of Satisfaction on or before the expiration of the Permitting Period (as may be extended), then, unless otherwise mutually agreed to in writing by the Parties, this Lease shall be deemed terminated, whereupon the Parties shall have no further rights, liabilities or obligations hereunder, except for any rights, liabilities or obligations which expressly survive the termination hereof. Notwithstanding the foregoing, prior to Lessee electing to terminate this Lease due to denial or non-receipt of any Governmental Approvals, Lessee shall provide documentation of such denial(s) to the Authority, and the Authority shall use commercially reasonable efforts to assist in modifying the denials. In the event of termination aforesaid, Lessee shall restore the Premises to its original condition within thirty (30) days of such termination.

2.5 Holdover and Holdover Rent. If Lessee continues to occupy the Premises after the expiration or earlier termination of this Lease without Authority's prior written approval, then Lessee's occupancy shall be deemed at sufferance. In such event, Lessee shall pay an occupancy fee equal to 150% of the monthly Rent in effect immediately prior to termination of this Lease. Provided, however, notwithstanding the foregoing, in the event Lessee holds over for the sole purpose of performing its obligations under Section 11.2.2, then Lessee's occupancy shall be at sufferance at a monthly rental, payable in advance, equal to (i) 110% of the monthly Rent in effect immediately prior to termination of this Lease during the first sixty (60) days following the Lease termination, and (ii) 150% of the monthly Rent in effect immediately prior to termination of this Lease thereafter.

Lessee is bound by and shall comply with all other provisions of this Lease while in possession of the Premises or any part thereof.

2.5.1 Nothing shall be construed, however, to give any right of holdover and Authority may exercise any all remedies of the law or in equity to recover possession of the Premises identified in the Agreement, together with any damages incurred by Authority.

### ARTICLE 3 - PREMISES

3.1 Premises. Authority hereby leases to Lessee and Lessee hereby leases from Authority improved land defined herein as the Premises, consisting of approximately three (3) acres, located in Fletcher, North Carolina, 28732, as shown on **Exhibit A**, for Lessee to construct Lessee's Improvements, and the Relocated Parking and Additional Parking as further described below.

3.1.1 Relocated Parking. Authority hereby grants a license to Lessee upon commencement of and until construction of Relocated Parking is complete, over, across, and under that portion of the parcel of real property owned by the Authority immediately adjacent and to the south of the Premises ("Adjacent Authority Property") for Lessee to construct the Relocated Parking, as shown on **Exhibit B**.

3.1.2 Additional Parking. Authority hereby grants a license to Lessee upon commencement and until construction of the Additional Parking is complete, over, across, and under the Adjacent Authority Property to the south of the Relocated Parking for Lessee to construct the Additional Parking, as shown on **Exhibit B**. The Authority hereby agrees to pay all costs associated with any parking created in excess of the required Relocated Parking area. All such costs shall be agreed to in advance by the Authority and paid either as a Ground Rent credit or reimbursement of the costs paid by Lessee.

3.1.3 Reservations of Authority. Lessee further agrees and accepts the Premises subject to the right of the Authority to secure any additional land and/or access, utility or other development easements of and/or over the Premises that may be necessary in the Authority's discretion to create, use and/or develop the adjacent property owned by the Authority. Lessee hereby consents and agrees to these easements, and the Authority will provide notification to Lessee of the easements to create legally accessible parcels of land for the Reserved Parking and Additional Parking parcels throughout the Lease Term. In the event the Authority requires the access to the Additional Parking or Relocated Parking parcels to be altered at any time during the Lease Term, the Authority, or its developer, shall pay for any damage and cost of repair to the right-of-way access to the Premises that occurs as a result of the Authority's construction.

3.2 Right of Way Access. During the Lease Term and any Option Periods, the Authority grants unto Lessee a non-exclusive and irrevocable access easement over and across that portion of property owned by the Authority immediately adjacent and to the south of the Premises providing for access to and from the public right of way of Boylston Highway / New Airport Road (NC280) and the Premises ("Right of Way Access"),

highlighted in blue as conceptually shown on **Exhibit B**. After initial construction of Lessee's access to the Premises, Lessee shall have no right to add, modify, change and/or upgrade any improvement located upon the Right of Way Access without the prior written approval of the Authority. The Authority shall not be required to furnish any services or facilities to Lessee for the Right of Way Access.

3.2.1 Reservations of Authority. The Authority reserves the right, but not the obligation, to make any additions, repairs or alterations to the Right of Way Access as the Authority deems necessary or appropriate for its use and ownership. In the event the Authority requires alterations to Lessee's Right of Way Access, as it pertains to the Additional Parking or Relocated Parking, at any time during the Lease Term, the Authority, or its developer shall pay for all costs of construction and restoration of Lessee's Right of Way Access to the Premises to substantially the same condition as existed prior to Authority's construction. In the event any additions, repairs or alterations completed by the Authority causes any damage, destruction and/or disrepair of the Right of Way Access, and the same is in no way caused by any action of Lessee, then the Authority, in its election shall repair any damages to Lessee's Right of Way Access to substantially the same condition as existed prior to the Authority's construction and/or construct and install a new right of way to reasonably replace and supplement the said destructed or damaged Right of Way Access.

3.3 Condition of Premises and Absence of Warranties. The Lessee agrees to accept the Premises in its "AS IS, WHERE IS" condition upon the date that Lessee accepts the Premises to begin construction of Lessee's Improvements. Lessee acknowledges and affirms by acceptance, that it has had the opportunity to conduct a full and complete examination of the environmental and other conditions of the Premises and the title thereto and has knowledge of its present uses and non-uses, and without any representation or warranty, express or implied, in fact or by law, by Authority to the title, nature, condition, or usability of the Premises or the uses to which the Premises or any part thereof may be put, and without recourse to Authority as to the title, nature, geology, condition, or usability of the Premises. In the event any environmental remediation or any issue that requires the Authority to remedy occurs during the Due Diligence Period and prior to Lessee's acceptance of the Premises (herein "Remediation Work") and the costs of the Remediation Work exceeds Twenty Thousand and 00/100 Dollars (\$20,000.00) ("Remediation Threshold"), the Authority shall have the right to terminate the Lease upon written notice to Lessee ("Environmental Termination Notice"); provided, however, upon Lessee's receipt of Authority's Environmental Termination Notice, Lessee may, by written notice sent to the Authority within ten (10) business days, and in lieu of termination, elect to pay any and all costs above the Remediation Threshold and require the Authority to complete the Remediation Work. Upon the Notice of Satisfaction Date, Lessee assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including the performance of all burdens running with the land of the Premises. Lessee, at its expense, shall furnish custodial, janitorial, trash service, cleaning service, and any other services required to operate the Convenience Store on the Premises. Lessee agrees that the rules and regulations of the Federal Aviation Administration (FAA) apply to this Lease and the Premises.

3.4 Survey. Within ninety (90) days following completion of any of the Lessee Improvements, which completion shall be evidenced by a certificate of occupancy issued for any building constructed by Lessee on the Premises, the Lessee shall deliver to Authority a copy of an "as-built" survey, metes and bounds legal description, drawn by a NC licensed surveyor or engineer (the "Survey") and the "as-built" construction plans thereof. The Survey shall include the square footage for the Premises, as mutually agreed upon by the Parties. The square footage will be adjusted upward or downward to reflect the actual Premises boundary and all future Rents for the Premises based upon square footage reflected by the Survey shall be adjusted accordingly as provided for herein.

#### **ARTICLE 4 - PERMITTED USES**

4.1 Permitted Uses. Regardless of the uses that might otherwise be allowed pursuant to the zoning classification or other ordinances that may be applicable to the Premises during the Lease Term, the Premises may only be used for the operation of an of a non-exclusive Convenience Store, and for no other use or purpose whatsoever without Authority's prior written approval ("Permitted Uses").

4.2 The Premises and Lessee Improvements may be used only for conducting the Permitted Uses and any individual portion of the Premises or Improvements may be used only for the purposes for which they were designed. Except as provided in this Section or elsewhere in this Lease, the Premises or Lessee Improvements may be used for no other use without the Authority's prior written consent, which the Authority may withhold or condition in its sole discretion.

#### 4.3 General Limits on Use

4.3.1 Lessee shall not use or conduct any activity on the Premises that (i) is prohibited by any applicable governmental requirement, including but not limited to zoning ordinances, and/or FAA regulations, (ii) violates any provision of this Lease or any other agreement between Authority and Lessee.

4.3.2 Lessee shall not store any equipment or materials of any kind on the Premises which to the general public is unsightly or inconsistent with the Authority's objective to maintain the Premises and Improvements in a neat and orderly condition.

4.3.3 Without limiting the generality of any other provision of this Lease, and without the Authority's written consent, which consent shall not be unreasonably withheld, delayed or conditioned, and except as described in the Permitted Uses, Lessee shall not use the Premises or Improvements: (a) to provide any facilities, services, commodities or supplies, now or hereafter made available at or through the Airport, except as expressly allowed as the Permitted Uses defined herein; (b) to provide automobile and/or truck rentals or perform automobile repairs and maintenance (c) to operate any motor vehicle rental business, public parking for hire, or facilities for the preparation, storage or distribution of merchandise for sale or consumption aboard aircraft, (d) for parking

for passengers or customers of the Airport and shuttle services (other than parking for Lessee's customers, employees and invitees while at the Premises), (e) for the installation or operation of any antennae, satellite dish or other system for third party transmission, reception or relay of voice or data communications not benefitting Lessee or the Premises; or (f) residential use, camping, mobile home sales; (g) use any portion of the Premises for an adult or sexually-oriented businesses of any kind whatsoever. Lessee shall not use the Premises or any part thereof for any purpose prohibited by this Lease without Authority's prior written consent, which may be withheld in the Authority's sole discretion.

4.3.4 Lessee shall use and occupy the Premises so that Lessee does not cause any damage to the Premises and Lessee shall not commit or allow others to commit any form of legal waste or impairment of the Premises. Lessee is liable for all such damage whether caused by the wrongful, negligent, or willful act or omission of Lessee or Lessee Parties.

4.4 Signage. Lessee shall not install, post, or erect any sign, poster, banner, flag, or other signage on or about the Premises that is permanent or unsightly without Authority's prior written approval. A request for permanent signage shall be submitted to Authority in writing and include a sample of the proposed signage. Lessee shall remove all unapproved signage within ten (10) days upon written demand by Authority. If such signage is not removed within such 10-day period, then the Authority may enter the Premises and remove the signage at Lessee's expense. Lessee shall maintain all Authority-approved signage in good condition at all times. Lessee agrees that no exterior signs or advertising material shall be erected on the Premises or on any improvement or facility on the Premises unless the design and layout of such signs and advertising material, together with the materials and method of construction of such signs and advertising material, shall have been approved in advance in writing by Authority, which approval shall not be unreasonably withheld. Lessee shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any Premises owned by the Authority not leased by Lessee, any signs, banners, or other similar devices for its own business, or the business of others. This provision shall not have the effect of limiting or restricting Lessee's right to enter into an agreement with Authority's authorized and permitted marketing, advertising, or signage agency for the display of informational, marketing or advertising media at approved designated locations on Airport property, if ever agreed upon. Lessee shall have no right to erect or install, or cause or consent to be erected or installed, any commercial outdoor advertising by a commercial advertising agency on the Premises.

4.5 Parking Requirements. Lessee and Authority agree that the Lessee is a 24-7 (meaning all hours of every day) operator and will have employees and customers parking within the Premises during the Lessee's hours of operation. Notwithstanding the foregoing, Lessee agrees that parking on the Premises shall only be permitted for Lessee Parties. Parking on the Premises for uses or activities off the Premises or long-term storage purposes shall be prohibited. Lessee shall not provide passenger shuttle services or provide any type of parking services on the Premises.

4.6 Variances. Authority expressly reserves the right, but not the obligation, to grant written variances from the use restrictions contained in this Article. In reviewing any request for a variance, Authority shall consider whether the proposed variance will

materially injure or prejudice any other property owned by Authority or unreasonably interfere with the use and enjoyment by any other lessee and their respective parcels. Lessee is responsible for complying with all governmental and other requirements pertaining thereto.

4.7 Exemption of Authority. The provisions of this Article shall not apply to any use or activity approved in writing by or conducted or undertaken by or at the direction of Authority.

**ARTICLE 5 - RENT**

5.1 Rent. Commencing upon the Rent Commencement Date, Lessee shall pay a fair market value ground rent and percentage of Gross Receipts (collectively "Rent") on the Rent Commencement Date during the Lease Term and the Lease Term Option Periods for the Premises.

5.1.2 Ground Rent. The Fair Market Value (FMV) Ground Rent for the Premises ("Ground Rent") shall be \$1.60 per square foot of the Premises per year, paid monthly. The amount for Ground Rent beginning on the Rent Commencement Date for the Premises is \$209,088.00 annually, or \$17,424.00 monthly, as adjusted in accordance herein. Ground Rent as set forth herein is based upon a square footage of 130,680 (± 3 acres) and shall be subject to adjustment based upon the Survey as provided for in Section 3.4 hereof. Ground Rent shall be adjusted every five (5) years in accordance with Table 1.

Table 1 Fair Market Value Ground Rent based on 130,680 square feet (3 acres)			
Lease Years	Per Square Foot Rental Rate	Annual Rent	Monthly Rent
1 - 5	\$ 1.60	\$ 209,088.00	\$ 17,424.00
6 - 10	\$ 1.76	\$ 229,996.80	\$ 19,166.40
11 - 15	\$ 1.94	\$ 253,519.20	\$ 21,126.60
16 - 20	\$ 2.13	\$ 278,348.40	\$ 23,195.70
21 - 25	\$ 2.34	\$ 305,791.20	\$ 25,482.60
26 - 30	\$ 2.57	\$ 335,847.60	\$ 27,987.30

5.1.3 Percentage Rent. A percentage rent of 1.5% (one and one-half percent) of Gross Receipts shall be paid to Authority on a monthly basis throughout the Lease Term and Lease Term Option Periods ("Percentage Rent").

5.2 Monthly Installments. All Rent shall be paid in twelve (12) monthly installments, without notice or demand, on the first day of each month, except that if any Rent commences on a day other than the first day of the month, the first payment of Rent attributable to the newly commencing rental period shall be prorated to the end of that month.



### 5.3 Late Payments

5.3.1 Delinquency Charge. Lessee shall pay a delinquency interest charge of eighteen percent (18%) of the payment of Rent, or the maximum rate of interest allowed by law, whichever is greater ("Delinquency Charge") per annum from the date such Rent is due, for any payment of Rent not made by Lessee within ten (10) days after written notice from Authority of nonpayment thereof is received by Lessee; provided, however, after one such notice of late payment is delivered by Authority to Lessee in any consecutive twelve (12) month period, the Delinquency Charge shall accrue automatically without prior notice if any payment of Rent is not paid when due. The Delinquency Charge is subject to periodic change upon at least thirty (30) days' prior written notice to Lessee, at the Authority's sole discretion, but in no case shall such change be inconsistent with Authority policy and practice with respect to the amount of the Delinquency Charge imposed on other similar Lessees of the Authority. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Authority due to Lessee's failure to timely pay Rent. If not timely paid by Lessee, the Authority may also draw upon the Security Deposit as outlined in this Lease for any Delinquency Charge, in which event, the Lessee shall promptly replenish the Security Deposit for the funds so used. Notwithstanding the foregoing, in no event shall Lessee be responsible for the Delinquency Charge in the event Authority fails to receive any payment of Rent due to any change in Authority's address or direct deposit information for which Lessee has not received written notice at least thirty (30) days prior to the due date for such payment.

5.3.2 Returned Checks. If Lessee's check for payment of Rent or any other payment due the Authority under this Lease is returned as insufficient funds for any reason, the payment shall be considered not to have been made and shall be delinquent. In addition to the Delinquency Charge, the Authority may charge Lessee a returned check fee of One Hundred and 00/100 Dollars (\$100.00) per returned check, which Lessee agrees is a reasonable fee for the additional administrative time and expense incurred by the Authority in having to deal with the returned check. The Delinquency Charge shall continue to accrue until the returned check fee is paid, the check can be cashed, and the Authority receives all funds due. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Authority due to Lessee's failure to timely pay a returned check fee. Notwithstanding the foregoing, in no event shall Lessee be responsible for any returned check fee in the event Authority fails to receive any payment of Rent due to any change in Authority's address or direct deposit information for which Lessee has not received written notice at least thirty (30) days prior to the due date for such payment.

5.3.3 Acceptance of Rent. The Authority's acceptance of a late or partial payment of Rent and/or a Delinquency Charge shall not constitute a waiver of any Event of Default nor shall it prevent the Authority from exercising any of its other rights and remedies granted to the Authority under this Lease or by law. It is hereby agreed that any endorsements or statements on checks of waiver, compromise, payment in full or any other similar restrictive endorsement shall have no legal

effect. Lessee shall remain in violation of this Lease and obligated to pay all Rent due even if the Authority has accepted a partial or late payment of Rent.

5.4 Security Deposit. Upon the Lease Effective Date, Lessee shall deposit Sixty-Nine Thousand Six Hundred Ninety-Six and 00/100 Dollars (\$69,696.00) ("Security Deposit") with an escrow agent mutually agreeable to the parties ("Escrow Agent"). The Security Deposit shall be fully refundable if Lessee terminates the Lease on or before the expiration of the Due Diligence Period without any extensions. The Security Deposit is required to be in place for the entire Term of the Lease and may be amended from time to time at the discretion of the Authority. Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease.

5.4.1. If Lessee does not terminate the Lease on or before the expiration of the Due Diligence Period without any extensions, Thirty Thousand and 00/100 Dollars (\$30,000.00) of the Security Deposit ("Deposit Release") shall become non-refundable and the Escrow Agent shall release such \$30,000.00 to the Authority.

5.4.2. If Lessee does not terminate the Lease on or before the ninetieth (90th) day of the Permitting Period, Twenty Thousand and 00/100 Dollars (\$20,000.00) of the Security Deposit shall become non-refundable and the Escrow Agent shall release such \$20,000.00 to the Authority.

5.4.3. If Lessee does not terminate the Lease on or before the one hundred and eightieth (180th) day of the Permitting Period, the remaining portion of the Security Deposit shall become non-refundable and the Escrow Agent shall release such remaining portion to the Authority.

5.4.4 Adjustment to Security Deposit. Authority may increase the amount of the Security Deposit from time to time so that it is equal to or greater than three (3) months' Rent then in effect. Authority may increase the amount of the security guarantee by giving Lessee at least thirty calendar days' prior written notice of the amount of the increase. The amount of the Security Deposit may be increased for any reason Authority deems appropriate, including (A) an increase of Lessee's financial obligations under this Lease, (B) Lessee's failure to pay any Rent, Additional Payment, or any other amount when due, and/or (C) if, in the Authority's own discretion, the Lessee's financial condition changes to the extent that Authority is concerned about Lessee's ability to perform under this Lease. Lessee shall pay to Authority the additional amount necessary to increase the Security Deposit upon written notice from Authority.

5.4.5 Duty to Restore Security Deposit. The Security Deposit insures the full and timely performance by Lessee of all its obligations under this Lease and is security for payment by Lessee of all claims by Authority. Authority may draw on or make a claim against the Security Deposit if Lessee defaults, breaches or fails to perform under this Lease. If Authority draws on or makes a claim against the Security Deposit pursuant to the terms hereof, then Lessee, upon written demand from Authority, shall replenish the Security Deposit to its previous amount within

thirty (30) calendar days of Authority's written notice to Lessee of the draw or claim.

5.4.6 Refund of Security Deposit. After the expiration or earlier termination of this Lease, Authority shall refund the Security Deposit to Lessee less any Rent, Additional Payments, and any other amount due to Authority. In the event Lessee terminates this Lease prior to the Lease Term Commencement Date due solely to a default by the Authority, Lessee shall be entitled to a full refund of the Security Deposit. Authority will not pay interest to Lessee on the Security Deposit, but the Security Deposit may be held in any interest-bearing account for the benefit of the Authority.

5.5 Triple Net Lease. Authority and Lessee agree that Rent shall be absolutely net to Authority so that this Lease shall yield to Authority the Rent each year during the Lease Term free of any taxes, charges, assessments, Additional Payments, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by Lessee, except as specifically provided in this Lease, and Authority shall not pay any such charge, assessment, or Additional Payment or be under any obligation or liability hereunder, except as otherwise expressly provided in this Lease. All costs, expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements, which may arise or become due during the Lease Term shall be paid by Lessee and Authority shall be indemnified and saved harmless by Lessee from and against all such costs, expenses, and obligations. Notwithstanding the foregoing, Lessee shall not be obligated to pay for interest due and amortization on any Authority mortgages against the Premises and/or for any charges or payments that, by their nature, are purely personal to Authority, such as taxes on rental income and succession taxes.

5.6 Percentage Rent Reports.

5.6.1 In computing Percentage Rent to be paid by Lessee, the first reporting period, as defined herein, shall commence on the Rent Commencement Date, and shall end at the close of business on the last day of the same calendar month. Thereafter, the reporting period shall be on a calendar month basis.

5.6.2 Monthly Reports. Beginning the first month following the Rent Commencement Date, Lessee shall, on or before the fifteenth (15th) day of each calendar month ("Monthly Report Due Date") after the close of each month, deliver to Authority a detailed statement of Gross Receipts and any deduction as defined from Gross Receipts for the preceding month prepared in accordance with generally accepted accounting principles ("GAAP") and signed by a financial officer of Lessee. The Gross Receipts report must show the data and breakdown for Lessee, and if requested by Authority, an itemized list identifying all Gross Receipts and any other type of reporting required by Authority, and shall be accompanied by Lessee's payment of Rent that is due based on the application of the Percentage Rent. A sample report is attached as **Exhibit C**. Authority may require changes to the format of these reports at any time, but upon no less than thirty (30) days' prior written notice to Lessee. The first Monthly Report Due Date shall be due on the 15<sup>th</sup> of the month following the month during which the Rent

Commencement Date begins.

5.6.3 Annual Reports, Annual Audited Statement of Gross Receipts. Lessee shall deliver to Authority within ninety (90) days of the end of each Lease Year, during the Term of this Lease and any Option Periods, a "Schedule of Gross Receipts" for the operations as defined in Section 1.17, for the previous Lease Year, prepared in accordance with GAAP, accompanied either by an opinion of an independent Certified Public Accountant, a certification of Lessee's Chief Financial Officer, or a certification by an independent Certified Public Accountant on behalf of Lessee. Opinions issued by an independent Certified Public Accountant shall be issued in accordance with the provisions of Statement of Auditing Standards No. 62, Special Reports, as promulgated by the AICPA. Certifications provided either by Lessee's Chief Financial Officer or by an independent Certified Public Accountant on behalf of Lessee shall be in such form and content as is acceptable by the Authority. Said statement shall set forth the calculation of Gross Receipts, and the calculation of the Percentage Rent for the previous year as defined under this Lease. If any such statement discloses that additional sums are due to Authority, Lessee shall pay to Authority such additional sums with the submission of said statement to the Authority. This requirement applies to prorated Lease Years at the start and end of the Lease Term. The purpose of the annual statement is to determine if the Gross Receipts and Percentage Rent reported accurately reflect the Rent due and paid to Authority for the Lease Year for the Premises.

5.6.4 Late Statements and Reports. If Lessee is delinquent for ten (10) or more calendar days in furnishing Authority with any monthly or annual statement or other report required under this Lease, then Lessee shall pay One Hundred and 00/100 Dollars (\$100.00) per late statement or report to Authority as damages for the additional administrative costs incurred by Authority in processing and reviewing delinquent statements or report. The Parties agree this is a fair and reasonable estimate of Authority's costs incurred in processing a delinquent monthly statement or report.

5.7 Additional Fees. Lessee may be subject to such other fees and costs as are now or hereinafter imposed by the Authority; however, such fees or charges shall be applied uniformly on all similarly situated users by the Authority.

## **ARTICLE 6 - RECORDS**

### 6.1 Records.

6.1.1 Lessee shall maintain, at all times, during the term of this Lease, keep or cause to be kept and maintained in accordance with GAAP true and complete books, records, and accounts of all financial transactions solely pertaining to Lessee's operations on the Premises ("Lease Books and Records").

6.1.2 The Lease Books and Records and accounts shall include detailed analyses listing all of Lessee's transactions from operations at the Premises in the form of printed, written, or electronic media. Lessee shall provide such Lease

Books and Records within twenty (20) calendar days upon written notice by the Authority to Lessee, throughout the Lease Term. Lease Books and Records shall include, but shall not be limited to, all original accounting source documents detailing transactions relevant to this Lease, including but not limited to operating/financial statements, a complete (cumulative) general ledger, monthly sales journals detailing each transaction for the month, reconciliations between the financial records and monthly reports submitted to Authority, bank statements applicable to the operations at the Premises and related reports on internal controls (including management representation letters), electronic media documenting accounting records, and other sales-related documents. Said Lease Books and Records and accounts shall also include documentation of all exclusions from Gross Receipts claimed by Lessee, and documentation of said records supporting reductions to Gross Receipts authorized pursuant to Article 1.17 of this Lease.

6.1.3 Lessee shall cause to be installed and shall at all times use, such cash registers, invoicing machines, sales slips and other accounting equipment, devices and forms as are reasonably necessary to record properly, accurately and completely all sales and transactions related to Lessee's Gross Receipts.

6.1.4 In those situations where Lessee's records have been generated from computerized data, Lessee shall provide Authority with extracts of data files in a computer readable format sent via email with attached files, or suitable alternative computer data exchange formats as requested by Authority.

6.1.5 The Lease Books and Records required hereunder shall be kept and maintained for a period of at least three (3) years from the date of creation and for such extended period as Authority requires in the event that there is an audit or litigation pending.

6.1.6 Notwithstanding any provision herein, Lessee shall keep all Lease Books and Records for a minimum of three (3) years following termination of the Lease.

6.2 Authority Right to Audit Lessee's Records. Authority shall have the right, at the Authority's expense, to audit or authorize audits of the Lease Books and Records upon at least thirty (30) days' prior written notice to Lessee, subject to the following: (a) the audit shall be prepared by an independent certified public accounting firm of recognized national standing; (b) in no event shall any audit be performed by a firm retained on a "contingency fee" basis; (c) the audit shall commence within thirty (30) days after Lessee makes the Lease Books and Records available to Authority's auditor and shall conclude within sixty (60) days after commencement; (d) the audit shall be conducted during Lessee's normal business hours at the location where Lessee maintains the Lease Books and Records and shall not unreasonably interfere with the conduct of Lessee's business; and (e) the Authority and its accounting firm shall treat any audit in a confidential manner and shall each execute Lessee's confidentiality agreement for Lessee's benefit prior to commencing the audit. If either an annual audit or any other lesser period audit performed by Authority discloses an under reporting of Gross

Receipts, Lessee shall pay to Authority any amounts due under this Lease within thirty (30) business days of written notice by Authority, plus interest calculated in accordance with Article 5.3 of this Lease. In addition, if an audit conducted by Authority discloses an under reporting of Gross Receipts by two percent (2.0%) or more for any twelve (12) month period, Lessee shall, at Authority's direction, reimburse Authority for the full cost of the audit, any applicable legal fees, and expenses and shall pay a penalty of ten percent (10%) of the under reported Percentage Fee. If it is determined that Lessee has overpaid the Percentage Rent, the Authority shall reimburse to Lessee the overpaid amount within thirty (30) business days of the completion of the audit completed at the Authority's expense.

6.2.1 Lessee shall provide the contact information of Lessee's AVP of Accounting who will provide the basis of the accounting system as it pertains to this Lease and who will assist the Authority with its audit. In the event necessary for any audit by the Authority, Lessee will also use reasonable efforts to engage and interview present and/or past employees involved in the financial or operational activities of Lessee during such auditing period in question.

6.2.2 Provided, there is no material disruption of Lessee's use or operation of the Premises, Lessee agrees to provide appropriate workspace to Authority to conduct the audit and free access to office and equipment needed to conduct the audit. If Authority has authorized Lessee to keep any Lease Books and Records outside the Premises or outside Buncombe County and Henderson County, North Carolina, and the same cannot be provided and made available locally, Lessee agrees to reimburse Authority for expenses incurred in sending representatives to wherever such books and records are maintained. Such expense will include transportation, lodging, food, and other out-of-pocket expenses resulting from the necessity to leave Buncombe County or Henderson County.

6.2.3 Lessee's duty to maintain the Lease Books and Records and Authority's rights under this Lease to inspect and audit the books and records of Lessee shall survive the expiration or earlier termination of this Lease.

6.3 Confidentiality. All Lease Books and Records, audits and other records provided in this Article 6 are to be held in confidence and not disclosed by the Authority without the prior written approval of the Lessee, unless required by law; however, this shall expressly not include disclosure to the Authority's attorneys, officers, accountants and other professionals engaged by the Authority to assist with this Lease and who are directed to comply with the confidentiality requirements of this Section 6.3.

## **ARTICLE 7 - PERFORMANCE AND OPERATIONAL STANDARDS**

7.1 Operational Standards. Following the design and construction of the Convenience Store, Lessee shall continuously maintain and operate the Convenience Store in accordance with the terms hereof during the Term hereof except for any periods during which such maintenance and operation is not commercially and reasonably possible as a result of casualty or condemnation (but subject to Lessee's obligations

under this Lease in the event of casualty as described in Article 21). Lessee is required to meet or exceed all operational standards defined in this Section and included in **Exhibit D**, "Operating Standards", which may be amended from time to time and sent to Lessee in writing by the Authority.

7.2 Renovations and Alterations; Restrictions. From and after the Lease Term Commencement Date, and subject to Section 14.7.2, below, Lessee shall not improve, change, alter, add to, remove or demolish all or any of the Lessee Improvements, if such action would require a building permit under applicable law or would constitute a material change to the aesthetic appearance or structure of the exterior portions of the Lessee Improvements, without the prior written consent of the Authority; provided, however, Lessee shall replace the canopy and awning on the exterior of the Lessee Improvements from time to time as necessary to maintain the appearance of the exterior of the Lessee Improvements as a first-class Convenience Store (collectively, the "Refurbishment"). Any such permitted Refurbishment by Lessee must comply with all conditions imposed by the Authority and the then current Development Guidelines. Full and complete specifications for all work and improvements, along with a statement of the time required to complete such work shall be submitted to and approved in writing by the Authority before construction work commences on any such Refurbishment. First-class standards of design and construction will be required in connection with any and all such Refurbishment work, and all Refurbishment improvements shall conform with applicable statutes, ordinances, building codes, regulations and other general requirements of the Authority, including but not limited to compliance with then current Development Guidelines, procurement of general liability and builder's risk insurance and performance and payment bonds, and compliance with worker's compensation, DBE participation requirements and compliance with the Americans with Disabilities Act, 42 U.S.C. 12,000 et seq., and its regulations. The approval given by the Authority shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Lessee. Approval of the Authority shall extend to and include consideration of architectural and aesthetic matters, and the Authority expressly reserves the right to reject any designs for any Refurbishment submitted (provided the Authority shall provide Lessee with an explanation, in reasonable detail, of the basis for the Authority's rejection and any suggestions for modifications which may garner, but not guarantee, the requested approval) and to require Lessee to resubmit designs and layout proposals until they meet with the Authority's approval, such approval not to be unreasonably withheld, conditioned or delayed. The Authority agrees to act promptly upon a request for approval of such plans and/or revisions thereto.

## **ARTICLE 8 - INSURANCE**

8.1 Lessee Obligation to Insure. Lessee, at its expense, shall procure and maintain for the Term of this Lease insurance against claims for injuries to persons and/or damage to property that may arise from or in connection with this Lease or activities on the Premises by Lessee or its agents, employees, representatives, contractors, licensees, or invitees according to the "Insurance Requirements" set forth in **Exhibit E** attached hereto and made a part hereof. Lessee shall provide the Authority with copies of all insurance certificates and renewals.

8.2. Risk of Loss. Authority is not required to carry any insurance covering or affecting the Premises. Lessee assumes the risk of any loss, damage, or claims throughout the Term and the Authority must be named as an additional insured as described on **Exhibit E**.

8.3 Failure to Maintain Insurance. If Lessee fails or refuses to provide a copy of the renewal insurance certificates, in compliance with the Insurance Requirements attached as **Exhibit E**, or Lessee otherwise fails or refuses to procure or maintain insurance as required by this Lease, then Authority may, at Authority's election and, subject to written notice to the Lessee, procure and maintain such insurance and the same shall be due from Lessee as Additional Payments. The premiums paid by Authority shall be due and payable from Lessee to Authority on the first day of the month following the date on which the premiums were paid. Authority shall give Lessee written notice of the payment of the premiums and state the amounts paid and the names of the insurer(s) and insured(s). The lapse and/or cancellation of any insurance policy required under this Lease, whether in whole or in part, is an event of breach, which cannot be cured unless Lessee obtains a new or renewed policy that specifically provides the required coverage to Authority for any liability arising during the lapsed or uncovered period within two (2) calendar days of the lapse or cancellation.

8.4 Increases in Coverage. Authority may increase the amount of insurance coverage and/or change these Insurance Requirements by the Authority Board policies, to be consistent with other similar ground leases and shall do so by giving Lessee at least sixty (60) calendar days' prior written notice of the increase or change.

## **ARTICLE 9 - TERMINATION AND SURRENDER**

9.1 Personal Property. Upon the expiration or earlier termination of this Lease, Lessee shall peaceably and quietly leave, surrender, and yield up to Authority the Premises in a broom-clean condition and free of occupants. Lessee shall repair all damage to the Premises caused by or resulting from the removal of any trade fixture or other personal property, normal wear and tear excepted. The fuel island canopy(ies), signage (including any fuel pump wraps and/or any other identifying displays) and UST System with related product lines and pumps are all deemed to be personal property of Lessee for purposes of this Lease. Any personal property left on the Premises after the expiration or termination of this Lease shall be deemed abandoned property and title shall automatically be conveyed to Authority. Authority may retain the property or dispose of it in any manner Authority sees fit. If any such property, or any part thereof, is sold, then Authority shall receive and retain the proceeds of the sale free of any claim or interest by Lessee or any other person. Lessee shall pay to the Authority any and all costs incurred to remove the abandoned property and to repair all damages caused thereby. Notwithstanding the foregoing or anything to the contrary contained herein, but without limiting any remedies of the Authority for default by Lessee under Article 24, in no event shall the Authority have, and the Authority hereby expressly waives, any and all rights or claims to a security interest in any of Lessee's personal property now or at any time located at or on, or otherwise used in connection with Lessee's operations at, the Premises.



9.2 Title to Improvements. As set forth in Article 14.7.2 hereof, at the Authority's sole option and election, any Lessee Improvement erected or installed by Lessee after the Effective Date shall become the property of the Authority upon expiration or earlier termination of this Lease and any Option Period(s), without the requirement of any deed, conveyance, or bill of sale. However, if Authority requires any document to confirm its ownership of the Lessee Improvements, then Lessee shall execute, acknowledge, and deliver the required documents in a form acceptable to Authority. Notwithstanding the foregoing, the Authority reserves the right to require Lessee to remove any Lessee Improvement from the Premises upon the expiration or earlier termination of this Lease and restore the Premises to its original condition.

9.3 Removal and Demolition of Improvements. Except as required by Article 14.7.2, Lessee shall not remove or demolish, in whole or in part, any Improvements on the Premises that do not remain Lessee's property upon the expiration or earlier termination of this Lease, without the prior written approval of the Authority which may, at its discretion, condition such approval upon the obligation of Lessee to replace the same by an improvement of at least equal value and utility.

9.4 Dangerous Conditions. Within thirty (30) calendar days after the expiration or earlier termination of this Lease, Lessee shall correct any dangerous or unsafe condition on the Premises. After the Term or any earlier termination of this Lease, Lessee may only enter the Premises with Authority's prior written approval and only to the extent necessary to correct and/or remove the dangerous or unsafe condition and for no other purpose whatsoever.

9.5 Survival of Provisions. The provisions of this Article shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 10 - FACILITY ASSESSMENT**

Facility Assessment. Prior to January 1, 2037 but no later than July 1, 2037, the Lessee shall provide the Authority a "Condition Assessment Report" of the Premises and Lessee Improvements thereon, prepared by either a licensed contractor, engineer, or architect, and who is licensed to do business in the State of North Carolina ("A/E"). This Condition Assessment Report shall address the current condition, the contractor's or A/E's professional opinion of the useful life remaining of the structures and systems of Lessee Improvements, and the contractor's or A/E's professional opinion of repairs, replacements, or refurbishments recommended to maintain the operationally useful state and condition of the Premises. The Condition Assessment Report shall primarily focus on major structural systems and components of the Lessee Improvements, including but not limited to: pavements, utilities, building structures, roofs, and heating/ventilation/air conditioning (HVAC), plumbing, and electrical systems. The Condition Assessment Report shall be updated one (1) year prior to termination of the Lease, and the Parties shall meet to discuss and agree upon the time period of any items required to be repaired or replaced by the Lessee based on the Condition Assessment Report.

## ARTICLE 11 - ENVIRONMENTAL

11.1 Environmental Assessment. In June 2021, a Phase 1 Environmental Site Assessment completed by ECS Southeast LLP on the Premises ("Phase I Assessment"). The Phase I Assessment was prepared in accordance with federal regulations and the standards of the American Society of Testing and Materials (ASTM) E1527-13, Standard Practice for Environmental Assessments. The Environmental Site Assessment is incorporated herein by this reference. In addition, a Stormwater Soil Evaluation Report was completed on the site by S&ME, Inc., was completed in December 2021. The Lessee has been provided a copy of both of these reports. The Lessee shall have the right to perform Environmental Studies as defined in Article 2.3 and such Environmental Studies shall be certified in favor of the Authority.

### 11.2 Environmental Exit Audit.

11.2.1 In the event that the Authority informs Lessee that it wishes to retain Lessee's UST System pursuant to Section 14.7.2, then within 180 days prior to expiration or earlier termination of this Lease, the Lessee, shall conduct and pay for an environmental audit of the Premises, in accordance with federal regulations and the standards of the American Society of Testing and Materials (ASTM) E1527-13, Standard Practice for Environmental Assessments, ("Exit Audit") to determine: (a) the environmental condition of the Premises; (b) whether any Hazardous Materials Release has occurred during the Term of this Lease on or about the Premises; and; (c) whether there is evidence of any violation of applicable Environmental Law or the environmental provisions of this Lease. The scope of the Exit Audit may be more extensive than that of the Initial Audit, if the Authority has reason to believe that there has been a Hazardous Materials Release or a violation of the environmental provisions of this Lease, or a violation of any Environmental Laws.

11.2.2 In the event that the Authority informs Lessee that it does not wish to retain Lessee's UST System pursuant to Section 14.7.2, then within no less than sixty (60) days after the expiration or earlier termination of this Lease, Lessee will remove (and is expressly entitled to remove) Lessee's UST System and shall backfill and repave to level grade any areas disturbed by such removal. Notwithstanding anything herein to the contrary, and unless Lessee has removed Lessee's UST System earlier, Lessee agrees that it shall pay a monthly license fee to the Authority during such sixty (60) day period (or such shorter period as Lessee actually requires to remove Lessee's UST System) equal to the monthly Ground Rent being paid by Lessee to the Authority during the last month of the Term. The removal shall be done in a good and commercially reasonable manner and in compliance with all Environmental Laws applicable to the Premises and Lessee shall provide to the Authority a copy of the UST Closure Report as completed by a certified tank removal specialist, certifying that Lessee's UST System, monitoring wells, and all other equipment and improvements used in connection with the Lessee's Improvements have been properly removed. If during the course of Lessee's removal, it is determined that a Release had or has occurred as a result of Lessee's use of the Premises, Lessee shall remediate the Release and related contamination in accordance with applicable Environmental

Laws and obtain a "no further action letter" issued by NCDEQ. In the event that a Release has occurred, Authority acknowledges that Lessee may be required by applicable law to monitor certain environmental aspects of the Premises after the expiration of the Term. Lessee, and its agents and employees shall, notwithstanding the expiration of the Term, retain the right to have access to the Premises for no additional charge or rent on a limited basis and as may be reasonably necessary for Lessee to comply with such applicable Environmental Laws so long as (i) such continued access does not prevent the Authority from using the Premises, and (ii) any monitoring equipment to be located within the Premises shall only be located in locations that do not interfere with the use of the Premises, In the event as such continued access does prevent the Authority from using the Premises, and/or any monitoring equipment to be located within the Premises shall only be located in locations that interfere with the use of the Premises, then a rent shall be due by Lessee to the Authority based on mutual agreement. Lessee shall also be permitted to take soil, air and/or water samples at the Premises as necessary or appropriate in connection with any such monitoring activities. Exercise of the foregoing rights of access and sampling shall be subject to the following: (1) Lessee shall promptly repair any damage to the Premises caused by its activities, (2) such activities shall be required for Lessee to comply with applicable Environmental Laws, (3) Lessee shall indemnify and hold harmless Authority from and against any and all bodily and personal injury, loss, claims or damages to any person or property caused by or arising out of Lessee's exercise of the rights of access and sampling at the Premises, and (4) Lessee's other obligations under this Article 11, as shall be expressly applicable thereto.

11.3 Environmental Audit. Upon reasonable written notice to Lessee, but no less than five (5) days' prior written notice except in the event of an emergency, the Authority may conduct or cause to be conducted through any third party that it selects, an environmental audit or other investigation of Lessee's operations to determine whether Lessee has breached its obligations under this Lease. Lessee shall pay all costs associated with said investigation if such investigation shall disclose any such breach by Lessee.

11.4 Hazardous Materials.

11.4.1. Definitions. As used herein, the following terms shall have the meanings hereinafter set forth:

11.4.1.1. "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order, or requirement relating to industrial hygiene, environmental conditions, or Hazardous Materials, whether now in effect or hereafter adopted.

11.4.1.2. "Hazardous Materials" or "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material(s)" includes,

without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, also commonly known as the "Superfund" law, as amended (42 U.S.C. Sections 9601 et seq.) ("CERCLA"), or pursuant to the General Statutes of North Carolina, or any waste which conforms to the criteria for hazardous material adopted by the Authority; any asbestos and asbestos containing materials; lead based paint; petroleum, including crude oil or any fraction thereof; natural gas or natural gas liquids; and any materials listed as a hazardous substance in the Authority's rules and regulations.

11.4.1.3. "Release" when used with respect to Hazardous Materials shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or on any property or part of the Premises.

11.5. Storage Tanks. Above-ground refueling storage tanks will not be permitted on the Premises (this includes special enclosure equipment). Lessee shall comply at all times during this Lease with all local, state, federal and Airport ordinances, rules, regulations and orders applicable to the construction, operation, maintenance, removal or closure, and remediation of storage tank systems, including Lessee's UST System, and fuel pumping stations and facilities, including, without limitation, all applicable regulations of the EPA and NC DEQ. In addition, all storage tank systems, including Lessee's UST System, shall meet or exceed existing tank standards promulgated by the American Petroleum Institute and industry standards.

11.6 Lessee's Agreement. Lessee agrees that neither it nor its officers, agents, employees, contractors, subcontractors, sublessees, licensees and/or invitees shall cause any Hazardous Materials to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises, or transported to or from the Premises; unless customarily used with a Convenience Store and gas service station operations so long as such use is in strict compliance with all applicable Environmental Laws and the Authority's rules and regulations.

11.7 Environmental Indemnity. Lessee shall indemnify, defend and hold harmless the Authority from and against any and all loss, damage, cost or expense (including attorney's fees) arising during or after the Term of this Lease as a result of or arising from (i) a breach by Lessee of its obligations contained herein, or (ii) any Release of Hazardous Materials from, in, on or about the Premises caused by intentional or unintentional act or omission of Lessee, its officers, agents, employees, contractors, subcontractors, sublessees, licensees or invitees.

11.7.1 Limitation of Lessee's Environmental Liability. Notwithstanding the foregoing or anything to the contrary contained herein, Lessee shall have no obligation to indemnify the Authority for any environmental condition, or the storage, release or disposal of any Hazardous Materials, (a) existing or occurring at, on, beneath or around the Premises prior to the earlier of (i) the Lease Commencement Date, (ii) Lessee's installation of Lessee's UST System or (iii) the Authority's delivery of possession of the Premises to Lessee, or (b) conclusively shown to have been solely caused by the

Authority or an unrelated third party who is not accessing, using and/or occupying any portion of the Premises with Lessee's consent or approval (express or implied) or otherwise under Lessee (provided that Lessee shall not exacerbate, contribute to or worsen any such existing environmental condition or Hazardous Materials), expressly excepting from all of the foregoing, any environmental condition, or the storage, release or disposal of any Hazardous Materials conclusively shown to have been solely caused by the Lessee or an unrelated third party who is accessing, using and/or occupying any portion of the Premises with Lessee's consent or approval (express or implied) or otherwise under Lessee (provided that the Authority shall not exacerbate, contribute to or worsen any such existing environmental condition or Hazardous Materials).

11.8 Survival of Provisions. The provisions of this Article shall survive the expiration or earlier termination of this Lease. This Article does not extend the Term of this Lease after it has expired or been terminated.

## **ARTICLE 12 – MAINTENANCE AND REPAIRS**

12.1 Maintenance and Repairs. Lessee shall, at its sole cost and expense, maintain the Lessee Improvements and Premises in first-class condition and, at all times, in a clean, safe, and orderly condition and appearance including all Improvements, landscaping, and personal property of the Lessee pursuant to the provisions of this Lease, and in accordance with all applicable laws and regulations whether now or hereafter enacted. Such maintenance and repairs shall include, but not be limited to the electrical, lighting, signs, driveways, fences, sidewalks, curbs, interior and exterior, structural, and nonstructural, ordinary, and extraordinary, and pest and wildlife control on the Premises.

12.2 Drainage. Lessee and Authority will finalize the design and location for the stormwater system ("SW System") for the Premises during the Due Diligence Period. Lessee shall, at its sole cost, build the SW System. During the Lease Term, maintenance and repair obligations for the SW System shall be determined during the Due Diligence Period to determine any cost sharing participation between the parties. Lessee may not alter or obstruct established drainage over the Premises unless adequate drainage is provided and approved in writing in advance by the Authority and any governmental authority having jurisdiction over the Premises. Any alteration of established drainage must comply with applicable governmental requirements. For the purpose hereof, *established drainage* means the natural drainage or any previous alteration thereof that has been approved by the Authority. Approval of any alteration or obstruction of established drainage shall not relieve Lessee from being responsible for the alteration or obstruction from any liability to other persons that might result therefrom. Lessee shall not be responsible at its expense for any unreasonable drainage issues created by the Authority or any parties retained by the Authority during construction following the initial construction of the Relocated Parking and Additional Parking.

12.3 Erosion and Lateral Support. Lessee shall maintain on the Premises sufficient landscaping and other materials and devices to prevent erosion of the Premises or of any adjacent parcels. Lessee may not perform any excavation on the Premises that might result in the loss of lateral support to any adjacent parcels.

## ARTICLE 13 - COMPLIANCE WITH LAWS

13.1 General. Lessee and its agents, employees, representatives, contractors, licensees, and invitees and any other person whom Lessee controls or has the right to control shall comply with all present and future federal, state, and local laws, rules, regulations, ordinances, orders, and directives and all other jurisdictions and agencies that may apply to this Lease or Lessee's activities under this Lease, on the Premises. Lessee shall, upon Authority's request, furnish Authority with a copy of all permits, licenses, and other evidence of compliance with these laws.

13.2 Additional Terms and Conditions. Lessee agrees that the Premises is owned by the Authority and as such, is part of the national transportation system and is operated for the benefit of the public and is, from time to time, the recipient of federal funds. As a recipient, Authority is obligated to make certain assurances to the FAA or other federal agencies that Authority is in compliance with the requirements of federal law, which requirements also become the obligation of Authority's contracting parties. Lessee shall comply with all requirements set forth herein.

13.3 Compliance with Environmental Laws. In addition to the requirements of Article 11, Lessee shall, at its expense, comply with all present and subsequently enacted environmental laws, and any amendments thereto, affecting Lessee's use or occupancy of the Premises, including those set forth in the provisions of this Article and Article 11, which such provisions shall survive the expiration or earlier termination of this Lease.

13.4 Certificate of Occupancy. Lessee shall obtain any certificate(s) of occupancy with respect to all Lessee Improvements constructed upon the Premises that may at any time be required by any governmental agency with jurisdiction, and Lessee shall provide a copy or copies to the Authority and as set forth in this Lease.

13.5 Construction. As set forth in Article 14 and otherwise in this Lease, Lessee's construction and installation of all Lessee Improvements and the development of the Relocated Parking and Additional Parking must be in strict compliance with all applicable federal, state, and local land use regulations, codes, and laws affecting the development, improvement, occupancy, and use of the Premises.

13.6 As required by North Carolina law, and in no way superseding the acknowledgment of Lessee's acceptance of the Premises in its as-is and where-is condition as set forth in Article 3.3, Authority hereby includes the following notification(s) as part of this Lease:

**RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in North Carolina. Additional information regarding radon and radon testing may be obtained from the county health unit applicable to the Premises.

13.7 The requirements of compliance otherwise set forth in this Article 13 are intended to be general and broad in nature. To the extent any other provisions of this Lease contain more guidelines and requirements for compliance, the more strict and detailed provisions of this Lease shall control.

## **ARTICLE 14 - CONSTRUCTION OF LESSEE IMPROVEMENTS**

14.1 Description of Project. Lessee shall design, build, finance, construct and manage the Lessee Improvements, investing a minimum of \$7,000,000. The Lessee Improvements shall be completed within thirty (30) months of the Lease Effective Date (the "Construction Completion Date"), subject to (i) Article 32, or (ii) unless this Lease is terminated during the Due Diligence Period.

14.1.2 Relocated Parking; Right of Way Access. Lessee will finance and fund the planning, design, permitting, and construction of Lessee's Right of Way Access and Relocated Parking.

14.1.3 Additional Parking. The Authority hereby agrees to pay all costs associated with the Additional Parking, with such costs being agreed to in advance by the Authority. On behalf of the Authority, Lessee will finance and fund the planning, design, permitting, and construction of the Additional Parking ("Additional Parking Costs"). Lessee will provide the Additional Parking Costs to the Authority for review and written approval, whereupon Lessee will be reimbursed by Authority for such approved Additional Parking Costs associated for the Additional Parking. All such Additional Parking Costs shall be paid either as a Ground Rent credit or reimbursement of the Additional Parking Costs paid by Lessee.

14.2 Planning, Design and Construction of Lessee Improvements, Relocated Parking, and Additional Parking. Lessee or its designated representatives, including the contractor(s) and the consultants, shall meet with Authority for a pre-design meeting to discuss the Project, applicable criteria and standards, schedule, utility requirements, etc. Lessee shall design and construct the (i) Lessee Improvements on the Premises, and (ii) Relocated Parking, Additional Parking and Right of Way Access on the Adjacent Authority Property, all subject to the Authority's express approval of Lessee's proposed Project plans and specifications ("Plans"). Any proposed changes of the Plans prior to or during construction that would require modifications and/or updates to a permit(s) or site plan(s) and/or submission to any government agency shall be submitted to the Authority for review and approval in advance of any such change. All construction shall adhere to the Plans and terms of this Lease, and to any additional design and construction standards, and any other applicable regulations, codes and requirements set out by Authority, or any governmental agency having jurisdictional authority, including the FAA. Project Plans and specification review submittals shall be provided to Authority at 30, 60, and 90 percent design, and the Authority shall provide comments, as applicable, on each submittal. Upon the Authority's reasonable request, the Lessee shall provide additional or supplemental submittals, as may be reasonably required, to fully understand the proposed Lessee Improvements. Authority reserves the right to observe the work from time to time,

however this shall not take away from the Lessee's responsibilities or place any burden on the Authority to ensure compliance. Neither Authority nor anyone working under or through it shall unduly interfere with or delay the Lessee's work.

14.2.1 Lessee expressly agrees for itself, its successors, and assigns to:

14.2.1.1. File a notice consistent with requirements of FAR Part 77 (FAA Form 7460-1) prior to constructing any facility, structure or other item comprising the Lessee Improvements on the Premises; and,

14.2.1.2. Only commence vertical construction and/or activation of any radio frequency transmitting antenna following formal FAA notification of a "Favorable Determination of No Hazard," and with no "Notice of Presumed Hazard (NPH) determinations" as defined by the FAA; and,

14.2.1.3. Administer and observe on-site construction and/or design professionals to ensure compliance with the approved plans and specifications.

14.3 Construction Standards. All construction activities engaged in upon the Premises, shall conform to (i) the minimum standards specified by the applicable governmental building codes in effect at the time of such construction, (ii) all other rules, regulations, requirements, ordinances and laws, including but not limited to, such regulations and requirements relating to soil, sedimentation and erosion control of any local, state or federal governmental unit(s) or authority(ies) having jurisdiction thereof, and (iii) the Development Guidelines in effect at the time of such construction. Throughout the course of such construction activities, Lessee shall be responsible for maintaining the Premises in as clean, safe, and orderly a condition as the nature of such construction permits, shall insure that equipment utilized for such construction, if required to remain overnight, is parked or stored entirely within the boundaries of the Premises and upon completion of construction activities (or more immediately if damage is such as to materially impair the use of a driveway, roadway or parking area) shall repair, restore and/or reconstruct any damage to any adjoining property, including improvements, driveways, roadways, landscaped areas, parking areas and street and parking lot lighting caused by such construction activities. All grading activities shall be conducted, and all slopes or gradients required to be maintained on the Premises shall be so maintained, entirely within the boundaries of the Premises. Lessee agrees to proceed diligently to complete the Lessee Improvements, Relocated Parking, Additional Parking and Right of Way Access, and shall not delay or abandon its construction until it is complete and shall be completed prior to the Construction Completion Date.

14.4. Plans and Permit Approvals. Approval of the Plans described in this Article 14 shall not be deemed any approval of zoning codes, building codes, or any other approvals required by the Authority, the FAA and/or any other agencies having jurisdictional authority for the enforcement of codes applicable to the Premises. Lessee shall indemnify and hold the Authority harmless for any liability for regulatory or governmental approvals or the failure to obtain the same for any Lessee Improvements. Lessee shall be responsible for obtaining all permits and approvals required for the construction, maintenance, operation and use of all facilities and Lessee Improvements on the Premises. Lessee shall coordinate the construction of the Lessee Improvements,



Relocated Parking, Additional Parking and Right of Way Access with the Authority providing time schedules for completion of each of the projects comprising the total Project.

14.5 Bonding Requirements. Lessee shall post bonds and pay for all materials and labor as required by Authority and/or applicable county regulations and North Carolina law for any Lessee Improvements constructed and/or installed on the Premises by Lessee. Lessee shall provide a performance bond(s) and a payment bond(s) in an amount equal to construction costs, and all bonds must be provided prior to start of any work and must include Lessee and Authority as "obligees." Bonds must comply with the requirements set forth in North Carolina Statutes and shall include the following: (a) completion of the construction of any Lessee Improvements; (b) performance of any construction required under this Lease; and (c) payment of all labor and materials, assuring the Authority that the construction of any Lessee Improvements shall be completed and all contractors and subcontractors shall be paid. Each bond shall be in a form acceptable with the Authority and the surety company providing the bonds must have an A.M. Best Rating of B+ VI or better for the past four (4) consecutive quarters.

14.6 Utility Services for Construction Project. Lessee agrees, at its own expense, to connect to all utility providers as are necessary to secure the services that Lessee desires and requires for the Premises and Lessee Improvements.

#### 14.7 Completion Requirements.

14.7.1. Workmanship. Lessee will construct the Lessee Improvements in a good, careful, proper, commercially reasonable and workmanlike manner and according to: (i) the approved Plans; and (ii) all provisions of law and all permits and authority required by any federal, state, or local law, rule, regulation, or ordinance or by any authority having jurisdiction over the Premises.

14.7.2. Ownership of Buildings and Lessee Improvements. Lessee shall hold title to all Lessee Improvements it constructs or installs on the Premises, including its UST System, subject to all other provisions of this Lease, excluding the Relocated Parking, Additional Parking, Right of Way Access and roadways. On the expiration or earlier termination of this Lease and as set forth in Article 9.2, Lessee shall, in addition to Lessee removing Lessee's UST System, demolish all Lessee Improvements and deliver the Premises to the Authority in a rough-graded condition at the approximate grade at which Lessee operated upon the Premises. Notwithstanding the foregoing, in the event the Authority desires that the Lessee Improvements remain on the Premises, then the Authority shall deliver written notice to Lessee within thirty (30) days after Lessee sends written notice to the Authority that Lessee is electing not to renew the Term, or (ii) ninety (90) days prior to the expiration of the Term and/or any Option Periods. In the event that the Authority so notifies Lessee that the Lessee Improvements shall remain on the Premises, then on the expiration or earlier termination of this Lease and as set forth in Article 9.2, all Lessee Improvements, exclusive of trade fixtures and other personal property of Lessee and its sublessees, shall, without the payment of compensation to Lessee or others, become the property of Authority free and clear

of all claims and encumbrances by Lessee and anyone claiming by, under, or through Lessee. All pipes, wells, pumps, tanks, and other equipment installed on the Premises by Lessee, including its UST System (subject to Article 11.2), shall be left in a structurally sound, non-leaking condition so as not to become the source of any future environmental Release, contamination, or hazard, and if such cannot be rendered in such condition, they shall be removed by Lessee. Lessee shall defend, indemnify, and hold Authority harmless from and against all liability and loss that may arise from the assertion of any claim and any encumbrance on any Lessee Improvement arising from acts that occurred prior to the expiration or earlier termination of this Lease; provided, however, that Lessee's duty to indemnify and hold harmless shall not apply to any claim or encumbrance that is solely attributable to the acts or omissions of Authority. Lessee shall assign to Authority, and Authority shall be entitled to the benefit of, any license, warranty, and guarantee applicable to all equipment, systems, fixtures, and personal property conveyed or otherwise transferred to, or for the benefit of, Authority under this Lease. Title to the Lessee Improvements shall not vest in Authority, if applicable, until they have been inspected by Authority and determined not to present a potential environmental hazard. Lessee's obligations under this Article shall survive the expiration or earlier termination of this Lease.

14.7.3. Certificate of Occupancy. Within forty-five (45) calendar days following issuance of final Certificate of Occupancy for the Lessee Improvements ("COO"), the Premises shall be cleaned, construction debris and stored materials removed, property damage repaired or replaced, final landscaping completed, and all construction equipment and stored materials removed from Premises; and a copy of the COO shall be submitted to the Authority.

14.7.4. As-Builts. By no later than thirty (30) calendar days after completion of any Lessee Improvements, Lessee shall furnish the Authority with one (1) complete set, on computer disc in AUTOCAD, of detailed record drawings of the work completed.

14.7.5. Completed Construction. Upon completion of the Lessee Improvements, Relocated Parking, Additional Parking and Right of Way Access, Lessee shall deliver to Authority a final lien waiver and a letter, in substantially the form attached hereto as Schedule 14.7.5 and incorporated herein by reference, stating:

- A. The Improvements have been completed in accordance with the approved Plans and specifications, and all applicable zoning and permitting requirements;
- B. The Improvements have been completed in a good and skilled manner;
- C. No liens have been filed, nor is there any basis for the filing of such liens with respect to the Improvements; and
- D. The final cost of construction for the Lessee Improvements, Relocated Parking, Additional Parking and Right of Way Access.

14.7.6. Inaccurate or False Certifications. Inaccurate or false certifications provided to Authority by Lessee shall be a breach of this Lease which the Parties agree may only be remedied by specific performance whenever discovered. Lessee's obligation to cure deficiencies in the improvements to the Premises by performance in a good and skilled manner shall survive this Lease.

## **ARTICLE 15 - PORTABLE STORAGE CONTAINERS/STRUCTURES**

15.1 Unless specifically approved in writing, and only under conditions specified by Authority, Lessee shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, barrel or other similar vessel to store merchandise and/or equipment and supplies outside of any enclosed permanent building or structure. Unless specifically approved and only under conditions specified by Authority, Lessee shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure, or device.

## **ARTICLE 16 - COOPERATION WITH AUTHORITY DEVELOPMENT**

Lessee understands and agrees that Authority may pursue development, improvements and maintenance activities from time-to-time that may directly or indirectly affect the Premises and other areas of the Airport and Authority-owned property. Lessee agrees to work cooperatively and in good faith with the Authority and other lessees and contractors in development, improvement and maintenance activities to minimize or mitigate any disruptions. If requested by the Authority, Lessee shall cooperate with the Authority to the greatest extent possible (as necessary and at no cost to Lessee) in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Authority development, improvement, and maintenance activities. Authority may temporarily or permanently close, re-route, and/or consent to the closing or re-routing of any method of ingress or egress on the Authority-owned property, so long as reasonable means of ingress and egress to the Premises are maintained. Exercise by the Authority of any such development, improvement, or maintenance shall be paid by Authority. Lessee shall not be entitled to any compensation for loss of revenue, business interruption, relocation, temporary storage rental, additional labor costs, or any other expense attributable to the development, improvement, or maintenance on the Airport or Authority-owned property.

## **ARTICLE 17 - CONDITIONS OF AUTHORITY DEVELOPMENT**

17.1 Reservation of Easements. In addition to other reservations stated herein, including specifically Article 3, this Lease shall at all times be subject to the easement reservations as outlined herein for the benefit of the Authority and for its use and development of any Authority owned property.

17.1.1. Entry for Construction and Maintenance. Authority hereby reserves to itself and its agents, contractors, employees, licensees, and invitees a nonexclusive easement for ingress and egress over all portions of the Premises

for the purposes of (i) construction, installation, repair, reconstruction, restoration, landscaping, and maintenance of any improvement now or hereafter constructed or installed on the Premises by the Authority or its designated developer and (ii) performing any other obligation of Authority under this Lease, upon at least five (5) days' prior written notice to Lessee. Authority will not use the easement in a manner that unreasonably interferes with Lessee's use and enjoyment of the Premises and this provision shall in no way be interpreted so as to obligate the Authority to construct, install, repair, reconstruct, restore and/or maintain any Lessee Improvements. In the event the Authority causes any damage in the use of any ingress and egress, and the same is in no way caused by Lessee, then the Authority shall repair any damage to substantially the same condition as existed prior to the damage.

17.1.2. Utility and Stormwater Easements. Authority hereby expressly reserves the right to easements upon, over, across, and under the Premises where utilities and/or any stormwater systems are or are to be installed, provided that the use of such areas or the grant of such easements does not unreasonably interfere with Lessee 's operations and use of the Premises. If created and/or granted by Authority, the easement(s) may grant to the providing utility rights for access to, egress from, and to occupy and use the Premises subject thereto for the purposes of installing, maintaining, repairing, servicing, enlarging, extending, modernizing, and/or upgrading any utility located thereon for the benefit of the Premises, or Authority owned property or Lessee or other person occupying any portion of the Authority property. As used herein, *utility* means electricity, natural gas, water, sanitary sewers, telephone, cable television, and other similar facilities of general use and benefit commonly regarded as utilities.

17.1.3. Airport Avigation Easement. Authority hereby expressly preserves and reserves unto to itself an assignable exclusive easement and right-of-way for the free and unobstructed passage of aircraft in, through, and across the air space above and over the Premises, together with the continuing right to clear and keep clear the Premises of all obstructions infringing upon or extending into or above an imaginary line, the extension, distance, and height of which are prescribed in FAA Regulation Part 77, 14 C.F.R. 77, as it may be amended, and for this purpose to cut and remove underbrush and soil and to demolish and remove buildings or any other structures and obstructions infringing upon or extending into or above the air space above the imaginary line, and the right to cut the ground cover, remove, clear, and keep clear all trees that extend above a point ten (10) feet below the imaginary line, whether any structure or obstruction is located on or extending into or over so much of the Premises that lies below such imaginary line; this is expressly reserved together with the right of ingress and egress for the purpose of effecting and maintaining such clearance; and including the right in the air space to allow such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation or flight in the air. Lessee's use, rights, and privileges in the Premises may not interfere with or abridge the rights hereby reserved. Included within this easement is the right to cause or permit in the air space such noise, smoke, fumes, droppings, and vibrations as may be inherent in the

operation of aircraft now or hereafter used for navigation of or flight in the air using the air space for landing at, taking off from, or operating at the Airport.

17.1.4 Reference to Easements Not Required. Any easement provided for or reserved in this Lease shall be appurtenant to and pass with the leasehold interest in the Premises or any portion thereof, whether or not specifically referred to in any instrument granting or conveying any such interest.

## **ARTICLE 18 - INDEMNIFICATION**

### **18.1 General Indemnification.**

18.1.1. Lessee agrees to indemnify, defend and hold completely harmless the Authority, and its members (including, without limitation, members of the Authority's Board), officers, employees and agents of each, from and against all liabilities (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq., or any other federal, state or local environmental statute, ordinance regulation or rule), losses, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels), which may be incurred by, charged to or recovered from any of the foregoing (i) by reason or on account of damage to or destruction of any property of the Authority, or any property of, injury to or death of any person resulting from or arising out of the use, occupancy, or maintenance of the Premises or any improvements thereto, of Lessee's operations thereon, or the intentional or unintentional acts or omissions of Lessee's officers, agents, employees, contractors, subcontractors, invitees or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was proximately caused solely by Authority's negligence or by the joint negligence of Authority and any person other than Lessee or its officers, agents, employees, contractors, subcontractors, invitees or licensees, and/or (ii) arising out of the failure of Lessee to keep, observe or perform any of the covenants or agreements in this Lease to be kept, observed or performed by Lessee. The provisions of this Article shall survive the expiration of earlier termination of the Term of this Lease with respect to any acts or omissions occurring during the Term of this Lease.

18.1.2. The foregoing provisions of this Article are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which Authority otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by Lessee under this Lease.

## 18.2 Additional Indemnifications

18.2.1. Without limiting Lessee's liability pursuant to Section 18.1 above, Lessee shall assume, protect, defend, reimburse, and indemnify Authority, and their respective past, present and future officers, members (including without limitation all members of the governing board of Authority,) and their respective employees and agents, and each of them, and shall hold each and all of them harmless at all times from and against any and all liabilities for compensation under any workers' compensation statute arising out of an injury or injuries sustained by any employee or other worker of Lessee. Lessee also covenants that it shall cause its licensees, contractors, and subcontractors to maintain in effect at all times workers' compensation insurance as required by law and/or this Lease.

18.2.2. Without limiting the generality of any other provision hereof, Lessee shall reimburse Authority for any and all reasonable attorney's fees and investigation expenses incurred by Authority in the defense and handling of said causes of action, suits and claims and in enforcing the provisions of this Lease, excepting those expenses incurred by Authority in the defense and handling of said causes of action, suits and claims resulting from the gross negligence or willful act or omission of Authority.

18.2.3. Lessee hereby expressly waives and releases any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any fire, defect, deficiency or impairments of any of the services in or to the Premises, including, but not limited to, electrical power, gas, telephone service, steam, heating, air conditioning, water supply, drainage or sewage systems, or from wires leading to or inside of any space or structure, or by reason of any loss resulting from the failure of any such system or facility unless such loss or damage is proximately caused by the negligence or willful misconduct of Authority or its officers, agents or employees.

18.2.4. Lessee shall also indemnify, defend, and save Authority harmless from and against any and all Claims that may be imposed upon, incurred by, or asserted against Authority by reason of any of the following occurring:

18.2.4.1. Construction of any Improvements and/or other work done in, on, or about the Premises or any part thereof by Lessee or its agents, employees, representatives, contractors, licensees, or invitees;

18.2.4.2. Any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance, and/or management of the Premises or any of the Improvements or any nuisance made or caused thereon or any failure by Lessee to keep the Premises or Improvements or any part thereof in a safe condition;

18.2.4.3. Any act of Lessee or any sublessee of Lessee or any of their respective agents, employees, representatives, contractors, licensees, or invitees;

18.2.4.4. Any fire, accident, injury (including death), or damage to any person or property occurring in, on, or about the Premises or any Improvement or any part thereof;

18.2.4.5. Any failure by Lessee to pay Rent, Additional Payments or other payments required by Lessee under this Lease or to perform or comply with any provision of this Lease to be performed or complied with by Lessee, and the exercise by Authority of any right or remedy available to Authority with respect thereto;

18.2.4.6. Any lien, claim, or Encumbrance against or on the Premises or any Improvement or any part thereof or any of the assets of, or funds appropriated to, Authority or any liability that may be asserted against Authority with respect thereto to the extent arising out of the acts or omissions of Lessee or its agents, employees, representatives, contractors, licensees, or invitees;

18.2.4.7. Any failure by Lessee to keep, observe, comply with, and perform any provision in any sublease or other agreement affecting the Premises or any part thereof, on Lessee's part to be kept, observed, or performed;

18.3 Risk of Loss. Lessee assumes the risk of damage to all goods, materials, furniture, trade fixtures, equipment, machinery, and other personal property on the Premises and saves Authority harmless from any loss or damage thereto by any cause whatsoever.

18.4 Insurance. Lessee's obligations under this Article shall not be affected by the absence of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises, any of the Improvements, or any personal property on the Premises.

18.5 Lessee to Defend Authority. If any claim, action, or proceeding is made or brought against Authority by reason of any event referred to in this Article, then, upon demand by Authority, Lessee, at its expense, shall resist or defend the claim, action, or proceeding in Authority's name, if necessary, by the attorneys for Lessee's insurance carrier (if such claim, action, or proceeding is covered by insurance), otherwise by attorneys approved by Authority. Notwithstanding the foregoing, Authority may hire its own attorneys to defend itself or to assist in its defense and Lessee shall pay the fees and costs of the attorneys.

18.6 Survival. Without in any way limiting any other provision on the subject matter contained elsewhere in this Lease, Lessee agrees that all of Lessee's obligations of indemnity specified in Article 18 hereof shall survive the expiration or termination of this Lease.

## ARTICLE 19 - INSPECTION

19.1 Inspection and Entry. Provided, there is no disruption of Lessee's use or operation of the Premises, the Authority may enter on the Premises and any part thereof for the purpose of ascertaining its condition and whether Lessee is observing and performing its obligations under this Lease. During the final twelve (12) months of the Term, Authority may show the Premises to any prospective purchaser or mortgagee, all without hindrance or interference from Lessee, provided that the entry does not unreasonably interfere with Lessee's business operations and provided that Authority gives Lessee at least twenty-four (24) hours' written notice prior to inspecting the interior of any building.

19.2 Notice. The twenty-four (24) hour written notice provision shall not be construed to prohibit or delay any entry by Authority in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, or to any entry authorized by any writ or warrant issued by any court, or to any entry authorized by any health or welfare statute, code, ordinance, rule, or regulation. In case of an emergency, as determined by Authority, Authority may enter the Premises and any part thereof without prior notice, if necessary.

## ARTICLE 20 - IMPAIRMENT OF AUTHORITY'S TITLE

20.1 No Liens. Lessee shall not cause or allow any other person or entity to cause any lien, cloud, charge, or encumbrance ("Encumbrance") to be filed, recorded, or imposed on the Premises or any portion thereof, or on any Rent, Additional Payment, or other income to Authority under this Lease. If an Encumbrance is filed, recorded, or imposed, then Lessee shall cause it to be discharged and released within thirty (30) calendar days after the date it was filed, recorded or imposed, or bonded, if applicable and with the prior written approval of the Authority. Lessee shall not create or allow any other person or entity to cause anything to occur that impairs Authority's right, title, and interest in and to the Premises. Lessee shall indemnify, defend, and hold harmless Authority from all claims, losses, demands, costs, expenses, attorney fees, and liability related to or arising out of any Encumbrance.

20.2 Discharge. If any Encumbrance is filed, recorded, or imposed against the Premises or any portion thereof, then Lessee, within thirty (30) calendar days after the filing, recording or imposition, shall cause the Encumbrance to be discharged of record by payment, deposit, bond, order of a court, or such other means legally sufficient to resolve and/or clear the Encumbrance. Lessee shall notify Authority in writing of its action to satisfy or contest the Encumbrance and, if contested, of the matter's status monthly until concluded. If Lessee fails to cause the Encumbrance to be discharged within the thirty day period, then, in addition to all other rights and remedies, Authority may discharge the Encumbrance by paying the amount claimed to be due or by procuring the discharge by deposit or bonding; any amount paid by Authority and costs and expenses incurred by Authority in connection with the Encumbrance shall constitute an Additional Payment payable by Lessee to Authority on demand.



20.3 No Implied Consent. Nothing in this Lease may be deemed or construed in any way as constituting Authority's express or implied authorization, consent, or request to any contractor, subcontractor, laborer, materialman, architect, or consultant for the construction or demolition of any of the Improvements, the performance of any labor or services or the furnishing of any materials for any of the Lessee Improvements, alteration to, or repair of the Premises or any part thereof.

20.4 No Agency Intended. Lessee agrees that it is not the agent of Authority for the construction, alteration, or repair of any of the Lessee Improvements that Lessee may construct on the Premises.

20.5 Survival. Lessee's obligations under the provisions of this Article shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 21 - DAMAGE OR DESTRUCTION**

21.1 General. In the event the Improvements are damaged or destroyed in whole or in part by fire or other casualty, Lessee shall promptly notify the Authority of damage or destruction to any building(s) or Lessee Improvements located on the Premises.

21.2 Restoration of Premises. Lessee shall, at its expense, promptly repair and restore Lessee Improvements and/or the Premises, as applicable, to substantially their condition prior to such damage or destruction (but with such design modifications as Lessee may elect with Authority approval) so that the fair market value of the Lessee Improvements and Premises are substantially equal to the value thereof immediately prior to the casualty. Lessee shall comply, at its sole cost and expense, with all then existing building codes and requirements in the performance of all repairs, replacements, and restoration. Failure to maintain or receive sufficient insurance coverage shall in no way limit or excuse Lessee's obligations hereunder.

21.3 Destruction Due to Risk Covered by Insurance. Subject to Section 21.7, if at any time during the Term of this Lease, the Premises, or any Lessee Improvements on the Premises are damaged from a risk covered by the insurance, such destruction shall not terminate this Lease, but the Premises and all Lessee Improvements so damaged shall be repaired, replaced, and restored to the condition prior to the damage.

21.4 Funds to Restore; Restoration Standards. All cost and expense of restoration of the Lessee Improvements shall be paid by Lessee whether or not the insurance proceeds are sufficient to accomplish such restoration. The restored or replaced property shall be at least equal in value, quality, and use to the value, quality and use of such damaged Improvements immediately before the casualty. Any restoration, rebuilding, repair, and cleanup shall be at Lessee's expense and shall comply with provisions of this lease.

21.5 No Proration or Abatement of Rent. There shall be no prorated Rent, abatement, or reduction of Rent during any period of restoration or rebuilding.

21.6 No Duty to Protect. Protection against loss by fire or other casualty to any

of the contents of the Premises shall not, at any time, be an obligation of the Authority.

21.7 Substantial Damage at End of Term. If fifty percent (50%) or more of the square footage of the structural components of the Lessee Improvements on the Premises are substantially damaged or destroyed by fire or other casualty during the last three (3) years of the Term ("Casualty"), then the Parties shall each have the right to terminate this Lease by delivery of written notice to the other within ninety (90) calendar days of the Casualty. If either Party elects to terminate this Lease, then all insurance proceeds on account of any damage or destruction under the policies of insurance provided for in this Lease, less the costs, if any, incurred in connection with the adjustment of the loss and the collection thereof, and all insurance proceeds arising from Casualty shall be allocated as follows, first, to the cost to clean up and restore the Premises to its pre-lease condition; and then, the remaining proceeds to the Authority; provided, however, Lessee shall be entitled to insurance proceeds attributable to Lessee's trade fixtures, furniture, equipment and other personal property, business interruption and other components of insurance coverage not related to the permanent portions of the Lessee Improvements. In the event, neither Party elects to terminate the Lease, all Lessee Improvements will be restored to the conditions prior to the damage and Casualty.

## **ARTICLE 22 - CONDEMNATION**

22.1 If it shall be in the public interest, Authority shall have the power to condemn the property interests created by this Lease even though it is itself a party to the Lease, provided that this provision shall not be construed as a waiver by Lessee of its rights to contest the validity of any such condemnation.

22.2 If the whole or any part of the Premises or Lessee Improvements shall be taken or condemned by Authority or by any other condemning authority for any public use or purpose, either through any proceeding or by settlement, the Lessee shall be entitled to an award based on the taking of or injury to the Lessee Improvements within the Premises covered by and subject to this Lease. Lessee reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for an award or damages for such taking based on upon Lessee's leasehold interest and Lessee's rights contained in this Lease, interruption of business, moving expenses, goodwill, and Lessee's ownership of buildings alterations and improvements, including the Lessee Improvements, and other damages available under applicable law.

## **ARTICLE 23 - ASSIGNMENT, SUBLEASE, MORTGAGE AND TRANSFER**

23.1 No Assignment, Sublease, Mortgage, or Other Transfer shall occur without Authority consent. This Lease is personal to Lessee. Except as provided herein, no part of the Premises nor any Improvements on the Premises, nor any interest in this Lease, may be sold, assigned, pledged, transferred, mortgaged, or subleased by Lessee, nor may a right of use of any portion of the Premises be conveyed or conferred on any third party by Lessee by any other means (all of the foregoing referred to in this Lease as a "Transfer" or collectively "Transfers"), without the prior written consent of the Authority, which consent shall not be unreasonably withheld, conditioned, or delayed.

23.2 Application. Article 23 shall apply to all Transfers, including any that may

occur by operation of law. If Lessee is a corporation or other entity, any change in ownership resulting in a change in the controlling interest in the stock of the corporation or ownership interest in such other entity, through sale, exchange, merger, consolidation or other transfer, shall be deemed a Transfer requiring the Authority's consent; provided, however, that (i) Lessee may transfer this Lease without the consent of the Authority as a result of a merger, reorganization, acquisition or consolidation of Lessee's business entity with or into another business entity, provided that in any such case the assets of the resulting entity are equal to or greater than the assets of Lessee immediately prior to the transaction, and provided further that Lessee shall provide the Authority with prior written notice of any such transaction; and (ii) Sheetz, Inc. may assign its interest in this Lease to a wholly-owned subsidiary without the prior written consent of the Authority, provided that any such subsidiary-assignee shall not have the right to further assign, pledge or transfer or sublet its rights in this Lease except in accordance with the second sentence of this Section 23.2.

23.3 Fee for Review of Requests for Transfers. The Authority reserves the right to charge a fee for staff and legal time spent in the review of Lessee's requests for the Authority's consent to any Transfer. This fee may be imposed by the Authority whether or not consent is granted, but in no case shall exceed the usual fees charged by the Authority for the review of requests for Transfer for similar lessees of the Authority.

23.4 Effect of Consent. No Transfer shall relieve Lessee of any obligation under this Lease and Lessee shall remain fully liable hereunder unless a specific written release is expressly given by the Authority in writing. Any consent by the Authority to a particular Transfer shall not constitute the Authority's consent to any other or subsequent Transfer. If consent is granted, Lessee shall provide a copy of the signed Transfer document to the Authority promptly after execution. The Transfer document shall contain a provision requiring that the transferee perform and observe all terms and conditions of this Lease and shall provide that the Authority have the right to enforce such terms and conditions directly against such transferee.

23.5 Unpermitted Transfer Void. Any Transfer or attempted Transfer without the Authority's prior written consent or as otherwise permitted herein shall be void.

23.6 Transfer by the Authority. The Authority shall have the right to transfer its interest in the Premises and/or in this Lease, in its sole discretion. In the event of such a transfer, the Authority shall provide written notice to Lessee of the name and address of the Authority's successor and Lessee shall attorn to said transferee and recognize transferee as the new lessor under this Lease. Upon execution of any Transfer by the Authority, the Authority shall be relieved of any and all obligations and duties accruing from and after the date of the transfer provided only that the transferee agrees to assume all obligations and duties of the Authority under this Lease.

23.7 Permitted Mortgage. Lessee shall be free to mortgage or otherwise encumber its interest in this Lease, and the Lessee Improvements in connection with the financing of the Lessee Improvements and in order to secure any other debt or obligation incurred by Lessee for performance under this Lease. However, Lessee shall in no event be permitted to create any lien or other encumbrance on the Authority's fee interest in the Premises or the Authority's interest in this Lease. If requested by Lessee in writing, the

Authority shall, within twenty (20) business days of the Authority's receipt of such request, acknowledge in writing the recognition of any leasehold mortgagee and agree to leasehold mortgagee protection provisions reasonably requested by the leasehold mortgagee including, without limitation, agreeing to (a) give notice of any default to the leasehold mortgagee and a reasonable time for the leasehold mortgagee to cure such default, (b) accept performance by the leasehold mortgagee as if the same had been performed by Lessee, (c) permit the leasehold mortgagee to enter upon the Premises for performance of Lessee's obligations and the exercise of the leasehold mortgagee's rights, (d) not terminate this Lease without giving the leasehold mortgagee thirty (30) calendar days to cure if the default is capable of being cured by the payment of money, (e) permit the leasehold mortgagee (or other acquirer of Lessee's interests) in the event of foreclosure of the leasehold mortgage, assignment in lieu of foreclosure or other similar means, to be the substituted Lessee under this Lease, (f) permit insurance proceeds resulting from a casualty and any award in connection with a condemnation or the exercise of rights under eminent domain to be used first to repair or restore the damaged Lessee Improvements and the remainder to pay the debt owed to the leasehold mortgagee, subject to Article 21, (g) not amend this Lease or accept surrender of the Premises from Lessee without the prior written consent of the leasehold mortgagee, and (h) any other provisions reasonably requested by the leasehold mortgagee so long as the provisions do not encumber the Authority's interest in this Lease or the Premises in any way.

23.8 Subordination. Authority's right, title, and interest in the Premises and this Lease may only be subject or subordinate to a Permitted Mortgage and as subject to Article 33.4. No other encumbrance or security interest shall be placed on Lessee's leasehold interest in this Lease or any other lien or Encumbrance affecting Lessee's interest in this Lease.

23.9 No Release of Obligations. Except for a mutual release and waiver of rights and liabilities arising under this Lease or as otherwise expressly provided in this Lease, any happening, event, occurrence, or situation, whether foreseen or unforeseen, and however extraordinary, shall not authorize Lessee to vacate or surrender possession of the Premises, cancel this Lease, or relieve Lessee of its obligation to pay the Rent, Additional Payments, and any other amount due under this Lease, and shall not relieve Lessee of any of its other obligations under this Lease. The expiration or earlier termination of this Lease will not relieve Lessee of its obligation to pay all Rent, Additional Payments, and any other amount that became due during the Term, any holdover period, or any period of time Lessee had possession or use of the Premises.

23.10 Conflict. In the event there is a conflict between the terms and conditions herein and any federal grant assurances, the grant assurances shall take precedence and govern.

## **ARTICLE 24 - DEFAULT BY LESSEE**

24.1 Events of Breach. The occurrence of the following events shall be considered a material breach of this Lease by Lessee:

24.1.1 Monetary Breach. Lessee fails to pay Rent, Additional Payment, or any other amount when due and the failure continues for ten (10) calendar days after notice from Authority.

24.1.2. Non-Monetary Breach. Except for the non-monetary events listed below, Lessee fails to perform any non-monetary obligation under this Lease and the failure continues for thirty (30) calendar days after notice from Authority, or if such failure cannot by its nature reasonably be cured within said thirty (30) calendar days, does not commence within thirty (30) calendar days such act(s) as shall be necessary to remedy the failure and thereafter diligently proceed to cure the same.

24.1.3. Bankruptcy, Voluntary. Lessee files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent or takes the benefit of any relevant law for bankrupt or insolvent debtors or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any federal, state, or local statute, law, rule, or regulation, or if Lessee seeks or consents to or acquiesces in the appointment of any trustee, receiver, or liquidator of Lessee or of all or any substantial part of its assets, or shall make any general assignment for the benefit of any creditor(s).

24.1.4. Bankruptcy, Involuntary. A petition is filed against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any federal, state, or local statute, law, rule, or regulation and shall remain undismissed or unstayed for ninety calendar days, or if any trustee, receiver, or liquidator of Lessee, or of all or substantial part of its assets, shall be appointed without the consent or acquiescence of Lessee and such appointment remains unvacated and unstayed for ninety (90) calendar days.

24.1.5. Insurance, Lapse or Termination. Any insurance policy required under this Lease lapses or is cancelled, in whole or in part and replacement coverage is not procured within two (2) calendar days. This breach may only be cured by Lessee obtaining a new or renewed policy that specifically complies with the requirements of Article 8 of this Lease. There is no notice from Authority required for this breach.

24.1.6. Permitted Mortgage Default. Lessee breaches any terms and/or becomes in default of any Permitted Mortgage. There is no cure period or notice from Authority required for this breach.

24.1.7. Transfer. The transfer of Lessee's interest in this Lease by execution or other process of law when said process of law is not discharged within thirty (30) days of the transfer.

24.1.8. Violation of any Law. Lessee violates any (a) non-safety related federal, state, or local law, rule, regulation, or ordinance related to the Premises or this Lease and the violation continues for ten (10) business days after notice from

Authority, or (b) safety related federal, state, or local law, rule, regulation, or ordinance related to the Premises or this Lease and the violation continues for two (2) calendar days after notice from Authority. The term 'safety related' as used herein shall mean related to prevention of danger, risk, injury or damage to any person or property.

24.1.9. Ceases to Operate. Lessee vacates, deserts or abandons the Premises or any part thereof for five (5) consecutive days; provided, however, that a vacation, desertion or abandonment shall not be deemed to occur if:

24.1.9.1 Due to a Refurbishment in accordance with Section 7.2 (and such Refurbishment period shall not exceed two hundred seventy (270) consecutive days, unless otherwise agreed to in writing by the Parties) and during such Refurbishment period, Lessee continues to (i) pay Rent and Additional Payments, (ii) perform the other terms and conditions of this Lease (expressly including maintenance and insuring the Premises), and (iii) take all reasonable steps to protect the Premises against vandalism; or

24.1.9.2 Due to a restoration reasonably necessary after casualty or condemnation (and such restoration period shall not exceed one hundred twenty (120) consecutive days, unless otherwise agreed to in writing by the Parties) and during such restoration period, Lessee continues to (i) pay Rent and Additional Payments, (ii) perform the other terms and conditions of this Lease (expressly including maintenance and insuring the Premises), and (iii) take all reasonable steps to protect the Premises against vandalism.

24.1.10. Encumbrances. An Encumbrance is filed or recorded against the Premises or any part thereof because of any act or omission of Lessee or Lessee Parties and the Encumbrance is not removed or discharged in compliance with Article 20 hereof. There is no notice from Authority required for this breach.

24.2 Authority Remedies. Upon a breach of this Lease continuing beyond any and all applicable notice, grace and/or cure periods, Authority may, but shall not be obligated to, thereafter or at any time subsequent thereto during the continued existence of such breach, provided that the Authority shall mitigate its damages:

24.2.1 The Authority may elect to allow this Lease to continue in full force and effect and to enforce all of the Authority's rights and remedies hereunder, including without limitation the right to collect Rent and Additional Payments as they become due, together with late payment charges and interest on all past due payments in accordance with Section 5.3.

24.2.2 The Authority may cancel and terminate this Lease and repossess the Premises (by suitable action or proceeding at law; or by force or otherwise without additional legal process, and all without being liable for indictment, prosecution, trespass, or damages therefor), and upon giving thirty (30)

days written notice to Lessee of its intention to terminate, at the end of which time all the rights hereunder of Lessee shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within the applicable time frame provided in Section 24.1 above (or within thirty (30) days if a cure period for the particular event of default is not specifically proscribed in Section 24.1 above). If Lessee fails to cure within the applicable time frame, then the Authority at its sole option may (1) cancel and terminate all or the rights hereunder of Lessee, and the Authority may, upon the date specified in such notice, reenter the Premises and remove therefrom all property of Lessee and store the same at the expense of Lessee, or (2) elect to proceed under Section 24.2.3 below. If the Authority elects to terminate, Lessee shall be liable to the Authority for all amounts owing at the time of termination, including, but not limited to, Rent and Additional Payments due plus late payment charges and interest in accordance with Section 5.3.

24.2.3 The Authority may elect to reenter and take possession of the Premises and expel Lessee or any person claiming under Lessee, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Lease unless a written notice specifically so states; however, the Authority reserves the right to terminate the Lease at any time after reentry. Following reentry, the Authority may relet the Premises, or any portion thereof, for the account of Lessee, on such terms and conditions as the Authority may choose, and may make such repairs or improvements as it deems appropriate to accomplish the reletting. The Authority shall not be responsible for any failure to relet or any failure to collect rent due for such reletting. Lessee shall be liable to the Authority for all costs of reletting, including any advertising costs, brokerage commissions, the value of the Authority's staff time expended as a result of the event(s) of default, attorney's fees, repairs and/or improvements. The Authority may sue periodically to recover damages during the period corresponding to the remainder of the Lease Term, and no action for damages shall bar a later action for damages subsequently accruing.

24.3 Lessee Liability Continues. The termination of this Lease pursuant to this Article shall not relieve Lessee of its liability and obligations under this Lease, which shall survive the termination. If this Lease is terminated, whether or not the Premises or any part thereof shall have been relet, Lessee shall pay to Authority the Rent, Additional Payments, and any other amount due under this Lease up to the date of the termination. If Authority elects to re-let the Premises under Section 24.2.3 above, and if the amounts received from re-letting of the Premises during any month or part thereof be less than the Rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Authority promptly upon calculation and written notice thereof.

24.4 No Implied Waivers. Authority's failure to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy upon a breach hereof, and any acceptance of full or partial Rent or Additional Payments during the continuance of the breach, shall not constitute a waiver of the breach or the provision. No provision hereof to be performed or complied with by Lessee, and no breach thereof, may be waived, altered, or modified except by a written instrument executed by Authority. A



waiver of any breach shall not affect or alter this Lease, but all provisions hereof shall continue in full force and effect with respect to any other then existing or subsequent breach.

24.5 Remedies Cumulative. The remedies provided in this Lease shall be cumulative and shall in no way affect any other remedy available to Authority under law or equity and no one of them shall be construed as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either Party by law, and shall in no way affect or impair the right of either Party to pursue any other equitable or legal remedy to which either Party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged. The exercise or beginning of the exercise by the Authority of any such rights or remedies will not preclude the simultaneous or later exercise by the Authority of any other such rights or remedies.

## **ARTICLE 25 – DEFAULT BY THE AUTHORITY**

In the event of any default by the Authority, Lessee's remedy at law shall be an action for damages. Prior to being entitled to maintain such action, Lessee shall give the Authority written notice specifying such default with particularity, and the Authority shall have thirty (30) calendar days within which to cure any such default, or if such default cannot reasonably be cured within said thirty (30) calendar days, the Authority shall then have beyond said thirty (30) calendar days to commence cure provided the Authority pursues diligently the cure to completion. Unless and until the Authority fails to so cure such default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of the Authority hereunder shall be construed as covenants, not conditions, and all such obligations shall be binding upon the Authority only during the period of its ownership of the Premises and this Lease and not thereafter.

## **ARTICLE 26 - NOTICES**

26.1 Notices. Except as otherwise expressly provided in this Lease, all notices, consents, approvals, and other communications provided for under this Lease shall be in writing and shall be either delivered electronically or U.S. mailed by certified mail, return receipt requested, or by receipted overnight delivery, to Authority and Lessee at the following addresses:

**by U.S. Mail or Electronically:**

AUTHORITY  
President & CEO  
Greater Asheville Regional Airport Authority  
61 Terminal Drive, Suite 1  
Fletcher, NC 28732  
Email address: [pr@flyavl.com](mailto:pr@flyavl.com)

LESSEE  
Sheetz, Inc.  
Attention: Associate Real Estate Counsel  
351 Sheetz Way  
Claysburg, PA 16625



(814) 239-6014 (direct)  
(814) 718-2215 (mobile)  
Email: [cbarlow@sheetz.com](mailto:cbarlow@sheetz.com)

**by Overnight Delivery:**

AUTHORITY  
President & CEO  
Greater Asheville Regional Airport Authority  
61 Terminal Drive, Suite 1  
Fletcher, NC 28732

LESSEE:  
Sheetz, Inc.  
Attention: Associate Real Estate Counsel  
351 Sheetz Way  
Claysburg, PA 16625  
(814) 239-6014 (direct)  
(814) 718-2215 (mobile)  
Email: [cbarlow@sheetz.com](mailto:cbarlow@sheetz.com)

**Emergency Notification:**

AUTHORITY:  
Airport Communications Center  
(828) 664-4577

LESSEE:  
Jordan Walker  
Facility Support Manager for North Carolina  
336-624-4552  
[jwalker@sheetz.com](mailto:jwalker@sheetz.com)  
or  
1-800-280-4357, press #1 for Emergency

or to such other person or address as either Authority or Lessee may from time to time designate by written notice to the other in accordance with this Section.

26.1.1. Notice given in compliance with this Article is deemed received for purposes of this Lease (i) on the day it is personally delivered, (ii) if sent by email, on the day the email is read, as confirmed by a read receipt confirmation (iii) on the day it is confirmed as sent by facsimile transmittal, (iv) two business days after it is delivered to any commercial air courier or express delivery service, or (v) three business days after it is sent by registered or certified mail as provided above. Unless otherwise expressly provided for herein, any time period stated in a notice shall commence on the date the notice is deemed received and actual receipt is not required.

26.1.2. If Authority or Lessee changes the person or address for notice, then the Party making the change shall give notice of the change to the other Party in compliance with this Article. Unless there is a proper change of address, the Parties are not required to give notice to any person or address other than as set forth above. A Party may not raise failure of or of defect in notice as a defense if the Party failed to give the other Party proper notice that it had changed the person or address for notice.

26.1.3. Notices given orally are invalid.

26.2 Notice to First Permitted Mortgagee Only. When notice is required to be given to a Permitted Mortgagee, the notice shall only be required to be given to the First Permitted Mortgagee. Notice to any other Permitted Mortgagee(s) shall be the responsibility of Lessee. If Lessee fails to give notice to other Permitted Mortgagees, the failure shall not affect the validity of any action taken by Authority. This provision takes precedence over any other provisions of this Lease that may impose a greater notice requirement upon Authority.

## **ARTICLE 27 - QUIET ENJOYMENT**

Authority agrees that Lessee, and anyone claiming by or through Lessee or a Permitted Mortgagee, upon paying all Rent, Additional Payments, and any other amount due under this Lease and complying with all other provisions of this Lease, shall have possession of the Premises without unreasonable interference from Authority, subject only to the terms of this Lease.

## **ARTICLE 28 - ESTOPPEL**

28.1 The Authority and Lessee each hereby agree to provide to the other, upon reasonable request, a commercially reasonable estoppel certificate evidencing:

28.1.1. That this Lease is in full force and effect.

28.1.2. The amount and current status of the Rent, Additional Payments, and any other amount due under this Lease.

28.1.3. That this Lease has or has not been amended or supplemented. If there has been any amendment or supplement, a description thereof.

28.1.4. That there is no default or breach under the Lease and there is no event that, with the passage of time, may result in a default or breach, or if there is any default or breach, a description thereof.

## **ARTICLE 29 - APPROVALS AND CONSENTS**

Unless otherwise expressly stated in this Lease, where the approval or consent of a Party is required, the approval or consent shall not be unreasonably withheld nor delayed. In such instances, if the requesting Party believes that the other Party has unreasonably withheld or delayed its approval or consent, the sole remedy of the requesting Party shall be limited to seeking an injunction or declaratory judgment and in no event shall the other Party be liable for any money damages or lost profits.

## **ARTICLE 30 - ADJOINING EXCAVATION**

Authority will use reasonable efforts to not disrupt Lessee's use or operation of the Premises, upon at least seven (7) days' prior written notice, Lessee shall allow any person authorized by law and approved by the Authority desiring to excavate upon land or streets adjacent to the Premises to enter the Premises and shore up any walls and take any other action during the excavation to the extent required. Authority, at its expense, shall repair, or cause to be repaired any damage caused to the Premises by any excavation, construction work, or other work that may be done on any land or street adjoining or adjacent to the Premises, not caused by Lessee or its contractors.

## **ARTICLE 31 - AUTHORITY NOT LIABLE**

Unless where directly and substantially caused by the negligence of the Authority, its agents, employees or contractors, the Authority shall not be responsible or liable for any damage or injury to any of the Lessee Improvements, or to any personal property, fixture, merchandise, or equipment of Lessee or to any person on the Premises from steam, gas, electricity, water, rain, or any other source(s) whether the same may leak into, issue or flow from any part of the Premises or from pipes or plumbing work of the same, or from any other place or quarter. Authority shall not be responsible or liable in case of any accident or injury, including death, to any of Lessee's its agents, employees, representatives, contractors, licensees, invitees, sublessees, or other any person in or about the Premises or the streets, sidewalks, or vaults adjacent thereto. Lessee agrees that it will not hold Authority responsible or liable therefor.

## **ARTICLE 32 - UNAVOIDABLE DELAY**

If either Party is unable to perform any obligation under this Lease (other than the payment of any sum of money) because of strikes, boycotts, labor disputes, embargoes, riots, rebellion, terrorism, earthquake, fire, and other acts of God, shortages of labor or materials, war, superior governmental authority, governmental laws, regulations, restrictions, delays, an outbreak and/or spread of an epidemic, pandemic, or other disease causing local, regional, or national emergency, or other unforeseen causes beyond the control of such Party, then performance shall be extended for ninety (90) calendar days or during the period of the unavoidable delay, whichever is less. If the affected Party is unable to perform after one hundred eighty (180) calendar days, then this Lease shall terminate, unless the Parties mutually agree, in writing, to extend the time

to perform for any length of time deemed appropriate, and the Parties may extend the time to perform as many times as deemed appropriate. Lessee may not assert any unavoidable delay as an excuse or defense to its failure to pay Rent, Additional Payments, or any other amount due under this Lease or maintain all Insurance as required under this Lease. Lessee's lack of money and/or inability to obtain money or financing is not an unavoidable delay as set forth herein and cannot be used by Lessee as an excuse or defense to its failure to pay Rent, Additional Payments, or any other amount due under this Lease.

### **ARTICLE 33 – GOVERNMENT REQUIREMENTS**

#### **33.1 Government and Federal Aviation Administration Requirements.**

33.1.1. Lessee shall comply with all applicable regulations of the Federal Aviation Administration relating to Airport security and shall control the Premises so as to prevent or deter unauthorized persons from obtaining access to the air operations area of the Airport.

33.1.2. In addition to Article 18.1, the Authority reserves unto itself, and unto its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the said airspace, and use of said airspace for landing on, taking off from or operating on the Airport.

33.1.3 Lessee shall restrict the height of structures, objects of natural growth and other obstructions on the Premises in compliance with the requirements of Federal Aviation Regulations, 14 CFR Part 77.

33.1.4 Lessee shall require any lights in the Premises to be constructed, focused, or arranged in a manner that will prevent them from casting their beams in an upward direction so as to interfere with the vision of pilots in aircraft landing at or taking off from the Airport.

33.1.5. Lessee shall prevent any use of the Premises which would interfere with or adversely affect the operation or maintenance of the Airport or which would otherwise constitute a hazard, danger or nuisance at the Airport.

33.1.6 Notwithstanding anything herein contained that may appear to be the contrary, it is expressly understood and agreed that, except for Lessee's right to possession of the Premises, the rights granted under this Lease are non-exclusive.

33.2 Discrimination Not Permitted. Lessee, for itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Premises under the provisions of this

Lease; (b) that in the construction of any improvements on, over or under the Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (c) that Lessee shall use the Premises 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, Non-discrimination 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. Likewise, Lessee shall comply with laws of the State of North Carolina prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status. Should the Lessee authorize another person to provide services or benefits from the Premises, Lessee shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Lessee shall furnish the original or a true copy of such agreement to Authority. The Authority may, from time to time, be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions, including non-discrimination provisions, concerning the use and operation of the Airport and Authority-owned property, and in such event, Lessee agrees that it will adopt any such requirement as a part of this Lease. If Lessee shall furnish any services to the public at Premises, it shall furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable, and not unjustly discriminatory prices for each unit of service, provided that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any. In the event of breach by Lessee of any of the herein nondiscrimination covenants, continuing after the thirty calendar day notice from the Authority, Authority shall have the right to terminate this Lease and to re-enter and repossess said Premises, and hold the same as if this Lease had never been made or issued. The right granted to Authority by the foregoing sentence shall not be effective until applicable procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights. Further, Lessee assures Authority that no person shall be excluded on the grounds of race, creed, color, national origin, or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Non-discrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended. Lessee also assures Authority that it will require its covered sub-organizations to provide written assurances to the same effect and provide copies thereof to Authority. Lessee assures Authority that it will comply with all pertinent State of North Carolina and/or Federal statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted in connection with its operations under this Lease. Lessee also assures the Authority that it will require any contractors and sublessees (to the extent that such sublessees are allowed under other provisions of this Lease) to provide assurances to the same effect and ensure that such assurances are included in subcontracts at all tiers which are entered into in connection with Lessee's operations under this Lease.

33.3 Airport Concession Disadvantaged Business Enterprise ("ACDBE"). This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. In accordance with these requirements of the U.S. Department of Transportation, Disadvantaged Business Enterprises ("DBEs") as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole in part with Federal funds and in concession agreements at Airports. Lessee agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23. Lessee agrees to include the immediately preceding sentence in any subsequent concession agreements (subcontracts) that it enters and cause those businesses to similarly include the statements in further agreements.

33.3.1 Lessee shall submit information as required concerning the DBE(s) that will participate in this concession. This information will include the names and addresses of each DBE and/or DBE suppliers of goods and services, a description of the work to be performed by each DBE, the dollar value (annual estimated gross receipts) of the DBE's contracted participation, and a description of the legal arrangements to be utilized. Lessee does not have a specific goal for ACDBE participation in the performance of this Lease. Notwithstanding the absence of a specific goal, Lessee agrees that it will make substantial good faith efforts to obtain participation of ACDBEs through subleasing of locations, joint venturing with an ACDBE partner and or utilizing ACDBE vendors/suppliers, when available. If applicable, Lessee will contract with the ACDBEs identified by Lessee and approved by the Authority.

33.3.2 The Lessee agrees it will make good faith efforts to explore all available opportunities to extent practicable to obtain ACDBE participation, or if Lessee does not secure ACDBEs, Lessee agrees to provide documentation of its good faith effort to the Authority.

33.3.3 DBE participation may be in the form of one or more subleases, joint ventures, partnerships, or other legal arrangement meeting the eligibility standards in 49 CFR Part 23. In the event that the Lessee qualifies as a DBE, then ACDBE participation shall be deemed to have been met. Should Lessee be unable to attain participation as provided for above, Lessee may use or obtain the services, goods, and products from Disadvantaged Business Enterprises (DBEs) as allowed by 49 CFR, Part 23.

33.3.4 The Lessee shall replace a DBE firm whose contract is terminated with another DBE firm in order to meet the goal, unless otherwise approved by the Authority.

33.3.5 Lessee shall maintain records and documents of payments to DBE's for three (3) years following their performance under this Lease.

33.4 Subordination to Agreements with the United States. This Lease is subject and subordinate to all current and future agreements entered into between Authority and

the FAA, or any other federal agency, related to the operation or maintenance of the Airport and real property, including agreements that are required as a condition to Authority receiving federal rights or property for Airport purposes or required in order for Authority to spend federal funds to improve or further develop the Airport in accordance with the Federal Aviation Act of 1958 (49 U.S.C. §§ 1301, *et seq.*).

33.5 Rehabilitation Act and Americans with Disabilities Act. Lessee and its agents, employees, representatives, contractors, licensees, or invitees and any other person whom Lessee controls or has the right to control, shall comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA), and all pertinent Executive Orders, regulations, and rules promulgated thereunder. Lessee must train all employees and agents performing under this Lease on Section 504 and ADA requirements.

33.6 Reservation of Rights. The Authority reserves the right for itself and its assigns to access and use the Premises. The Authority reserves the right to grant easements for the purpose of constructing, installing, maintaining, operating, repairing, replacing, and removing new or existing utilities and facilities related to the operation or use of Authority properties and for the purpose of providing access and services to other Authority properties. In addition, the Authority reserves the right for itself and its assigns to widen or realign existing roadways adjacent to the Premises and to install new roadways or driveways, provided that such roadway or driveway construction does not unreasonably interfere with Lessee's use of the Premises. Lessee agrees to execute any reasonable documents requested by the Authority related to the granting of any such access, use rights, or easements. The Authority shall have no liability for interference with Lessee's use of the Premises which might result from the Authority's construction, installation, maintenance, repair, replacement, or removal efforts and no such efforts shall be construed as a constructive eviction, other eviction, or disruption of the quiet enjoyment of Lessee. Rent shall not be reduced during any time period that the Authority is exercising any rights described in this Article; provided, however, if any portion of the Premises is permanently removed as described in the Agreement, then Rent shall be adjusted accordingly.

33.7 Authority Over the Airport and the Airport Public Facilities. In addition to any other rights granted by law or by this Lease, the Authority reserves the following rights with respect to the Airport and Premises including, without limitation, the Airport Public Facilities: a) to adjust the boundaries of, expand or delete all or part of the Airport; (b) to add to, delete, or amend all or any part of the Authority rules applicable to all or portions of the Airport; (c) to permit the use of the Airport by others in such manner as the Authority may from time to time determine; (d) to close all or any portion of the Airport; (e) to construct additional buildings or other Improvements at the Airport; and (f) to evict anyone from the Airport who fails to comply with any applicable laws, including applicable Authority ordinances or rules.

33.8 Right to Amend. If the FAA or any other federal agency requires an amendment, modification, revision, supplement, or deletion of any provision of this Lease as a condition to granting funds for the improvement of the Airport or the Premises then Lessee hereby consents to the amendment, modification, revision, supplement, or

deletion to the extent necessary to satisfy the FAA's or other federal agency's requirements. At the Authority's request, Lessee shall execute and deliver to the Authority all instruments and other documents necessary to evidence its consent.

33.9 Conflict. To the extent of any direct conflict of the terms and provisions of this Article 34 with any other terms of this Lease, the terms of this Article 34 shall control.

## **ARTICLE 34 - GENERAL PROVISIONS**

34.1 Additional Documents. Each Party agrees to provide such other documents from time to time as may be reasonably requested to implement the provisions of this Lease.

34.2 Amendments. All amendments, approvals, and consents required by this Lease shall be in writing, dated, and signed by the Parties, and may not be established by oral testimony. This Lease cannot be modified or amended by any verbal agreement or communication with Authority either before or after this Lease was effective.

34.3 Attorney Fees and Costs. In any contested action related to or arising out of this Lease and except as otherwise expressly set forth in this Lease, the Authority and Lessee shall each be responsible for the fees and expenses of their respective legal counsel, court costs, and consultants.

34.4 Business Certification. If Lessee is a corporation, limited liability company, or other business entity regulated by a different state than North Carolina, then Lessee certifies that it is authorized to do business in the State of North Carolina, is in good standing with North Carolina, and shall remain in good standing with North Carolina throughout the Term of this Lease. If Lessee is an individual or any other unregulated business entity, then Lessee certifies that it is authorized to transact business in the State of North Carolina and shall remain authorized throughout the Term of this Lease. Lessee certifies that the person signing this Lease on its behalf is an agent of Lessee and authorized to bind Lessee to this Lease.

34.5 Brokerage Commissions. Unless expressly provided otherwise herein, each Party warrants to the other that no real estate commission, finder's fees (or similar fees) is owed, or claimed by or through such Party to any person or entity in connection with this Lease, and both Parties do hereby agree to indemnify, defend and hold completely harmless the other Party from and against any and all liabilities, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels) incurred by either Party as a result of any claims therefor.

34.6. Choice of Law. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina, and those of the United States.

34.7 Recording. This Lease shall not be recorded, but, if requested by either



Party, a memorandum hereof shall be prepared, signed by the parties, and recorded in the County where the Premises are located, at the expense of the Party requesting the same. The aforesaid memorandum shall contain such information as is necessary to provide adequate record notice of the existence of the Lease, including the Parties, the Term, the property and easements involved and whether options to renew exist.

34.8 Continuation During Disputes. The Parties shall continue to perform under this Lease during the period of any dispute between them, unless enjoined by a court order. This provision does not apply to the Authority when Lessee is in default or breach of this Lease beyond all applicable notice and cure periods.

34.9 Successors and Assigns. This Lease binds the Parties and their owners, officers, directors, managers, members, agents, employees, representatives, trustees, executors, personal representatives, successors, and assigns.

34.10 Fair Interpretation. Lessee agrees that the rule that ambiguous or vague language in a contract will be construed against the drafter is waived and does not apply to this Lease. Lessee agrees that this Lease shall be interpreted fairly and not against Authority simply because Authority drafted this Lease.

34.11 Headings. Headings for articles, sections, and paragraphs are for reference only and do not limit the content or scope of any provision of this Lease.

34.12 Institution of Legal Actions. Any action or proceeding related to or arising out of this Lease shall be filed and maintained in a state or federal court located in the State of North Carolina and of the Federal District Court for the Western District of North Carolina and the Parties consent to the jurisdiction and venue of such courts.

34.13 Authority's Officials Not Liable. Authority's officers, officials, agents, and employees are not personally liable to Lessee for any default or breach of this Lease by Authority, are not liable for any amount that may become due to Lessee, and are not obligated to perform under any provision of this Lease.

34.14 No Liability to Third Parties. Authority has no liability to any third party for any approval of Lessee's Plans, construction of Lessee Improvements, negligence, failure to comply with the provisions of this Lease, including any absence or inadequacy of insurance required to be carried by Lessee, or otherwise as a result of the existence of this Lease.

34.15 No Third-Party Beneficiaries. Except as expressly stated herein, this Lease does not create and may not be construed as creating any right or privilege in any person that is not a Party to this Lease.

34.16 No Partnership. The relationship of the Parties is solely that of Authority and Lessee. Nothing in this Lease creates or may be construed as creating a principal-agent, employer-employee, partnership, joint venture, or similar relationship between the Parties. Lessee agrees that it is not an agent or employee of Authority for the use or occupancy of the Premises or for the installation, construction, alteration, or repair of any Lessee Improvement(s) on the Premises. Lessee agrees that the Lessee Parties, as

applicable, are not employees of Authority and that Authority's civil service, retirement, or personnel rules and benefits do not accrue or apply to Lessee's employees and contractors. Lessee shall pay all salaries, wages, bonuses, retirement, withholdings, workers' compensation, unemployment compensation and other benefits, taxes, and premiums appurtenant thereto concerning Lessee and the Lessee Parties, as applicable, and Lessee shall indemnify, defend, and hold harmless Authority with respect thereto.

34.17 Savings Clause. If any provision of this Lease is ruled invalid or unenforceable by a court of law applicable to the Premises and/or this Lease, then the provision shall be modified to the extent necessary to make it valid or enforceable, if practicable, and the remaining provisions of this Lease shall remain unchanged and in full force and effect, provided that elimination of the offending provision does not materially prejudice either Party's rights or obligations under this Lease, in which case this Lease will terminate.

34.18 Time of Essence. Time is of the essence in Lessee's payment of Rent, Additional Payments, and any other amount due under this Lease, and the performance of all its other obligations under this Lease.

34.19 Entire Agreement. This Lease constitutes and embodies the entire agreement between the Parties and supersedes all prior written and oral agreements, understandings, discussions, proposals, negotiations, communications, representations, and correspondence related to this Lease and the Premises. The Parties are not bound by any obligation not provided for in this Lease. Lessee agrees that it was not induced to enter into this Lease by any misrepresentation, undue influence, or coercion by Authority or any of its officers, officials, agents, or employees. The Recitals and Exhibits attached to this Lease are material parts of this Lease and are incorporated herein by this reference.

IN WITNESS WHEREOF, this Lease is duly executed by the parties hereto as of the day and year first above written, intending themselves to be legally bound hereby.

**GREATER ASHEVILLE REGIONAL  
AIRPORT AUTHORITY**

By: \_\_\_\_\_  
Lew Bleiweis, A.A.E.  
President & CEO

\_\_\_\_\_  
Date

**SHEETZ, INC.**

By: \_\_\_\_\_  
  
Travis T. Sheetz  
President & CEO

\_\_\_\_\_  
8/3/23  
Date

**SCHEDULE 14.7.5  
CONSTRUCTION COST SUMMARY (IMPROVEMENTS)**

(\*\*\*)To Be Completed and Attached within 90 Days of Completion of Construction(\*\*\*)

RE: Ground Lease and Agreement dated \_\_\_\_\_, 2023 (the "Lease"), between GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY ("Authority") and SHEETZ, INC. ("Lessee") for the Premises, approximately \_\_\_\_\_ acres located at \_\_\_\_\_. Unless otherwise specified, capitalized terms used herein shall have the same meanings as in the Lease.

Lessee agrees that:

1. The Improvements have been completed in accordance with the approved Plans and specifications, and all applicable zoning and permitting requirements.
2. The Improvements have been completed in a good and skilled manner.

COST CATEGORY – LESSEE IMPROVEMENTS	FINAL AMOUNT	PERCENT OF TOTAL
Planning and Development		
Building Improvements		
Site Work Improvements		
Equipment Costs		
<b>TOTAL PROJECT COST</b>		

**SHEETZ, INC.**

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

\_\_\_\_\_ Date

**SCHEDULE 14.7.5**  
**Page 2**

<b>COST CATEGORY – Relocated Parking</b>	<b>FINAL AMOUNT</b>	<b>PERCENT OF TOTAL</b>
Planning and Development		
Building Improvements		
Site Work Improvements		
Equipment Costs		
<b>TOTAL PROJECT COST</b>		

<b>COST CATEGORY – Additional Parking</b>	<b>FINAL AMOUNT</b>	<b>PERCENT OF TOTAL</b>
Planning and Development		
Building Improvements		
Site Work Improvements		
Equipment Costs		
<b>TOTAL PROJECT COST</b>		

**SHEETZ, INC.**

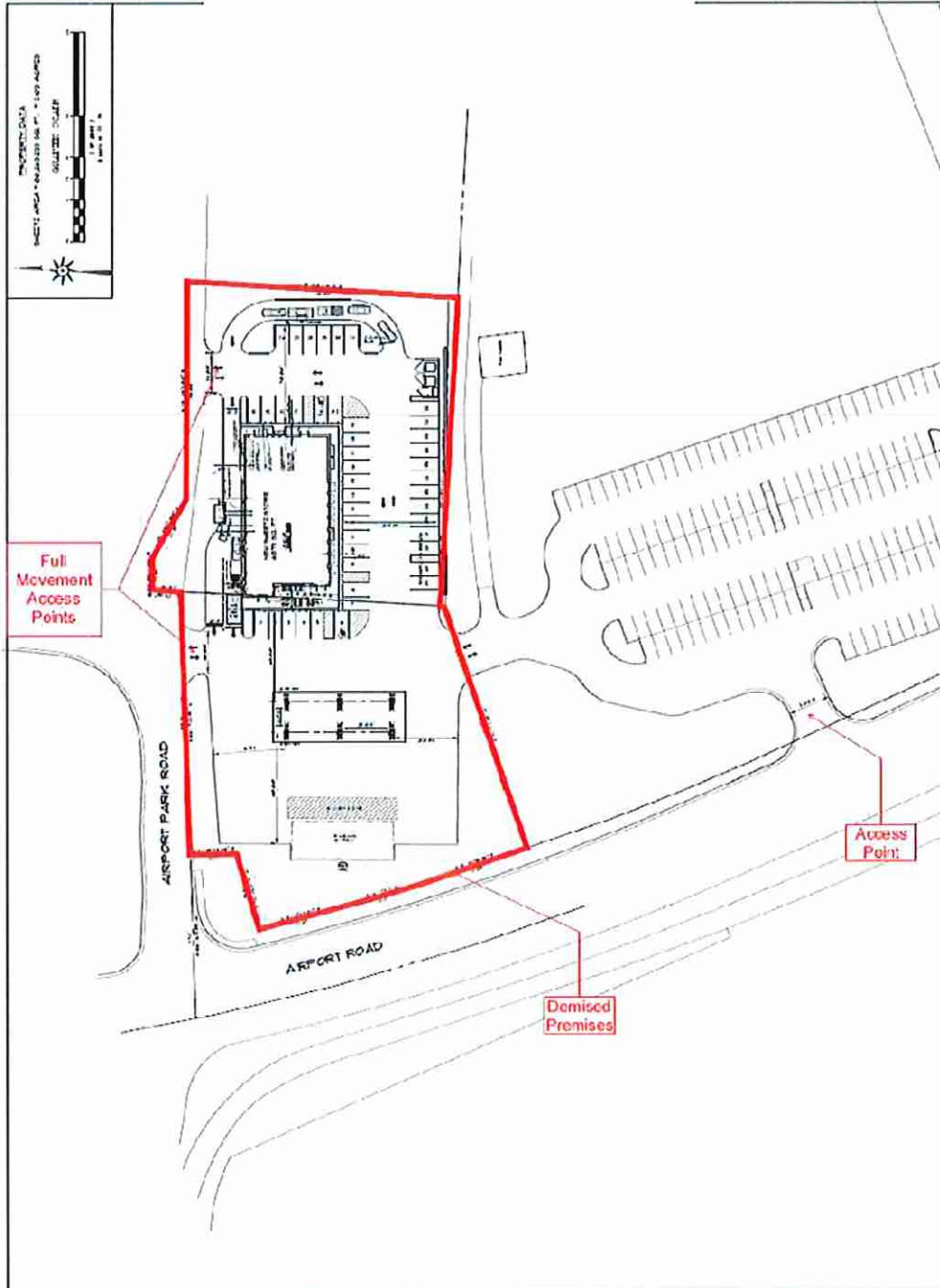
By: \_\_\_\_\_ Date \_\_\_\_\_  
Its: \_\_\_\_\_

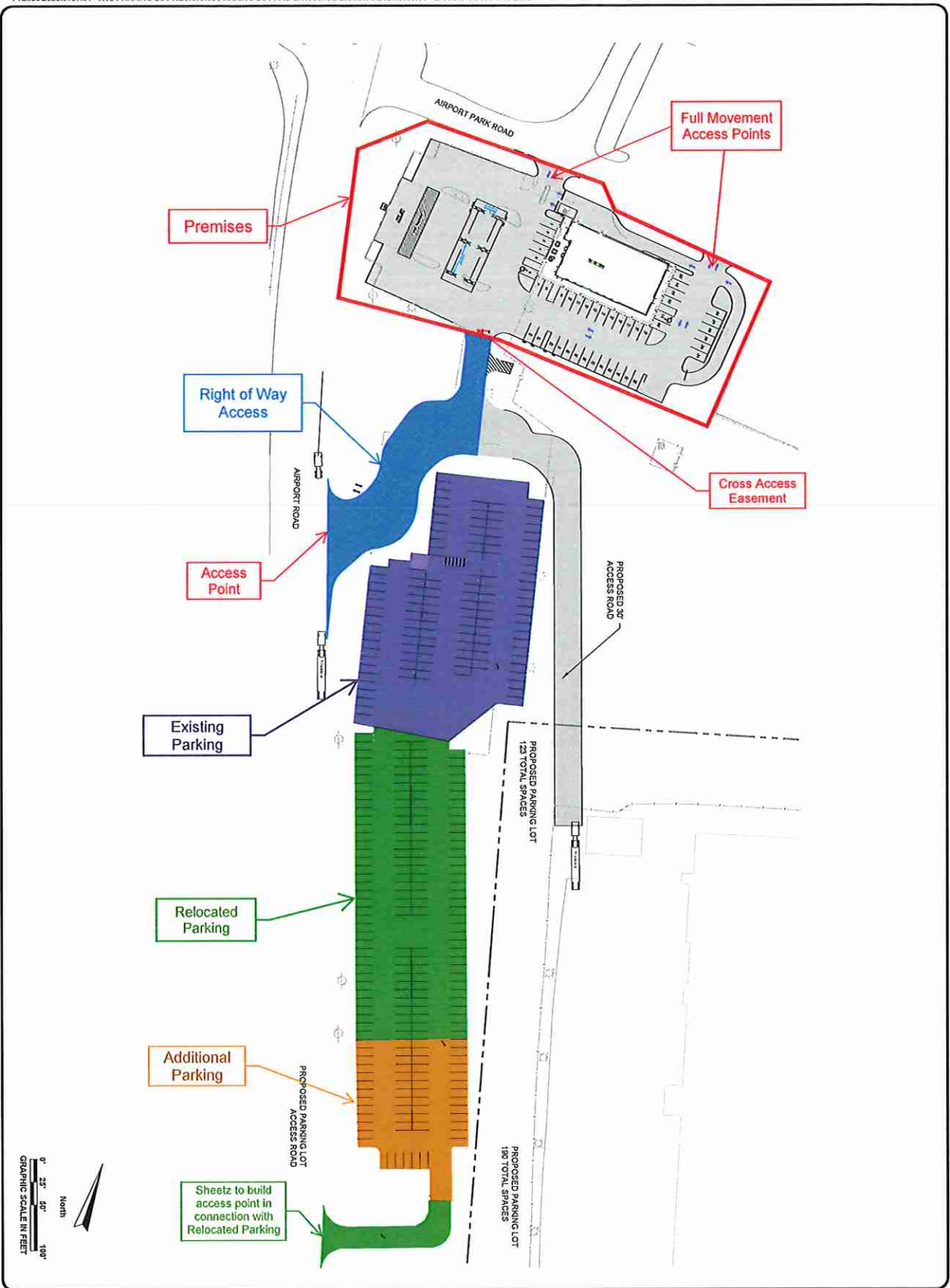
**Acknowledgement of receipt and approval of the foregoing from Lessee:**

**GREATER ASHEVILLE REGIONAL  
AIRPORT AUTHORITY**

By: Lew Bleiweis, A.A.E. Date \_\_\_\_\_  
President & CEO

# Exhibit A Premises





**DESIGNED BY:** J.C.W.  
**DRAWN BY:** J.C.W.  
**CHECKED BY:** J.M.M.  
**APPROVED BY:** J.M.M.  
**DATE:** MARCH 2023  
**STATE LICENSE #:** N.C. C-2450  
**PROJECT NO.:** 2023.0157.01  
**SHEET NUMBER:** EX-04

**REVISIONS:**

NO.	DATE	BY	DESCRIPTION

**SCALE:**

THIS SHEET IS PART OF A SET OF PLANS FOR THE PROJECT DESCRIBED ABOVE. THE USER OF THESE PLANS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR VERIFYING THE ACCURACY OF ALL INFORMATION SHOWN ON THESE PLANS. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE LOCAL AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE LOCAL AUTHORITIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE LOCAL AUTHORITIES.

**PARKING LOT REVISIONS**  
**EXHIBIT 4**

**ASHEVILLE REGIONAL AIRPORT**  
**FLETCHER NORTH CAROLINA**

**ATYCON, INC.**  
 PRELIMINARY DESIGN  
 CONSTRUCTION

**Asheville REGIONAL AIRPORT**

## Exhibit C Percentage Rent Monthly Report

Remit Payment to:  
Greater Asheville Regional Airport Authority  
61 Terminal Drive, Suite 1  
Fletcher, NC 28732

Send Reports to:  
xxxxxxx

### MONTHLY GROSS RECEIPTS REPORT ("MONTHLY STATEMENT")

SHEETZ # \_\_\_\_\_  
Asheville Regional Airport

Month: \_\_\_\_\_ Year: \_\_\_\_\_

[This Monthly Statement and payment must be submitted to Authority by the 15th of each month.]

Gross Receipts	\$ _____	
Less Discounts (1)	\$ _____	Discount % _____
Adjusted Gross Receipts	\$ _____	

Percentage Fee X 1.5%

Percentage Fee Payable \$ \_\_\_\_\_

*The Monthly Statement with prior month actuals, along with payment, is due by the fifteenth (15th) day of each calendar month. The undersigned hereby certifies that the figures above represent a true account statement for the transactions, gross receipts, and fees collected.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Email

\_\_\_\_\_  
Prepared By

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone



**Exhibit D**  
**Operating Standards**  
**Page 1 of 3**

In the operation of the business to be conducted under this Lease, Lessee agrees to comply with the following conditions and requirements:

2. Lessee shall provide the customary facilities and services of a Convenience Store and gas station in support thereof twenty-four (24) hours per day, seven (7) days per week.
3. Lessee shall furnish well-trained personnel, including qualified, competent, and experienced supervisory personnel, and other support staff necessary to operate its Convenience Store and gas station. Lessee shall select and appoint a full-time manager and supervisors necessary to fulfill the requirements of the operation.
4. Lessee's supervisors shall be qualified and experienced supervisors. Each shall be capable of acting as the manager during the full-time manager's absence. Supervisors shall be trained by the manager and Lessee so that each shall become proficient in handling all the duties of the manager. Supervisors shall be scheduled so that the manager or a supervisor is on duty at all times.
5. Lessee shall ensure polite and inoffensive conduct and demeanor on the part of its representatives, agents, servants, and employees.
6. Lessee shall furnish good, prompt, courteous and efficient service to meet reasonable demands or requests for such services.
7. Lessee's Premises shall be clean in appearance and maintained so as to present a professional and well-kept image at all times.
8. Lessee shall not distribute, or allow to be distributed, advertising or promotional materials, flyers, or leaflets at or upon Authority Property.
9. Lessee shall not allow its agents, servants or employees so engaged to conduct business in a loud, noisy, boisterous, derogatory, discriminatory, offensive, objectionable manner, or to drive in either a reckless or an unlawful fashion, or to solicit business on Airport or Authority Property except through the Authority's advertising concessionaire.
10. Lessee shall operate its business upon the Premises so that a duplicate sales slip, or detailed sales transaction shall be issued with each sale or transaction. Such duplicate detailed sales transactions shall be considered a part of Lessee's books and records of accounts and shall be retained pursuant to Article 6 of this Lessee.

**Exhibit D**  
**Operating Standards**  
**Page 2 of 3**

11. Lessee shall not misrepresent to the public its prices or the terms and provisions of its services or those of its competitors. Lessee shall comply with all applicable rules and regulations of all governmental agencies having jurisdiction over Lessee's activities. Lessee shall, upon receipt of written notice, immediately cease any business practices which Authority determines to be deceptive.
  
12. Lessee must offer for sale:
  - a. Motor fuels including regular, mid-grade, high grade and automobile diesel.
  - b. Fast food, which must include carry-out service with limited indoor and outdoor seating, and such fast food items may also be sold via the drive-thru service lane. All made-to-order items and cold made-to-go items must be available 24-hours a day.
  - c. Lessee's branded specialty coffee concept, which must be available 24-hours a day.
  - d. Snacks, fountain or pre-packaged beverages, pre-packaged foods, cigarettes and other merchandise typical to a Convenience Store operation, except for pornographic materials, which are prohibited.
  - e. Beer and wine products for sale to the extent allowed by North Carolina Alcoholic Beverage Control Commission regulations (and subject to Lessee's applicable permit/license and all other applicable Laws) with the following restrictions and/or prohibitions:
    1. Beer and unfortified wine may only be sold for off-site consumption; and
    2. Fortified wines may not be sold.
  
13. Lessee may provide electric vehicle charging stations through sublease/license arrangements with third-party electric charging providers, provided that such sublease/license agreement(s) have been approved in advance in writing by Authority and that the electricity costs for such vehicle charging stations are billed to and paid by Lessee and/or the third-party electric charging provider(s).
  
14. Lessee must accept cash, debit and credit payments for all sales, and must offer debit and credit payments for motor fuel sales at each pump. Lessee is not obligated to offer credit sales for lottery.
  
15. Lessee must provide air pumps for customer use.
  
16. Lessee must provide sufficient parking to ensure parking for the fast-food operation does not interfere with motor fuel and convenience center operations.
  
17. Lessee may also offer for sale such merchandise and services typical to a Convenience Store, including, but not limited to, ATM banking and payphones services.

**Exhibit D**  
**Operating Standards**  
**Page 3 of 3**

18. Notwithstanding any provisions hereof to the contrary, Lessee shall not (i) provide automobile and/or truck rentals, (ii) perform automobile repairs and/or maintenance, (iii) provide parking services (whether or not for compensation), (iv) provide passenger shuttle service, (v) perform any service not specifically listed or permitted in the terms of the Lease.
19. Lessee's right to operate the Convenience Store business at the Airport as granted in this Lease shall not be construed as an exclusive right.

**Exhibit E**  
**Insurance Requirements**  
**Page 1 of 2**

At least three (3) business days prior to the Effective Date of this Lease and at least ten (10) days prior to the expiration of any policy or policies theretofore provided hereunder by Lessee, Lessee shall cause a certificate or certificates of insurance to be furnished to Authority evidencing all such coverage, and such certificate shall provide that the policy or policies will not be cancelled nor the limits thereunder be materially changed without first providing at least thirty (30) days' written notice thereof to Authority. The Greater Asheville Regional Airport Authority, and the members (including, without limitation, members of Authority Board), officers, agents and employees of each, all of whom shall be named as additional insureds, from and against any and all liabilities arising out of or relating to Lessee's use or occupancy of, or the conduct of its operations on the Premises,

**A. Liability Insurance** (any auto, including owned autos, non-autos and hired autos), and Commercial General Liability insurance (including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, Independent Contractors, Personal Injury coverage, as applicable), Liquor Liability, Employment Practices, Crime Liability, Pollution Liability protecting Lessee, the Greater Asheville Regional Airport Authority, and the members (including, without limitation, members of Authority Board), officers, agents and employees of each, all of whom shall be named as additional insureds, from and against any and all liabilities arising out of or relating to Lessee's use or occupancy of, or the conduct of its operations on, the Premises and any improvements thereto, in such form and with such company or companies as the Authority may reasonably approve, with a combined single limit (or its equivalent) per occurrence of not less than the amount set forth hereof, with a deductible reasonably acceptable to the Authority, with a waiver of any right of subrogation that the insurer may have against the Authority, with contractual liability coverage for Lessee's covenants to and indemnification of the Authority under this Lease, and with the insurance company obligated to use counsel agreed upon by the Parties and competent in this area of insurance defense in carrying out its obligations to the Authority. This insurance shall provide that it is primary insurance as respects any other valid and collectible insurance Authority may possess, including any self-insured retention or deductible Authority may have, and that any other insurance Authority does possess shall be considered excess insurance only. This insurance shall also provide that it shall act for each insured and each additional insured as though a separate policy has been written for each; provided, however, that this provision shall not operate to increase the policy limits of the insurance; and,

**B. Workers Compensation Insurance** as required by the laws of North Carolina; provided, however, that Lessee may self-insure its workers compensation liability, if in compliance with North Carolina law. Employers Liability coverage is also required with limits of liability not less than \$500,000 each accident, \$500,000 disease policy limit and \$500,000 disease-each employee.

Lessee shall purchase and maintain throughout the Term of this Lease the following insurance:

**Exhibit E**  
**Insurance Requirements**  
**Page 2 of 2**

**Minimum Limits of Insurance**

Lessee, or any party the Lessee subcontracts with, shall maintain limits of liability of not less than those set forth below.

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$5,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$5,000,000 per occurrence for personal and advertising injury;
  - (iii) \$5,000,000 aggregate for products and completed operations; and,
  - (iv) \$5,000,000 general aggregate applying separately to the work performed under the Agreement.
  
2. **COMMERCIAL AUTOMOBILE LIABILITY:**
  - (i) \$1,000,000 per accident for bodily injury and property damage.
  
3. **CRIME LIABILITY INSURANCE:** Not less than \$1,000,000 for each occurrence covering all employees, including sub-contractors, who have access to or responsibility for or who handle any funds associated with or generated on or from the Premises.
  
4. **PROPERTY INSURANCE:** Insurance against loss of or damage to all buildings, improvements, equipment, and fixtures on the Premises resulting from fire, lightning, vandalism, malicious mischief, those risks ordinarily defined as "all risk coverage." Such property insurance shall be in amount equal to the full replacement cost of said buildings, improvements, equipment, and fixtures, including all required code upgrades.
  
5. **BUSINESS INTERRUPTION INSURANCE:** Insurance equal to 100% of the rental requirements herein stated, including fixed rents and percentage rents, which shall be based on an annual average computed on the most recent twelve-month period.
  
6. **WORKERS' COMPENSATION INSURANCE** as required by the State of North Carolina with statutory limits and **EMPLOYER'S LIABILITY** with limits of liability not less than:
  - (i) \$500,000 each accident for bodily injury;
  - (ii) \$500,000 disease each employee; and,
  - (iii) \$500,000 disease policy
  
7. **DRAM SHOP/LIQUOR LIABILITY INSURANCE** for liquor liability coverage covering any claims arising under applicable law relating to said uses which could be asserted against Authority, Lessee, or the Premises if Lessee serves or sells alcoholic beverage in or from the Premises. Liquor Liability coverage is required with limits of liability of not less than:
  - (i) \$2,000,000 per occurrence;
  - (ii) \$2,000,000 aggregate for bodily injury and property damage;
  
8. **POLLUTION LIABILITY/ENVIRONMENTAL IMPAIRMENT/ENVIRONMENTAL CLEAN-UP AND LIABILITY/STORAGE TANK POLLUTION LIABILITY:**
  - (i) \$1,000,000 per occurrence.


IN WITNESS WHEREOF, this Lease is duly executed by the parties hereto as of the day and year first above written, intending themselves to be legally bound hereby.

**GREATER ASHEVILLE REGIONAL  
AIRPORT AUTHORITY**

By: \_\_\_\_\_  
Lew Bleiweis, A.A.E.  
President & CEO

\_\_\_\_\_  
Date

**SHEETZ, INC.**

By:  \_\_\_\_\_  
Travis T. Sheetz  
President & CEO

\_\_\_\_\_  
8/3/23  
Date



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## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Jared Merrill  
Vice President - Planning

DATE: August 11, 2023

### **ITEM DESCRIPTION – New Business Item C**

Approval of Agreements for Professional Consulting Services for the 2023-2028 Capital Improvement Program (CIP)

### **BACKGROUND**

The FAA requires the airport select and maintain professional services consultants for certain projects within the airport's five-year CIP based on qualifications. The most recent process was undertaken in 2018, and the contracts awarded are set to expire by the end of September 2023. The 2023-2028 CIP program contains projects that require consultant services for architectural, civil, planning, financial, and other professional services.

A qualifications-based selection process was conducted in accordance with FAA requirements and publicly advertised on May 10, 2023 with a due date of June 8, 2023. Twelve firms submitted Statements of Qualifications. A review committee made up of five senior staff members reviewed the submittals and short listed four firms and invited them for interviews. The review committee conducted the interviews on August 2-3, 2023, and based on qualifications, selected McFarland Johnson, Avcon Engineers and Planners, Inc., and Kimley Horn as those most qualified firms to provide the necessary services for the Greater Asheville Regional Airport Authority over the next five years. This information will be submitted to the FAA for their review and approval.

### **ISSUES**

None.

New Business – Item C



## **ALTERNATIVES**

None, the airport is required by the FAA to award professional services agreements in this manner.

## **FISCAL IMPACT**

There is no fiscal impact directly associated with this action. Any work performed under these contracts will require negotiation of a scope of work and fee, which will require separate Board approval in accordance with Authority policies.

## **RECOMMENDED ACTION**

It is respectfully requested that the Airport Authority Board resolve to (1) approve the Agreements for Professional Consultant Services with McFarland Johnson, Avcon Engineers and Planners, Inc., and Kimley Horn conditional upon FAA approval; and (2) authorize the President & CEO to execute the necessary documents.





Greater Asheville Regional Airport Authority  
Five Year Consulting Services Selection Process

Consultant Rankings by Staff:

1. McFarland Johnson
2. Avcon Engineers & Planners, Inc.
3. Kimley Horn
4. RS&H

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES**  
BETWEEN  
**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**  
AND  
**MCFARLAND JOHNSON**

THIS IS AN AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY, 61 Terminal Drive, Suite 1, Fletcher, North Carolina 28732, hereinafter referred to as "Authority," and MCFARLAND JOHNSON, a Corporation with office located at 330 East Coffee Street, Suite 5017, Greenville, SC 29601, hereinafter referred to as the "Consultant."

**WITNESSETH**

WHEREAS, Authority anticipates a need for Professional Consulting Services (hereinafter called "Services") for the accomplishment of the proposed projects as described in **Exhibit "A"** [hereinafter called "Project"], and Consultant is desirous of providing such services to Authority;

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, Authority hereby retains Consultant, and the parties agree as follows:

Consultant hereby agrees to perform Services for Authority as subsequently described by separate Scope of Services (**see Exhibit "B"**) to this Agreement for Services, subject to and in accordance with the terms and provisions hereinafter contained. Individual Scope of Services shall be negotiated on a project-by-project basis.

The term of this Agreement shall be for a period of five (5) years beginning on the date of execution, unless terminated in accordance with Section 7.7 of this Agreement.

**SECTION 1 – SCOPE OF SERVICES**

The Authority will request a Scope of Services for each project it desires to engage the services of the Consultant. Each Scope of Services shall be specific as to the extent of services required for each project. The Scope of Services shall be as described in the form included as **Exhibit "B"**. Services for the Project may include the following elements:

1. Assistance in formulating the project and applying for State and/or Federal aid. (Due to logistics of the funding process, these services are generally performed prior to preparation of the Scope of Services.)
2. Preparation of preliminary design information for review and approval.
3. Assistance with obtaining necessary property, topographic and environmental surveys, and investigative testing.

4. Preparation of Plans, Specifications, Bidding Documents, other Contract Documents, and Reports.
5. Assistance with obtaining permits and approvals required to construct the project.
6. Assistance during the bidding and construction contract formulation process.
7. Construction contract administration and Resident Project Representative (RPR) services.
8. Assistance with Quality Assurance (QA) Testing during construction.
9. Assistance with project close-out.

## **SECTION 2 - BASIC SERVICES**

### **2.1. General**

- 2.1.1 Scope of Basic Services: Unless otherwise modified in the respective Scope of Services for the Project, Basic Services shall consist of Services during the Preliminary Design Phase, the Design and Permitting Phase; the Bidding and Contract Preparation Phase, and the Construction and Close-Out Phase.
- 2.1.2. Site: The Site of the Project will be described in the corresponding Scope of Services. The Project will typically be contained within the boundaries of the airport property, but in some cases utilities, roadways and other miscellaneous work may be required in contiguous areas to achieve a complete Project.
- 2.1.3 Sub-consultants: Consultant shall not utilize any sub-consultants for carrying out the services to be performed under this Agreement without the prior written approval of Authority. By the execution of this Agreement, Authority grants approval for the utilization of the sub-consultants set forth in **Exhibit "D"**, which is attached hereto and incorporated herein.
- 2.1.4 Authorization to Proceed: Return of the signed and dated Exhibit B or numbered task order for a specific project to the Consultant shall constitute authorization to proceed. Authority shall verify that necessary Federal Aviation Administration (FAA) and/or North Carolina Department of Transportation (NCDOT) approvals have been received, prior to returning the signed Agreement, if appropriate. Consultant shall assist Authority with obtaining approvals.
- 2.1.5 Work Performed Prior to Execution of Agreement: Due to the logistics of the FAA and NCDOT funding process, assistance with formulating the project (or multiple Projects in the Authority's Work Program) and assistance with the preliminary request for State or Federal Aid is usually performed by Consultant prior to approval of the Agreement for a specific Project. For typical airport improvement Projects, such work is performed to assist in promoting development of the Airport, in the anticipation of recovering the expended costs as part of the Preliminary Design-Phase fee after the Agreement is executed. If, for any reason, the Agreement for the specific project is not executed, the Authority shall have no obligation to compensate Consultant for assistance expended to formulate the

Project or request aid prior to execution of the Authority, except in the case of complex projects or projects with an apparent low probability of funding, in which it has been agreed in writing, in advance, that the Consultant will be compensated on a time-and-material or other basis for Project formulation and/or assistance with the request for funding. In such cases, the fee for Basic Services, if finally approved, shall not include the amount paid earlier for Project formulation and/or assistance with requests for funding.

- 2.1.6 Cooperation with Other Consultants: Consultant recognizes that the Authority has selected one or more other consultants to assist with the development of the Airport. The Consultant agrees to cooperate with the other consultant(s) and assist the Authority diligently in the process of pursuing funding of projects, without regard to which Consultant appears more likely to perform the consulting services for any particular project.

## **2.2. Pre-Planning Phase**

After receiving an executed Scope of Services agreement, Consultant shall:

- 2.2.1 Consult with Authority to clarify and define the Authority's requirements for the project, discuss alternatives, and consider the cost of alternatives.
- 2.2.2 Review all available data; advise Authority to necessity of the Authority's providing or obtaining from others data or services of the types as described in paragraph 4.3, and assist Authority in obtaining such data and services.

## **2.3. Planning Phase**

After approval of the pre-planning documents, Consultant shall:

- 2.3.1 Prepare Plans and Narrative, depicting scope, character, and details of the Plan and alternatives.
- 2.3.2 Prepare a report summarizing the basis and rationale of the design, listing standards used, and providing the Consultant's final opinion of probable construction costs and suggested funding and phasing.
- 2.3.3 Furnish to Authority two sets of Planning Documents, and additional sets as required by the Authority.
- 2.3.4 Respond to Authority and other governmental agency review comments.
- 2.3.5 Unless otherwise agreed in advance, all aforementioned documents will be prepared and submitted to the Authority in both hard copy and electronic format (AutoCAD latest version compatible; Microsoft Word, or such other electronic formats as requested by the Authority)
- 2.3.6 Coordinate follow-up services by other consultants.

## **2.4. Preliminary Design Phase**

After receiving an executed Agreement Consultant shall:

- 2.4.1 Consult with Authority to clarify and define Authority's requirements for the Project, discuss alternatives, and consider the costs of alternative designs.
- 2.4.2 Review available data; advise Authority as to the necessity of the Authority's providing or obtaining from others data or services of the types described in paragraph 4.3, and assist Authority in obtaining such data and services.
- 2.4.3 Prepare preliminary, schematic layouts, sketches and conceptual design drawings and other exhibits to clearly indicate the design considerations involved and the alternative solutions available. Provide recommendations, with an opinion of the Probable Cost of the Project. It shall be understood that the opinions of Probable Cost are offered only as the Consultant's opinion of the likely cost of the improvements based on the Consultant's experience and the limited information available at the time; such opinions of cost are not to be construed as guarantees. If the word "Estimate" is used, it shall be understood to mean "opinion of Probable Cost."
- 2.4.4 Transmit by expeditious means (fax, internet, express courier, or hand delivery; or by U.S. Mail if appropriate for the project schedule) the Preliminary Drawings and other information. Discuss by telephone or in person as appropriate, and revise the Drawings and other exhibits as needed until Authority approves the Preliminary Design. Coordinate drawings and other information with permitting and/or regulatory agencies as appropriate for this phase, to avoid unnecessary changes to the final Construction Documents. Upon approval by Authority of the Preliminary Design, which shall be given either in writing by Authority or verbally by Authority and confirmed in writing by Consultant, the Design Phase shall begin. Multiple revisions of the drawings during the Preliminary Design phase shall not be considered "Additional Services."

## **2.5 Design Development Phase**

- 2.5.1 Based on the approved Preliminary Design Documents and any adjustments authorized by the Authority in the program, schedule or construction budget, the Consultant shall prepare, for approval by the Authority, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.
- 2.5.2 The Consultant shall advise the Authority of any adjustments to the preliminary estimate of Construction Cost.

## **2.6. Design and Permitting Phase**

After approval by the Authority of the Design Development Documents, Consultant shall:

- 2.6.1 Prepare Final Plans and Specifications, depicting the scope, character, and details of the work, in accordance with generally accepted standards of airport design practice. The term "Specifications" shall be understood to include General Conditions, Special Provisions, and other Contract Documents.
- 2.6.2 Prepare a report, summarizing the basis and rationale of the design, listing standards used, and providing the Consultant's final opinion of probable construction costs.
- 2.6.3 Furnish to Authority at least two sets of Plans, Specifications, and Consultant Report, and simultaneously send one set each to FAA, NCDOT and/or any other applicable governmental agencies, for review. Assist Authority with submittal of certifications. Consultant shall provide additional copies of these docs if requested.
- 2.6.4 Respond to Authority, FAA, NCDOT and/or any other applicable governmental agency review comments. Corrections, additions or modifications to satisfy for applicable government agencies shall not be considered additional services or be eligible for additional compensation.
- 2.6.5 Furnish to Authority such documents and design data as may be required for submittal to governmental authorities having jurisdiction over the Project, and assist in obtaining permits and approvals by participating in submissions to and negotiations with the authorities. (All permit and review fees shall be paid by Authority.) It must be understood that these services do not constitute a guarantee that the permits will be issued; some projects (runway extensions, wetland mitigation, etc.) may be of a controversial nature and it may not be possible to obtain permits, or it may be found that substantial additional services may be required to obtain permits.
- 2.6.6 Unless otherwise agreed in advance, all aforementioned documents will be prepared and submitted to Authority in both hard copy and electronic format (AutoCAD latest version compatible; Microsoft Word, or such other electronic formats as requested by the Authority). Data files will be furnished to Authority, at any time upon request.
- 2.6.7 Design team shall complete and incorporate into the construction documents the project Construction Safety and Phasing Plan (CSPP). It is the responsibility of the design team to complete this document with input from the Authority and to submit completed document to the FAA for review and approval. This document must be in the bid documents.

## **2.7. Bidding and Contract Formulation Phase**

After Authority, FAA, NCDOT and/or any other applicable governmental agencies have approved the documents for Bid Advertisement, the Consultant shall:

- 2.7.1 Assist Authority in advertising for and obtaining bids or negotiating proposals for each Construction Contract. Consultant shall receive payments for bid documents, and issue bidding documents directly to prospective bidders, and furnish the requested number of bid document sets to Authority for issuance to bidders from Authority's office.

- 2.7.2 Respond to prospective bidder's inquiries and issue Addenda as required to clarify, and/or interpret the Bidding Documents.
- 2.7.3 Attend the bid openings. Prepare bid tabulation, and assist Authority in evaluating bids or proposals, preparing letters to funding agencies, and in assembling and processing the Construction Contract. For FAA-funded projects, prepare an Application for Federal Assistance, generally on the same day as the receipt of bids.
- 2.7.4 Prepare Contract and Bond documents and issue them to Contractor; receive the executed documents and verify that they appear to be completely and correctly executed; bind them into "conformed copies" of the contract documents, and forward the documents to Authority for execution and distribution. Establish a procedure to verify that the bonds and insurance remain valid throughout the final close-out of the project.

## **2.8. Construction and Close-Out Phase**

During the Construction and Close-Out Phase, the Consultant shall:

- 2.8.1 Provide General Administration of the Construction Contract. Consultant shall consult with and advise Authority and act on behalf of the Authority, as provided hereinafter. The extent and limitations of the duties, responsibilities and authority of Consultant shall not be modified, except to the extent provided in the Scope of Services and except as Consultant may otherwise agree in writing. All of the Authority's instructions to Contractor(s), except those related to safety or airport operations which require immediate communication to promote airport safety, will be issued through Consultant who will have authority to act on behalf of the Authority to the extent herein provided, except as otherwise modified in writing.
- 2.8.2 Attend and direct the Preconstruction Conference; prepare and distribute summary of topics discussed; and assist with start-up of the construction Project.
- 2.8.3 Issue guidelines for quality assurance testing. For FAA AIP projects, this will be in the form of a "Construction Management Plan." This is the title of the document used by FAA and shall not be interpreted to mean that the Consultant is responsible to manage the Contractor's operation, which is the responsibility of Contractor.
- 2.8.4 Periodically visit the site and observe the construction; discuss progress and construction details with RPR, Authority's Representative, and the Contractor's Superintendent. Issue a written report, if required. Periodic site reviews generally occur at one week or shorter intervals, although there is no definite schedule for such visits.
- 2.8.5 Review daily reports and other information which is transmitted regularly by RPR.
- 2.8.6 The purpose of Consultant's visits to the site, and representation by RPR, if any, will be to enable Consultant to better carry out his duties and responsibilities during the Construction Phase, and to provide Authority assurance that the completed and accepted work of the Contractor(s) has been monitored in accordance with the quality assurance

provisions set forth by FAA and NCDOT, and conforms to the Construction Contract requirements. Consultant shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work, nor shall the Consultant have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incidental to the work of Contractor(s), or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to the construction work. Accordingly, Consultant can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' acts or omissions in the performance of the work. However, Consultant's shall expeditiously notify the Contractor and Authority of any observed failure of Contractor to perform the work in accordance with the Plans and Specifications, or other observed failure to comply with the contract requirements.

- 2.8.7 Review and approve (or take other appropriate action in respect of) Shop Drawings, Certifications, Samples, and Mix Designs, which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Construction Contract Documents. Such review and approval or other action shall not extend to the means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incidental thereto.
- 2.8.8 Issue all instructions of Authority to Contractor(s), except as hereinbefore noted; issue necessary interpretations and clarifications of the Construction Contract Documents and in connection therewith; prepare Change Orders or other authorizations to perform additional work as required; have authority, as Authority's Representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Construction Contract Documents and judge of the acceptability of the work thereunder; and render advice on all claims of Authority and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Construction Contract Documents pertaining to the execution and progress of the work; however Consultant shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.
- 2.8.9 Review Contractor's Periodic Pay Requests, and recommend payment amount to Authority. Consultant's payment recommendation (certification) will be based on on-site observations by Consultant and on verification and/or measurement of quantities by RPR. Such recommendation of payment will constitute a representation to Authority that the work has progressed to the point indicated, to the best of Consultant's knowledge, information and belief. This recommendation shall not constitute certification that moneys owed by the Contractor to Sub-contractors or suppliers have been paid.
- 2.8.10 Conduct a preliminary final Project Review to determine whether the Project is Substantially Complete, and issue a Punch List. After being notified that the Punch List work is presumptively complete, conduct a final Project Review to determine whether the work has been completed in accordance with the Construction Contract Documents and whether each Contractor has fulfilled all of its obligations thereunder so that Consultant may recommend, in writing, final payment to Contractor and may give written notice to Authority and Contractor(s) that the work is acceptable (subject to any conditions therein expressed.)
- 2.8.11 Project review, including periodic review by Consultant and continuous or nearly



continuous review by RPR, shall consist of a visual observation of materials, equipment, or construction work for the purpose of ascertaining that the work is in substantial conformance with the Construction Contract Documents and with the design intent. Such review shall not be relied upon by others as acceptance of the work, nor shall it be construed to relieve the Contractor in any way of his obligation and responsibilities under the construction contract. Specifically, and without limitation, review by Consultant shall not require Consultant to assume responsibilities for the means and methods of construction nor for safety on the job site.

2.8.12 Consultant shall not be responsible for the acts or omissions of any Contractor, or Sub-contractor, or any of Contractor(s)' or Sub-contractors' agents or employees or any other persons (except Consultant's own employees and agents) at the site or otherwise performing any of Contractor(s)' work; however, nothing contained herein shall be construed as releasing Consultant from liability for failure to properly perform duties undertaken by him.

2.8.13 Consultant shall prepare a set of "Record Drawings" after completion of the project, showing changes made during construction, based on the marked- up prints, drawings and other data furnished by Contractor(s) to Consultant, which Consultant considers significant. Such Record Drawings will be in electronic format (AutoCAD compatible) and will be furnished to Authority along with blue-line prints or blackline plots. If the Contractor furnishes record information in the form of finished AutoCAD drawings rather than marked-up prints or similar non-CAD method, Consultant may add those drawings to the record drawing set, rather than transcribing the information to the Contract Drawings.

2.8.14 During the course of construction, Consultant may be required to perform quality assurance (QA) testing, through a qualified and certified testing laboratory, to verify that the improvements constructed by the Contractor(s) conform to the requirements of the Construction Contract Documents. It shall be understood that Consultant will use random sampling procedures, meaning selected portions of the work will be subject to close review and/or testing, and the results observed will be inferred to exist in other areas not sampled. Although such sampling procedures will be conducted in accordance with commonly accepted standards of practice, it shall be understood that the samples and tests will indicate the actual conditions only where the sampling and testing is performed, and that, despite proper implementation of sampling and testing procedures and proper interpretation of their results, Consultant can only infer, not assure, the existence of the revealed conditions at other locations. Accordingly, Authority shall not require Consultant to sign any certification, no matter by whom requested, that would result in Consultant certifying the existence of conditions of which Consultant cannot be certain.

2.8.15 "Certify" means to state or declare a professional opinion of conditions whose true properties cannot be known at the time such certification was made, despite appropriate professional evaluation. Consultant's certification of conditions in no way relieves any other party from meeting requirements imposed by contract or other means, including commonly accepted industry practices.

2.8.16 To assist Authority with the project close-out process, Consultant shall prepare a summary of quality assurance testing, summary of project costs, and related items required by FAA and NCDOT for Close-Out of the Project. Such information shall be neatly organized and bound.

## **2.9. Buried Utilities**

- 2.9.1 Consultant shall conduct the research that in his professional opinion is necessary to locate utility lines and other man-made objects that may exist beneath the site's surface. Authority recognizes that Consultant's research may not identify all subsurface utility lines and man-made objects, and that the information upon which Consultant relies may contain errors or may not be complete. Authority also agrees that the possibility exists that soil borings or other penetrations made by or under the instructions of Consultant for investigative purposes may strike and damage underground utility lines or other man-made objects, despite the efforts of Consultant to avoid such objects.

## **SECTION 3 - SPECIAL AND ADDITIONAL SERVICES**

### **3.1 Special Services**

Special Services are any services which are included in the Scope of Services but are not part of Basic Services. Such services are usually performed either by a Sub-consultant (for example, testing or survey,) or by an employee of Consultant residing in the vicinity of the project (RPR.) The terms and conditions for furnishing Special Services are set forth in the Scope of Services.

### **3.2 Additional Services**

Additional Services are services required by Authority which are not included in (or are specifically excluded by) the Scope of Services. Typically, such services are associated with unforeseen conditions which arise during the design or construction process. All additional Services shall be approved in advance by Authority. Additional Services include, but are not limited to, the following.

- 3.2.1 Additional Permitting Services due to changes in regulatory policies which went into effect after the Scope of Services was formulated and Permitting Services such as environmental assessments, asbestos evaluations and permitting, etc. which were not contemplated or identified in the Scope of Services. (The scope of permitting services included in **Exhibit "B"** reflects the services which Consultant anticipates to be necessary based upon experience with prior projects, and does not include contingencies for unexpected or unanticipated permitting requirements that one or more of the various governmental agencies having jurisdiction might elect to impose.)
- 3.2.2 Field investigations to verify the accuracy of Drawings or other information furnished by Authority.
- 3.2.3 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, Authority's schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or construction contract documents when such revisions are due to causes beyond Consultant's control. This does not apply to the Preliminary Design Phase, in which multiple revisions are not considered Additional Services.
- 3.2.4 Providing renderings or three-dimensional models. (Preparation of a reasonable number

of two-dimensional exhibits for presentation to the public, FAA, NCDOT, Authority, etc. is an essential part of Basic Services to properly communicate and coordinate the project, and will not be considered Additional Services.)

- 3.2.5 Preparing documents with multiple bid schedules or complex bid options, or requiring the construction work to be performed in two or more mobilizations, or at night, when such conditions were not anticipated in the Scope of Services.
- 3.2.6 Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing Value Engineering consulting to a significant degree during the course of design; preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining loan or bond financing for the Project; evaluation of processes licensing and assisting Authority in obtaining process licensing; detailed quantity surveys of material, equipment and labor; audits or inventories required in connection with construction performed by Authority.
- 3.2.7 Services performed by Consultant due to failure of the Contractor to complete the work within the scheduled time, including but not limited to additional periodic reviews and additional follow-up reviews to verify Punch List completion after the final inspection. (Wherever possible, the costs of such services will be minimized by combining follow-up inspections with trips made to the site for other projects.)
- 3.2.8 Services resulting from the award of a greater number of separate prime contracts for construction, materials, equipment or services than are anticipated in the Scope of Services and services resulting from the arranging for performance by individuals or firms other than the principal Prime Contractor(s.)
- 3.2.9 Providing any type field surveys, engineering surveys or staking to enable the Contractor(s) to proceed with their work; and providing other special field surveys, where such work was not included in the Scope of Services.
- 3.2.10 Services in connection with changes or additions to the Project requested by the Authority during construction, unless of a minor and incidental nature
- 3.2.11 Services during out-of-town travel required of Consultant and approved by Authority, other than visits to the site as required by Section 2, or visits to the FAA or NCDOT offices will not be considered out-of-town travel.
- 3.2.12 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor(s), (3) acceleration of the progress schedule involving services beyond normal working hours, (4) default by Contractor(s), or (5) evaluation of an unreasonable number of claims made by the Contractor(s) or others.
- 3.2.13 Preparation of operating and maintenance manuals; protracted or extensive assistance in balancing); and training personnel for operation the utilization of any equipment or system (such as initial start-up, testing, adjusting and maintenance.
- 3.2.14 Services after completion of the Construction Phase, such as project review during any guarantee period, and reporting observed discrepancies under guarantees called for in any contract for the Project.

- 3.2.15 Preparing to serve or serving as a consultant or witness for Authority in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as specifically provided in the Scope of Services.)
- 3.2.16 Any similar Additional Services in connection with the Project, including services normally furnished by Authority and services not otherwise provided for in this Agreement.

### **3.3. Resident Representative Services During Construction**

- 3.3.1 If included in the Scope of Services, a Resident Project Representative (RPR) will be furnished by Consultant. Such services will be paid for by Authority as provided in the Scope of Services.
- 3.3.2 The duties, responsibilities, and limitations of Authority of RPR and any assistants to the RPR are set-forth in **Exhibit "E"**, which is attached hereto and incorporated herein.
- 3.3.3 Through more extensive on-site observations of the work in progress and field checks of materials and equipment by RPR, Consultant shall provide further protection for the Authority against defects and deficiencies in the work of Contractor(s); however, the furnishing of RPR Services will not make Consultant responsible for the Contractor's means, methods, techniques, sequences or procedures, or for safety precautions or programs.

## **SECTION 4 - AUTHORITY'S RESPONSIBILITIES**

The Authority shall do the following in a timely manner:

- 4.1 Designate a person (or persons) to act as Authority's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Authority's policies and decisions with respect to Consultant's services for the Project.
- 4.2 Furnish to Consultant criteria and information as to the Authority's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all local or extraordinary design and construction standards which Authority will require to be included in the Drawings and Specifications. (Such criteria and information may be furnished verbally during project formulation and design discussions; Authority is not obligated to furnish any written summaries of design criteria and requirements, but may do so if he deems it to be appropriate.)
- 4.3 Assist Consultant by placing at his disposal available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. Authority shall make pertinent files and records available, but shall not be obligated to perform any exhaustive or detailed research of existing files or records.
- 4.4 Provide Consultant, as required for performance of Consultant's Basic Services (except to the extent provided otherwise in the Scope of Services) data prepared by or services of

others, including but not limited to core borings, probing, and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; appropriate professional interpretations of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions; and other special data or consultations not covered in Section 3; all of which Consultant may rely upon in performing his services.

- 4.5 Arrange for access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform Services under this Agreement.
- 4.6 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by Consultant; obtain advice of an attorney, insurance counselor and other consultants as the Authority deems appropriate; and render decisions pertaining thereto within a reasonable time so as not to delay the services of Consultant.
- 4.7 Assist Consultant in the process of obtaining necessary permits for the Project. Authority shall promptly review, and upon its approval, sign, and submit to the appropriate agencies such approved permit applications which Consultant furnishes. Authority shall pay all applicable agency permit and review fees.
- 4.8 If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, Authority shall designate a person or organization to have authority and responsibility for coordinating the activities among the prime contractors.
- 4.9 Attend the pre-bid conference, bid openings, preconstruction conferences, construction progress and other job related meetings, and pre-final and final project reviews.
- 4.10 Give prompt written notice to Consultant whenever Authority observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, any defect in the work of Contractor(s), or any apparently unsafe practices being performed by Contractor(s.)
- 4.11 Direct Consultant to provide, necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bear all costs incidental to performance of the requirements of this Section 4.

## **SECTION 5 - PERIOD OF SERVICE**

- 5.1 The services called for in the Preliminary Design Phase will be completed and the Preliminary Design documents submitted within the stipulated period, if any, indicated in the Scope of Services after authorization to proceed with that phase of services.
- 5.2 After acceptance by Authority of the Preliminary Design Phase documents indicating any specific modifications or changes in the extent of the Project desired by Authority, and upon written authorization from Authority, Consultant shall proceed with the performance of the services called for in the Design and Permitting Phase, and shall submit Plans, Specifications, and general consulting report and other documents for 100% review within

the stipulated period, if any, indicated in the Scope of Services.

- 5.3 Consultant's services under the Preliminary Design Phase and the Design and Permitting Phase shall be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by Authority or (2) thirty (30) days after the date when such submissions are delivered to Authority for final acceptance, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction over the Project.
- 5.4 After acceptance by Authority of Consultant's Plans, Specifications and other Final Design Phase documentation including the most recent opinion of Probable Construction and Total Project Cost and upon written authorization to proceed with advertisement of the Project, Consultant shall proceed with performance of the Services called for in the Bidding and Contract Formulation Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of the negotiations with prospective Contractor(s).
- 5.5 The Construction and Close-Out Phase will commence with the execution of the first Prime Contract to be executed for the work of the Project or any part thereof, and will terminate upon submittal of final close-out documentation for submittal to FAA and/or NCDOT. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one Prime Contract.
- 5.6 If Authority has requested significant modifications or changes in the extent of the Project, the time, if any, of performance of Consultant's Services, Consultant's compensation may be adjusted by the Authority.
- 5.7 If Authority fails to give prompt written authorization to proceed with any phase of Services after completion of the immediately preceding phase, or if Construction Phase has not commenced within 180 calendar days after completion of the Design and Permitting Phase, Consultant may, after giving seven days' written notice to Authority, suspend services under this Agreement.
- 5.8 If Consultant's Services for design or during construction of the Project are delayed or suspended in whole or in part by Authority for more than twelve months for reasons beyond Consultant's control, the rates of compensation provided for in the Scope of Services shall be subject to renegotiation.

## **SECTION 6 - COMPENSATION**

### **6.1. Methods of Payment for Services and Expenses of the General consultant**

Payment for each element of work identified in the Scope of Services shall be made under one of the following methods, which shall be identified in the Scope of Services:

- 6.1.1 LUMP SUM METHOD - This method generally applies to Basic Services, and certain special Sub-consultant Services such as topographic surveys and environmental reports. The Lump Sum fee shall be a fixed amount as stipulated in the Scope of Services. No adjustment may be made to a lump sum fee. If Additional Services are required, they shall be paid for separately as "Additional Services," under pre-approved terms.

- 6.1.2 UNIT PRICE METHOD - This method generally applies to Sub-contracted testing or survey services. (Survey crew hourly rate shall be considered a "unit rate.") Payment shall be made at the number of units (typically, tests or survey hours) performed, multiplied by the stipulated unit price. If a "Not-to-Exceed" maximum amount is stated, then the total fee may not exceed the stipulated amount unless additional work is performed and approved in advance. If no maximum amount is stated, Consultant shall inform Authority in a timely manner if it becomes apparent that the estimated (budgeted) amount will be exceeded.
- 6.1.3 HOURLY RATE METHOD - Generally applies to Miscellaneous Services (non-FAA and non-NCDOT participation) requested by Authority, and RPR services. Generally applies to services performed by employees of Consultant, as subcontracted Services based on hourly rates are typically considered to be unit price services as stipulated in Sub-section 6.1.2 above. Unless otherwise stated, the hourly rates shall be as listed in Consultant's current Standard Rate Schedule. The Standard Rate Schedule current for the year in which this Agreement is executed is attached as **Exhibit "C"**. The Standard Rate Schedule is revised and re-issued on a calendar-year annual basis (whether or not the rates or other conditions change.) Hourly rates for RPR services are typically stated on the Scope of Services.
- 6.1.4 REIMBURSEMENT OF EXPENSES - This method applies to items which are designated as reimbursable in the Scope of Services, including but not limited to: reproduction of documents exceeding the number of reproductions included in the basic services fee, express shipments in addition to those stipulated in the basic services fee and special travel expenses. Terms of reimbursement are set forth in the Scope of Services, and are typically direct reimbursement of actual costs without mark-up. Office supplies, telephone, first class postage, plot media electronic storage media, and computer time are considered to be overhead costs and are not reimbursable. Plot media for special orders (not for the original production of the drawings) shall be considered "reproductions" and is therefore reimbursable.

## **6.2 Billing and Payment**

- 6.2.1 Consultant shall submit monthly invoices for Professional Services rendered and for Reimbursable Expenses incurred. The invoice for Basic Services will be based upon Consultant's estimate of the proportion of the total services actually completed at the time of preparation of the invoice. To assist in the estimation of fees earned, the Basic Services fee will be broken down into the fees for various project phases. The invoice for RPR services shall be based on the number of hours worked during the billing period, as indicated on time sheets. The invoice for Sub-consultant services shall be based on the invoice received from the Sub-consultant (which Consultant shall review for reasonableness,) plus the pro-rated portion of Consultant's stipulated Administrative/Coordination Fee. The invoice for Reimbursable Expenses shall be based on the number of reproductions made during the invoice period multiplied by the stipulated or standard unit price, and the direct cost of other Reimbursable Expenses, as set forth in the Scope of Services.
- 6.2.2 Invoices shall be due and payable within thirty (30) calendar days of the Authority's receipt of the invoice. If Authority objects to all or any portion of an invoice, Authority shall so

notify Consultant within fourteen (14) calendar days of the Authority's receipt of the invoice, identify the cause of disagreement, and pay when due the portion of the invoice, if any, not in dispute.

- 6.2.3 Failure to pay the portion of an invoice not under dispute after sixty (60) days shall be cause for Consultant to suspend work on the Project until such payment is made. By doing so, Consultant shall not incur any liability for claimed losses or damages due to non-performance of the work.
- 6.2.4 In the event that Authority terminates the project in accordance with Section 7 of this Agreement, Consultant shall be paid for the portion of the fee earned and costs incurred as of the date of notice of termination, but shall not be eligible for payment for any lost anticipated profits from the portion of the project following the termination date.

## **SECTION 7 - MISCELLANEOUS PROVISIONS**

### **7.1 Insurance**

During the performance of this Agreement, Consultant shall insure itself for and against professional liability and malpractice relative to the performance of this Agreement in the minimum amount of \$1,000,000 each claim/annual aggregate. In addition, Consultant shall be required, if available, to provide the same types and levels of insurance identified above for a period of six years following the expiration or early termination of this Agreement. Consultant shall deliver to Authority a certificate of this insurance coverage at the time this Agreement is executed. The certificate shall unconditionally provide that the requisite coverage shall not be terminated or modified or not renewed until Authority has received thirty (30) day written notice thereof. In the event that an insurance carrier should terminate or modify or not renew the above coverage, Consultant shall immediately contract with another insurance carrier to provide requisite coverage and shall immediately deliver to Authority a replacement certificate. The coverage shall be written through an admitted carrier in the State of North Carolina. In addition, Consultant and its sub-consultants shall maintain Workers' Compensation Insurance as required by law, and certificates of such insurance coverage shall likewise be delivered to Authority.

### **7.2 Indemnity**

Consultant shall indemnify and hold harmless Authority and its present and future Members, officers, agents and employees, from and against all liabilities, claims, losses, costs and expenses (including, but not limited to, attorney fees) arising out of or resulting from any and all negligent acts and omissions of Consultant and/or its agents, employees and/or sub-consultants. Consultant shall be directly responsible for any such additional costs, above first costs, incurred by the Authority, as a result of the errors and omissions of the consultant through its employees assigned to tasks for, or on behalf of the Authority, which result in additional costs to the Authority, either by a contractor, or by the consultant itself.

### **7.3 Independent Contractor**

Consultant is an independent contractor and not an agent of Authority.



#### **7.4 Civil Right Assurances**

During the performance of this Agreement, Consultant, for itself and for its assignees and successors if any and sub-consultants (all of whom collectively referred to as "Contractor") agrees as follows:

(a) Compliance with Regulations. Contractor shall comply with the regulations ("Regulations") relative to nondiscrimination in federally assisted programs of the Department of Transportation ("DOT") including but not limited to: Title 49, Code of Federal Regulations, Part 21, and as they may be amended from time to time. The Regulations are incorporated herein by this reference thereto.

(b) Nondiscrimination. With respect to and during the performance of this Agreement, Contractor shall not discriminate on the ground of age, race, color, national origin, religion, disability or sex in the selection or retention of sub-contractors and sub-consultants including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including, but not limited to, practices when this Agreement covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for sub-consultants and sub-contractors, including but not limited to, procurements of materials and equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a sub-contract, including, but not limited to, procurements of materials and leases of equipment, each potential sub-consultant, sub-contractor and supplier shall be notified by Contractor of Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of age, race, color, national origin, religion, disability or sex.

(d) Information and Reports. Contractor shall provide all information and reports required by the Regulations or directives, orders or instructions issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, directives, circulars, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Authority and the FAA as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of Contractor's non-compliance with any of the non-discrimination provisions of this Agreement, Authority shall impose such Agreement sanctions as it or the FAA determine to be appropriate, including, but not limited to, the following:

- i. Withholding of payments to Contractor under this Agreement until Contractor complies; and/or
- ii. Cancellation, termination, or suspension of this Agreement, in whole or in part.

(f) Incorporation of Provisions. Contractor shall include the provisions of Paragraphs (a) through (e) above in every sub-contract, including but not limited to, procurements of materials and leases of equipment, unless exempted by the Regulations or directives issued pursuant thereto. Contractor shall take such action with respect to any sub-contract or procurement as Authority or the FAA may direct as a means of enforcing such provisions, including, but not necessarily limited to, sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a sub-consultant, sub-contractor or supplier as a result of such direction, Contractor may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Contractor may request the United States Government to enter into such litigation to protect the interests of the United States Government.

## **7.5 Disadvantaged Business Enterprise (DBE) Assurances**

DBE Obligation: The Disadvantaged Business Enterprise (DBE) requirements of Title 49, Code of Federal Regulations, CFR Part (23 or 26) apply to this Agreement. Consultant agrees to ensure that DBE's, as defined in Part (23 or 26), have the maximum opportunity to participate in the performance of contracts and sub-contracts provided under this Agreement. In this regard, Consultant shall take all necessary and reasonable steps in accordance with Part (23 or 26) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform Contracts. The Consultant shall not discriminate on the basis of age, race, color, national origin, religion, disability or sex in the award and performance of contracts.

## **7.6. Opinions of Cost**

7.6.1 Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' method of determining prices, or over competitive bidding or market conditions, his opinions of Probable Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional general consultant, familiar with the construction industry; but Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable cost prepared by him.

7.6.2 "Construction Cost" means the total of payments made to Construction Contractor(s), plus the cost of any materials, furnishings, etc. purchased separately by Authority and incorporated into the project. "Non-construction costs" are all costs of the project other than construction costs, including but not limited to Consulting Services, Testing, Topographic or other Surveys, Environmental Evaluations, RPR, Planning, and Authority's Miscellaneous and Administrative Expense. All of these costs, collectively, are referred to as the Project Cost.

## **7.7 Termination**

7.7.1 This Agreement may be terminated by Authority upon seven (7) day's written notice, for the Authority's convenience and without cause.

- 7.7.2 Upon receipt of a termination notice, Consultant and its sub-consultants shall promptly discontinue all services and shall deliver to Authority all data, Drawings, Specifications, report estimates, summaries, and other information and materials as may be accumulated by Consultant and its sub-consultants, whether completed or in process.
- 7.7.3 Upon termination of this Agreement, Authority may, without prejudice or limitation of any action for damages or any other right or remedy, enter into another agreement for the completion of the work contemplated by this Agreement, or may use other methods for the completion of such work.
- 7.7.4 Upon termination of this Agreement, Consultant shall be entitled to receive payment for work executed and costs incurred by reason of such termination, including reasonable overhead and profit on completed work.

## **7.8 Re-Use of Documents**

The drawings, specifications and all other documents or things prepared by Consultant for the Project shall become and be the sole property of Authority. Consultant shall, at its own cost and expense, be permitted to retain copies thereof for its records and for its future professional endeavors. Such drawings, specifications and other documents or things are not intended by Consultant for use on other projects by Authority or others. Any reuse by Authority or by third parties without the written approval of Consultant, shall be at the sole risk of Authority.

## **7.9 Storage, Protection, and Retrieval of Documents and Data**

- 7.9.1 Storage, protection, and retrieval of General Consulting documents is an important part of Consultant's responsibility to Authority. Completed General Consulting Drawings (Plans) shall be stored by Consultant in a minimum of three medias: paper plot originals, AutoCAD files in the dual redundant hard drives of Consultant's raid server, and in thumb drives which are made each week and stored off-site. Additionally, Authority may obtain disks containing the CAD files at any reasonable interval, such as monthly or upon completion of each project, and store them at Authority's office. Drawings in progress are stored in the hard drive and in the weekly back-up thumb drives; existing paper plots of drawings in progress may not be up to date at any particular time. Text documents shall be stored as filed paper documents, as text files in the hard drive, and in the same weekly thumb drive back-up that contain the CAD files.
- 7.9.2 Documents received from others, such as test reports, shop drawings, correspondence from the Contractor, etc., are stored by Consultant only in their original paper form or electronic form. They are filed by job number and are stored in-perpetuity, unless approved in writing by the Authority for disposal, except for papers which are considered by Consultant to be unimportant for future reference purposes, which are discarded. Although paper documents are stored in boxes in a dry place and reasonable care is taken to protect them, no guarantee is made that they will be preserved undamaged without time limit.

## **7.10 Non-waiver of Rights**

Neither Authority's failure to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy relative to a breach thereof, nor Authority's acceptance of any performance during such breach shall constitute a waiver of any right or remedy of Authority.

### **7.11 Conflict of Interest**

No paid employee of Authority shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

### **7.12 Sub-consultants**

Consultant shall not utilize any sub-consultants for carrying out the services to be performed under this Agreement without the prior written approval of Authority. By the execution of this Agreement, Authority grants approval for the utilization of the sub-consultants set forth in **Exhibit "D"**, which is attached hereto and incorporated herein.

### **7.13 Audit: Access to Records**

Consultant shall maintain books, records and documents pertinent to the performance of the Contract and these General Provisions in accordance with generally accepted accounting principles and practices, and with any governmental requirements; and Authority, the FAA, the Comptroller General of the United States and their duly authorized representatives shall have access to all such documents for purposes of examination, audit and copying.

### **7.14 Special Provisions**

This Agreement is subject to the following Special Provisions. The listed documents are hereby incorporated into this Agreement by reference, and have the same force and effect as if they had been written into the body of this Agreement. However, if there is a conflict between a Special Provision and any other provisions of the agreement, the Special Provisions shall be subordinate.

1. Exhibit A – Proposed Project Work
2. Exhibit B – Consultant Scope of Services related to this Agreement for Professional Services.
3. Exhibit C – Schedule of Fees consisting of one page.
4. Exhibit D – Consultant Staff/Sub Consultant(s) Assignment - Listing of assigned staff and all sub-consultants committed to the fulfillment of this Agreement. Such staff and or sub-consultants may not be changed without the expressed written consent of the Authority.
5. Exhibit E – Responsibilities of Resident Project Representative (RPR).

### **7.15 Notices**

All notices shall be in writing and shall be served only by registered or certified mail, return receipt requested, addressed to the party to be served at the address set forth below or at such other

address as may be designated in writing. Service of notice shall be complete upon receipt of notice.

**To Authority:**

Greater Asheville Regional Airport Authority  
61 Terminal Drive, Suite 1  
Fletcher, North Carolina 28732  
Attention: President & CEO

**To Consultant:**

McFarland Johnson  
330 East Coffee Street, Suite 5017  
Greenville, SC 29601  
Attention: President/Principal-in-Charge/Owner

**7.16 Dispute Resolution**

- 7.16.1 As a condition precedent to resolving claims, disputes and other matters by litigation, but only so long as neither of the parties hereto is thereby prejudiced or harmed by a statute of limitation or a statute of repose, the parties agree to attempt to resolve any claim, dispute or other matter in question arising out of or relating to this Agreement or a breach thereof, in the first instance, by mutual consent based upon an objective review and interpretation of factual information presented by either or both parties.
- 7.16.2 In the absence of agreement by mutual consent as set out in Sub-paragraph 7.16.1, but only so long as neither of the parties hereto is thereby prejudiced or harmed by a statute of limitation or a statute of repose, the parties agree to refer the claim, dispute or other matter to mediation. Either party may initiate a request for mediation, and the parties hereto shall, within thirty days of the receipt of a written request, select by mutual agreement a mediator, who shall be qualified to conduct mediated settlement conferences in the Superior Court Division of the General court of Justice of the State of North Carolina. If the parties cannot agree upon a mediator, the first mediator (who will agree to conduct this mediation) on the mediator list of the Trial Court Administrator for the 28th Judicial District of the State of North Carolina shall be automatically selected.
- 7.16.3 The parties hereto shall share the mediator's fees equally. The mediation shall be held in the Conference Room at Authority's Administrative Offices, Asheville Regional Airport, or at such other place as may be mutually agreed upon (the expense for such other place to be shared equally).
- 7.16.4 Failing resolution of a claim, dispute or other matter by the methods set forth in Sub-Paragraph 7.16.1 or 7.16.2, either party may then resort to litigation, which shall be commenced in Buncombe County, North Carolina.
- 7.16.5 Notwithstanding any provision of this Agreement to the contrary, this Agreement does not contain, and shall not be deemed to constitute, an Agreement to arbitrate, and any claim against or dispute or other matter with Consultant shall not be subject to arbitration.

7.16.6 In the event a dispute shall arise under or about this Agreement, then the prevailing party therein shall be entitled to recover from the non-prevailing party all reasonable costs, expenses and reasonable attorney's fees which may be incurred on account of such dispute, whether or not suit or other legal or quasi-legal proceedings may be brought, as well as at every stage of any such proceedings from the time such dispute first arises through trial or other proceedings and all appellate processes.

### **7.17 Governing Law**

This Agreement is to be governed by the laws of the State of North Carolina.

### **7.18 Successors and Assigns**

7.18.1 Authority and Consultant each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to the Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

7.18.2 Consultant shall not assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the Authority, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent Sub-consultants or Sub-contractors as he may deem appropriate to assist him in the performance of services hereunder, however Consultant shall so inform Authority in advance, and shall not employ any sub-consultant or sub-contractor to whom Authority objects.

### **7.19 No Third-Party Beneficiaries**

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

### **7.20 Severability**

If any of the terms, conditions or provisions of this Agreement hereto, or any document incorporated herein (other than a Regulation) or any portions thereof, shall contravene or be invalid under the laws or regulations of the United States or the State of North Carolina or any of their respective agencies, departments or subdivisions, such contravention or invalidity shall not invalidate the whole Agreement, attachment or document, but this Agreement, attachment(s), and document(s) shall be construed as if not containing the particular term, condition or provision, or portion thereof, held to be in contravention or invalid, and the rights and obligations of the parties hereto shall be construed accordingly.

**7.21 Non-Exclusive**

This Agreement does not create or provide any exclusive right or interest in or for Consultant, and Authority may contract with other engineers, professionals and contractors at any time and for any services and purposes.

**7.22 Entirety of Agreement**

7.22.1 This Agreement together with the Exhibits identified above constitutes the entire agreement between Authority and Consultant and supersedes all prior written or oral understanding. This Agreement and said Exhibits may only be amended, supplemented, or modified by a duly executed Amendment, except that an Amendment shall not be required to transmit each year's updated Standard Rate Schedule.

7.22.2 Regardless of which party hereto is responsible for the preparation and drafting of this agreement, it shall not be construed more strictly against either party.

**IN WITNESS WHEREOF**, the parties hereto have made and executed and this Agreement as of the day and year first above written.

**AUTHORITY:**

GREATER ASHEVILLE REGIONAL  
AIRPORT AUTHORITY

By:

\_\_\_\_\_  
Lew Bleiweis, A.A.E.  
President & CEO

Attested By:

\_\_\_\_\_

Print Name: \_\_\_\_\_

Seal

**CONSULTANT:**

MCFARLAND JOHNSON

By:

\_\_\_\_\_  
Chad Nixon  
President/Principal-in-Charge/Owner

Attested By:

\_\_\_\_\_

Print Name: \_\_\_\_\_

Seal

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## **EXHIBIT A PROPOSED PROJECT WORK**

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The following projects may be included in the scope of services provided under the contract associated with this request:

### **Architectural/Engineering Projects:**

1. Rental Car Facility Repairs.
2. Parking Lot Improvements/Rehabilitation and Reconstruction.
3. New Parking Garage Design and Construction.
4. General Aviation Apron/Taxiway Rehabilitation.
5. North General Aviation Area site development.
6. Runway/Taxiway Sealcoat.
7. Terminal Apron Improvements/Reconstruction/Joint Sealing.
8. Wright Brothers Way Extension.
9. Perimeter Road Improvements.
10. Airport Campus Roadway Improvements/Reconstruction/Reconfiguration.
11. Miscellaneous survey and geotechnical investigations.
12. Roadway Improvements.
13. Taxiway A Improvements/Overlay/Reconstruction.
14. Slope Repairs/Retaining Wall/Stormwater Improvements.
15. Maintenance Facilities Redevelopment Program.
16. Design/Construct New SRE Building.
17. Maintenance Facility Fuel Farm Replacement/Expansion.
18. Design/Construct New US Customs Facility.
19. Design/Construct Central Distribution Receiving Center (CDRC).
20. Terminal Drive Extension/Re-configuration.
21. North General Aviation Area Taxiway Connector.
22. Rental Car Facility Upgrades/Improvements.

### **Planning/Financial Assistance Projects:**

1. Items from current Airport Master Plan update.
2. Southwest Development Area (Environmental and Design Services).
3. Northwest Site Property Development (Environmental and Design Services).
4. Safety Management System (SMS).
5. Tri-Annual DBE Goals Program.
6. Tri-Annual Airport Concessions DBE Goals Program.
7. Financial evaluation and other associated services.
8. Rates and Charges evaluation, recommendations, and other associated services.
9. Passenger Facility Charge evaluation, recommendations and/or application processes.

The above list of potential projects and tasks is not necessarily all inclusive and is subject to revisions by the Authority.

**EXHIBIT B**

**Consultant Scope of Services**

**Greater Asheville Regional Airport Authority**

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Scope of Services for Professional Consulting Services, as referenced in the Professional Consulting Agreement between the Greater Asheville Regional Airport Authority and \_\_\_\_\_, dated \_\_\_\_\_.

Project:

Scope of Services:

Consultant Team:

Schedule:

Project Budget:

Fees:

**Authority:**

Greater Asheville Regional Airport Authority

By: \_\_\_\_\_  
President & CEO

Date: \_\_\_\_\_

**Consultant:**

McFarland Johnson

By: \_\_\_\_\_  
President/Principal-in-Charge/Owner

Date: \_\_\_\_\_

This instrument has been pre-audited in the manner required by local government and fiscal control.

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Date

**EXHIBIT C**  
**SCHEDULE OF FEES**  
**for**  
**AVCON ENGINEERS & PLANNERS INC.**

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**CLASSIFICATION**

**HOURLY RATES**

**EXHIBIT D**

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**Consultant Staff/Sub-Consultant(s) Assignments**

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Position/Role

Company/Name

## EXHIBIT E

### Responsibilities of the Resident Project Representative

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If Authority requests the services of a Resident Project Representative, he or she shall be the agent and employee of Consultant and shall:

- A. Make extensive and comprehensive on-site observations of the work in progress, assist Consultant in determining if the work is proceeding in accordance with the Contract Documents; field measure to verify quantities of installed unit price items for accuracy of pay applications; make field checks of materials and equipment incorporated into the work; provided that Consultant shall not have control over the construction means, methods, techniques, sequences or procedures of the Contractor(s) or the safety precautions or programs of the Contractor(s).
- B. Be Consultant's agent at the construction site.
- C. Deal with subcontractors only through the Contractor(s), unless authorized by Consultant and the appropriate Contractor to deal directly with a subcontractor.
- D. Review the progress schedule, schedule of shop drawing submittals and schedule of values prepared by the Contractor(s).
- E. Attend meetings with the Contractor(s), such as pre-construction conferences, progress meetings, job conferences and other Project related meetings, and prepare and circulate copies of minutes thereof to Authority and other appropriate parties. (In the event that there is no Resident Project Representative, Consultant shall be responsible for the preparation and circulation of the minutes for all such meetings.)
- F. Serve as Consultant's liaison with the Contractor(s), working principally through the Contractor(s)' superintendents; and assist the Contractor(s) in understanding the intent of the Contract Documents; and assist Consultant in serving as Authority's liaison with the Contractor(s), particularly when the Contractor(s)' operations affect Authority's airport operations.
- G. Assist in obtaining from Authority such additional details and information as may be required for the proper execution of the work.
- H. Record the dates of receipt of shop drawings and samples.
- I. Receive samples which are furnished at the job site by the Contractor(s), and notify Consultant of the availability of samples for examination.
- J. Advise Consultant and the Contractor(s) of the commencement of any work requiring a shop drawing or sample if the submittal has not been approved by Consultant.
- K. Report in writing to Consultant whenever he or she believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Consultant in writing of any work that he or she believes

should be corrected or rejected, or should be uncovered for observation, or may require special testing, inspection or approval.

- L. Verify that tests, equipment and systems start-ups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that the Contractor(s) maintain adequate written records thereof; and observe, record in writing and report to Consultant appropriate details relative to the test procedures and the start-ups.
- M. Accompany governmental inspectors, and report in writing to Consultant the results of the inspections.
- N. Report in writing to Consultant when clarifications and interpretations of the Contract Documents are needed; and transmit Consultant's clarifications and interpretations to the Contractor(s).
- O. Evaluate the Contractor(s)' suggestions for modifications in drawings and specifications; report his or her recommendations in writing to Consultant; and transmit Consultant's decisions to the Contractor(s).
- P. Maintain at the job site orderly files for correspondence, reports of job conferences, minutes of meetings, shop drawings and samples, reproductions of the Contract Documents including but not limited to all addenda and change orders, Consultant's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents. Consultant shall keep all documents (including but not necessarily limited to the documents referred to in this paragraph and the next two paragraphs) for a period of six (6) years after the Project is fully completed, and during the construction period and this six (6) year period, Authority, the FAA, the Comptroller General of the United States and their duly authorized representatives shall have access to these documents for purposes of examination, audit and copying.
- Q. Keep a diary or log book, and record therein the Contractor(s)' hours on the job site, weather conditions, data relative to questions about the work, job site visitors, daily activities, quantities of items installed, decisions, observations in general, and specific observations with respect to test procedures.
- R. Record names, addresses and telephone numbers of all Contractor(s), subcontractors and major suppliers of material and equipment.
- S. Furnish Consultant periodic written reports of the progress of the work and of the Contractor(s)' compliance with the progress schedule and schedule of shop drawings and sample submittals.
- T. Consult with Consultant in advance of scheduled major tests, inspections and the start of important phases of the work.
- U. Draft proposed change orders and obtain backup materials from the Contractor(s), and make recommendations to Consultant.
- V. Report immediately to Consultant and Authority upon the occurrence of any accident, and confirm such report in writing.

- W. Review applications for payment with the Contractor(s), and forward his or her written recommendations to Consultant, noting particularly the relationship of the payment requested to the schedule of values, work completed, quantities of unit price items, and materials and equipment delivered to the job site but not incorporated in the work.
- X. Verify that certificates, operation and maintenance manuals, and other data required to be assembled and furnished by the Contractor(s) are applicable to the items actually installed and are in accordance with the Contract Documents; and have this material delivered to Consultant for review and forwarding to Authority prior to the final payment for work.
- Y. Before Consultant issues a certificate of substantial completion, submit to each Contractor a written list of observed items requiring completion or correction.
- Z. Conduct a final inspection in the company of Consultant, Authority and the Contractor(s), and prepare a final written list of items to be completed or corrected.
- AA. Determine that all items on the final list have been completed or corrected, and make recommendations in writing to Consultant concerning acceptance of the work and corrections.

The Resident Project Representative shall not:

- A. Authorize any deviation from the Contract Documents, or any substitution of materials or equipment, unless authorized in writing by Consultant.
- B. Exceed Consultant's authority as set forth herein or in the Contract.
- C. Undertake any of the responsibilities of the Contractor(s) or subcontractors.
- D. Advise on, issue directions relative to, or assume control over any aspect of the construction means, methods, techniques, sequences or procedures of the Contractor(s) unless such directions or control are specifically required by the Contract Documents.
- E. Advise on, issue directions relative to, or assume control over Contractor(s)' safety precautions or programs.
- F. Accept shop drawings or sample submittals from anyone other than a Contractor.
- G. Authorize Authority to occupy the Project in whole or in part.
- H. Participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized in writing by Consultant.
- I. Review any of the CONTRACTOR(s)' safety precautions, or the means, methods, sequences, or procedures required for the CONTRACTOR(s) to perform the work. Omitted design or review services include, but are not limited to, shoring, scaffolding, underpinning, temporary retainment of excavations, and any erection methods and temporary bracing.

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**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES**  
BETWEEN  
**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**  
AND  
**AVCON ENTINEERS & PLANNERS, INC.**

THIS IS AN AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY, 61 Terminal Drive, Suite 1, Fletcher, North Carolina 28732, hereinafter referred to as "Authority," and AVCON ENGINEERS & PLANNERS, INC., a Corporation with office located at 10115 Kinsey Avenue, Suite 140, Huntersville, NC 28078, hereinafter referred to as the "Consultant."

**WITNESSETH**

WHEREAS, Authority anticipates a need for Professional Consulting Services (hereinafter called "Services") for the accomplishment of the proposed projects as described in **Exhibit "A"** [hereinafter called "Project"], and Consultant is desirous of providing such services to Authority;

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, Authority hereby retains Consultant, and the parties agree as follows:

Consultant hereby agrees to perform Services for Authority as subsequently described by separate Scope of Services (**see Exhibit "B"**) to this Agreement for Services, subject to and in accordance with the terms and provisions hereinafter contained. Individual Scope of Services shall be negotiated on a project-by-project basis.

The term of this Agreement shall be for a period of five (5) years beginning on the date of execution, unless terminated in accordance with Section 7.7 of this Agreement.

**SECTION 1 – SCOPE OF SERVICES**

The Authority will request a Scope of Services for each project it desires to engage the services of the Consultant. Each Scope of Services shall be specific as to the extent of services required for each project. The Scope of Services shall be as described in the form included as **Exhibit "B"**. Services for the Project may include the following elements:

1. Assistance in formulating the project and applying for State and/or Federal aid. (Due to logistics of the funding process, these services are generally performed prior to preparation of the Scope of Services.)
2. Preparation of preliminary design information for review and approval.
3. Assistance with obtaining necessary property, topographic and environmental surveys, and investigative testing.

4. Preparation of Plans, Specifications, Bidding Documents, other Contract Documents, and Reports.
5. Assistance with obtaining permits and approvals required to construct the project.
6. Assistance during the bidding and construction contract formulation process.
7. Construction contract administration and Resident Project Representative (RPR) services.
8. Assistance with Quality Assurance (QA) Testing during construction.
9. Assistance with project close-out.

## **SECTION 2 - BASIC SERVICES**

### **2.1. General**

- 2.1.1 Scope of Basic Services: Unless otherwise modified in the respective Scope of Services for the Project, Basic Services shall consist of Services during the Preliminary Design Phase, the Design and Permitting Phase; the Bidding and Contract Preparation Phase, and the Construction and Close-Out Phase.
- 2.1.2. Site: The Site of the Project will be described in the corresponding Scope of Services. The Project will typically be contained within the boundaries of the airport property, but in some cases utilities, roadways and other miscellaneous work may be required in contiguous areas to achieve a complete Project.
- 2.1.3 Sub-consultants: Consultant shall not utilize any sub-consultants for carrying out the services to be performed under this Agreement without the prior written approval of Authority. By the execution of this Agreement, Authority grants approval for the utilization of the sub-consultants set forth in **Exhibit "D"**, which is attached hereto and incorporated herein.
- 2.1.4 Authorization to Proceed: Return of the signed and dated Exhibit B or numbered task order for a specific project to the Consultant shall constitute authorization to proceed. Authority shall verify that necessary Federal Aviation Administration (FAA) and/or North Carolina Department of Transportation (NCDOT) approvals have been received, prior to returning the signed Agreement, if appropriate. Consultant shall assist Authority with obtaining approvals.
- 2.1.5 Work Performed Prior to Execution of Agreement: Due to the logistics of the FAA and NCDOT funding process, assistance with formulating the project (or multiple Projects in the Authority's Work Program) and assistance with the preliminary request for State or Federal Aid is usually performed by Consultant prior to approval of the Agreement for a specific Project. For typical airport improvement Projects, such work is performed to assist in promoting development of the Airport, in the anticipation of recovering the expended costs as part of the Preliminary Design-Phase fee after the Agreement is executed. If, for any reason, the Agreement for the specific project is not executed, the Authority shall have no obligation to compensate Consultant for assistance expended to formulate the

Project or request aid prior to execution of the Authority, except in the case of complex projects or projects with an apparent low probability of funding, in which it has been agreed in writing, in advance, that the Consultant will be compensated on a time-and-material or other basis for Project formulation and/or assistance with the request for funding. In such cases, the fee for Basic Services, if finally approved, shall not include the amount paid earlier for Project formulation and/or assistance with requests for funding.

- 2.1.6 Cooperation with Other Consultants: Consultant recognizes that the Authority has selected one or more other consultants to assist with the development of the Airport. The Consultant agrees to cooperate with the other consultant(s) and assist the Authority diligently in the process of pursuing funding of projects, without regard to which Consultant appears more likely to perform the consulting services for any particular project.

## **2.2. Pre-Planning Phase**

After receiving an executed Scope of Services agreement, Consultant shall:

- 2.2.1 Consult with Authority to clarify and define the Authority's requirements for the project, discuss alternatives, and consider the cost of alternatives.
- 2.2.2 Review all available data; advise Authority to necessity of the Authority's providing or obtaining from others data or services of the types as described in paragraph 4.3, and assist Authority in obtaining such data and services.

## **2.3. Planning Phase**

After approval of the pre-planning documents, Consultant shall:

- 2.3.1 Prepare Plans and Narrative, depicting scope, character, and details of the Plan and alternatives.
- 2.3.2 Prepare a report summarizing the basis and rationale of the design, listing standards used, and providing the Consultant's final opinion of probable construction costs and suggested funding and phasing.
- 2.3.3 Furnish to Authority two sets of Planning Documents, and additional sets as required by the Authority.
- 2.3.4 Respond to Authority and other governmental agency review comments.
- 2.3.5 Unless otherwise agreed in advance, all aforementioned documents will be prepared and submitted to the Authority in both hard copy and electronic format (AutoCAD latest version compatible; Microsoft Word, or such other electronic formats as requested by the Authority)
- 2.3.6 Coordinate follow-up services by other consultants.

## **2.4. Preliminary Design Phase**

After receiving an executed Agreement Consultant shall:

- 2.4.1 Consult with Authority to clarify and define Authority's requirements for the Project, discuss alternatives, and consider the costs of alternative designs.
- 2.4.2 Review available data; advise Authority as to the necessity of the Authority's providing or obtaining from others data or services of the types described in paragraph 4.3, and assist Authority in obtaining such data and services.
- 2.4.3 Prepare preliminary, schematic layouts, sketches and conceptual design drawings and other exhibits to clearly indicate the design considerations involved and the alternative solutions available. Provide recommendations, with an opinion of the Probable Cost of the Project. It shall be understood that the opinions of Probable Cost are offered only as the Consultant's opinion of the likely cost of the improvements based on the Consultant's experience and the limited information available at the time; such opinions of cost are not to be construed as guarantees. If the word "Estimate" is used, it shall be understood to mean "opinion of Probable Cost."
- 2.4.4 Transmit by expeditious means (fax, internet, express courier, or hand delivery; or by U.S. Mail if appropriate for the project schedule) the Preliminary Drawings and other information. Discuss by telephone or in person as appropriate, and revise the Drawings and other exhibits as needed until Authority approves the Preliminary Design. Coordinate drawings and other information with permitting and/or regulatory agencies as appropriate for this phase, to avoid unnecessary changes to the final Construction Documents. Upon approval by Authority of the Preliminary Design, which shall be given either in writing by Authority or verbally by Authority and confirmed in writing by Consultant, the Design Phase shall begin. Multiple revisions of the drawings during the Preliminary Design phase shall not be considered "Additional Services."

## **2.5 Design Development Phase**

- 2.5.1 Based on the approved Preliminary Design Documents and any adjustments authorized by the Authority in the program, schedule or construction budget, the Consultant shall prepare, for approval by the Authority, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.
- 2.5.2 The Consultant shall advise the Authority of any adjustments to the preliminary estimate of Construction Cost.

## **2.6. Design and Permitting Phase**

After approval by the Authority of the Design Development Documents, Consultant shall:

- 2.6.1 Prepare Final Plans and Specifications, depicting the scope, character, and details of the work, in accordance with generally accepted standards of airport design practice. The term "Specifications" shall be understood to include General Conditions, Special Provisions, and other Contract Documents.
- 2.6.2 Prepare a report, summarizing the basis and rationale of the design, listing standards used, and providing the Consultant's final opinion of probable construction costs.
- 2.6.3 Furnish to Authority at least two sets of Plans, Specifications, and Consultant Report, and simultaneously send one set each to FAA, NCDOT and/or any other applicable governmental agencies, for review. Assist Authority with submittal of certifications. Consultant shall provide additional copies of these docs if requested.
- 2.6.4 Respond to Authority, FAA, NCDOT and/or any other applicable governmental agency review comments. Corrections, additions or modifications to satisfy for applicable government agencies shall not be considered additional services or be eligible for additional compensation.
- 2.6.5 Furnish to Authority such documents and design data as may be required for submittal to governmental authorities having jurisdiction over the Project, and assist in obtaining permits and approvals by participating in submissions to and negotiations with the authorities. (All permit and review fees shall be paid by Authority.) It must be understood that these services do not constitute a guarantee that the permits will be issued; some projects (runway extensions, wetland mitigation, etc.) may be of a controversial nature and it may not be possible to obtain permits, or it may be found that substantial additional services may be required to obtain permits.
- 2.6.6 Unless otherwise agreed in advance, all aforementioned documents will be prepared and submitted to Authority in both hard copy and electronic format (AutoCAD latest version compatible; Microsoft Word, or such other electronic formats as requested by the Authority). Data files will be furnished to Authority, at any time upon request.
- 2.6.7 Design team shall complete and incorporate into the construction documents the project Construction Safety and Phasing Plan (CSPP). It is the responsibility of the design team to complete this document with input from the Authority and to submit completed document to the FAA for review and approval. This document must be in the bid documents.

## **2.7. Bidding and Contract Formulation Phase**

After Authority, FAA, NCDOT and/or any other applicable governmental agencies have approved the documents for Bid Advertisement, the Consultant shall:

- 2.7.1 Assist Authority in advertising for and obtaining bids or negotiating proposals for each Construction Contract. Consultant shall receive payments for bid documents, and issue bidding documents directly to prospective bidders, and furnish the requested number of bid document sets to Authority for issuance to bidders from Authority's office.

- 2.7.2 Respond to prospective bidder's inquiries and issue Addenda as required to clarify, and/or interpret the Bidding Documents.
- 2.7.3 Attend the bid openings. Prepare bid tabulation, and assist Authority in evaluating bids or proposals, preparing letters to funding agencies, and in assembling and processing the Construction Contract. For FAA-funded projects, prepare an Application for Federal Assistance, generally on the same day as the receipt of bids.
- 2.7.4 Prepare Contract and Bond documents and issue them to Contractor; receive the executed documents and verify that they appear to be completely and correctly executed; bind them into "conformed copies" of the contract documents, and forward the documents to Authority for execution and distribution. Establish a procedure to verify that the bonds and insurance remain valid throughout the final close-out of the project.

## **2.8. Construction and Close-Out Phase**

During the Construction and Close-Out Phase, the Consultant shall:

- 2.8.1 Provide General Administration of the Construction Contract. Consultant shall consult with and advise Authority and act on behalf of the Authority, as provided hereinafter. The extent and limitations of the duties, responsibilities and authority of Consultant shall not be modified, except to the extent provided in the Scope of Services and except as Consultant may otherwise agree in writing. All of the Authority's instructions to Contractor(s), except those related to safety or airport operations which require immediate communication to promote airport safety, will be issued through Consultant who will have authority to act on behalf of the Authority to the extent herein provided, except as otherwise modified in writing.
- 2.8.2 Attend and direct the Preconstruction Conference; prepare and distribute summary of topics discussed; and assist with start-up of the construction Project.
- 2.8.3 Issue guidelines for quality assurance testing. For FAA AIP projects, this will be in the form of a "Construction Management Plan." This is the title of the document used by FAA and shall not be interpreted to mean that the Consultant is responsible to manage the Contractor's operation, which is the responsibility of Contractor.
- 2.8.4 Periodically visit the site and observe the construction; discuss progress and construction details with RPR, Authority's Representative, and the Contractor's Superintendent. Issue a written report, if required. Periodic site reviews generally occur at one week or shorter intervals, although there is no definite schedule for such visits.
- 2.8.5 Review daily reports and other information which is transmitted regularly by RPR.
- 2.8.6 The purpose of Consultant's visits to the site, and representation by RPR, if any, will be to enable Consultant to better carry out his duties and responsibilities during the Construction Phase, and to provide Authority assurance that the completed and accepted work of the Contractor(s) has been monitored in accordance with the quality assurance provisions set forth by FAA and NCDOT, and conforms to the Construction Contract

requirements. Consultant shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work, nor shall the Consultant have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incidental to the work of Contractor(s), or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to the construction work. Accordingly, Consultant can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' acts or omissions in the performance of the work. However, Consultant's shall expeditiously notify the Contractor and Authority of any observed failure of Contractor to perform the work in accordance with the Plans and Specifications, or other observed failure to comply with the contract requirements.

- 2.8.7 Review and approve (or take other appropriate action in respect of) Shop Drawings, Certifications, Samples, and Mix Designs, which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Construction Contract Documents. Such review and approval or other action shall not extend to the means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incidental thereto.
- 2.8.8 Issue all instructions of Authority to Contractor(s), except as hereinbefore noted; issue necessary interpretations and clarifications of the Construction Contract Documents and in connection therewith; prepare Change Orders or other authorizations to perform additional work as required; have authority, as Authority's Representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Construction Contract Documents and judge of the acceptability of the work thereunder; and render advice on all claims of Authority and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Construction Contract Documents pertaining to the execution and progress of the work; however Consultant shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.
- 2.8.9 Review Contractor's Periodic Pay Requests, and recommend payment amount to Authority. Consultant's payment recommendation (certification) will be based on on-site observations by Consultant and on verification and/or measurement of quantities by RPR. Such recommendation of payment will constitute a representation to Authority that the work has progressed to the point indicated, to the best of Consultant's knowledge, information and belief. This recommendation shall not constitute certification that moneys owed by the Contractor to Sub-contractors or suppliers have been paid.
- 2.8.10 Conduct a preliminary final Project Review to determine whether the Project is Substantially Complete, and issue a Punch List. After being notified that the Punch List work is presumptively complete, conduct a final Project Review to determine whether the work has been completed in accordance with the Construction Contract Documents and whether each Contractor has fulfilled all of its obligations thereunder so that Consultant may recommend, in writing, final payment to Contractor and may give written notice to Authority and Contractor(s) that the work is acceptable (subject to any conditions therein expressed.)
- 2.8.11 Project review, including periodic review by Consultant and continuous or nearly continuous review by RPR, shall consist of a visual observation of materials, equipment,

or construction work for the purpose of ascertaining that the work is in substantial conformance with the Construction Contract Documents and with the design intent. Such review shall not be relied upon by others as acceptance of the work, nor shall it be construed to relieve the Contractor in any way of his obligation and responsibilities under the construction contract. Specifically, and without limitation, review by Consultant shall not require Consultant to assume responsibilities for the means and methods of construction nor for safety on the job site.

- 2.8.12 Consultant shall not be responsible for the acts or omissions of any Contractor, or Sub-contractor, or any of Contractor(s)' or Sub-contractors' agents or employees or any other persons (except Consultant's own employees and agents) at the site or otherwise performing any of Contractor(s)' work; however, nothing contained herein shall be construed as releasing Consultant from liability for failure to properly perform duties undertaken by him.
- 2.8.13 Consultant shall prepare a set of "Record Drawings" after completion of the project, showing changes made during construction, based on the marked- up prints, drawings and other data furnished by Contractor(s) to Consultant, which Consultant considers significant. Such Record Drawings will be in electronic format (AutoCAD compatible) and will be furnished to Authority along with blue-line prints or blackline plots. If the Contractor furnishes record information in the form of finished AutoCAD drawings rather than marked-up prints or similar non-CAD method, Consultant may add those drawings to the record drawing set, rather than transcribing the information to the Contract Drawings.
- 2.8.14 During the course of construction, Consultant may be required to perform quality assurance (QA) testing, through a qualified and certified testing laboratory, to verify that the improvements constructed by the Contractor(s) conform to the requirements of the Construction Contract Documents. It shall be understood that Consultant will use random sampling procedures, meaning selected portions of the work will be subject to close review and/or testing, and the results observed will be inferred to exist in other areas not sampled. Although such sampling procedures will be conducted in accordance with commonly accepted standards of practice, it shall be understood that the samples and tests will indicate the actual conditions only where the sampling and testing is performed, and that, despite proper implementation of sampling and testing procedures and proper interpretation of their results, Consultant can only infer, not assure, the existence of the revealed conditions at other locations. Accordingly, Authority shall not require Consultant to sign any certification, no matter by whom requested, that would result in Consultant certifying the existence of conditions of which Consultant cannot be certain.
- 2.8.15 "Certify" means to state or declare a professional opinion of conditions whose true properties cannot be known at the time such certification was made, despite appropriate professional evaluation. Consultant's certification of conditions in no way relieves any other party from meeting requirements imposed by contract or other means, including commonly accepted industry practices.
- 2.8.16 To assist Authority with the project close-out process, Consultant shall prepare a summary of quality assurance testing, summary of project costs, and related items required by FAA and NCDOT for Close-Out of the Project. Such information shall be neatly organized and bound.



## **2.9. Buried Utilities**

- 2.9.1 Consultant shall conduct the research that in his professional opinion is necessary to locate utility lines and other man-made objects that may exist beneath the site's surface. Authority recognizes that Consultant's research may not identify all subsurface utility lines and man-made objects, and that the information upon which Consultant relies may contain errors or may not be complete. Authority also agrees that the possibility exists that soil borings or other penetrations made by or under the instructions of Consultant for investigative purposes may strike and damage underground utility lines or other man-made objects, despite the efforts of Consultant to avoid such objects.

## **SECTION 3 - SPECIAL AND ADDITIONAL SERVICES**

### **3.1 Special Services**

Special Services are any services which are included in the Scope of Services but are not part of Basic Services. Such services are usually performed either by a Sub-consultant (for example, testing or survey,) or by an employee of Consultant residing in the vicinity of the project (RPR.) The terms and conditions for furnishing Special Services are set forth in the Scope of Services.

### **3.2 Additional Services**

Additional Services are services required by Authority which are not included in (or are specifically excluded by) the Scope of Services. Typically, such services are associated with unforeseen conditions which arise during the design or construction process. All additional Services shall be approved in advance by Authority. Additional Services include, but are not limited to, the following.

- 3.2.1 Additional Permitting Services due to changes in regulatory policies which went into effect after the Scope of Services was formulated and Permitting Services such as environmental assessments, asbestos evaluations and permitting, etc. which were not contemplated or identified in the Scope of Services. (The scope of permitting services included in **Exhibit "B"** reflects the services which Consultant anticipates to be necessary based upon experience with prior projects, and does not include contingencies for unexpected or unanticipated permitting requirements that one or more of the various governmental agencies having jurisdiction might elect to impose.)
- 3.2.2 Field investigations to verify the accuracy of Drawings or other information furnished by Authority.
- 3.2.3 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, Authority's schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or construction contract documents when such revisions are due to causes beyond Consultant's control. This does not apply to the Preliminary Design Phase, in which multiple revisions are not considered Additional Services.
- 3.2.4 Providing renderings or three-dimensional models. (Preparation of a reasonable number of two-dimensional exhibits for presentation to the public, FAA, NCDOT, Authority, etc. is

an essential part of Basic Services to properly communicate and coordinate the project, and will not be considered Additional Services.)

- 3.2.5 Preparing documents with multiple bid schedules or complex bid options, or requiring the construction work to be performed in two or more mobilizations, or at night, when such conditions were not anticipated in the Scope of Services.
- 3.2.6 Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing Value Engineering consulting to a significant degree during the course of design; preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining loan or bond financing for the Project; evaluation of processes licensing and assisting Authority in obtaining process licensing; detailed quantity surveys of material, equipment and labor; audits or inventories required in connection with construction performed by Authority.
- 3.2.7 Services performed by Consultant due to failure of the Contractor to complete the work within the scheduled time, including but not limited to additional periodic reviews and additional follow-up reviews to verify Punch List completion after the final inspection. (Wherever possible, the costs of such services will be minimized by combining follow-up inspections with trips made to the site for other projects.)
- 3.2.8 Services resulting from the award of a greater number of separate prime contracts for construction, materials, equipment or services than are anticipated in the Scope of Services and services resulting from the arranging for performance by individuals or firms other than the principal Prime Contractor(s.)
- 3.2.9 Providing any type field surveys, engineering surveys or staking to enable the Contractor(s) to proceed with their work; and providing other special field surveys, where such work was not included in the Scope of Services.
- 3.2.10 Services in connection with changes or additions to the Project requested by the Authority during construction, unless of a minor and incidental nature
- 3.2.11 Services during out-of-town travel required of Consultant and approved by Authority, other than visits to the site as required by Section 2, or visits to the FAA or NCDOT offices will not be considered out-of-town travel.
- 3.2.12 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor(s), (3) acceleration of the progress schedule involving services beyond normal working hours, (4) default by Contractor(s), or (5) evaluation of an unreasonable number of claims made by the Contractor(s) or others.
- 3.2.13 Preparation of operating and maintenance manuals; protracted or extensive assistance in balancing); and training personnel for operation the utilization of any equipment or system (such as initial start-up, testing, adjusting and maintenance.
- 3.2.14 Services after completion of the Construction Phase, such as project review during any guarantee period, and reporting observed discrepancies under guarantees called for in any contract for the Project.

- 3.2.15 Preparing to serve or serving as a consultant or witness for Authority in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as specifically provided in the Scope of Services.)
- 3.2.16 Any similar Additional Services in connection with the Project, including services normally furnished by Authority and services not otherwise provided for in this Agreement.

### **3.3. Resident Representative Services During Construction**

- 3.3.1 If included in the Scope of Services, a Resident Project Representative (RPR) will be furnished by Consultant. Such services will be paid for by Authority as provided in the Scope of Services.
- 3.3.2 The duties, responsibilities, and limitations of Authority of RPR and any assistants to the RPR are set-forth in **Exhibit "E"**, which is attached hereto and incorporated herein.
- 3.3.3 Through more extensive on-site observations of the work in progress and field checks of materials and equipment by RPR, Consultant shall provide further protection for the Authority against defects and deficiencies in the work of Contractor(s); however, the furnishing of RPR Services will not make Consultant responsible for the Contractor's means, methods, techniques, sequences or procedures, or for safety precautions or programs.

## **SECTION 4 - AUTHORITY'S RESPONSIBILITIES**

The Authority shall do the following in a timely manner:

- 4.1 Designate a person (or persons) to act as Authority's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Authority's policies and decisions with respect to Consultant's services for the Project.
- 4.2 Furnish to Consultant criteria and information as to the Authority's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all local or extraordinary design and construction standards which Authority will require to be included in the Drawings and Specifications. (Such criteria and information may be furnished verbally during project formulation and design discussions; Authority is not obligated to furnish any written summaries of design criteria and requirements, but may do so if he deems it to be appropriate.)
- 4.3 Assist Consultant by placing at his disposal available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. Authority shall make pertinent files and records available, but shall not be obligated to perform any exhaustive or detailed research of existing files or records.
- 4.4 Provide Consultant, as required for performance of Consultant's Basic Services (except to the extent provided otherwise in the Scope of Services) data prepared by or services of others, including but not limited to core borings, probing, and subsurface explorations,

laboratory tests and inspection of samples, materials and equipment; appropriate professional interpretations of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions; and other special data or consultations not covered in Section 3; all of which Consultant may rely upon in performing his services.

- 4.5 Arrange for access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform Services under this Agreement.
- 4.6 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by Consultant; obtain advice of an attorney, insurance counselor and other consultants as the Authority deems appropriate; and render decisions pertaining thereto within a reasonable time so as not to delay the services of Consultant.
- 4.7 Assist Consultant in the process of obtaining necessary permits for the Project. Authority shall promptly review, and upon its approval, sign, and submit to the appropriate agencies such approved permit applications which Consultant furnishes. Authority shall pay all applicable agency permit and review fees.
- 4.8 If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, Authority shall designate a person or organization to have authority and responsibility for coordinating the activities among the prime contractors.
- 4.9 Attend the pre-bid conference, bid openings, preconstruction conferences, construction progress and other job related meetings, and pre-final and final project reviews.
- 4.10 Give prompt written notice to Consultant whenever Authority observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, any defect in the work of Contractor(s), or any apparently unsafe practices being performed by Contractor(s.)
- 4.11 Direct Consultant to provide, necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bear all costs incidental to performance of the requirements of this Section 4.

## **SECTION 5 - PERIOD OF SERVICE**

- 5.1 The services called for in the Preliminary Design Phase will be completed and the Preliminary Design documents submitted within the stipulated period, if any, indicated in the Scope of Services after authorization to proceed with that phase of services.
- 5.2 After acceptance by Authority of the Preliminary Design Phase documents indicating any specific modifications or changes in the extent of the Project desired by Authority, and upon written authorization from Authority, Consultant shall proceed with the performance of the services called for in the Design and Permitting Phase, and shall submit Plans, Specifications, and general consulting report and other documents for 100% review within the stipulated period, if any, indicated in the Scope of Services.

- 5.3 Consultant's services under the Preliminary Design Phase and the Design and Permitting Phase shall be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by Authority or (2) thirty (30) days after the date when such submissions are delivered to Authority for final acceptance, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction over the Project.
- 5.4 After acceptance by Authority of Consultant's Plans, Specifications and other Final Design Phase documentation including the most recent opinion of Probable Construction and Total Project Cost and upon written authorization to proceed with advertisement of the Project, Consultant shall proceed with performance of the Services called for in the Bidding and Contract Formulation Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of the negotiations with prospective Contractor(s).
- 5.5 The Construction and Close-Out Phase will commence with the execution of the first Prime Contract to be executed for the work of the Project or any part thereof, and will terminate upon submittal of final close-out documentation for submittal to FAA and/or NCDOT. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one Prime Contract.
- 5.6 If Authority has requested significant modifications or changes in the extent of the Project, the time, if any, of performance of Consultant's Services, Consultant's compensation may be adjusted by the Authority.
- 5.7 If Authority fails to give prompt written authorization to proceed with any phase of Services after completion of the immediately preceding phase, or if Construction Phase has not commenced within 180 calendar days after completion of the Design and Permitting Phase, Consultant may, after giving seven days' written notice to Authority, suspend services under this Agreement.
- 5.8 If Consultant's Services for design or during construction of the Project are delayed or suspended in whole or in part by Authority for more than twelve months for reasons beyond Consultant's control, the rates of compensation provided for in the Scope of Services shall be subject to renegotiation.

## **SECTION 6 - COMPENSATION**

### **6.1. Methods of Payment for Services and Expenses of the General consultant**

Payment for each element of work identified in the Scope of Services shall be made under one of the following methods, which shall be identified in the Scope of Services:

- 6.1.1 LUMP SUM METHOD - This method generally applies to Basic Services, and certain special Sub-consultant Services such as topographic surveys and environmental reports. The Lump Sum fee shall be a fixed amount as stipulated in the Scope of Services. No adjustment may be made to a lump sum fee. If Additional Services are required, they shall be paid for separately as "Additional Services," under pre-approved terms.

- 6.1.2 UNIT PRICE METHOD - This method generally applies to Sub-contracted testing or survey services. (Survey crew hourly rate shall be considered a "unit rate.") Payment shall be made at the number of units (typically, tests or survey hours) performed, multiplied by the stipulated unit price. If a "Not-to-Exceed" maximum amount is stated, then the total fee may not exceed the stipulated amount unless additional work is performed and approved in advance. If no maximum amount is stated, Consultant shall inform Authority in a timely manner if it becomes apparent that the estimated (budgeted) amount will be exceeded.
- 6.1.3 HOURLY RATE METHOD - Generally applies to Miscellaneous Services (non-FAA and non-NCDOT participation) requested by Authority, and RPR services. Generally applies to services performed by employees of Consultant, as subcontracted Services based on hourly rates are typically considered to be unit price services as stipulated in Sub-section 6.1.2 above. Unless otherwise stated, the hourly rates shall be as listed in Consultant's current Standard Rate Schedule. The Standard Rate Schedule current for the year in which this Agreement is executed is attached as **Exhibit "C"**. The Standard Rate Schedule is revised and re-issued on a calendar-year annual basis (whether or not the rates or other conditions change.) Hourly rates for RPR services are typically stated on the Scope of Services.
- 6.1.4 REIMBURSEMENT OF EXPENSES - This method applies to items which are designated as reimbursable in the Scope of Services, including but not limited to: reproduction of documents exceeding the number of reproductions included in the basic services fee, express shipments in addition to those stipulated in the basic services fee and special travel expenses. Terms of reimbursement are set forth in the Scope of Services, and are typically direct reimbursement of actual costs without mark-up. Office supplies, telephone, first class postage, plot media electronic storage media, and computer time are considered to be overhead costs and are not reimbursable. Plot media for special orders (not for the original production of the drawings) shall be considered "reproductions" and is therefore reimbursable.

## **6.2 Billing and Payment**

- 6.2.1 Consultant shall submit monthly invoices for Professional Services rendered and for Reimbursable Expenses incurred. The invoice for Basic Services will be based upon Consultant's estimate of the proportion of the total services actually completed at the time of preparation of the invoice. To assist in the estimation of fees earned, the Basic Services fee will be broken down into the fees for various project phases. The invoice for RPR services shall be based on the number of hours worked during the billing period, as indicated on time sheets. The invoice for Sub-consultant services shall be based on the invoice received from the Sub-consultant (which Consultant shall review for reasonableness,) plus the pro-rated portion of Consultant's stipulated Administrative/Coordination Fee. The invoice for Reimbursable Expenses shall be based on the number of reproductions made during the invoice period multiplied by the stipulated or standard unit price, and the direct cost of other Reimbursable Expenses, as set forth in the Scope of Services.
- 6.2.2 Invoices shall be due and payable within thirty (30) calendar days of the Authority's receipt of the invoice. If Authority objects to all or any portion of an invoice, Authority shall so notify Consultant within fourteen (14) calendar days of the Authority's receipt of the

invoice, identify the cause of disagreement, and pay when due the portion of the invoice, if any, not in dispute.

6.2.3 Failure to pay the portion of an invoice not under dispute after sixty (60) days shall be cause for Consultant to suspend work on the Project until such payment is made. By doing so, Consultant shall not incur any liability for claimed losses or damages due to non-performance of the work.

6.2.4 In the event that Authority terminates the project in accordance with Section 7 of this Agreement, Consultant shall be paid for the portion of the fee earned and costs incurred as of the date of notice of termination, but shall not be eligible for payment for any lost anticipated profits from the portion of the project following the termination date.

## **SECTION 7 - MISCELLANEOUS PROVISIONS**

### **7.1 Insurance**

During the performance of this Agreement, Consultant shall insure itself for and against professional liability and malpractice relative to the performance of this Agreement in the minimum amount of \$1,000,000 each claim/annual aggregate. In addition, Consultant shall be required, if available, to provide the same types and levels of insurance identified above for a period of six years following the expiration or early termination of this Agreement. Consultant shall deliver to Authority a certificate of this insurance coverage at the time this Agreement is executed. The certificate shall unconditionally provide that the requisite coverage shall not be terminated or modified or not renewed until Authority has received thirty (30) day written notice thereof. In the event that an insurance carrier should terminate or modify or not renew the above coverage, Consultant shall immediately contract with another insurance carrier to provide requisite coverage and shall immediately deliver to Authority a replacement certificate. The coverage shall be written through an admitted carrier in the State of North Carolina. In addition, Consultant and its sub-consultants shall maintain Workers' Compensation Insurance as required by law, and certificates of such insurance coverage shall likewise be delivered to Authority.

### **7.2 Indemnity**

Consultant shall indemnify and hold harmless Authority and its present and future Members, officers, agents and employees, from and against all liabilities, claims, losses, costs and expenses (including, but not limited to, attorney fees) arising out of or resulting from any and all negligent acts and omissions of Consultant and/or its agents, employees and/or sub-consultants. Consultant shall be directly responsible for any such additional costs, above first costs, incurred by the Authority, as a result of the errors and omissions of the consultant through its employees assigned to tasks for, or on behalf of the Authority, which result in additional costs to the Authority, either by a contractor, or by the consultant itself.

### **7.3 Independent Contractor**

Consultant is an independent contractor and not an agent of Authority.

## **7.4 Civil Right Assurances**

During the performance of this Agreement, Consultant, for itself and for its assignees and successors if any and sub-consultants (all of whom collectively referred to as "Contractor") agrees as follows:

(a) Compliance with Regulations. Contractor shall comply with the regulations ("Regulations") relative to nondiscrimination in federally assisted programs of the Department of Transportation ("DOT") including but not limited to: Title 49, Code of Federal Regulations, Part 21, and as they may be amended from time to time. The Regulations are incorporated herein by this reference thereto.

(b) Nondiscrimination. With respect to and during the performance of this Agreement, Contractor shall not discriminate on the ground of age, race, color, national origin, religion, disability or sex in the selection or retention of sub-contractors and sub-consultants including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including, but not limited to, practices when this Agreement covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for sub-consultants and sub-contractors, including but not limited to, procurements of materials and equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a sub-contract, including, but not limited to, procurements of materials and leases of equipment, each potential sub-consultant, sub-contractor and supplier shall be notified by Contractor of Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of age, race, color, national origin, religion, disability or sex.

(d) Information and Reports. Contractor shall provide all information and reports required by the Regulations or directives, orders or instructions issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, directives, circulars, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Authority and the FAA as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of Contractor's non-compliance with any of the non-discrimination provisions of this Agreement, Authority shall impose such Agreement sanctions as it or the FAA determine to be appropriate, including, but not limited to, the following:

- i. Withholding of payments to Contractor under this Agreement until Contractor complies; and/or
- ii. Cancellation, termination, or suspension of this Agreement, in whole or in part.



(f) Incorporation of Provisions. Contractor shall include the provisions of Paragraphs (a) through (e) above in every sub-contract, including but not limited to, procurements of materials and leases of equipment, unless exempted by the Regulations or directives issued pursuant thereto. Contractor shall take such action with respect to any sub-contract or procurement as Authority or the FAA may direct as a means of enforcing such provisions, including, but not necessarily limited to, sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a sub-consultant, sub-contractor or supplier as a result of such direction, Contractor may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Contractor may request the United States Government to enter into such litigation to protect the interests of the United States Government.

## **7.5 Disadvantaged Business Enterprise (DBE) Assurances**

DBE Obligation: The Disadvantaged Business Enterprise (DBE) requirements of Title 49, Code of Federal Regulations, CFR Part (23 or 26) apply to this Agreement. Consultant agrees to ensure that DBE's, as defined in Part (23 or 26), have the maximum opportunity to participate in the performance of contracts and sub-contracts provided under this Agreement. In this regard, Consultant shall take all necessary and reasonable steps in accordance with Part (23 or 26) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform Contracts. The Consultant shall not discriminate on the basis of age, race, color, national origin, religion, disability or sex in the award and performance of contracts.

## **7.6. Opinions of Cost**

7.6.1 Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' method of determining prices, or over competitive bidding or market conditions, his opinions of Probable Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional general consultant, familiar with the construction industry; but Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable cost prepared by him.

7.6.2 "Construction Cost" means the total of payments made to Construction Contractor(s), plus the cost of any materials, furnishings, etc. purchased separately by Authority and incorporated into the project. "Non-construction costs" are all costs of the project other than construction costs, including but not limited to Consulting Services, Testing, Topographic or other Surveys, Environmental Evaluations, RPR, Planning, and Authority's Miscellaneous and Administrative Expense. All of these costs, collectively, are referred to as the Project Cost.

## **7.7 Termination**

7.7.1 This Agreement may be terminated by Authority upon seven (7) day's written notice, for the Authority's convenience and without cause.

- 7.7.2 Upon receipt of a termination notice, Consultant and its sub-consultants shall promptly discontinue all services and shall deliver to Authority all data, Drawings, Specifications, report estimates, summaries, and other information and materials as may be accumulated by Consultant and its sub-consultants, whether completed or in process.
- 7.7.3 Upon termination of this Agreement, Authority may, without prejudice or limitation of any action for damages or any other right or remedy, enter into another agreement for the completion of the work contemplated by this Agreement, or may use other methods for the completion of such work.
- 7.7.4 Upon termination of this Agreement, Consultant shall be entitled to receive payment for work executed and costs incurred by reason of such termination, including reasonable overhead and profit on completed work.

## **7.8 Re-Use of Documents**

The drawings, specifications and all other documents or things prepared by Consultant for the Project shall become and be the sole property of Authority. Consultant shall, at its own cost and expense, be permitted to retain copies thereof for its records and for its future professional endeavors. Such drawings, specifications and other documents or things are not intended by Consultant for use on other projects by Authority or others. Any reuse by Authority or by third parties without the written approval of Consultant, shall be at the sole risk of Authority.

## **7.9 Storage, Protection, and Retrieval of Documents and Data**

- 7.9.1 Storage, protection, and retrieval of General Consulting documents is an important part of Consultant's responsibility to Authority. Completed General Consulting Drawings (Plans) shall be stored by Consultant in a minimum of three medias: paper plot originals, AutoCAD files in the dual redundant hard drives of Consultant's raid server, and in thumb drives which are made each week and stored off-site. Additionally, Authority may obtain disks containing the CAD files at any reasonable interval, such as monthly or upon completion of each project, and store them at Authority's office. Drawings in progress are stored in the hard drive and in the weekly back-up thumb drives; existing paper plots of drawings in progress may not be up to date at any particular time. Text documents shall be stored as filed paper documents, as text files in the hard drive, and in the same weekly thumb drive back-up that contain the CAD files.
- 7.9.2 Documents received from others, such as test reports, shop drawings, correspondence from the Contractor, etc., are stored by Consultant only in their original paper form or electronic form. They are filed by job number and are stored in-perpetuity, unless approved in writing by the Authority for disposal, except for papers which are considered by Consultant to be unimportant for future reference purposes, which are discarded. Although paper documents are stored in boxes in a dry place and reasonable care is taken to protect them, no guarantee is made that they will be preserved undamaged without time limit.

### **7.10 Non-waiver of Rights**

Neither Authority's failure to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy relative to a breach thereof, nor Authority's acceptance of any performance during such breach shall constitute a waiver of any right or remedy of Authority.

### **7.11 Conflict of Interest**

No paid employee of Authority shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

### **7.12 Sub-consultants**

Consultant shall not utilize any sub-consultants for carrying out the services to be performed under this Agreement without the prior written approval of Authority. By the execution of this Agreement, Authority grants approval for the utilization of the sub-consultants set forth in **Exhibit "D"**, which is attached hereto and incorporated herein.

### **7.13 Audit: Access to Records**

Consultant shall maintain books, records and documents pertinent to the performance of the Contract and these General Provisions in accordance with generally accepted accounting principles and practices, and with any governmental requirements; and Authority, the FAA, the Comptroller General of the United States and their duly authorized representatives shall have access to all such documents for purposes of examination, audit and copying.

### **7.14 Special Provisions**

This Agreement is subject to the following Special Provisions. The listed documents are hereby incorporated into this Agreement by reference, and have the same force and effect as if they had been written into the body of this Agreement. However, if there is a conflict between a Special Provision and any other provisions of the agreement, the Special Provisions shall be subordinate.

1. Exhibit A – Proposed Project Work
2. Exhibit B – Consultant Scope of Services related to this Agreement for Professional Services.
3. Exhibit C – Schedule of Fees consisting of one page.
4. Exhibit D – Consultant Staff/Sub Consultant(s) Assignment - Listing of assigned staff and all sub-consultants committed to the fulfillment of this Agreement. Such staff and or sub-consultants may not be changed without the expressed written consent of the Authority.
5. Exhibit E – Responsibilities of Resident Project Representative (RPR).

## **7.15 Notices**

All notices shall be in writing and shall be served only by registered or certified mail, return receipt requested, addressed to the party to be served at the address set forth below or at such other address as may be designated in writing. Service of notice shall be complete upon receipt of notice.

### **To Authority:**

Greater Asheville Regional Airport Authority  
61 Terminal Drive, Suite 1  
Fletcher, North Carolina 28732  
Attention: President & CEO

### **To Consultant:**

AVCON Engineers & Planners, Inc.  
10115 Kinsey Avenue, Suite 140  
Huntersville, NC 28078  
Attention: President/Principal-in-Charge/Owner

## **7.16 Dispute Resolution**

- 7.16.1 As a condition precedent to resolving claims, disputes and other matters by litigation, but only so long as neither of the parties hereto is thereby prejudiced or harmed by a statute of limitation or a statute of repose, the parties agree to attempt to resolve any claim, dispute or other matter in question arising out of or relating to this Agreement or a breach thereof, in the first instance, by mutual consent based upon an objective review and interpretation of factual information presented by either or both parties.
- 7.16.2 In the absence of agreement by mutual consent as set out in Sub-paragraph 7.16.1, but only so long as neither of the parties hereto is thereby prejudiced or harmed by a statute of limitation or a statute of repose, the parties agree to refer the claim, dispute or other matter to mediation. Either party may initiate a request for mediation, and the parties hereto shall, within thirty days of the receipt of a written request, select by mutual agreement a mediator, who shall be qualified to conduct mediated settlement conferences in the Superior Court Division of the General court of Justice of the State of North Carolina. If the parties cannot agree upon a mediator, the first mediator (who will agree to conduct this mediation) on the mediator list of the Trial Court Administrator for the 28th Judicial District of the State of North Carolina shall be automatically selected.
- 7.16.3 The parties hereto shall share the mediator's fees equally. The mediation shall be held in the Conference Room at Authority's Administrative Offices, Asheville Regional Airport, or at such other place as may be mutually agreed upon (the expense for such other place to be shared equally).

7.16.4 Failing resolution of a claim, dispute or other matter by the methods set forth in Sub-Paragraph 7.16.1 or 7.16.2, either party may then resort to litigation, which shall be commenced in Buncombe County, North Carolina.

7.16.5 Notwithstanding any provision of this Agreement to the contrary, this Agreement does not contain, and shall not be deemed to constitute, an Agreement to arbitrate, and any claim against or dispute or other matter with Consultant shall not be subject to arbitration.

7.16.6 In the event a dispute shall arise under or about this Agreement, then the prevailing party therein shall be entitled to recover from the non-prevailing party all reasonable costs, expenses and reasonable attorney's fees which may be incurred on account of such dispute, whether or not suit or other legal or quasi-legal proceedings may be brought, as well as at every stage of any such proceedings from the time such dispute first arises through trial or other proceedings and all appellate processes.

### **7.17 Governing Law**

This Agreement is to be governed by the laws of the State of North Carolina.

### **7.18 Successors and Assigns**

7.18.1 Authority and Consultant each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to the Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

7.18.2 Consultant shall not assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the Authority, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent Sub-consultants or Sub-contractors as he may deem appropriate to assist him in the performance of services hereunder, however Consultant shall so inform Authority in advance, and shall not employ any sub-consultant or sub-contractor to whom Authority objects.

### **7.19 No Third-Party Beneficiaries**

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

### **7.20 Severability**

If any of the terms, conditions or provisions of this Agreement hereto, or any document incorporated herein (other than a Regulation) or any portions thereof, shall contravene or be

invalid under the laws or regulations of the United States or the State of North Carolina or any of their respective agencies, departments or subdivisions, such contravention or invalidity shall not invalidate the whole Agreement, attachment or document, but this Agreement, attachment(s), and document(s) shall be construed as if not containing the particular term, condition or provision, or portion thereof, held to be in contravention or invalid, and the rights and obligations of the parties hereto shall be construed accordingly.

**7.21 Non-Exclusive**

This Agreement does not create or provide any exclusive right or interest in or for Consultant, and Authority may contract with other engineers, professionals and contractors at any time and for any services and purposes.

**7.22 Entirety of Agreement**

7.22.1 This Agreement together with the Exhibits identified above constitutes the entire agreement between Authority and Consultant and supersedes all prior written or oral understanding. This Agreement and said Exhibits may only be amended, supplemented, or modified by a duly executed Amendment, except that an Amendment shall not be required to transmit each year's updated Standard Rate Schedule.

7.22.2 Regardless of which party hereto is responsible for the preparation and drafting of this agreement, it shall not be construed more strictly against either party.

**IN WITNESS WHEREOF**, the parties hereto have made and executed and this Agreement as of the day and year first above written.

**AUTHORITY:**

GREATER ASHEVILLE REGIONAL  
AIRPORT AUTHORITY

By:

\_\_\_\_\_  
Lew Bleiweis, A.A.E.  
President & CEO

Attested By:

\_\_\_\_\_

Print Name: \_\_\_\_\_

Seal

**CONSULTANT:**

AVCON ENGINEERS & PLANNERS, INC.

By:

\_\_\_\_\_  
Sandeep Singh, P.E.  
President/Principal-in-Charge/Owner

Attested By:

\_\_\_\_\_

Print Name: \_\_\_\_\_

Seal

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## **EXHIBIT A PROPOSED PROJECT WORK**

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The following projects may be included in the scope of services provided under the contract associated with this request:

### **Architectural/Engineering Projects:**

1. Rental Car Facility Repairs.
2. Parking Lot Improvements/Rehabilitation and Reconstruction.
3. New Parking Garage Design and Construction.
4. General Aviation Apron/Taxiway Rehabilitation.
5. North General Aviation Area site development.
6. Runway/Taxiway Sealcoat.
7. Terminal Apron Improvements/Reconstruction/Joint Sealing.
8. Wright Brothers Way Extension.
9. Perimeter Road Improvements.
10. Airport Campus Roadway Improvements/Reconstruction/Reconfiguration.
11. Miscellaneous survey and geotechnical investigations.
12. Roadway Improvements.
13. Taxiway A Improvements/Overlay/Reconstruction.
14. Slope Repairs/Retaining Wall/Stormwater Improvements.
15. Maintenance Facilities Redevelopment Program.
16. Design/Construct New SRE Building.
17. Maintenance Facility Fuel Farm Replacement/Expansion.
18. Design/Construct New US Customs Facility.
19. Design/Construct Central Distribution Receiving Center (CDRC).
20. Terminal Drive Extension/Re-configuration.
21. North General Aviation Area Taxiway Connector.
22. Rental Car Facility Upgrades/Improvements.

### **Planning/Financial Assistance Projects:**

1. Items from current Airport Master Plan update.
2. Southwest Development Area (Environmental and Design Services).
3. Northwest Site Property Development (Environmental and Design Services).
4. Safety Management System (SMS).
5. Tri-Annual DBE Goals Program.
6. Tri-Annual Airport Concessions DBE Goals Program.
7. Financial evaluation and other associated services.
8. Rates and Charges evaluation, recommendations, and other associated services.
9. Passenger Facility Charge evaluation, recommendations and/or application processes.

The above list of potential projects and tasks is not necessarily all inclusive and is subject to revisions by the Authority.



**EXHIBIT B**

**Consultant Scope of Services**

**Greater Asheville Regional Airport Authority**

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Scope of Services for Professional Consulting Services, as referenced in the Professional Consulting Agreement between the Greater Asheville Regional Airport Authority and \_\_\_\_\_, dated \_\_\_\_\_.

Project:

Scope of Services:

Consultant Team:

Schedule:

Project Budget:

Fees:

**Authority:**

Greater Asheville Regional Airport Authority

By: \_\_\_\_\_  
President & CEO

Date: \_\_\_\_\_

**Consultant:**

AVCON Engineers & Planners, Inc.

By: \_\_\_\_\_  
President/Principal-in-Charge/Owner

Date: \_\_\_\_\_

This instrument has been pre-audited in the manner required by local government and fiscal control.

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Date

**EXHIBIT C**  
**SCHEDULE OF FEES**  
**for**  
**AVCON ENGINEERS & PLANNERS INC.**

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**CLASSIFICATION**

**HOURLY RATES**

**EXHIBIT D**

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**Consultant Staff/Sub-Consultant(s) Assignments**

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Position/Role

Company/Name

## EXHIBIT E

### Responsibilities of the Resident Project Representative

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If Authority requests the services of a Resident Project Representative, he or she shall be the agent and employee of Consultant and shall:

- A. Make extensive and comprehensive on-site observations of the work in progress, assist Consultant in determining if the work is proceeding in accordance with the Contract Documents; field measure to verify quantities of installed unit price items for accuracy of pay applications; make field checks of materials and equipment incorporated into the work; provided that Consultant shall not have control over the construction means, methods, techniques, sequences or procedures of the Contractor(s) or the safety precautions or programs of the Contractor(s).
- B. Be Consultant's agent at the construction site.
- C. Deal with subcontractors only through the Contractor(s), unless authorized by Consultant and the appropriate Contractor to deal directly with a subcontractor.
- D. Review the progress schedule, schedule of shop drawing submittals and schedule of values prepared by the Contractor(s).
- E. Attend meetings with the Contractor(s), such as pre-construction conferences, progress meetings, job conferences and other Project related meetings, and prepare and circulate copies of minutes thereof to Authority and other appropriate parties. (In the event that there is no Resident Project Representative, Consultant shall be responsible for the preparation and circulation of the minutes for all such meetings.)
- F. Serve as Consultant's liaison with the Contractor(s), working principally through the Contractor(s)' superintendents; and assist the Contractor(s) in understanding the intent of the Contract Documents; and assist Consultant in serving as Authority's liaison with the Contractor(s), particularly when the Contractor(s)' operations affect Authority's airport operations.
- G. Assist in obtaining from Authority such additional details and information as may be required for the proper execution of the work.
- H. Record the dates of receipt of shop drawings and samples.
- I. Receive samples which are furnished at the job site by the Contractor(s), and notify Consultant of the availability of samples for examination.
- J. Advise Consultant and the Contractor(s) of the commencement of any work requiring a shop drawing or sample if the submittal has not been approved by Consultant.
- K. Report in writing to Consultant whenever he or she believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Consultant in writing of any work that he or she believes

should be corrected or rejected, or should be uncovered for observation, or may require special testing, inspection or approval.

- L. Verify that tests, equipment and systems start-ups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that the Contractor(s) maintain adequate written records thereof; and observe, record in writing and report to Consultant appropriate details relative to the test procedures and the start-ups.
- M. Accompany governmental inspectors, and report in writing to Consultant the results of the inspections.
- N. Report in writing to Consultant when clarifications and interpretations of the Contract Documents are needed; and transmit Consultant's clarifications and interpretations to the Contractor(s).
- O. Evaluate the Contractor(s)' suggestions for modifications in drawings and specifications; report his or her recommendations in writing to Consultant; and transmit Consultant's decisions to the Contractor(s).
- P. Maintain at the job site orderly files for correspondence, reports of job conferences, minutes of meetings, shop drawings and samples, reproductions of the Contract Documents including but not limited to all addenda and change orders, Consultant's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents. Consultant shall keep all documents (including but not necessarily limited to the documents referred to in this paragraph and the next two paragraphs) for a period of six (6) years after the Project is fully completed, and during the construction period and this six (6) year period, Authority, the FAA, the Comptroller General of the United States and their duly authorized representatives shall have access to these documents for purposes of examination, audit and copying.
- Q. Keep a diary or log book, and record therein the Contractor(s)' hours on the job site, weather conditions, data relative to questions about the work, job site visitors, daily activities, quantities of items installed, decisions, observations in general, and specific observations with respect to test procedures.
- R. Record names, addresses and telephone numbers of all Contractor(s), subcontractors and major suppliers of material and equipment.
- S. Furnish Consultant periodic written reports of the progress of the work and of the Contractor(s)' compliance with the progress schedule and schedule of shop drawings and sample submittals.
- T. Consult with Consultant in advance of scheduled major tests, inspections and the start of important phases of the work.
- U. Draft proposed change orders and obtain backup materials from the Contractor(s), and make recommendations to Consultant.
- V. Report immediately to Consultant and Authority upon the occurrence of any accident, and confirm such report in writing.

- W. Review applications for payment with the Contractor(s), and forward his or her written recommendations to Consultant, noting particularly the relationship of the payment requested to the schedule of values, work completed, quantities of unit price items, and materials and equipment delivered to the job site but not incorporated in the work.
- X. Verify that certificates, operation and maintenance manuals, and other data required to be assembled and furnished by the Contractor(s) are applicable to the items actually installed and are in accordance with the Contract Documents; and have this material delivered to Consultant for review and forwarding to Authority prior to the final payment for work.
- Y. Before Consultant issues a certificate of substantial completion, submit to each Contractor a written list of observed items requiring completion or correction.
- Z. Conduct a final inspection in the company of Consultant, Authority and the Contractor(s), and prepare a final written list of items to be completed or corrected.
- AA. Determine that all items on the final list have been completed or corrected, and make recommendations in writing to Consultant concerning acceptance of the work and corrections.

The Resident Project Representative shall not:

- A. Authorize any deviation from the Contract Documents, or any substitution of materials or equipment, unless authorized in writing by Consultant.
- B. Exceed Consultant's authority as set forth herein or in the Contract.
- C. Undertake any of the responsibilities of the Contractor(s) or subcontractors.
- D. Advise on, issue directions relative to, or assume control over any aspect of the construction means, methods, techniques, sequences or procedures of the Contractor(s) unless such directions or control are specifically required by the Contract Documents.
- E. Advise on, issue directions relative to, or assume control over Contractor(s)' safety precautions or programs.
- F. Accept shop drawings or sample submittals from anyone other than a Contractor.
- G. Authorize Authority to occupy the Project in whole or in part.
- H. Participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized in writing by Consultant.
- I. Review any of the CONTRACTOR(s)' safety precautions, or the means, methods, sequences, or procedures required for the CONTRACTOR(s) to perform the work. Omitted design or review services include, but are not limited to, shoring, scaffolding, underpinning, temporary retainment of excavations, and any erection methods and temporary bracing.

**[Intentionally Left Blank]**

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES**  
BETWEEN  
**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**  
AND  
**KIMLEY-HORN & ASSOCIATES, INC.**

THIS IS AN AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY, 61 Terminal Drive, Suite 1, Fletcher, North Carolina 28732, hereinafter referred to as "Authority," and KIMLEY-HORN & ASSOCIATES, INC., a Corporation with office located at 421 Fayetteville Street, Suite 600, Raleigh, NC 27601, hereinafter referred to as the "Consultant."

**WITNESSETH**

WHEREAS, Authority anticipates a need for Professional Consulting Services (hereinafter called "Services") for the accomplishment of the proposed projects as described in **Exhibit "A"** [hereinafter called "Project"], and Consultant is desirous of providing such services to Authority;

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, Authority hereby retains Consultant, and the parties agree as follows:

Consultant hereby agrees to perform Services for Authority as subsequently described by separate Scope of Services (**see Exhibit "B"**) to this Agreement for Services, subject to and in accordance with the terms and provisions hereinafter contained. Individual Scope of Services shall be negotiated on a project-by-project basis.

The term of this Agreement shall be for a period of five (5) years beginning on the date of execution, unless terminated in accordance with Section 7.7 of this Agreement.

**SECTION 1 – SCOPE OF SERVICES**

The Authority will request a Scope of Services for each project it desires to engage the services of the Consultant. Each Scope of Services shall be specific as to the extent of services required for each project. The Scope of Services shall be as described in the form included as **Exhibit "B"**. Services for the Project may include the following elements:

1. Assistance in formulating the project and applying for State and/or Federal aid. (Due to logistics of the funding process, these services are generally performed prior to preparation of the Scope of Services.)
2. Preparation of preliminary design information for review and approval.
3. Assistance with obtaining necessary property, topographic and environmental surveys, and investigative testing.



4. Preparation of Plans, Specifications, Bidding Documents, other Contract Documents, and Reports.
5. Assistance with obtaining permits and approvals required to construct the project.
6. Assistance during the bidding and construction contract formulation process.
7. Construction contract administration and Resident Project Representative (RPR) services.
8. Assistance with Quality Assurance (QA) Testing during construction.
9. Assistance with project close-out.

## **SECTION 2 - BASIC SERVICES**

### **2.1. General**

- 2.1.1 Scope of Basic Services: Unless otherwise modified in the respective Scope of Services for the Project, Basic Services shall consist of Services during the Preliminary Design Phase, the Design and Permitting Phase; the Bidding and Contract Preparation Phase, and the Construction and Close-Out Phase.
- 2.1.2. Site: The Site of the Project will be described in the corresponding Scope of Services. The Project will typically be contained within the boundaries of the airport property, but in some cases utilities, roadways and other miscellaneous work may be required in contiguous areas to achieve a complete Project.
- 2.1.3 Sub-consultants: Consultant shall not utilize any sub-consultants for carrying out the services to be performed under this Agreement without the prior written approval of Authority. By the execution of this Agreement, Authority grants approval for the utilization of the sub-consultants set forth in **Exhibit "D"**, which is attached hereto and incorporated herein.
- 2.1.4 Authorization to Proceed: Return of the signed and dated Exhibit B or numbered task order for a specific project to the Consultant shall constitute authorization to proceed. Authority shall verify that necessary Federal Aviation Administration (FAA) and/or North Carolina Department of Transportation (NCDOT) approvals have been received, prior to returning the signed Agreement, if appropriate. Consultant shall assist Authority with obtaining approvals.
- 2.1.5 Work Performed Prior to Execution of Agreement: Due to the logistics of the FAA and NCDOT funding process, assistance with formulating the project (or multiple Projects in the Authority's Work Program) and assistance with the preliminary request for State or Federal Aid is usually performed by Consultant prior to approval of the Agreement for a specific Project. For typical airport improvement Projects, such work is performed to assist in promoting development of the Airport, in the anticipation of recovering the expended costs as part of the Preliminary Design-Phase fee after the Agreement is executed. If, for any reason, the Agreement for the specific project is not executed, the Authority shall have no obligation to compensate Consultant for assistance expended to formulate the

Project or request aid prior to execution of the Authority, except in the case of complex projects or projects with an apparent low probability of funding, in which it has been agreed in writing, in advance, that the Consultant will be compensated on a time-and-material or other basis for Project formulation and/or assistance with the request for funding. In such cases, the fee for Basic Services, if finally approved, shall not include the amount paid earlier for Project formulation and/or assistance with requests for funding.

- 2.1.6 Cooperation with Other Consultants: Consultant recognizes that the Authority has selected one or more other consultants to assist with the development of the Airport. The Consultant agrees to cooperate with the other consultant(s) and assist the Authority diligently in the process of pursuing funding of projects, without regard to which Consultant appears more likely to perform the consulting services for any particular project.

## **2.2. Pre-Planning Phase**

After receiving an executed Scope of Services agreement, Consultant shall:

- 2.2.1 Consult with Authority to clarify and define the Authority's requirements for the project, discuss alternatives, and consider the cost of alternatives.
- 2.2.2 Review all available data; advise Authority to necessity of the Authority's providing or obtaining from others data or services of the types as described in paragraph 4.3, and assist Authority in obtaining such data and services.

## **2.3. Planning Phase**

After approval of the pre-planning documents, Consultant shall:

- 2.3.1 Prepare Plans and Narrative, depicting scope, character, and details of the Plan and alternatives.
- 2.3.2 Prepare a report summarizing the basis and rationale of the design, listing standards used, and providing the Consultant's final opinion of probable construction costs and suggested funding and phasing.
- 2.3.3 Furnish to Authority two sets of Planning Documents, and additional sets as required by the Authority.
- 2.3.4 Respond to Authority and other governmental agency review comments.
- 2.3.5 Unless otherwise agreed in advance, all aforementioned documents will be prepared and submitted to the Authority in both hard copy and electronic format (AutoCAD latest version compatible; Microsoft Word, or such other electronic formats as requested by the Authority)
- 2.3.6 Coordinate follow-up services by other consultants.

## **2.4. Preliminary Design Phase**

After receiving an executed Agreement Consultant shall:

- 2.4.1 Consult with Authority to clarify and define Authority's requirements for the Project, discuss alternatives, and consider the costs of alternative designs.
- 2.4.2 Review available data; advise Authority as to the necessity of the Authority's providing or obtaining from others data or services of the types described in paragraph 4.3, and assist Authority in obtaining such data and services.
- 2.4.3 Prepare preliminary, schematic layouts, sketches and conceptual design drawings and other exhibits to clearly indicate the design considerations involved and the alternative solutions available. Provide recommendations, with an opinion of the Probable Cost of the Project. It shall be understood that the opinions of Probable Cost are offered only as the Consultant's opinion of the likely cost of the improvements based on the Consultant's experience and the limited information available at the time; such opinions of cost are not to be construed as guarantees. If the word "Estimate" is used, it shall be understood to mean "opinion of Probable Cost."
- 2.4.4 Transmit by expeditious means (fax, internet, express courier, or hand delivery; or by U.S. Mail if appropriate for the project schedule) the Preliminary Drawings and other information. Discuss by telephone or in person as appropriate, and revise the Drawings and other exhibits as needed until Authority approves the Preliminary Design. Coordinate drawings and other information with permitting and/or regulatory agencies as appropriate for this phase, to avoid unnecessary changes to the final Construction Documents. Upon approval by Authority of the Preliminary Design, which shall be given either in writing by Authority or verbally by Authority and confirmed in writing by Consultant, the Design Phase shall begin. Multiple revisions of the drawings during the Preliminary Design phase shall not be considered "Additional Services."

## **2.5 Design Development Phase**

- 2.5.1 Based on the approved Preliminary Design Documents and any adjustments authorized by the Authority in the program, schedule or construction budget, the Consultant shall prepare, for approval by the Authority, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.
- 2.5.2 The Consultant shall advise the Authority of any adjustments to the preliminary estimate of Construction Cost.

## **2.6. Design and Permitting Phase**

After approval by the Authority of the Design Development Documents, Consultant shall:

- 2.6.1 Prepare Final Plans and Specifications, depicting the scope, character, and details of the work, in accordance with generally accepted standards of airport design practice. The

term "Specifications" shall be understood to include General Conditions, Special Provisions, and other Contract Documents.

- 2.6.2 Prepare a report, summarizing the basis and rationale of the design, listing standards used, and providing the Consultant's final opinion of probable construction costs.
- 2.6.3 Furnish to Authority at least two sets of Plans, Specifications, and Consultant Report, and simultaneously send one set each to FAA, NCDOT and/or any other applicable governmental agencies, for review. Assist Authority with submittal of certifications. Consultant shall provide additional copies of these docs if requested.
- 2.6.4 Respond to Authority, FAA, NCDOT and/or any other applicable governmental agency review comments. Corrections, additions or modifications to satisfy for applicable government agencies shall not be considered additional services or be eligible for additional compensation.
- 2.6.5 Furnish to Authority such documents and design data as may be required for submittal to governmental authorities having jurisdiction over the Project, and assist in obtaining permits and approvals by participating in submissions to and negotiations with the authorities. (All permit and review fees shall be paid by Authority.) It must be understood that these services do not constitute a guarantee that the permits will be issued; some projects (runway extensions, wetland mitigation, etc.) may be of a controversial nature and it may not be possible to obtain permits, or it may be found that substantial additional services may be required to obtain permits.
- 2.6.6 Unless otherwise agreed in advance, all aforementioned documents will be prepared and submitted to Authority in both hard copy and electronic format (AutoCAD latest version compatible; Microsoft Word, or such other electronic formats as requested by the Authority). Data files will be furnished to Authority, at any time upon request.
- 2.6.7 Design team shall complete and incorporate into the construction documents the project Construction Safety and Phasing Plan (CSPP). It is the responsibility of the design team to complete this document with input from the Authority and to submit completed document to the FAA for review and approval. This document must be in the bid documents.

## **2.7. Bidding and Contract Formulation Phase**

After Authority, FAA, NCDOT and/or any other applicable governmental agencies have approved the documents for Bid Advertisement, the Consultant shall:

- 2.7.1 Assist Authority in advertising for and obtaining bids or negotiating proposals for each Construction Contract. Consultant shall receive payments for bid documents, and issue bidding documents directly to prospective bidders, and furnish the requested number of bid document sets to Authority for issuance to bidders from Authority's office.
- 2.7.2 Respond to prospective bidder's inquiries and issue Addenda as required to clarify, and/or interpret the Bidding Documents.
- 2.7.3 Attend the bid openings. Prepare bid tabulation, and assist Authority in evaluating bids

or proposals, preparing letters to funding agencies, and in assembling and processing the Construction Contract. For FAA-funded projects, prepare an Application for Federal Assistance, generally on the same day as the receipt of bids.

- 2.7.4 Prepare Contract and Bond documents and issue them to Contractor; receive the executed documents and verify that they appear to be completely and correctly executed; bind them into "conformed copies" of the contract documents, and forward the documents to Authority for execution and distribution. Establish a procedure to verify that the bonds and insurance remain valid throughout the final close-out of the project.

## **2.8. Construction and Close-Out Phase**

During the Construction and Close-Out Phase, the Consultant shall:

- 2.8.1 Provide General Administration of the Construction Contract. Consultant shall consult with and advise Authority and act on behalf of the Authority, as provided hereinafter. The extent and limitations of the duties, responsibilities and authority of Consultant shall not be modified, except to the extent provided in the Scope of Services and except as Consultant may otherwise agree in writing. All of the Authority's instructions to Contractor(s), except those related to safety or airport operations which require immediate communication to promote airport safety, will be issued through Consultant who will have authority to act on behalf of the Authority to the extent herein provided, except as otherwise modified in writing.
- 2.8.2 Attend and direct the Preconstruction Conference; prepare and distribute summary of topics discussed; and assist with start-up of the construction Project.
- 2.8.3 Issue guidelines for quality assurance testing. For FAA AIP projects, this will be in the form of a "Construction Management Plan." This is the title of the document used by FAA and shall not be interpreted to mean that the Consultant is responsible to manage the Contractor's operation, which is the responsibility of Contractor.
- 2.8.4 Periodically visit the site and observe the construction; discuss progress and construction details with RPR, Authority's Representative, and the Contractor's Superintendent. Issue a written report, if required. Periodic site reviews generally occur at one week or shorter intervals, although there is no definite schedule for such visits.
- 2.8.5 Review daily reports and other information which is transmitted regularly by RPR.
- 2.8.6 The purpose of Consultant's visits to the site, and representation by RPR, if any, will be to enable Consultant to better carry out his duties and responsibilities during the Construction Phase, and to provide Authority assurance that the completed and accepted work of the Contractor(s) has been monitored in accordance with the quality assurance provisions set forth by FAA and NCDOT, and conforms to the Construction Contract requirements. Consultant shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work, nor shall the Consultant have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incidental to the work of Contractor(s), or for any failure of Contractor(s) to comply with laws, rules, regulations,

ordinances, codes or orders applicable to the construction work. Accordingly, Consultant can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' acts or omissions in the performance of the work. However, Consultant's shall expeditiously notify the Contractor and Authority of any observed failure of Contractor to perform the work in accordance with the Plans and Specifications, or other observed failure to comply with the contract requirements.

- 2.8.7 Review and approve (or take other appropriate action in respect of) Shop Drawings, Certifications, Samples, and Mix Designs, which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Construction Contract Documents. Such review and approval or other action shall not extend to the means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incidental thereto.
- 2.8.8 Issue all instructions of Authority to Contractor(s), except as hereinbefore noted; issue necessary interpretations and clarifications of the Construction Contract Documents and in connection therewith; prepare Change Orders or other authorizations to perform additional work as required; have authority, as Authority's Representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Construction Contract Documents and judge of the acceptability of the work thereunder; and render advice on all claims of Authority and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Construction Contract Documents pertaining to the execution and progress of the work; however Consultant shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.
- 2.8.9 Review Contractor's Periodic Pay Requests, and recommend payment amount to Authority. Consultant's payment recommendation (certification) will be based on on-site observations by Consultant and on verification and/or measurement of quantities by RPR. Such recommendation of payment will constitute a representation to Authority that the work has progressed to the point indicated, to the best of Consultant's knowledge, information and belief. This recommendation shall not constitute certification that moneys owed by the Contractor to Sub-contractors or suppliers have been paid.
- 2.8.10 Conduct a preliminary final Project Review to determine whether the Project is Substantially Complete, and issue a Punch List. After being notified that the Punch List work is presumptively complete, conduct a final Project Review to determine whether the work has been completed in accordance with the Construction Contract Documents and whether each Contractor has fulfilled all of its obligations thereunder so that Consultant may recommend, in writing, final payment to Contractor and may give written notice to Authority and Contractor(s) that the work is acceptable (subject to any conditions therein expressed.)
- 2.8.11 Project review, including periodic review by Consultant and continuous or nearly continuous review by RPR, shall consist of a visual observation of materials, equipment, or construction work for the purpose of ascertaining that the work is in substantial conformance with the Construction Contract Documents and with the design intent. Such review shall not be relied upon by others as acceptance of the work, nor shall it be construed to relieve the Contractor in any way of his obligation and responsibilities under the construction contract. Specifically, and without limitation, review by Consultant shall not require Consultant to assume responsibilities for the means and methods of

construction nor for safety on the job site.

- 2.8.12 Consultant shall not be responsible for the acts or omissions of any Contractor, or Sub-contractor, or any of Contractor(s)' or Sub-contractors' agents or employees or any other persons (except Consultant's own employees and agents) at the site or otherwise performing any of Contractor(s)' work; however, nothing contained herein shall be construed as releasing Consultant from liability for failure to properly perform duties undertaken by him.
- 2.8.13 Consultant shall prepare a set of "Record Drawings" after completion of the project, showing changes made during construction, based on the marked- up prints, drawings and other data furnished by Contractor(s) to Consultant, which Consultant considers significant. Such Record Drawings will be in electronic format (AutoCAD compatible) and will be furnished to Authority along with blue-line prints or blackline plots. If the Contractor furnishes record information in the form of finished AutoCAD drawings rather than marked-up prints or similar non-CAD method, Consultant may add those drawings to the record drawing set, rather than transcribing the information to the Contract Drawings.
- 2.8.14 During the course of construction, Consultant may be required to perform quality assurance (QA) testing, through a qualified and certified testing laboratory, to verify that the improvements constructed by the Contractor(s) conform to the requirements of the Construction Contract Documents. It shall be understood that Consultant will use random sampling procedures, meaning selected portions of the work will be subject to close review and/or testing, and the results observed will be inferred to exist in other areas not sampled. Although such sampling procedures will be conducted in accordance with commonly accepted standards of practice, it shall be understood that the samples and tests will indicate the actual conditions only where the sampling and testing is performed, and that, despite proper implementation of sampling and testing procedures and proper interpretation of their results, Consultant can only infer, not assure, the existence of the revealed conditions at other locations. Accordingly, Authority shall not require Consultant to sign any certification, no matter by whom requested, that would result in Consultant certifying the existence of conditions of which Consultant cannot be certain.
- 2.8.15 "Certify" means to state or declare a professional opinion of conditions whose true properties cannot be known at the time such certification was made, despite appropriate professional evaluation. Consultant's certification of conditions in no way relieves any other party from meeting requirements imposed by contract or other means, including commonly accepted industry practices.
- 2.8.16 To assist Authority with the project close-out process, Consultant shall prepare a summary of quality assurance testing, summary of project costs, and related items required by FAA and NCDOT for Close-Out of the Project. Such information shall be neatly organized and bound.

## **2.9. Buried Utilities**

- 2.9.1 Consultant shall conduct the research that in his professional opinion is necessary to locate utility lines and other man-made objects that may exist beneath the site's surface. Authority recognizes that Consultant's research may not identify all subsurface utility lines and man-made objects, and that the information upon which Consultant relies may

contain errors or may not be complete. Authority also agrees that the possibility exists that soil borings or other penetrations made by or under the instructions of Consultant for investigative purposes may strike and damage underground utility lines or other man-made objects, despite the efforts of Consultant to avoid such objects.

## **SECTION 3 - SPECIAL AND ADDITIONAL SERVICES**

### **3.1 Special Services**

Special Services are any services which are included in the Scope of Services but are not part of Basic Services. Such services are usually performed either by a Sub-consultant (for example, testing or survey,) or by an employee of Consultant residing in the vicinity of the project (RPR.) The terms and conditions for furnishing Special Services are set forth in the Scope of Services.

### **3.2 Additional Services**

Additional Services are services required by Authority which are not included in (or are specifically excluded by) the Scope of Services. Typically, such services are associated with unforeseen conditions which arise during the design or construction process. All additional Services shall be approved in advance by Authority. Additional Services include, but are not limited to, the following.

- 3.2.1 Additional Permitting Services due to changes in regulatory policies which went into effect after the Scope of Services was formulated and Permitting Services such as environmental assessments, asbestos evaluations and permitting, etc. which were not contemplated or identified in the Scope of Services. (The scope of permitting services included in **Exhibit "B"** reflects the services which Consultant anticipates to be necessary based upon experience with prior projects, and does not include contingencies for unexpected or unanticipated permitting requirements that one or more of the various governmental agencies having jurisdiction might elect to impose.)
- 3.2.2 Field investigations to verify the accuracy of Drawings or other information furnished by Authority.
- 3.2.3 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, Authority's schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or construction contract documents when such revisions are due to causes beyond Consultant's control. This does not apply to the Preliminary Design Phase, in which multiple revisions are not considered Additional Services.
- 3.2.4 Providing renderings or three-dimensional models. (Preparation of a reasonable number of two-dimensional exhibits for presentation to the public, FAA, NCDOT, Authority, etc. is an essential part of Basic Services to properly communicate and coordinate the project, and will not be considered Additional Services.)
- 3.2.5 Preparing documents with multiple bid schedules or complex bid options, or requiring the construction work to be performed in two or more mobilizations, or at night, when such conditions were not anticipated in the Scope of Services.



- 3.2.6 Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing Value Engineering consulting to a significant degree during the course of design; preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining loan or bond financing for the Project; evaluation of processes licensing and assisting Authority in obtaining process licensing; detailed quantity surveys of material, equipment and labor; audits or inventories required in connection with construction performed by Authority.
- 3.2.7 Services performed by Consultant due to failure of the Contractor to complete the work within the scheduled time, including but not limited to additional periodic reviews and additional follow-up reviews to verify Punch List completion after the final inspection. (Wherever possible, the costs of such services will be minimized by combining follow-up inspections with trips made to the site for other projects.)
- 3.2.8 Services resulting from the award of a greater number of separate prime contracts for construction, materials, equipment or services than are anticipated in the Scope of Services and services resulting from the arranging for performance by individuals or firms other than the principal Prime Contractor(s.)
- 3.2.9 Providing any type field surveys, engineering surveys or staking to enable the Contractor(s) to proceed with their work; and providing other special field surveys, where such work was not included in the Scope of Services.
- 3.2.10 Services in connection with changes or additions to the Project requested by the Authority during construction, unless of a minor and incidental nature
- 3.2.11 Services during out-of-town travel required of Consultant and approved by Authority, other than visits to the site as required by Section 2, or visits to the FAA or NCDOT offices will not be considered out-of-town travel.
- 3.2.12 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor(s), (3) acceleration of the progress schedule involving services beyond normal working hours, (4) default by Contractor(s), or (5) evaluation of an unreasonable number of claims made by the Contractor(s) or others.
- 3.2.13 Preparation of operating and maintenance manuals; protracted or extensive assistance in balancing); and training personnel for operation the utilization of any equipment or system (such as initial start-up, testing, adjusting and maintenance.
- 3.2.14 Services after completion of the Construction Phase, such as project review during any guarantee period, and reporting observed discrepancies under guarantees called for in any contract for the Project.
- 3.2.15 Preparing to serve or serving as a consultant or witness for Authority in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as specifically provided in the Scope of Services.)
- 3.2.16 Any similar Additional Services in connection with the Project, including services normally furnished by Authority and services not otherwise provided for in this Agreement.

### **3.3. Resident Representative Services During Construction**

- 3.3.1 If included in the Scope of Services, a Resident Project Representative (RPR) will be furnished by Consultant. Such services will be paid for by Authority as provided in the Scope of Services.
- 3.3.2 The duties, responsibilities, and limitations of Authority of RPR and any assistants to the RPR are set-forth in **Exhibit "E"**, which is attached hereto and incorporated herein.
- 3.3.3 Through more extensive on-site observations of the work in progress and field checks of materials and equipment by RPR, Consultant shall provide further protection for the Authority against defects and deficiencies in the work of Contractor(s); however, the furnishing of RPR Services will not make Consultant responsible for the Contractor's means, methods, techniques, sequences or procedures, or for safety precautions or programs.

## **SECTION 4 - AUTHORITY'S RESPONSIBILITIES**

The Authority shall do the following in a timely manner:

- 4.1 Designate a person (or persons) to act as Authority's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Authority's policies and decisions with respect to Consultant's services for the Project.
- 4.2 Furnish to Consultant criteria and information as to the Authority's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all local or extraordinary design and construction standards which Authority will require to be included in the Drawings and Specifications. (Such criteria and information may be furnished verbally during project formulation and design discussions; Authority is not obligated to furnish any written summaries of design criteria and requirements, but may do so if he deems it to be appropriate.)
- 4.3 Assist Consultant by placing at his disposal available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. Authority shall make pertinent files and records available, but shall not be obligated to perform any exhaustive or detailed research of existing files or records.
- 4.4 Provide Consultant, as required for performance of Consultant's Basic Services (except to the extent provided otherwise in the Scope of Services) data prepared by or services of others, including but not limited to core borings, probing, and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; appropriate professional interpretations of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions; and other special data or consultations not covered in Section 3; all of which Consultant may rely upon in performing his services.

- 4.5 Arrange for access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform Services under this Agreement.
- 4.6 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by Consultant; obtain advice of an attorney, insurance counselor and other consultants as the Authority deems appropriate; and render decisions pertaining thereto within a reasonable time so as not to delay the services of Consultant.
- 4.7 Assist Consultant in the process of obtaining necessary permits for the Project. Authority shall promptly review, and upon its approval, sign, and submit to the appropriate agencies such approved permit applications which Consultant furnishes. Authority shall pay all applicable agency permit and review fees.
- 4.8 If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, Authority shall designate a person or organization to have authority and responsibility for coordinating the activities among the prime contractors.
- 4.9 Attend the pre-bid conference, bid openings, preconstruction conferences, construction progress and other job related meetings, and pre-final and final project reviews.
- 4.10 Give prompt written notice to Consultant whenever Authority observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, any defect in the work of Contractor(s), or any apparently unsafe practices being performed by Contractor(s.)
- 4.11 Direct Consultant to provide, necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bear all costs incidental to performance of the requirements of this Section 4.

## **SECTION 5 - PERIOD OF SERVICE**

- 5.1 The services called for in the Preliminary Design Phase will be completed and the Preliminary Design documents submitted within the stipulated period, if any, indicated in the Scope of Services after authorization to proceed with that phase of services.
- 5.2 After acceptance by Authority of the Preliminary Design Phase documents indicating any specific modifications or changes in the extent of the Project desired by Authority, and upon written authorization from Authority, Consultant shall proceed with the performance of the services called for in the Design and Permitting Phase, and shall submit Plans, Specifications, and general consulting report and other documents for 100% review within the stipulated period, if any, indicated in the Scope of Services.
- 5.3 Consultant's services under the Preliminary Design Phase and the Design and Permitting Phase shall be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by Authority or (2) thirty (30) days after the date when such submissions are delivered to Authority for final acceptance, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities

having jurisdiction over the Project.

- 5.4 After acceptance by Authority of Consultant's Plans, Specifications and other Final Design Phase documentation including the most recent opinion of Probable Construction and Total Project Cost and upon written authorization to proceed with advertisement of the Project, Consultant shall proceed with performance of the Services called for in the Bidding and Contract Formulation Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of the negotiations with prospective Contractor(s).
- 5.5 The Construction and Close-Out Phase will commence with the execution of the first Prime Contract to be executed for the work of the Project or any part thereof, and will terminate upon submittal of final close-out documentation for submittal to FAA and/or NCDOT. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one Prime Contract.
- 5.6 If Authority has requested significant modifications or changes in the extent of the Project, the time, if any, of performance of Consultant's Services, Consultant's compensation may be adjusted by the Authority.
- 5.7 If Authority fails to give prompt written authorization to proceed with any phase of Services after completion of the immediately preceding phase, or if Construction Phase has not commenced within 180 calendar days after completion of the Design and Permitting Phase, Consultant may, after giving seven days' written notice to Authority, suspend services under this Agreement.
- 5.8 If Consultant's Services for design or during construction of the Project are delayed or suspended in whole or in part by Authority for more than twelve months for reasons beyond Consultant's control, the rates of compensation provided for in the Scope of Services shall be subject to renegotiation.

## **SECTION 6 - COMPENSATION**

### **6.1. Methods of Payment for Services and Expenses of the General consultant**

Payment for each element of work identified in the Scope of Services shall be made under one of the following methods, which shall be identified in the Scope of Services:

- 6.1.1 LUMP SUM METHOD - This method generally applies to Basic Services, and certain special Sub-consultant Services such as topographic surveys and environmental reports. The Lump Sum fee shall be a fixed amount as stipulated in the Scope of Services. No adjustment may be made to a lump sum fee. If Additional Services are required, they shall be paid for separately as "Additional Services," under pre-approved terms.
- 6.1.2 UNIT PRICE METHOD - This method generally applies to Sub-contracted testing or survey services. (Survey crew hourly rate shall be considered a "unit rate.") Payment shall be made at the number of units (typically, tests or survey hours) performed, multiplied by the stipulated unit price. If a "Not-to-Exceed" maximum amount is stated, then the total fee may not exceed the stipulated amount unless additional work is performed and approved in advance. If no maximum amount is stated, Consultant shall inform Authority

in a timely manner if it becomes apparent that the estimated (budgeted) amount will be exceeded.

- 6.1.3 HOURLY RATE METHOD - Generally applies to Miscellaneous Services (non-FAA and non-NCDOT participation) requested by Authority, and RPR services. Generally applies to services performed by employees of Consultant, as subcontracted Services based on hourly rates are typically considered to be unit price services as stipulated in Sub-section 6.1.2 above. Unless otherwise stated, the hourly rates shall be as listed in Consultant's current Standard Rate Schedule. The Standard Rate Schedule current for the year in which this Agreement is executed is attached as **Exhibit "C"**. The Standard Rate Schedule is revised and re-issued on a calendar-year annual basis (whether or not the rates or other conditions change.) Hourly rates for RPR services are typically stated on the Scope of Services.
- 6.1.4 REIMBURSEMENT OF EXPENSES - This method applies to items which are designated as reimbursable in the Scope of Services, including but not limited to: reproduction of documents exceeding the number of reproductions included in the basic services fee, express shipments in addition to those stipulated in the basic services fee and special travel expenses. Terms of reimbursement are set forth in the Scope of Services, and are typically direct reimbursement of actual costs without mark-up. Office supplies, telephone, first class postage, plot media electronic storage media, and computer time are considered to be overhead costs and are not reimbursable. Plot media for special orders (not for the original production of the drawings) shall be considered "reproductions" and is therefore reimbursable.

## **6.2 Billing and Payment**

- 6.2.1 Consultant shall submit monthly invoices for Professional Services rendered and for Reimbursable Expenses incurred. The invoice for Basic Services will be based upon Consultant's estimate of the proportion of the total services actually completed at the time of preparation of the invoice. To assist in the estimation of fees earned, the Basic Services fee will be broken down into the fees for various project phases. The invoice for RPR services shall be based on the number of hours worked during the billing period, as indicated on time sheets. The invoice for Sub-consultant services shall be based on the invoice received from the Sub-consultant (which Consultant shall review for reasonableness,) plus the pro-rated portion of Consultant's stipulated Administrative/Coordination Fee. The invoice for Reimbursable Expenses shall be based on the number of reproductions made during the invoice period multiplied by the stipulated or standard unit price, and the direct cost of other Reimbursable Expenses, as set forth in the Scope of Services.
- 6.2.2 Invoices shall be due and payable within thirty (30) calendar days of the Authority's receipt of the invoice. If Authority objects to all or any portion of an invoice, Authority shall so notify Consultant within fourteen (14) calendar days of the Authority's receipt of the invoice, identify the cause of disagreement, and pay when due the portion of the invoice, if any, not in dispute.
- 6.2.3 Failure to pay the portion of an invoice not under dispute after sixty (60) days shall be cause for Consultant to suspend work on the Project until such payment is made. By doing so, Consultant shall not incur any liability for claimed losses or damages due to non-

performance of the work.

- 6.2.4 In the event that Authority terminates the project in accordance with Section 7 of this Agreement, Consultant shall be paid for the portion of the fee earned and costs incurred as of the date of notice of termination, but shall not be eligible for payment for any lost anticipated profits from the portion of the project following the termination date.

## **SECTION 7 - MISCELLANEOUS PROVISIONS**

### **7.1 Insurance**

During the performance of this Agreement, Consultant shall insure itself for and against professional liability and malpractice relative to the performance of this Agreement in the minimum amount of \$1,000,000 each claim/annual aggregate. In addition, Consultant shall be required, if available, to provide the same types and levels of insurance identified above for a period of six years following the expiration or early termination of this Agreement. Consultant shall deliver to Authority a certificate of this insurance coverage at the time this Agreement is executed. The certificate shall unconditionally provide that the requisite coverage shall not be terminated or modified or not renewed until Authority has received thirty (30) day written notice thereof. In the event that an insurance carrier should terminate or modify or not renew the above coverage, Consultant shall immediately contract with another insurance carrier to provide requisite coverage and shall immediately deliver to Authority a replacement certificate. The coverage shall be written through an admitted carrier in the State of North Carolina. In addition, Consultant and its sub-consultants shall maintain Workers' Compensation Insurance as required by law, and certificates of such insurance coverage shall likewise be delivered to Authority.

### **7.2 Indemnity**

Consultant shall indemnify and hold harmless Authority and its present and future Members, officers, agents and employees, from and against all liabilities, claims, losses, costs and expenses (including, but not limited to, attorney fees) arising out of or resulting from any and all negligent acts and omissions of Consultant and/or its agents, employees and/or sub-consultants. Consultant shall be directly responsible for any such additional costs, above first costs, incurred by the Authority, as a result of the errors and omissions of the consultant through its employees assigned to tasks for, or on behalf of the Authority, which result in additional costs to the Authority, either by a contractor, or by the consultant itself.

### **7.3 Independent Contractor**

Consultant is an independent contractor and not an agent of Authority.

### **7.4 Civil Right Assurances**

During the performance of this Agreement, Consultant, for itself and for its assignees and successors if any and sub-consultants (all of whom collectively referred to as "Contractor") agrees as follows:

(a) Compliance with Regulations. Contractor shall comply with the regulations ("Regulations") relative to nondiscrimination in federally assisted programs of the Department of Transportation ("DOT") including but not limited to: Title 49, Code of Federal Regulations, Part 21, and as they may be amended from time to time. The Regulations are incorporated herein by this reference thereto.

(b) Nondiscrimination. With respect to and during the performance of this Agreement, Contractor shall not discriminate on the ground of age, race, color, national origin, religion, disability or sex in the selection or retention of sub-contractors and sub-consultants including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including, but not limited to, practices when this Agreement covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for sub-consultants and sub-contractors, including but not limited to, procurements of materials and equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a sub-contract, including, but not limited to, procurements of materials and leases of equipment, each potential sub-consultant, sub-contractor and supplier shall be notified by Contractor of Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of age, race, color, national origin, religion, disability or sex.

(d) Information and Reports. Contractor shall provide all information and reports required by the Regulations or directives, orders or instructions issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, directives, circulars, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Authority and the FAA as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of Contractor's non-compliance with any of the non-discrimination provisions of this Agreement, Authority shall impose such Agreement sanctions as it or the FAA determine to be appropriate, including, but not limited to, the following:

- i. Withholding of payments to Contractor under this Agreement until Contractor complies; and/or
- ii. Cancellation, termination, or suspension of this Agreement, in whole or in part.

(f) Incorporation of Provisions. Contractor shall include the provisions of Paragraphs (a) through (e) above in every sub-contract, including but not limited to, procurements of materials and leases of equipment, unless exempted by the Regulations or directives issued pursuant thereto. Contractor shall take such action with respect to any sub-contract or procurement as Authority or the FAA may direct as a means of enforcing such provisions, including, but not necessarily limited to, sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened

with, litigation with a sub-consultant, sub-contractor or supplier as a result of such direction, Contractor may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Contractor may request the United States Government to enter into such litigation to protect the interests of the United States Government.

## **7.5 Disadvantaged Business Enterprise (DBE) Assurances**

DBE Obligation: The Disadvantaged Business Enterprise (DBE) requirements of Title 49, Code of Federal Regulations, CFR Part (23 or 26) apply to this Agreement. Consultant agrees to ensure that DBE's, as defined in Part (23 or 26), have the maximum opportunity to participate in the performance of contracts and sub-contracts provided under this Agreement. In this regard, Consultant shall take all necessary and reasonable steps in accordance with Part (23 or 26) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform Contracts. The Consultant shall not discriminate on the basis of age, race, color, national origin, religion, disability or sex in the award and performance of contracts.

## **7.6. Opinions of Cost**

7.6.1 Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' method of determining prices, or over competitive bidding or market conditions, his opinions of Probable Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional general consultant, familiar with the construction industry; but Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from opinions of probable cost prepared by him.

7.6.2 "Construction Cost" means the total of payments made to Construction Contractor(s), plus the cost of any materials, furnishings, etc. purchased separately by Authority and incorporated into the project. "Non-construction costs" are all costs of the project other than construction costs, including but not limited to Consulting Services, Testing, Topographic or other Surveys, Environmental Evaluations, RPR, Planning, and Authority's Miscellaneous and Administrative Expense. All of these costs, collectively, are referred to as the Project Cost.

## **7.7 Termination**

7.7.1 This Agreement may be terminated by Authority upon seven (7) day's written notice, for the Authority's convenience and without cause.

7.7.2 Upon receipt of a termination notice, Consultant and its sub-consultants shall promptly discontinue all services and shall deliver to Authority all data, Drawings, Specifications, report estimates, summaries, and other information and materials as may be accumulated by Consultant and its sub-consultants, whether completed or in process.

7.7.3 Upon termination of this Agreement, Authority may, without prejudice or limitation of any action for damages or any other right or remedy, enter into another agreement for the



completion of the work contemplated by this Agreement, or may use other methods for the completion of such work.

- 7.7.4 Upon termination of this Agreement, Consultant shall be entitled to receive payment for work executed and costs incurred by reason of such termination, including reasonable overhead and profit on completed work.

## **7.8 Re-Use of Documents**

The drawings, specifications and all other documents or things prepared by Consultant for the Project shall become and be the sole property of Authority. Consultant shall, at its own cost and expense, be permitted to retain copies thereof for its records and for its future professional endeavors. Such drawings, specifications and other documents or things are not intended by Consultant for use on other projects by Authority or others. Any reuse by Authority or by third parties without the written approval of Consultant, shall be at the sole risk of Authority.

## **7.9 Storage, Protection, and Retrieval of Documents and Data**

- 7.9.1 Storage, protection, and retrieval of General Consulting documents is an important part of Consultant's responsibility to Authority. Completed General Consulting Drawings (Plans) shall be stored by Consultant in a minimum of three medias: paper plot originals, AutoCAD files in the dual redundant hard drives of Consultant's raid server, and in thumb drives which are made each week and stored off-site. Additionally, Authority may obtain disks containing the CAD files at any reasonable interval, such as monthly or upon completion of each project, and store them at Authority's office. Drawings in progress are stored in the hard drive and in the weekly back-up thumb drives; existing paper plots of drawings in progress may not be up to date at any particular time. Text documents shall be stored as filed paper documents, as text files in the hard drive, and in the same weekly thumb drive back-up that contain the CAD files.
- 7.9.2 Documents received from others, such as test reports, shop drawings, correspondence from the Contractor, etc., are stored by Consultant only in their original paper form or electronic form. They are filed by job number and are stored in-perpetuity, unless approved in writing by the Authority for disposal, except for papers which are considered by Consultant to be unimportant for future reference purposes, which are discarded. Although paper documents are stored in boxes in a dry place and reasonable care is taken to protect them, no guarantee is made that they will be preserved undamaged without time limit.

## **7.10 Non-waiver of Rights**

Neither Authority's failure to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy relative to a breach thereof, nor Authority's acceptance of any performance during such breach shall constitute a waiver of any right or remedy of Authority.

### **7.11 Conflict of Interest**

No paid employee of Authority shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

### **7.12 Sub-consultants**

Consultant shall not utilize any sub-consultants for carrying out the services to be performed under this Agreement without the prior written approval of Authority. By the execution of this Agreement, Authority grants approval for the utilization of the sub-consultants set forth in **Exhibit "D"**, which is attached hereto and incorporated herein.

### **7.13 Audit: Access to Records**

Consultant shall maintain books, records and documents pertinent to the performance of the Contract and these General Provisions in accordance with generally accepted accounting principles and practices, and with any governmental requirements; and Authority, the FAA, the Comptroller General of the United States and their duly authorized representatives shall have access to all such documents for purposes of examination, audit and copying.

### **7.14 Special Provisions**

This Agreement is subject to the following Special Provisions. The listed documents are hereby incorporated into this Agreement by reference, and have the same force and effect as if they had been written into the body of this Agreement. However, if there is a conflict between a Special Provision and any other provisions of the agreement, the Special Provisions shall be subordinate.

1. Exhibit A – Proposed Project Work
2. Exhibit B – Consultant Scope of Services related to this Agreement for Professional Services.
3. Exhibit C – Schedule of Fees consisting of one page.
4. Exhibit D – Consultant Staff/Sub Consultant(s) Assignment - Listing of assigned staff and all sub-consultants committed to the fulfillment of this Agreement. Such staff and or sub-consultants may not be changed without the expressed written consent of the Authority.
5. Exhibit E – Responsibilities of Resident Project Representative (RPR).

### **7.15 Notices**

All notices shall be in writing and shall be served only by registered or certified mail, return receipt requested, addressed to the party to be served at the address set forth below or at such other address as may be designated in writing. Service of notice shall be complete upon receipt of notice.

**To Authority:**

Greater Asheville Regional Airport Authority  
61 Terminal Drive, Suite 1  
Fletcher, North Carolina 28732  
Attention: President & CEO

**To Consultant:**

Kimley-Horn & Associates, Inc.  
421 Fayetteville Street, Suite 600  
Raleigh, NC 27601  
Attention: Project Manager

**7.16 Dispute Resolution**

- 7.16.1 As a condition precedent to resolving claims, disputes and other matters by litigation, but only so long as neither of the parties hereto is thereby prejudiced or harmed by a statute of limitation or a statute of repose, the parties agree to attempt to resolve any claim, dispute or other matter in question arising out of or relating to this Agreement or a breach thereof, in the first instance, by mutual consent based upon an objective review and interpretation of factual information presented by either or both parties.
- 7.16.2 In the absence of agreement by mutual consent as set out in Sub-paragraph 7.16.1, but only so long as neither of the parties hereto is thereby prejudiced or harmed by a statute of limitation or a statute of repose, the parties agree to refer the claim, dispute or other matter to mediation. Either party may initiate a request for mediation, and the parties hereto shall, within thirty days of the receipt of a written request, select by mutual agreement a mediator, who shall be qualified to conduct mediated settlement conferences in the Superior Court Division of the General court of Justice of the State of North Carolina. If the parties cannot agree upon a mediator, the first mediator (who will agree to conduct this mediation) on the mediator list of the Trial Court Administrator for the 28th Judicial District of the State of North Carolina shall be automatically selected.
- 7.16.3 The parties hereto shall share the mediator's fees equally. The mediation shall be held in the Conference Room at Authority's Administrative Offices, Asheville Regional Airport, or at such other place as may be mutually agreed upon (the expense for such other place to be shared equally).
- 7.16.4 Failing resolution of a claim, dispute or other matter by the methods set forth in Sub-Paragraph 7.16.1 or 7.16.2, either party may then resort to litigation, which shall be commenced in Buncombe County, North Carolina.
- 7.16.5 Notwithstanding any provision of this Agreement to the contrary, this Agreement does not contain, and shall not be deemed to constitute, an Agreement to arbitrate, and any claim against or dispute or other matter with Consultant shall not be subject to arbitration.

7.16.6 In the event a dispute shall arise under or about this Agreement, then the prevailing party therein shall be entitled to recover from the non-prevailing party all reasonable costs, expenses and reasonable attorney's fees which may be incurred on account of such dispute, whether or not suit or other legal or quasi-legal proceedings may be brought, as well as at every stage of any such proceedings from the time such dispute first arises through trial or other proceedings and all appellate processes.

### **7.17 Governing Law**

This Agreement is to be governed by the laws of the State of North Carolina.

### **7.18 Successors and Assigns**

7.18.1 Authority and Consultant each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to the Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

7.18.2 Consultant shall not assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the Authority, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent Sub-consultants or Sub-contractors as he may deem appropriate to assist him in the performance of services hereunder, however Consultant shall so inform Authority in advance, and shall not employ any sub-consultant or sub-contractor to whom Authority objects.

### **7.19 No Third-Party Beneficiaries**

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

### **7.20 Severability**

If any of the terms, conditions or provisions of this Agreement hereto, or any document incorporated herein (other than a Regulation) or any portions thereof, shall contravene or be invalid under the laws or regulations of the United States or the State of North Carolina or any of their respective agencies, departments or subdivisions, such contravention or invalidity shall not invalidate the whole Agreement, attachment or document, but this Agreement, attachment(s), and document(s) shall be construed as if not containing the particular term, condition or provision, or portion thereof, held to be in contravention or invalid, and the rights and obligations of the parties hereto shall be construed accordingly.

**7.21 Non-Exclusive**

This Agreement does not create or provide any exclusive right or interest in or for Consultant, and Authority may contract with other engineers, professionals and contractors at any time and for any services and purposes.

**7.22 Entirety of Agreement**

7.22.1 This Agreement together with the Exhibits identified above constitutes the entire agreement between Authority and Consultant and supersedes all prior written or oral understanding. This Agreement and said Exhibits may only be amended, supplemented, or modified by a duly executed Amendment, except that an Amendment shall not be required to transmit each year’s updated Standard Rate Schedule.

7.22.2 Regardless of which party hereto is responsible for the preparation and drafting of this agreement, it shall not be construed more strictly against either party.

**IN WITNESS WHEREOF**, the parties hereto have made and executed and this Agreement as of the day and year first above written.

**AUTHORITY:**

GREATER ASHEVILLE REGIONAL  
AIRPORT AUTHORITY

By:

\_\_\_\_\_  
Lew Bleiweis, A.A.E.  
President & CEO

Attested By:

\_\_\_\_\_

Print Name: \_\_\_\_\_

Seal

**CONSULTANT:**

KIMLEY-HORN & ASSOCIATES, INC.

By:

\_\_\_\_\_  
Dan Robinson, P.E., CFM  
Project Manager

Attested By:

\_\_\_\_\_

Print Name: \_\_\_\_\_

Seal

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## **EXHIBIT A PROPOSED PROJECT WORK**

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The following projects may be included in the scope of services provided under the contract associated with this request:

### **Architectural/Engineering Projects:**

1. Rental Car Facility Repairs.
2. Parking Lot Improvements/Rehabilitation and Reconstruction.
3. New Parking Garage Design and Construction.
4. General Aviation Apron/Taxiway Rehabilitation.
5. North General Aviation Area site development.
6. Runway/Taxiway Sealcoat.
7. Terminal Apron Improvements/Reconstruction/Joint Sealing.
8. Wright Brothers Way Extension.
9. Perimeter Road Improvements.
10. Airport Campus Roadway Improvements/Reconstruction/Reconfiguration.
11. Miscellaneous survey and geotechnical investigations.
12. Roadway Improvements.
13. Taxiway A Improvements/Overlay/Reconstruction.
14. Slope Repairs/Retaining Wall/Stormwater Improvements.
15. Maintenance Facilities Redevelopment Program.
16. Design/Construct New SRE Building.
17. Maintenance Facility Fuel Farm Replacement/Expansion.
18. Design/Construct New US Customs Facility.
19. Design/Construct Central Distribution Receiving Center (CDRC).
20. Terminal Drive Extension/Re-configuration.
21. North General Aviation Area Taxiway Connector.
22. Rental Car Facility Upgrades/Improvements.

### **Planning/Financial Assistance Projects:**

1. Items from current Airport Master Plan update.
2. Southwest Development Area (Environmental and Design Services).
3. Northwest Site Property Development (Environmental and Design Services).
4. Safety Management System (SMS).
5. Tri-Annual DBE Goals Program.
6. Tri-Annual Airport Concessions DBE Goals Program.
7. Financial evaluation and other associated services.
8. Rates and Charges evaluation, recommendations, and other associated services.
9. Passenger Facility Charge evaluation, recommendations and/or application processes.

The above list of potential projects and tasks is not necessarily all inclusive and is subject to revisions by the Authority.

**EXHIBIT B**

**Consultant Scope of Services**

**Greater Asheville Regional Airport Authority**

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Scope of Services for Professional Consulting Services, as referenced in the Professional Consulting Agreement between the Greater Asheville Regional Airport Authority and \_\_\_\_\_, dated \_\_\_\_\_.

Project:

Scope of Services:

Consultant Team:

Schedule:

Project Budget:

Fees:

**Authority:**

Greater Asheville Regional Airport Authority

By: \_\_\_\_\_  
President & CEO

Date: \_\_\_\_\_

**Consultant:**

Kimley-Horn & Associates, Inc.

By: \_\_\_\_\_  
Project Manager

Date: \_\_\_\_\_

This instrument has been pre-audited in the manner required by local government and fiscal control.

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Date



**EXHIBIT C**  
**SCHEDULE OF FEES**  
**for**  
**AVCON ENGINEERS & PLANNERS INC.**

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**CLASSIFICATION**

**HOURLY RATES**

**EXHIBIT D**

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**Consultant Staff/Sub-Consultant(s) Assignments**

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Position/Role

Company/Name

## EXHIBIT E

### Responsibilities of the Resident Project Representative

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If Authority requests the services of a Resident Project Representative, he or she shall be the agent and employee of Consultant and shall:

- A. Make extensive and comprehensive on-site observations of the work in progress, assist Consultant in determining if the work is proceeding in accordance with the Contract Documents; field measure to verify quantities of installed unit price items for accuracy of pay applications; make field checks of materials and equipment incorporated into the work; provided that Consultant shall not have control over the construction means, methods, techniques, sequences or procedures of the Contractor(s) or the safety precautions or programs of the Contractors(s).
- B. Be Consultant's agent at the construction site.
- C. Deal with subcontractors only through the Contractor(s), unless authorized by Consultant and the appropriate Contractor to deal directly with a subcontractor.
- D. Review the progress schedule, schedule of shop drawing submittals and schedule of values prepared by the Contractor(s).
- E. Attend meetings with the Contractor(s), such as pre-construction conferences, progress meetings, job conferences and other Project related meetings, and prepare and circulate copies of minutes thereof to Authority and other appropriate parties. (In the event that there is no Resident Project Representative, Consultant shall be responsible for the preparation and circulation of the minutes for all such meetings.)
- F. Serve as Consultant's liaison with the Contractor(s), working principally through the Contractor(s)' superintendents; and assist the Contractor(s) in understanding the intent of the Contract Documents; and assist Consultant in serving as Authority's liaison with the Contractor(s), particularly when the Contractor(s)' operations affect Authority's airport operations.
- G. Assist in obtaining from Authority such additional details and information as may be required for the proper execution of the work.
- H. Record the dates of receipt of shop drawings and samples.
- I. Receive samples which are furnished at the job site by the Contractor(s), and notify Consultant of the availability of samples for examination.
- J. Advise Consultant and the Contractor(s) of the commencement of any work requiring a shop drawing or sample if the submittal has not been approved by Consultant.
- K. Report in writing to Consultant whenever he or she believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Consultant in writing of any work that he or she believes

should be corrected or rejected, or should be uncovered for observation, or may require special testing, inspection or approval.

- L. Verify that tests, equipment and systems start-ups, and operating and maintenance training are conducted in the presence of appropriate personnel, and that the Contractor(s) maintain adequate written records thereof; and observe, record in writing and report to Consultant appropriate details relative to the test procedures and the start-ups.
- M. Accompany governmental inspectors, and report in writing to Consultant the results of the inspections.
- N. Report in writing to Consultant when clarifications and interpretations of the Contract Documents are needed; and transmit Consultant's clarifications and interpretations to the Contractor(s).
- O. Evaluate the Contractor(s)' suggestions for modifications in drawings and specifications; report his or her recommendations in writing to Consultant; and transmit Consultant's decisions to the Contractor(s).
- P. Maintain at the job site orderly files for correspondence, reports of job conferences, minutes of meetings, shop drawings and samples, reproductions of the Contract Documents including but not limited to all addenda and change orders, Consultant's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents. Consultant shall keep all documents (including but not necessarily limited to the documents referred to in this paragraph and the next two paragraphs) for a period of six (6) years after the Project is fully completed, and during the construction period and this six (6) year period, Authority, the FAA, the Comptroller General of the United States and their duly authorized representatives shall have access to these documents for purposes of examination, audit and copying.
- Q. Keep a diary or log book, and record therein the Contractor(s)' hours on the job site, weather conditions, data relative to questions about the work, job site visitors, daily activities, quantities of items installed, decisions, observations in general, and specific observations with respect to test procedures.
- R. Record names, addresses and telephone numbers of all Contractor(s), subcontractors and major suppliers of material and equipment.
- S. Furnish Consultant periodic written reports of the progress of the work and of the Contractor(s)' compliance with the progress schedule and schedule of shop drawings and sample submittals.
- T. Consult with Consultant in advance of scheduled major tests, inspections and the start of important phases of the work.
- U. Draft proposed change orders and obtain backup materials from the Contractor(s), and make recommendations to Consultant.
- V. Report immediately to Consultant and Authority upon the occurrence of any accident, and confirm such report in writing.

- W. Review applications for payment with the Contractor(s), and forward his or her written recommendations to Consultant, noting particularly the relationship of the payment requested to the schedule of values, work completed, quantities of unit price items, and materials and equipment delivered to the job site but not incorporated in the work.
- X. Verify that certificates, operation and maintenance manuals, and other data required to be assembled and furnished by the Contractor(s) are applicable to the items actually installed and are in accordance with the Contract Documents; and have this material delivered to Consultant for review and forwarding to Authority prior to the final payment for work.
- Y. Before Consultant issues a certificate of substantial completion, submit to each Contractor a written list of observed items requiring completion or correction.
- Z. Conduct a final inspection in the company of Consultant, Authority and the Contractor(s), and prepare a final written list of items to be completed or corrected.
- AA. Determine that all items on the final list have been completed or corrected, and make recommendations in writing to Consultant concerning acceptance of the work and corrections.

The Resident Project Representative shall not:

- A. Authorize any deviation from the Contract Documents, or any substitution of materials or equipment, unless authorized in writing by Consultant.
- B. Exceed Consultant's authority as set forth herein or in the Contract.
- C. Undertake any of the responsibilities of the Contractor(s) or subcontractors.
- D. Advise on, issue directions relative to, or assume control over any aspect of the construction means, methods, techniques, sequences or procedures of the Contractor(s) unless such directions or control are specifically required by the Contract Documents.
- E. Advise on, issue directions relative to, or assume control over Contractor(s)' safety precautions or programs.
- F. Accept shop drawings or sample submittals from anyone other than a Contractor.
- G. Authorize Authority to occupy the Project in whole or in part.
- H. Participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized in writing by Consultant.
- I. Review any of the CONTRACTOR(s)' safety precautions, or the means, methods, sequences, or procedures required for the CONTRACTOR(s) to perform the work. Omitted design or review services include, but are not limited to, shoring, scaffolding, underpinning, temporary retainment of excavations, and any erection methods and temporary bracing.

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## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Lew Bleiweis, A.A.E., President & CEO

DATE: August 11, 2023

### **ITEM DESCRIPTION – Information Section Item A**

June, 2023 Traffic Report – Asheville Regional Airport

### **SUMMARY**

June, 2023 overall passenger traffic numbers were up 24.7% compared to the same period last year. Passenger traffic numbers reflect a 24.8% increase in passenger enplanements from June, 2022. Enplanements for Fiscal Year to Date total 1,022,141, which is a 20.2% increase over the same period last year.

### **AIRLINE PERFORMANCE**

Allegiant Airlines: Year over Year passenger enplanements for Allegiant in June 2023 were up by 22.7%. There were 11 flight cancellations for the month.

American Airlines: American's June 2023 passenger enplanements represent a 20.9% increase over the same period last year. There were 5 flight cancellations for the month.

Delta Airlines: Enplanements for Delta in June 2023 increased by 26.7%. There were 2 flight cancellations for the month.

JetBlue Airways: Passenger enplanements for JetBlue increased by 86.9% over the same period last year. There were no flight cancellations for the month.

Sun Country: Sun Country saw an increase in enplanements by 17.7% compared to June, 2022. There were no flight cancellations for the month.

United Airlines: In June 2023, United Airlines saw an increase in enplanements by 44.7% over the same period last year. There were no flight cancellations for the month.

# Monthly Traffic Report

## Asheville Regional Airport

### June, 2023



Category	Jun 2023	Jun 2022	Percentage Change	*CYTD-2023	**CYTD-2022	Percentage Change	*MOV12-2023	**MOV12-2022	Percentage Change
<b>Passenger Traffic</b>									
Enplaned	112,970	90,545	24.8%	487,897	399,901	22.0%	1,010,812	842,846	19.9%
Deplaned	113,869	91,340	24.7%	483,667	397,594	21.7%	1,002,050	839,001	19.4%
<b>Total</b>	<b>226,839</b>	<b>181,885</b>	<b>24.7 %</b>	<b>971,564</b>	<b>797,495</b>	<b>21.8 %</b>	<b>2,012,862</b>	<b>1,681,847</b>	<b>19.7 %</b>
<b>Aircraft Operations</b>									
Airlines	1,913	1,640	16.7%	8,914	7,313	21.9%	18,519	14,691	26.1%
Commuter/AirTaxi	1,102	1,043	5.7%	4,551	4,102	11.0%	10,405	11,922	-12.7%
<b>Subtotal</b>	<b>3,015</b>	<b>2,683</b>	<b>12.4 %</b>	<b>13,465</b>	<b>11,415</b>	<b>18.0 %</b>	<b>28,924</b>	<b>26,613</b>	<b>8.7 %</b>
GeneralAviation	4,029	4,819	-16.4%	22,581	22,610	-0.1%	46,988	46,481	1.1%
Military	428	381	12.3%	1,759	2,766	-36.4%	4,133	5,315	-22.2%
<b>Subtotal</b>	<b>4,457</b>	<b>5,200</b>	<b>-14.3 %</b>	<b>24,340</b>	<b>25,376</b>	<b>-4.1 %</b>	<b>51,121</b>	<b>51,796</b>	<b>-1.3 %</b>
<b>Total</b>	<b>7,472</b>	<b>7,883</b>	<b>-5.2 %</b>	<b>37,805</b>	<b>36,791</b>	<b>2.8 %</b>	<b>80,045</b>	<b>78,409</b>	<b>2.1 %</b>
<b>Fuel Gallons</b>									
FF-100LL	20,249	23,511	-13.9%	97,469	83,484	16.8%	184,007	184,818	-0.4%
FF-JETA-GA	230,412	237,222	-2.9%	799,117	810,108	-1.4%	1,899,712	1,955,310	-2.8%
<b>Subtotal</b>	<b>250,661</b>	<b>260,733</b>	<b>-3.9 %</b>	<b>896,586</b>	<b>893,592</b>	<b>0.3 %</b>	<b>2,083,719</b>	<b>2,140,128</b>	<b>-2.6 %</b>
FF-JETA-AL	1,047,314	838,002	25.0%	4,652,000	3,773,402	23.3%	9,647,061	8,284,593	16.5%
<b>Subtotal</b>	<b>1,047,314</b>	<b>838,002</b>	<b>25.0 %</b>	<b>4,652,000</b>	<b>3,773,402</b>	<b>23.3 %</b>	<b>9,647,061</b>	<b>8,284,593</b>	<b>16.4 %</b>
<b>Total</b>	<b>1,297,975</b>	<b>1,098,735</b>	<b>18.1 %</b>	<b>5,548,586</b>	<b>4,666,994</b>	<b>18.9 %</b>	<b>11,730,780</b>	<b>10,424,721</b>	<b>12.5 %</b>

\*CYTD = Calendar Year to Date and \*Mov12 = Moving Twelve Months.

\*\*Previous Year does not include charter activity.



# Airline Enplanements, Seats, and Load Factors

## Asheville Regional Airport

### June, 2023



	Jun 2023	Jun 2022	Percentage Change	*CYTD-2023	**CYTD-2022	Percentage Change
<b>Allegiant Air</b>						
Enplanements	49,298	40,165	22.7%	210,836	189,232	11.4%
Seats	55,248	44,832	23.2%	246,081	238,227	3.3%
Load Factor	89.0 %	90.0 %	-1.1%	86.0 %	79.0 %	8.9%
<b>American Airlines</b>						
Enplanements	30,878	25,544	20.9%	123,144	91,715	34.3%
Seats	39,844	29,162	36.6%	157,777	110,238	43.1%
Load Factor	77.0 %	88.0 %	-12.5%	78.0 %	83.0 %	-6.0%
<b>Delta Air Lines</b>						
Enplanements	21,512	16,983	26.7%	109,269	85,882	27.2%
Seats	24,807	18,902	31.2%	131,414	116,669	12.6%
Load Factor	87.0 %	90.0 %	-3.3%	83.0 %	74.0 %	12.2%
<b>JetBlue Airways</b>						
Enplanements	1,396	747	86.9%	1,396	747	86.9%
Seats	1,600	900	77.8%	1,600	900	77.8%
Load Factor	87.0 %	83.0 %	4.8%	87.0 %	83.0 %	4.8%
<b>Sun Country</b>						
Enplanements	1,722	1,463	17.7%	8,861	8,774	1.0%
Seats	2,046	1,836	11.4%	12,090	10,902	10.9%
Load Factor	84.0 %	80.0 %	5.0%	73.0 %	80.0 %	-8.8%
<b>United Airlines</b>						
Enplanements	8,164	5,643	44.7%	34,391	23,551	46.0%
Seats	10,138	6,300	60.9%	40,944	26,205	56.2%
Load Factor	81.0 %	90.0 %	-10.0%	84.0 %	90.0 %	-6.7%
<b>Totals</b>						
Enplanements	112,970	90,545	25.0%	487,897	399,901	22.0%
Seats	133,683	101,932	31.0%	589,906	503,141	17.0%
Load Factor	85.0 %	89.0 %	-4.5%	83.0 %	79.0 %	5.1%

\*CYTD = Calendar Year to Date and \*Mov12 = Moving Twelve Months.

\*\*Previous Year does not include charter activity.

# Airline Flight Completions Asheville Regional Airport June, 2023

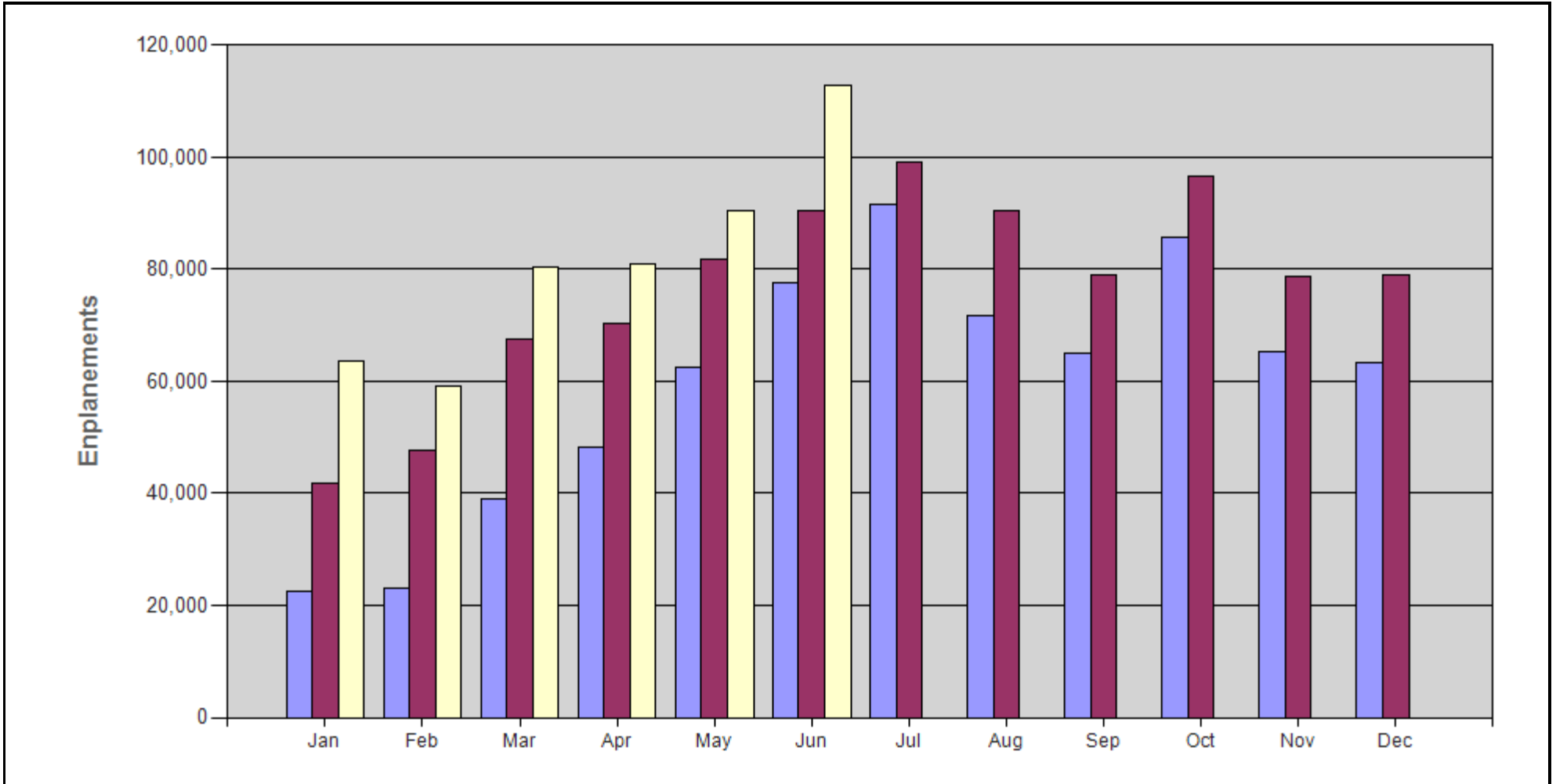


Airline	Scheduled Flights	Cancellations Due To				Total Cancellations	Percentage of Completed Flights
		Field	Mechanical	Weather	Other		
Allegiant Air	315	0	0	0	11	11	96.5%
American Airlines	450	0	0	5	0	5	98.9%
Delta Air Lines	238	0	0	2	0	2	99.2%
JetBlue Airways	16	0	0	0	0	0	100.0%
Sun Country	11	0	0	0	0	0	100.0%
United Airlines	141	0	0	0	0	0	100.0%
<b>Total</b>	1,171	0	0	7	11	18	98.5%

# Monthly Enplanements By Year

## Asheville Regional Airport

June, 2023

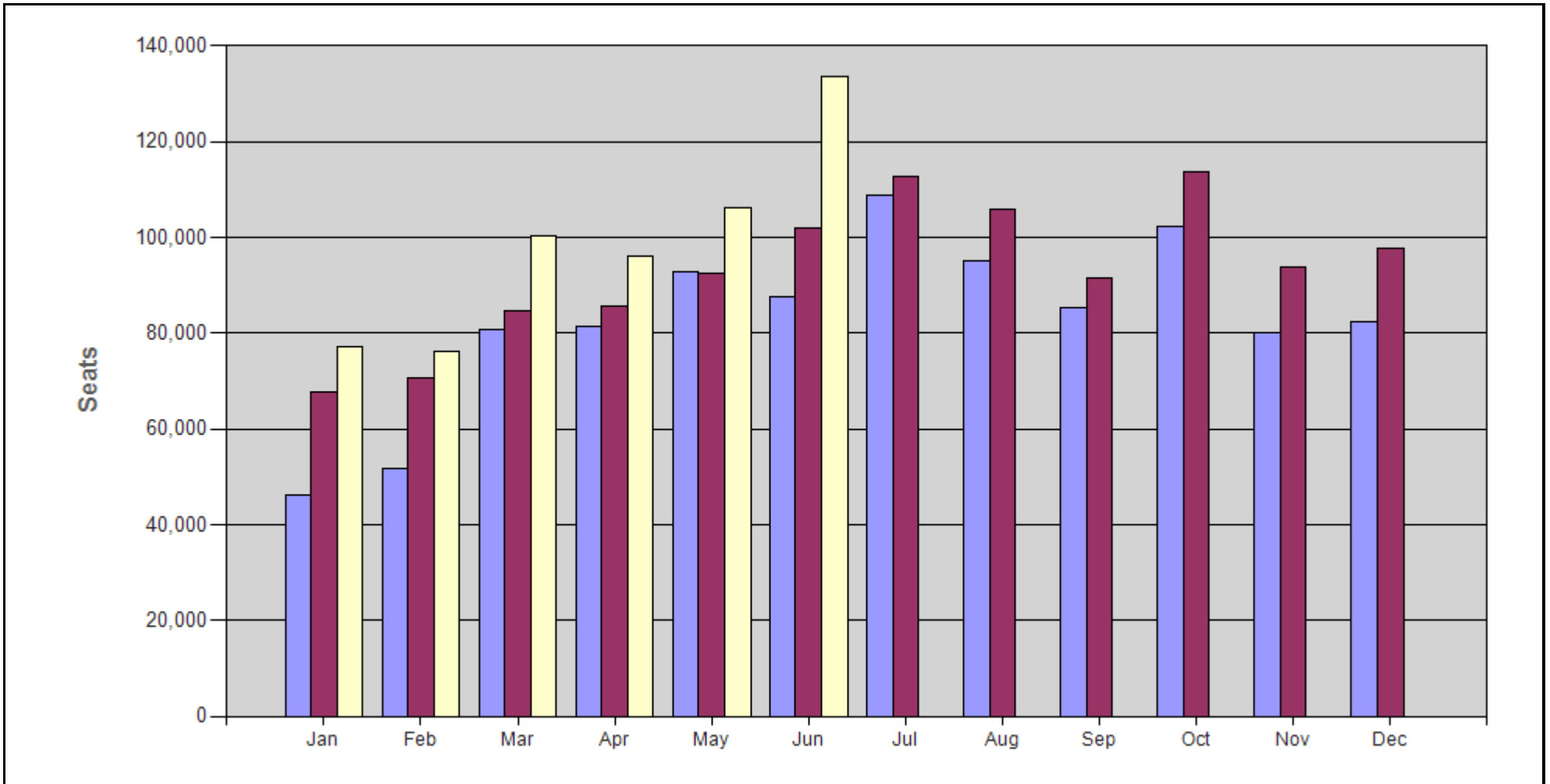


		1	2	3	4	5	6	7	8	9	10	11	12
	2021	22,658	22,977	39,029	48,371	62,546	77,489	91,609	71,735	65,120	85,762	65,431	63,288
	2022	41,920	47,636	67,677	70,365	81,758	90,545	99,028	90,425	78,972	96,632	78,734	79,124
	2023	63,676	59,276	80,380	81,093	90,502	112,970						

# Monthly Seats By Year

## Asheville Regional Airport

June, 2023

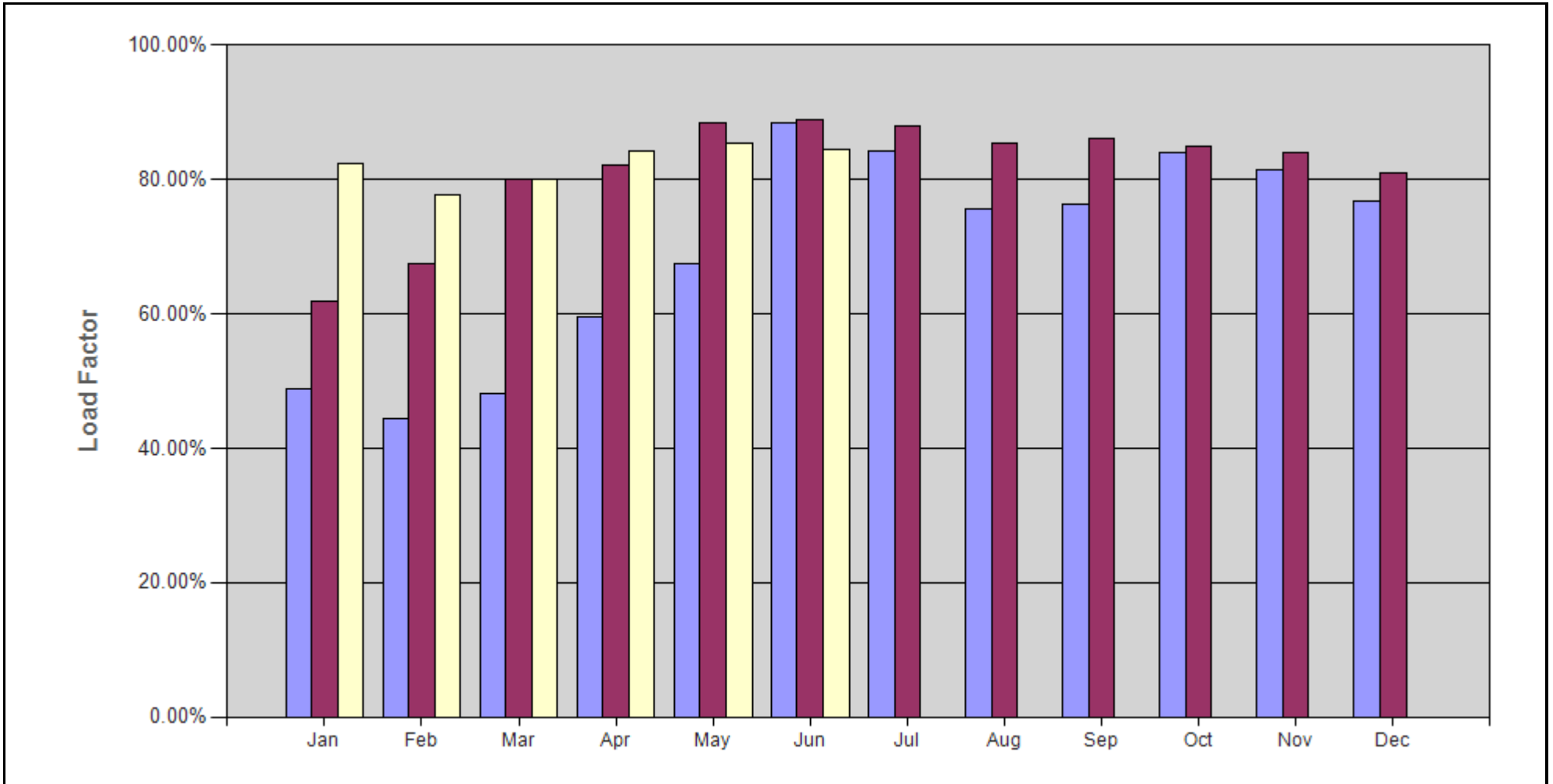


		1	2	3	4	5	6	7	8	9	10	11	12
	2021	46,325	51,620	80,905	81,345	92,780	87,651	108,793	94,971	85,335	102,158	80,261	82,435
	2022	67,869	70,496	84,599	85,726	92,519	101,932	112,645	105,748	91,648	113,656	93,729	97,734
	2023	77,331	76,283	100,299	96,249	106,061	133,683						

# Monthly Load Factors By Year

## Asheville Regional Airport

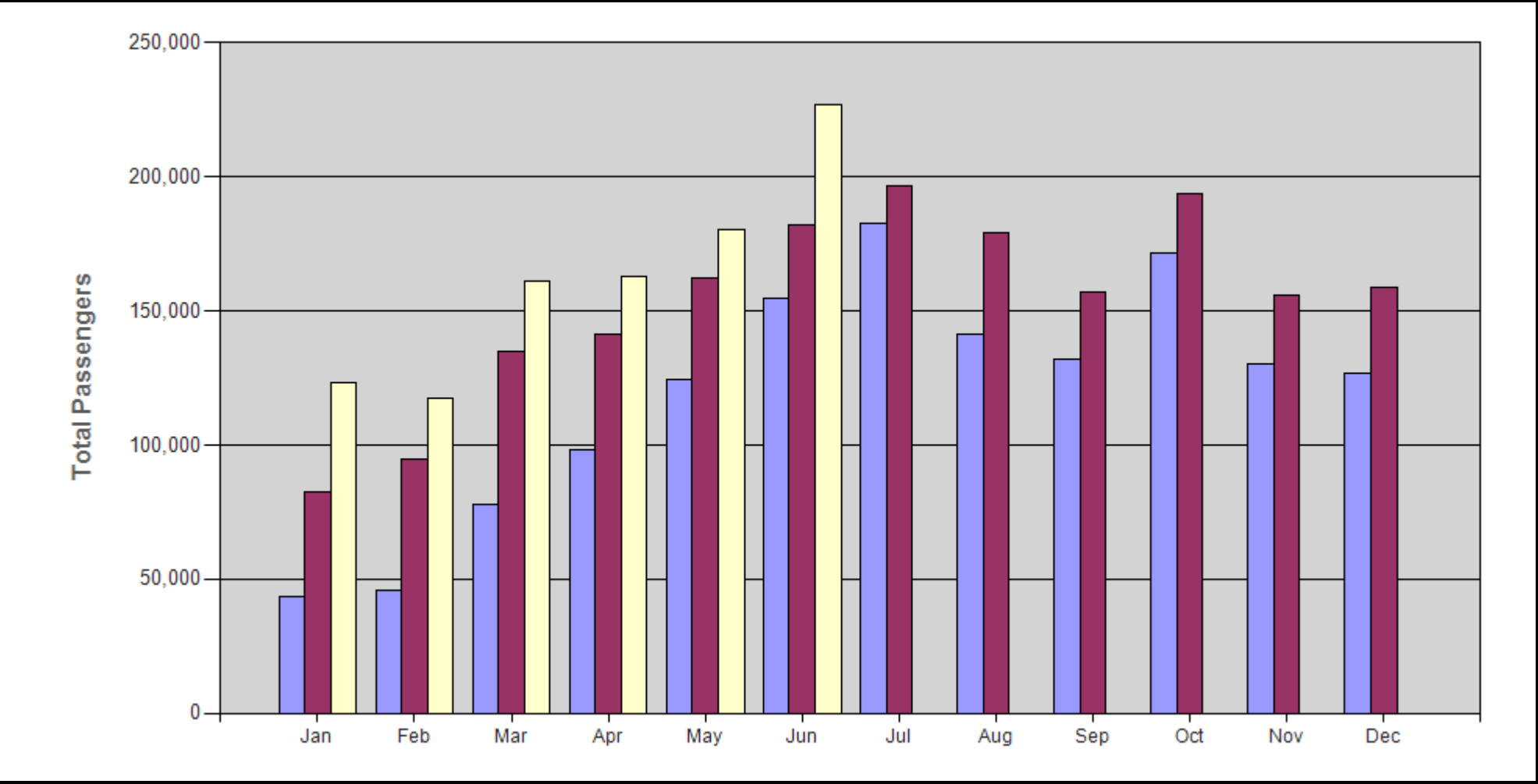
June, 2023



		1	2	3	4	5	6	7	8	9	10	11	12
	2021	48.91%	44.51%	48.24%	59.46%	67.41%	88.41%	84.20%	75.53%	76.31%	83.95%	81.52%	76.77%
	2022	61.77%	67.57%	80.00%	82.08%	88.37%	88.83%	87.91%	85.51%	86.17%	85.02%	84.00%	80.96%
	2023	82.34%	77.71%	80.14%	84.25%	85.33%	84.51%						

# Total Monthly Passengers By Year Asheville Regional Airport

June, 2023

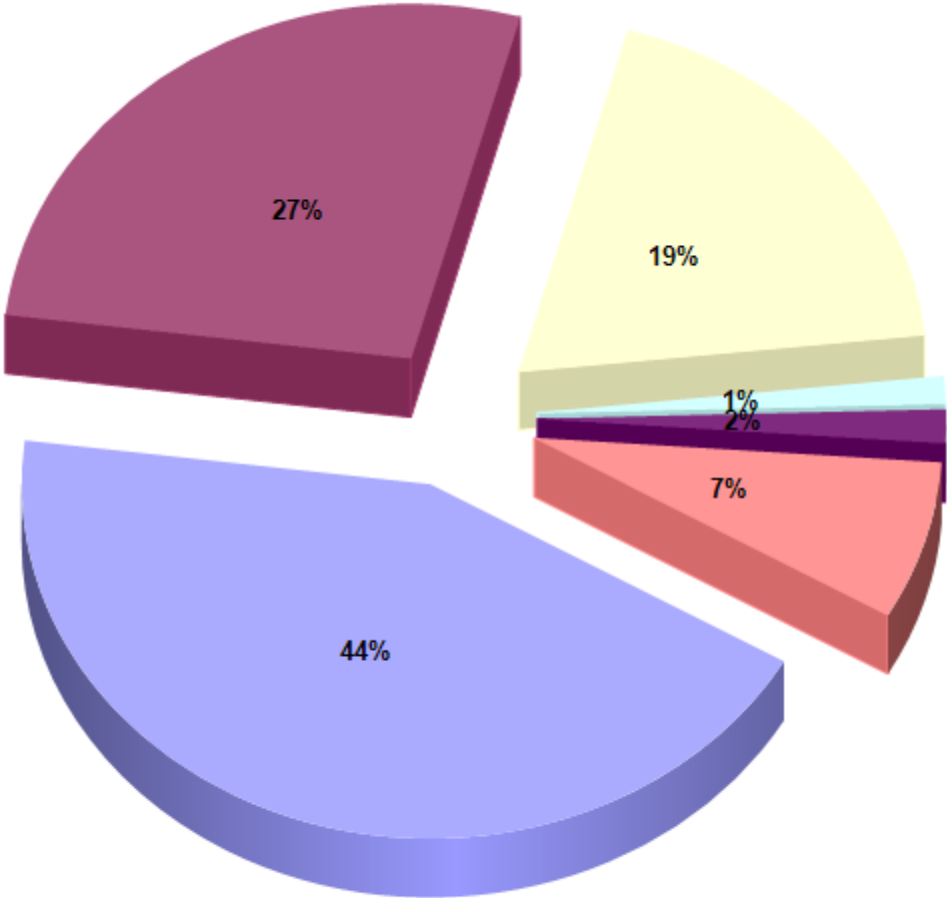


		1	2	3	4	5	6	7	8	9	10	11	12
	2021	43,630	45,617	77,862	97,905	124,151	154,749	182,470	141,577	132,022	171,476	130,131	126,676
	2022	82,372	94,697	135,068	141,232	162,241	181,885	196,507	179,330	157,040	193,883	156,006	158,532
	2023	123,117	117,682	161,265	162,599	180,062	226,839						

# Airline Market Share Analysis (Enplanements)

## Asheville Regional Airport

June, 2023



Allegiant Air American Airlines Delta Air Lines JetBlue Airways Sun Country United Airlines

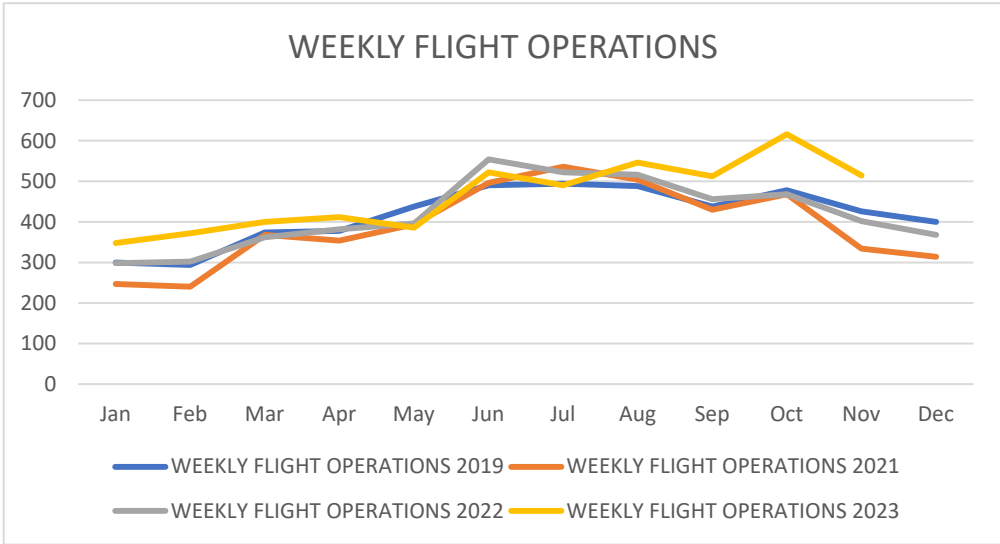
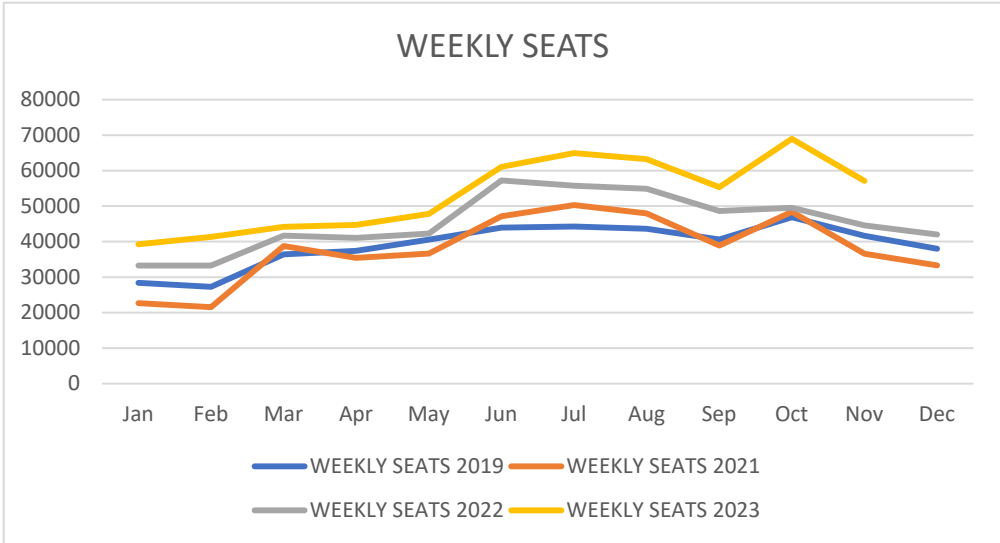
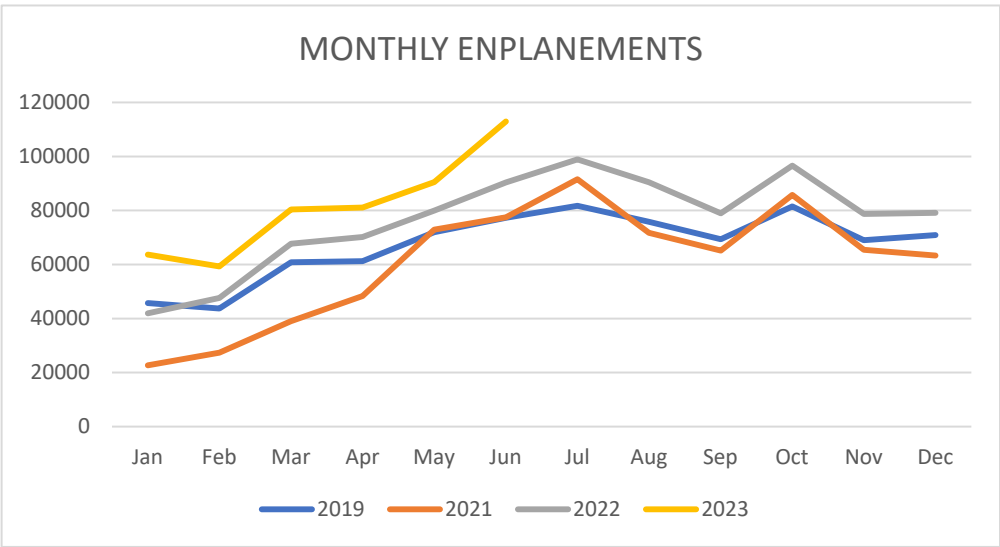
AVL - Three month schedule Summary Report  
 September 2023 to November 2023 vs. September 2022 to November 2022  
 1-Aug-23

Mkt AI	Travel Period			Sep 2023		Sep 2022		Diff YoY		Percent Diff YoY	
	Orig	Dest	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats	
AA	AUS-AVL	AUS	AVL	0	0	0	0	0	0	-	-
AA	AVL-AUS	AVL	AUS	0	0	0	0	0	0	-	-
AA	AVL-BOS	AVL	BOS	0	0	1	76	(1)	(76)	(100.0%)	(100.0%)
AA	BOS-AVL	BOS	AVL	0	0	1	76	(1)	(76)	(100.0%)	(100.0%)
AA	AVL-CLT	AVL	CLT	51	4,722	43	3,633	8	1,089	18.6%	30.0%
AA	CLT-AVL	CLT	AVL	51	4,722	43	3,633	8	1,089	18.6%	30.0%
AA	AVL-DCA	AVL	DCA	14	910	8	608	6	302	75.0%	49.7%
AA	DCA-AVL	DCA	AVL	14	910	8	608	6	302	75.0%	49.7%
AA	AVL-DFW	AVL	DFW	14	1,582	14	1,064	0	518	0.0%	48.7%
AA	DFW-AVL	DFW	AVL	14	1,582	14	1,064	0	518	0.0%	48.7%
AA	AVL-LGA	AVL	LGA	7	532	1	76	6	456	600.0%	600.0%
AA	LGA-AVL	LGA	AVL	7	532	1	76	6	456	600.0%	600.0%
AA	AVL-MIA	AVL	MIA	6	456	7	532	(1)	(76)	(14.3%)	(14.3%)
AA	MIA-AVL	MIA	AVL	6	456	7	532	(1)	(76)	(14.3%)	(14.3%)
AA	AVL-ORD	AVL	ORD	7	532	5	325	2	207	40.0%	63.7%
AA	ORD-AVL	ORD	AVL	7	532	5	325	2	207	40.0%	63.7%
AA	AVL-PHL	AVL	PHL	14	700	7	455	7	245	100.0%	53.8%
AA	PHL-AVL	PHL	AVL	14	700	7	455	7	245	100.0%	53.8%
B6	AVL-BOS	AVL	BOS	0	0	0	0	0	0	-	-
B6	BOS-AVL	BOS	AVL	0	0	0	0	0	0	-	-
DL	ATL-AVL	ATL	AVL	46	5,060	34	3,740	12	1,320	35.3%	35.3%
DL	AVL-ATL	AVL	ATL	46	5,060	34	3,740	12	1,320	35.3%	35.3%
DL	AVL-DTW	AVL	DTW	0	0	0	0	0	0	-	-
DL	DTW-AVL	DTW	AVL	0	0	0	0	0	0	-	-
DL	AVL-LGA	AVL	LGA	14	1,028	13	982	1	46	7.7%	4.7%
DL	LGA-AVL	LGA	AVL	14	1,028	13	982	1	46	7.7%	4.7%
DL	AVL-MSP	AVL	MSP	3	471	1	76	2	395	200.0%	519.7%
DL	MSP-AVL	MSP	AVL	3	471	1	76	2	395	200.0%	519.7%
G4	AUS-AVL	AUS	AVL	2	312	2	372	0	(60)	0.0%	(16.1%)
G4	AVL-AUS	AVL	AUS	2	312	2	372	0	(60)	0.0%	(16.1%)
G4	AVL-BOS	AVL	BOS	2	372	2	372	0	0	0.0%	0.0%
G4	BOS-AVL	BOS	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-BWI	AVL	BWI	2	372	2	312	0	60	0.0%	19.2%
G4	BWI-AVL	BWI	AVL	2	372	2	312	0	60	0.0%	19.2%
G4	AVL-DEN	AVL	DEN	2	372	2	372	0	0	0.0%	0.0%
G4	DEN-AVL	DEN	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-EWR	AVL	EWR	3	558	4	714	(1)	(156)	(25.0%)	(21.8%)
G4	EWR-AVL	EWR	AVL	3	558	4	714	(1)	(156)	(25.0%)	(21.8%)
G4	AVL-EYW	AVL	EYW	2	312	2	312	0	0	0.0%	0.0%
G4	EYW-AVL	EYW	AVL	2	312	2	312	0	0	0.0%	0.0%
G4	AVL-FLL	AVL	FLL	11	1,947	7	1,266	4	681	57.1%	53.8%
G4	FLL-AVL	FLL	AVL	11	1,947	7	1,266	4	681	57.1%	53.8%
G4	AVL-HOU	AVL	HOU	2	372	0	0	2	372	-	-
G4	HOU-AVL	HOU	AVL	2	372	0	0	2	372	-	-
G4	AVL-LAS	AVL	LAS	2	372	2	312	0	60	0.0%	19.2%
G4	LAS-AVL	LAS	AVL	2	372	2	312	0	60	0.0%	19.2%
G4	AVL-MDW	AVL	MDW	2	372	2	372	0	0	0.0%	0.0%
G4	MDW-AVL	MDW	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-MSP	AVL	MSP	2	372	0	0	2	372	-	-
G4	MSP-AVL	MSP	AVL	2	372	0	0	2	372	-	-
G4	AVL-PBI	AVL	PBI	2	372	2	372	0	0	0.0%	0.0%
G4	PBI-AVL	PBI	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-PGD	AVL	PGD	4	732	4	735	0	(3)	0.0%	(0.4%)
G4	PGD-AVL	PGD	AVL	4	732	4	735	0	(3)	0.0%	(0.4%)
G4	AVL-PHX	AVL	PHX	2	372	0	0	2	372	-	-
G4	PHX-AVL	PHX	AVL	2	372	0	0	2	372	-	-
G4	AVL-PIE	AVL	PIE	8	1,488	8	1,398	0	90	0.0%	6.4%
G4	PIE-AVL	PIE	AVL	8	1,488	8	1,398	0	90	0.0%	6.4%
G4	AVL-SFB	AVL	SFB	8	1,479	8	1,398	0	81	0.0%	5.8%
G4	SFB-AVL	SFB	AVL	8	1,479	8	1,398	0	81	0.0%	5.8%
G4	AVL-SRQ	AVL	SRQ	2	372	2	372	0	0	0.0%	0.0%
G4	SRQ-AVL	SRQ	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-VPS	AVL	VPS	0	0	0	0	0	0	-	-
G4	VPS-AVL	VPS	AVL	0	0	0	0	0	0	-	-
SY	AVL-MSP	AVL	MSP	2	372	2	372	0	0	0.0%	0.0%
SY	MSP-AVL	MSP	AVL	2	372	2	372	0	0	0.0%	0.0%
UA	AVL-EWR	AVL	EWR	14	986	12	880	2	106	16.7%	12.0%
UA	EWR-AVL	EWR	AVL	14	986	11	804	3	182	27.3%	22.6%
UA	AVL-IAD	AVL	IAD	0	0	0	0	0	0	-	-
UA	IAD-AVL	IAD	AVL	0	0	0	0	0	0	-	-
UA	AVL-ORD	AVL	ORD	21	1,558	21	1,090	0	468	0.0%	42.9%
UA	ORD-AVL	ORD	AVL	21	1,552	21	1,090	0	462	0.0%	42.4%
<b>Total</b>				<b>542</b>	<b>58,908</b>	<b>435</b>	<b>45,100</b>	<b>107</b>	<b>13,808</b>	<b>24.6%</b>	<b>30.6%</b>



Mkt AI	Travel Period			Oct 2023		Oct 2022		Diff YoY		Percent Diff YoY	
	Orig	Dest	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats	
AA	AUS-AVL	AUS	AVL	0	0	0	0	0	0	-	-
AA	AVL-AUS	AVL	AUS	0	0	0	0	0	0	-	-
AA	AVL-BOS	AVL	BOS	0	0	0	0	0	0	-	-
AA	BOS-AVL	BOS	AVL	0	0	0	0	0	0	-	-
AA	AVL-CLT	AVL	CLT	63	5,411	51	4,615	12	796	23.5%	17.2%
AA	CLT-AVL	CLT	AVL	63	5,411	51	4,615	12	796	23.5%	17.2%
AA	AVL-DCA	AVL	DCA	14	1,064	7	532	7	532	100.0%	100.0%
AA	DCA-AVL	DCA	AVL	14	1,064	7	532	7	532	100.0%	100.0%
AA	AVL-DFW	AVL	DFW	14	1,582	14	1,064	0	518	0.0%	48.7%
AA	DFW-AVL	DFW	AVL	14	1,582	14	1,064	0	518	0.0%	48.7%
AA	AVL-LGA	AVL	LGA	7	532	1	65	6	467	600.0%	718.5%
AA	LGA-AVL	LGA	AVL	7	532	1	65	6	467	600.0%	718.5%
AA	AVL-MIA	AVL	MIA	6	664	7	532	(1)	132	(14.3%)	24.8%
AA	MIA-AVL	MIA	AVL	6	664	7	532	(1)	132	(14.3%)	24.8%
AA	AVL-ORD	AVL	ORD	7	455	7	455	0	0	0.0%	0.0%
AA	ORD-AVL	ORD	AVL	7	455	7	455	0	0	0.0%	0.0%
AA	AVL-PHL	AVL	PHL	14	700	7	532	7	168	100.0%	31.6%
AA	PHL-AVL	PHL	AVL	14	700	7	532	7	168	100.0%	31.6%
B6	AVL-BOS	AVL	BOS	0	0	0	0	0	0	-	-
B6	BOS-AVL	BOS	AVL	0	0	0	0	0	0	-	-
DL	ATL-AVL	ATL	AVL	46	5,060	34	3,740	12	1,320	35.3%	35.3%
DL	AVL-ATL	AVL	ATL	46	5,060	34	3,740	12	1,320	35.3%	35.3%
DL	AVL-LGA	AVL	LGA	13	916	13	981	0	(65)	0.0%	(6.6%)
DL	LGA-AVL	LGA	AVL	13	916	13	981	0	(65)	0.0%	(6.6%)
DL	AVL-MSP	AVL	MSP	3	471	1	70	2	401	200.0%	572.9%
DL	MSP-AVL	MSP	AVL	3	471	1	70	2	401	200.0%	572.9%
G4	AUS-AVL	AVL	AUS	2	312	2	372	0	(60)	0.0%	(16.1%)
G4	AVL-AUS	AVL	AUS	2	312	2	372	0	(60)	0.0%	(16.1%)
G4	AVL-BOS	AVL	BOS	4	744	2	372	2	372	100.0%	100.0%
G4	BOS-AVL	BOS	AVL	4	744	2	372	2	372	100.0%	100.0%
G4	AVL-BWI	AVL	BWI	2	372	2	312	0	60	0.0%	19.2%
G4	BWI-AVL	BWI	AVL	2	372	2	312	0	60	0.0%	19.2%
G4	AVL-DEN	AVL	DEN	2	372	2	342	0	30	0.0%	8.8%
G4	DEN-AVL	DEN	AVL	2	372	2	342	0	30	0.0%	8.8%
G4	AVL-EWR	AVL	EWR	4	744	4	684	0	60	0.0%	8.8%
G4	EWR-AVL	EWR	AVL	4	744	4	684	0	60	0.0%	8.8%
G4	AVL-EYW	AVL	EYW	2	312	2	312	0	0	0.0%	0.0%
G4	EYW-AVL	EYW	AVL	2	312	2	312	0	0	0.0%	0.0%
G4	AVL-FLL	AVL	FLL	14	2,478	7	1,155	7	1,323	100.0%	114.5%
G4	FLL-AVL	FLL	AVL	14	2,478	7	1,155	7	1,323	100.0%	114.5%
G4	AVL-HOU	AVL	HOU	2	372	2	312	0	60	0.0%	19.2%
G4	HOU-AVL	HOU	AVL	2	372	2	312	0	60	0.0%	19.2%
G4	AVL-LAS	AVL	LAS	2	372	2	372	0	0	0.0%	0.0%
G4	LAS-AVL	LAS	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-MDW	AVL	MDW	2	372	2	372	0	0	0.0%	0.0%
G4	MDW-AVL	MDW	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-MSP	AVL	MSP	4	744	4	744	0	0	0.0%	0.0%
G4	MSP-AVL	MSP	AVL	4	744	4	684	0	60	0.0%	8.8%
G4	AVL-PBI	AVL	PBI	4	726	2	312	2	414	100.0%	132.7%
G4	PBI-AVL	PBI	AVL	4	726	2	372	2	354	100.0%	95.2%
G4	AVL-PGD	AVL	PGD	5	918	5	921	0	(3)	0.0%	(0.3%)
G4	PGD-AVL	PGD	AVL	5	918	5	921	0	(3)	0.0%	(0.3%)
G4	AVL-PHX	AVL	PHX	2	372	0	0	2	372	-	-
G4	PHX-AVL	PHX	AVL	2	372	0	0	2	372	-	-
G4	AVL-PIE	AVL	PIE	13	2,409	7	1,272	6	1,137	85.7%	89.4%
G4	PIE-AVL	PIE	AVL	13	2,409	7	1,272	6	1,137	85.7%	89.4%
G4	AVL-SFB	AVL	SFB	12	2,232	8	1,458	4	774	50.0%	53.1%
G4	SFB-AVL	SFB	AVL	12	2,232	8	1,458	4	774	50.0%	53.1%
G4	AVL-SRQ	AVL	SRQ	4	714	2	372	2	342	100.0%	91.9%
G4	SRQ-AVL	SRQ	AVL	4	714	2	372	2	342	100.0%	91.9%
G4	AVL-VPS	AVL	VPS	0	0	0	0	0	0	-	-
G4	VPS-AVL	VPS	AVL	0	0	0	0	0	0	-	-
SY	AVL-MSP	AVL	MSP	2	372	2	372	0	0	0.0%	0.0%
SY	MSP-AVL	MSP	AVL	2	372	2	372	0	0	0.0%	0.0%
UA	AVL-DEN	AVL	DEN	7	490	0	0	7	490	-	-
UA	DEN-AVL	DEN	AVL	7	490	0	0	7	490	-	-
UA	AVL-EWR	AVL	EWR	14	980	14	1,058	0	(78)	0.0%	(7.4%)
UA	EWR-AVL	EWR	AVL	14	980	14	1,058	0	(78)	0.0%	(7.4%)
UA	AVL-IAD	AVL	IAD	0	0	0	0	0	0	-	-
UA	IAD-AVL	IAD	AVL	0	0	0	0	0	0	-	-
UA	AVL-ORD	AVL	ORD	21	1,414	21	1,050	0	364	0.0%	34.7%
UA	ORD-AVL	ORD	AVL	21	1,414	21	1,050	0	364	0.0%	34.7%
<b>Total</b>				<b>622</b>	<b>69,352</b>	<b>468</b>	<b>49,500</b>	<b>154</b>	<b>19,852</b>	<b>32.9%</b>	<b>40.1%</b>

Mkt AI	Travel Period		Nov 2023		Nov 2022		Diff YoY		Percent Diff YoY		
	Orig	Dest	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats	
AA	AUS-AVL	AUS	AVL	0	0	0	0	0	0	-	-
AA	AVL-AUS	AVL	AUS	0	0	0	0	0	0	-	-
AA	AVL-BOS	AVL	BOS	0	0	0	0	0	0	-	-
AA	BOS-AVL	BOS	AVL	0	0	0	0	0	0	-	-
AA	AVL-CLT	AVL	CLT	48	3,466	35	3,752	13	(286)	37.1%	(7.6%)
AA	CLT-AVL	CLT	AVL	48	3,466	35	3,752	13	(286)	37.1%	(7.6%)
AA	AVL-DCA	AVL	DCA	14	987	7	455	7	532	100.0%	116.9%
AA	DCA-AVL	DCA	AVL	14	987	7	455	7	532	100.0%	116.9%
AA	AVL-DFW	AVL	DFW	14	1,582	7	532	7	1,050	100.0%	197.4%
AA	DFW-AVL	DFW	AVL	14	1,582	7	532	7	1,050	100.0%	197.4%
AA	AVL-LGA	AVL	LGA	7	532	7	455	0	77	0.0%	16.9%
AA	LGA-AVL	LGA	AVL	7	532	7	455	0	77	0.0%	16.9%
AA	AVL-MIA	AVL	MIA	0	0	0	0	0	0	-	-
AA	MIA-AVL	MIA	AVL	0	0	0	0	0	0	-	-
AA	AVL-ORD	AVL	ORD	7	350	0	0	7	350	-	-
AA	ORD-AVL	ORD	AVL	7	350	0	0	7	350	-	-
AA	AVL-PHL	AVL	PHL	6	300	7	350	(1)	(50)	(14.3%)	(14.3%)
AA	PHL-AVL	PHL	AVL	6	300	7	350	(1)	(50)	(14.3%)	(14.3%)
B6	AVL-BOS	AVL	BOS	0	0	0	0	0	0	-	-
B6	BOS-AVL	BOS	AVL	0	0	0	0	0	0	-	-
DL	ATL-AVL	ATL	AVL	46	5,060	41	4,510	5	550	12.2%	12.2%
DL	AVL-ATL	AVL	ATL	46	5,060	41	4,510	5	550	12.2%	12.2%
DL	AVL-LGA	AVL	LGA	13	910	13	974	0	(64)	0.0%	(6.6%)
DL	LGA-AVL	LGA	AVL	13	910	13	974	0	(64)	0.0%	(6.6%)
DL	AVL-MSP	AVL	MSP	3	471	1	76	2	395	200.0%	519.7%
DL	MSP-AVL	MSP	AVL	3	471	1	76	2	395	200.0%	519.7%
G4	AUS-AVL	AVL	AUS	2	342	2	342	0	0	0.0%	0.0%
G4	AVL-AUS	AVL	AUS	2	342	2	342	0	0	0.0%	0.0%
G4	AVL-BOS	AVL	BOS	3	558	3	498	0	60	0.0%	12.0%
G4	BOS-AVL	BOS	AVL	3	558	3	498	0	60	0.0%	12.0%
G4	AVL-BWI	AVL	BWI	2	372	2	372	0	0	0.0%	0.0%
G4	BWI-AVL	BWI	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-DEN	AVL	DEN	1	186	1	156	0	30	0.0%	19.2%
G4	DEN-AVL	DEN	AVL	1	186	1	156	0	30	0.0%	19.2%
G4	AVL-EWR	AVL	EWR	5	930	5	870	0	60	0.0%	6.9%
G4	EWR-AVL	EWR	AVL	5	930	5	870	0	60	0.0%	6.9%
G4	AVL-EYW	AVL	EYW	2	312	1	156	1	156	100.0%	100.0%
G4	EYW-AVL	EYW	AVL	2	312	1	156	1	156	100.0%	100.0%
G4	AVL-FLL	AVL	FLL	12	2,160	5	903	7	1,257	140.0%	139.2%
G4	FLL-AVL	FLL	AVL	12	2,160	5	903	7	1,257	140.0%	139.2%
G4	AVL-HOU	AVL	HOU	2	372	2	372	0	0	0.0%	0.0%
G4	HOU-AVL	HOU	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-LAS	AVL	LAS	2	342	2	342	0	0	0.0%	0.0%
G4	LAS-AVL	LAS	AVL	2	342	2	342	0	0	0.0%	0.0%
G4	AVL-MDW	AVL	MDW	2	372	2	342	0	30	0.0%	8.8%
G4	MDW-AVL	MDW	AVL	2	372	2	342	0	30	0.0%	8.8%
G4	AVL-MSP	AVL	MSP	2	372	2	342	0	30	0.0%	8.8%
G4	MSP-AVL	MSP	AVL	2	372	2	342	0	30	0.0%	8.8%
G4	AVL-PBI	AVL	PBI	2	372	2	312	0	60	0.0%	19.2%
G4	PBI-AVL	PBI	AVL	2	372	2	342	0	30	0.0%	8.8%
G4	AVL-PGD	AVL	PGD	5	918	5	834	0	84	0.0%	10.1%
G4	PGD-AVL	PGD	AVL	5	918	5	834	0	84	0.0%	10.1%
G4	AVL-PHX	AVL	PHX	2	372	0	0	2	372	-	-
G4	PHX-AVL	PHX	AVL	2	372	0	0	2	372	-	-
G4	AVL-PIE	AVL	PIE	11	2,046	7	1,272	4	774	57.1%	60.8%
G4	PIE-AVL	PIE	AVL	11	2,046	7	1,272	4	774	57.1%	60.8%
G4	AVL-SFB	AVL	SFB	12	2,205	10	1,782	2	423	20.0%	23.7%
G4	SFB-AVL	SFB	AVL	12	2,205	10	1,782	2	423	20.0%	23.7%
G4	AVL-SRQ	AVL	SRQ	2	372	2	372	0	0	0.0%	0.0%
G4	SRQ-AVL	SRQ	AVL	2	372	2	372	0	0	0.0%	0.0%
G4	AVL-VPS	AVL	VPS	0	0	0	0	0	0	-	-
G4	VPS-AVL	VPS	AVL	0	0	0	0	0	0	-	-
SY	AVL-MSP	AVL	MSP	2	372	2	372	0	0	0.0%	0.0%
SY	MSP-AVL	MSP	AVL	2	372	2	372	0	0	0.0%	0.0%
UA	AVL-DEN	MSP	AVL	7	490	0	0	7	490	-	-
UA	DEN-AVL	MSP	AVL	7	490	0	0	7	490	-	-
UA	AVL-EWR	AVL	EWR	7	370	7	490	0	(120)	0.0%	(24.5%)
UA	EWR-AVL	EWR	AVL	7	370	7	490	0	(120)	0.0%	(24.5%)
UA	AVL-IAD	AVL	IAD	0	0	0	0	0	0	-	-
UA	IAD-AVL	IAD	AVL	0	0	0	0	0	0	-	-
UA	AVL-ORD	AVL	ORD	14	1,064	21	1,050	(7)	14	(33.3%)	1.3%
UA	ORD-AVL	ORD	AVL	14	1,064	21	1,050	(7)	14	(33.3%)	1.3%
<b>Total</b>			<b>514</b>	<b>57,114</b>	<b>402</b>	<b>44,566</b>	<b>112</b>	<b>12,548</b>	<b>27.9%</b>	<b>28.2%</b>	





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## MEMORANDUM

TO: Members of the Airport Authority  
FROM: Janet Burnette, Chief Financial Officer  
DATE: August 11, 2023

### ITEM DESCRIPTION – Information Section Item B

Greater Asheville Regional Airport – Explanation of Extraordinary Variances  
Month of June 2023

### SUMMARY

Operating Revenues for the month of June were \$2,430,077, 43.6% over budget. Operating Expenses for the month were \$2,024,815, 71.8% over budget. As a result, Net Operating Revenues before Depreciation were \$405,262. Net Non-Operating Revenues were \$4,611,008, which includes ARPA grant funding of \$2,271,230 and \$819,897 in 2022A Bond interest expense to be paid from the Bond Capitalized Interest account semi-annually.

Year-to-date Operating Revenues were \$24,341,870, 19.8% over budget. Year-to-date Operating Expenses were \$12,998,294, 10.3% under budget. Year-to-date Net Operating Revenues before Depreciation were \$11,343,576. Net Non-Operating Revenues for the year were \$12,339,502.

### REVENUES

Significant variations to budget for June were:

Term space rentals – airlines	\$100,782	39.44%	Enplanements over budget
Landing fees	\$88,800	50.99%	Landings over budget
Concessions	\$70,355	132.28%	Advertising and food sales over budget
Auto parking	\$313,109	50.10%	Parking higher than anticipated
Rental car- car rentals	\$84,147	25.24%	Car rentals over budget
Ground transportation	\$31,542	180.24%	TURO and TNC fees
FBOs	\$28,746	30.09%	Rent increase
Other leases and fees	\$14,573	62.28%	Accrual of 2 months' TSA LEO reimbursement

Information Section – Item B



**EXPENSES**

Significant variations to budget for June were:

Personnel services	\$256,264	33.67%	Three payrolls during month
Professional services	\$44,973	104.51%	Consulting-Leakage study & Strategic Planning
Other contractual services	\$174,531	104.73%	Parking management/shuttle & Temp help
Travel & training	\$15,493	83.85%	Timing of travel expenses
Utility services	\$42,369	103.92%	Water & electricity higher than anticipated
Promotional activities	\$28,185	102.78%	Advertising & promotional items
Operating supplies	\$102,111	249.31%	Fuel, custodial and marketing event supplies
Repairs & maintenance	\$65,256	405.32%	Tree removal
Emergency repairs	\$29,820	715.67%	Repaint runway
Business development	\$67,999	272.00%	Advertising incentives – Allegiant (PHX)

**STATEMENT OF NET ASSETS**

Significant variations to prior month were:

Cash and Cash Equivalents – Cash and Cash Equivalents increased by \$3.1M mostly due to receipt of grant funding.

Grants Receivable – Grants Receivable decreased by \$6.3M due to receipt of grant funding.

Construction in Progress – Construction in Progress increased by \$12.2M mostly due to the terminal and air traffic control tower construction projects.

Property and Equipment, Net – Property and Equipment, Net decreased by \$455K due to depreciation.

**ASHEVILLE REGIONAL AIRPORT  
INVESTMENT AND INTEREST INCOME SUMMARY  
As of June 30, 2023**

<b><u>Institution:</u></b>	<b><u>Interest Rate</u></b>	<b><u>Investment Amount</u></b>	<b><u>Monthly Interest</u></b>
Bank of America - Operating Account	1.60%	\$ 19,216,540	21,993
NC Capital Management Trust - Cash Portfolio		21,231,645	86,829
Petty Cash		200	
 <b><u>Restricted Cash:</u></b>			
Bank of America - PFC Revenue Account	1.60%	15,826,613	30,055
BNY Mellon		1,538,058	
NC Capital Mgt Trust - 2022A Construction		157,709,704	644,590
NC Capital Mgt Trust - 2022A Parity Reserve		13,901,456	56,851
NC Capital Mgt Trust - 2022A Capitalized Interest		24,698,295	101,389
NC Capital Mgt Trust - 2023 Construction		157,962,589	681,038
NC Capital Mgt Trust - 2023 Capitalized Interest		18,619,457	76,146
 <b>Total</b>		<b><u>\$ 430,704,557</u></b>	<b><u>\$ 1,698,891</u></b>

**Investment Diversification:**

Banks	8%
NC Capital Management Trust	92%
Commercial Paper	0%
Federal Agencies	0%
US Treasuries	0%
	<b><u>100%</u></b>

**ASHEVILLE REGIONAL AIRPORT  
STATEMENT OF CHANGES IN FINANCIAL POSITION  
For the Month Ended June 30, 2023**

	<b>Current Month</b>	<b>Prior Period</b>
<b>Cash and Investments Beginning of Period</b>	<b>\$ 427,541,789</b>	<b>\$ 240,451,621</b>
Net Income/(Loss) Before Capital Contributions	4,560,494	726,207
Depreciation	455,777	455,777
Decrease/(Increase) in Receivables	6,197,473	184,126
Increase/(Decrease) in Payables	1,722,955	945,730
Decrease/(Increase) in Prepaid Expenses	(81,285)	(1,433,044)
Decrease/(Increase) in Fixed Assets	(10,439,196)	(2,199,341)
Principal Payments of Bond Maturities	-	-
Capital Contributions	746,464	13,471
Addition of 2023 Revenue Bond Payable	-	188,401,891
Prior period adjustment - Forfeiture Funds	86	(4,649)
<b>Increase(Decrease) in Cash</b>	<b>3,162,768</b>	<b>187,090,168</b>
<b>Cash and Investments End of Period</b>	<b>\$ 430,704,557</b>	<b>\$ 427,541,789</b>

**ASHEVILLE REGIONAL AIRPORT  
STATEMENT OF FINANCIAL POSITION  
As of June 30, 2023**

	<u>Current Month</u>	<u>Last Month</u>
<b><u>ASSETS</u></b>		
<b>Current Assets:</b>		
<b>Unrestricted Net Assets:</b>		
Cash and Cash Equivalents	\$40,448,385	\$27,382,326
Accounts Receivable	1,139,097	1,242,375
Passenger Facility Charges Receivable	450,000	400,000
Refundable Sales Tax Receivable	412,181	325,921
Grants Receivable	1,009,470	7,377,465
Prepaid Expenses	8,272,185	8,190,900
GASB 87 Short-term Lease Receivable	1,762,290	1,624,750
Total Unrestricted Assets	<u>53,493,608</u>	<u>46,543,737</u>
<b>Restricted Assets:</b>		
Cash and Cash Equivalents	390,256,173	400,159,463
Total Restricted Assets	<u>390,256,173</u>	<u>400,159,463</u>
Total Current Assets	<u>443,749,781</u>	<u>446,703,200</u>
<b>Noncurrent Assets:</b>		
Construction in Progress	77,459,342	65,257,855
Net Pension Asset - LGERS	(689,136)	(689,136)
Benefit Payment - OPEB	477,829	477,830
Contributions in Current Year	1,401,569	1,401,569
GASB 87 Long-term Lease Receivable	14,624,992	16,387,282
Property and Equipment - Net	168,444,758	168,900,535
Total Noncurrent Assets	<u>261,719,354</u>	<u>251,735,935</u>
	<u>\$705,469,135</u>	<u>\$698,439,135</u>
<b><u>LIABILITIES AND NET ASSETS</u></b>		
<b>Current Liabilities:</b>		
<b>Payable from Unrestricted Assets:</b>		
Accounts Payable & Accrued Liabilities	\$3,307,519	(\$3,326)
Customer Deposits	88,018	88,018
Unearned Revenue	490,212	566,163
Construction Contract Retainages	715,740	715,740
Revenue Bond Payable - Current	1,375,000	1,375,000
GASB 87 Short-term Deferred Revenue	2,257,607	2,257,607
Interest Payable	5,368,089	4,235,364
Total Payable from Unrestricted Assets	<u>13,602,185</u>	<u>9,234,566</u>
Total Current Liabilities	<u>13,602,185</u>	<u>9,234,566</u>
<b>Noncurrent Liabilities:</b>		
Pension Deferrals - OPEB	208,860	208,860
Other Postemployment Benefits	2,616,865	2,616,865
Compensated Absences	721,851	655,090
Net Pension Obligation-LEO Special Separation Allowance	654,955	654,955
GASB 87 Long-term Deferred Revenue	13,753,750	16,011,357
Revenue Bond Payable - 2016 - Noncurrent	12,270,000	12,270,000
Revenue Bond Payable - 2022A - Noncurrent	196,541,352	196,939,329
Revenue Bond Payable - 2023 - Noncurrent	188,346,050	188,401,891
Total Noncurrent Liabilities	<u>415,113,683</u>	<u>417,758,347</u>
Total Liabilities	<u>428,715,868</u>	<u>426,992,913</u>
<b>Net Assets:</b>		
Invested in Capital Assets	232,259,100	220,513,390
Restricted	390,256,173	400,159,463
Unrestricted	(345,762,006)	(349,226,631)
Total Net Assets	<u>276,753,267</u>	<u>271,446,222</u>
	<u>\$705,469,135</u>	<u>\$698,439,135</u>





# Income Statement

Through 06/30/23

Summary Listing

Classification	MTD Actual Amount	YTD Actual Amount	YTD Budget Amount	YTD Variance	Annual Budget Amount	Budget Less YTD Actual
<b>Fund Category Governmental Funds</b>						
<b>Fund Type General Fund</b>						
<b>Fund 10 - General Fund</b>						
<i>Operating revenues</i>						
Terminal space rentals - non airline	25,018.89	299,493.40	299,402.00	91.40	299,402.00	(91.40)
Terminal space rentals - airline	356,305.55	3,446,284.87	3,066,284.00	380,000.87	3,066,284.00	(380,000.87)
Landing fees	262,946.46	2,361,181.57	2,089,755.00	271,426.57	2,089,755.00	(271,426.57)
Concessions	123,542.55	1,120,272.62	638,250.00	482,022.62	638,250.00	(482,022.62)
Auto parking	938,109.41	9,595,308.49	7,500,000.00	2,095,308.49	7,500,000.00	(2,095,308.49)
Rental car - car rentals	417,480.70	4,290,219.77	4,000,000.00	290,219.77	4,000,000.00	(290,219.77)
Rental car - facility rent	61,723.05	739,227.38	733,515.00	5,712.38	733,515.00	(5,712.38)
Commerce ground transportation	49,041.71	390,089.71	210,000.00	180,089.71	210,000.00	(180,089.71)
FBOs	124,263.69	1,361,312.36	1,146,216.00	215,096.36	1,146,216.00	(215,096.36)
Building leases	4,306.15	50,841.42	47,985.00	2,856.42	47,985.00	(2,856.42)
Land leases	29,365.79	310,763.60	293,322.00	17,441.60	293,322.00	(17,441.60)
Other leases and fees	37,973.01	376,874.51	280,800.00	96,074.51	280,800.00	(96,074.51)
<i>Operating revenues Totals</i>	<u>\$2,430,076.96</u>	<u>\$24,341,869.70</u>	<u>\$20,305,529.00</u>	<u>\$4,036,340.70</u>	<u>\$20,305,529.00</u>	<u>(\$4,036,340.70)</u>
<i>Non-operating revenue and expense</i>						
Customer facility charges	234,238.75	2,182,506.75	2,000,000.00	182,506.75	2,000,000.00	(182,506.75)
Passenger facility charges	516,492.92	4,370,779.61	3,000,000.00	1,370,779.61	3,000,000.00	(1,370,779.61)
ARPA grant	2,271,230.44	7,778,632.00	.00	7,778,632.00	.00	(7,778,632.00)
GASB 87	632,856.14	632,856.14	.00	632,856.14	.00	(632,856.14)
Interest revenue	1,698,891.35	9,424,727.37	25,000.00	9,399,727.37	25,000.00	(9,399,727.37)
Interest expense	(1,132,725.00)	(11,270,425.45)	.00	(11,270,425.45)	.00	11,270,425.45
Bond premium revenue	453,818.86	453,818.86	.00	453,818.86	.00	(453,818.86)
Bond expense	(68,655.17)	(1,252,403.20)	.00	(1,252,403.20)	.00	1,252,403.20
Gain or loss on disposal of assets	4,560.00	8,510.00	.00	8,510.00	.00	(8,510.00)
P-card rebate	.00	6,299.91	.00	6,299.91	.00	(6,299.91)
Miscellaneous	300.00	4,200.00	.00	4,200.00	.00	(4,200.00)
<i>Non-operating revenue and expense Totals</i>	<u>\$4,611,008.29</u>	<u>\$12,339,501.99</u>	<u>\$5,025,000.00</u>	<u>\$7,314,501.99</u>	<u>\$5,025,000.00</u>	<u>(\$7,314,501.99)</u>
Capital contributions	746,463.69	21,963,650.88	.00	21,963,650.88	.00	(21,963,650.88)



# Income Statement

Through 06/30/23

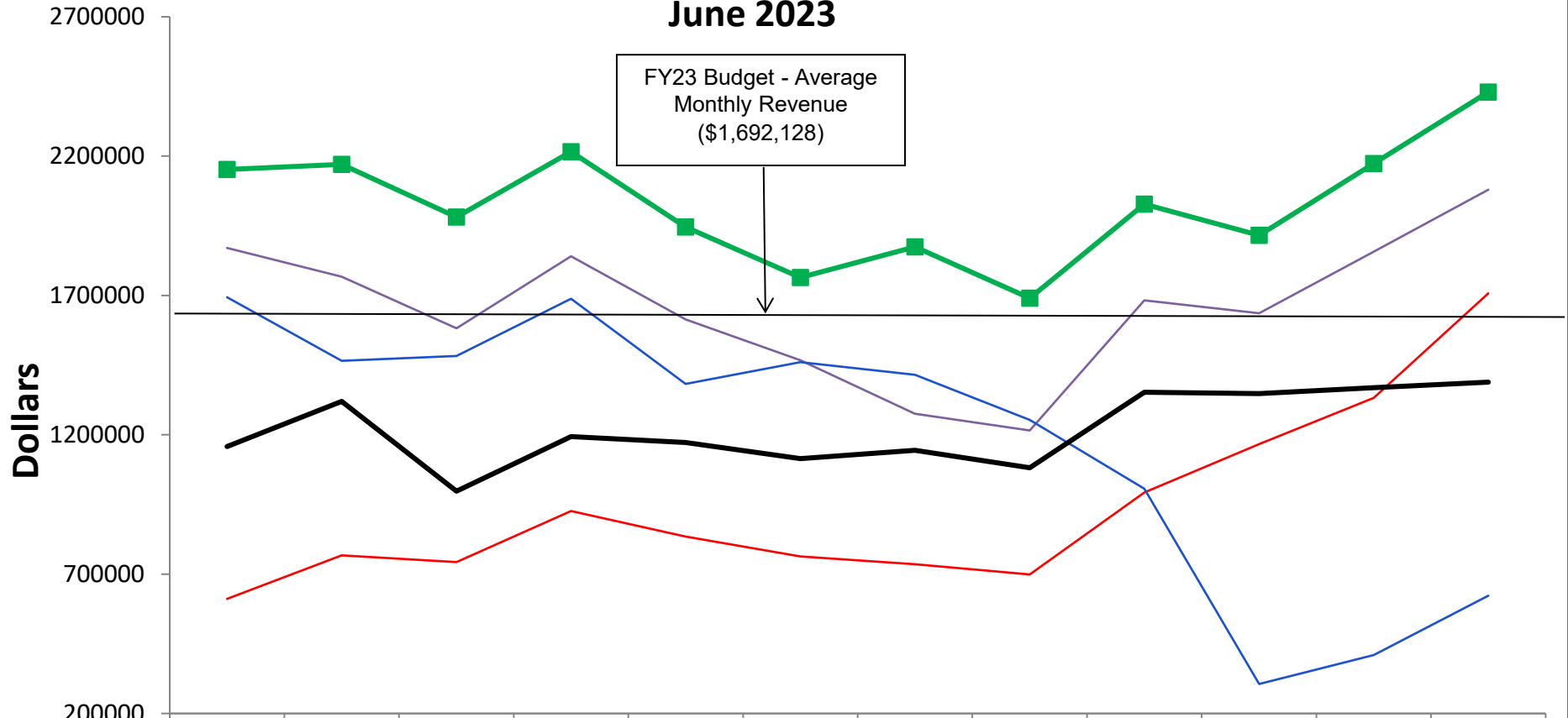
Summary Listing

Classification	MTD Actual Amount	YTD Actual Amount	YTD Budget Amount	YTD Variance	Annual Budget Amount	Budget Less YTD Actual
<i>Operating expenses</i>						
Personnel services	1,017,341.97	7,752,724.54	9,132,937.00	(1,380,212.46)	9,132,937.00	1,380,212.46
Professional services	88,006.73	419,894.43	516,400.00	(96,505.57)	516,400.00	96,505.57
Other contractual services	341,183.89	2,108,243.02	1,999,830.00	108,413.02	1,999,830.00	(108,413.02)
Travel and training	33,970.19	173,843.14	221,730.00	(47,886.86)	221,730.00	47,886.86
Communiations	4,978.02	40,185.33	58,200.00	(18,014.67)	58,200.00	18,014.67
Utility services	83,141.03	467,498.34	489,267.00	(21,768.66)	489,267.00	21,768.66
Rentals and leases	4,156.66	25,705.74	18,710.00	6,995.74	18,710.00	(6,995.74)
Insurance	.00	331,798.68	334,400.00	(2,601.32)	334,400.00	2,601.32
Advertising, printing and binding	10,759.87	16,796.89	11,450.00	5,346.89	11,450.00	(5,346.89)
Promotional activities	55,608.05	217,342.43	329,075.00	(111,732.57)	329,075.00	111,732.57
Other current charges and obligations	12,538.45	82,304.37	83,275.00	(970.63)	83,275.00	970.63
Operating supplies	143,069.73	577,428.93	491,500.00	85,928.93	491,500.00	(85,928.93)
Publications, subscriptions, memberships, etc.	6,578.83	71,247.75	73,205.00	(1,957.25)	73,205.00	1,957.25
Repairs and maintenance	81,356.36	286,062.51	193,200.00	92,862.51	193,200.00	(92,862.51)
Small equipment	15,139.05	106,412.66	87,500.00	18,912.66	87,500.00	(18,912.66)
Contingency	.00	.00	87,874.00	(87,874.00)	87,874.00	87,874.00
Emergency repairs	33,986.35	125,715.74	50,000.00	75,715.74	50,000.00	(75,715.74)
Business development	92,999.46	181,675.11	300,000.00	(118,324.89)	300,000.00	118,324.89
Bad debt expense	.00	13,414.54	.00	13,414.54	.00	(13,414.54)
<i>Operating expenses Totals</i>	<u>\$2,024,814.64</u>	<u>\$12,998,294.15</u>	<u>\$14,478,553.00</u>	<u>(\$1,480,258.85)</u>	<u>\$14,478,553.00</u>	<u>\$1,480,258.85</u>
<i>Depreciation</i>						
Depreciation	455,777.00	5,469,324.00	.00	5,469,324.00	.00	(5,469,324.00)
<i>Depreciation Totals</i>	<u>\$455,777.00</u>	<u>\$5,469,324.00</u>	<u>\$0.00</u>	<u>\$5,469,324.00</u>	<u>\$0.00</u>	<u>(\$5,469,324.00)</u>
Grand Totals						
REVENUE TOTALS	7,787,548.94	58,645,022.57	25,330,529.00	33,314,493.57	25,330,529.00	(33,314,493.57)
EXPENSE TOTALS	2,480,591.64	18,467,618.15	14,478,553.00	3,989,065.15	14,478,553.00	(3,989,065.15)
Grand Total Net Gain (Loss)	<u>\$5,306,957.30</u>	<u>\$40,177,404.42</u>	<u>\$10,851,976.00</u>	<u>\$29,325,428.42</u>	<u>\$10,851,976.00</u>	<u>\$29,325,428.42</u>

# ASHEVILLE REGIONAL AIRPORT

## Annual Operating Revenue by Month

### June 2023

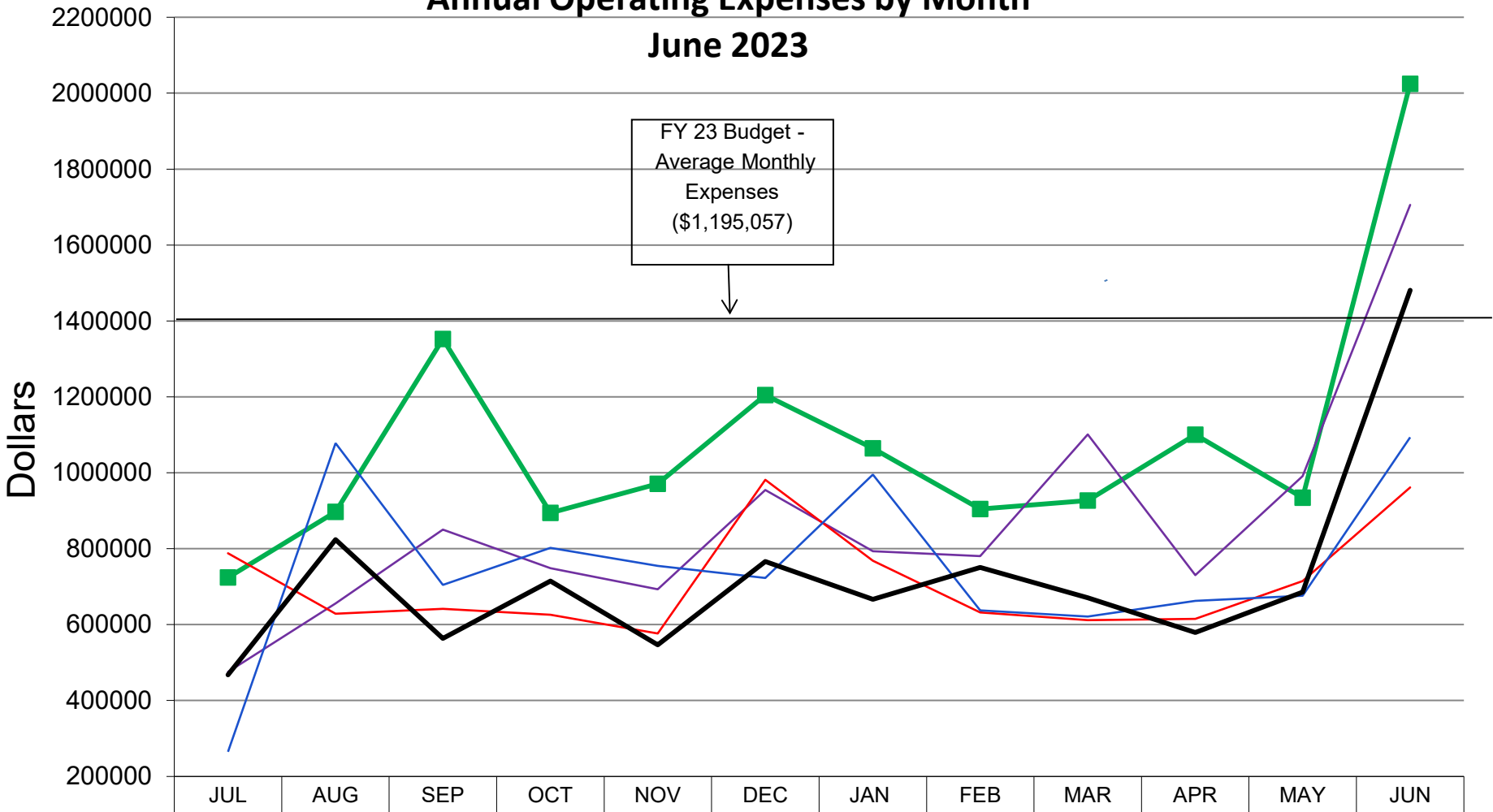


FY23 Budget - Average  
Monthly Revenue  
(\$1,692,128)

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
2023	2151973	2170060	1981276	2215944	1946150	1764811	1874458	1690357	2027726	1915691	2173346	2430077
2022	1870783	1766994	1582459	1840835	1614185	1467415	1275749	1215598	1682310	1636179	1857453	2079519
2021	611290	767485	743365	926512	834587	763375	735131	699104	993500	1166582	1332640	1707683
2020	1693639	1465826	1482983	1688471	1382894	1461166	1414955	1253245	1006396	305847	409453	622404
2019	1157880	1319448	997702	1193707	1171956	1114742	1144401	1081933	1352795	1348310	1369108	1388974

# ASHEVILLE REGIONAL AIRPORT Annual Operating Expenses by Month

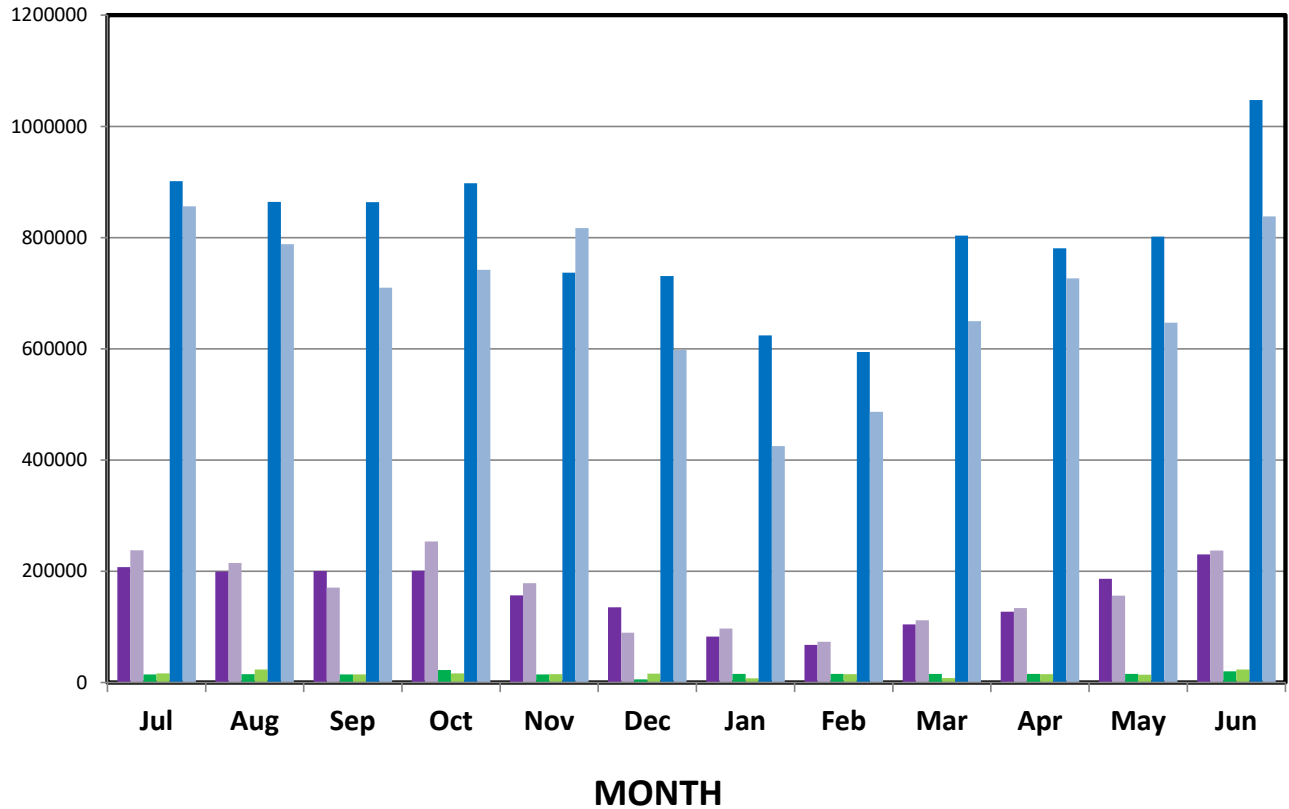
**June 2023**



	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
2023	723941	897398	1352214	894073	970953	1204680	1064287	904765	926762	1100224	934182	2024815
2022	475489	656101	850419	748420	692984	954472	793428	780593	1101373	730109	991519	1705678
2021	788272	628561	641559	625891	576630	981507	768156	632342	611610	614830	714835	961373
2020	264978	1077831	704819	802144	754800	722727	995620	637669	621479	662302	676330	1093523
2019	467701	823824	563350	714938	546502	766012	666544	750376	670406	579071	685414	1480804

**ASHEVILLE REGIONAL AIRPORT  
FUEL SALES - GALLONS  
June 2023**

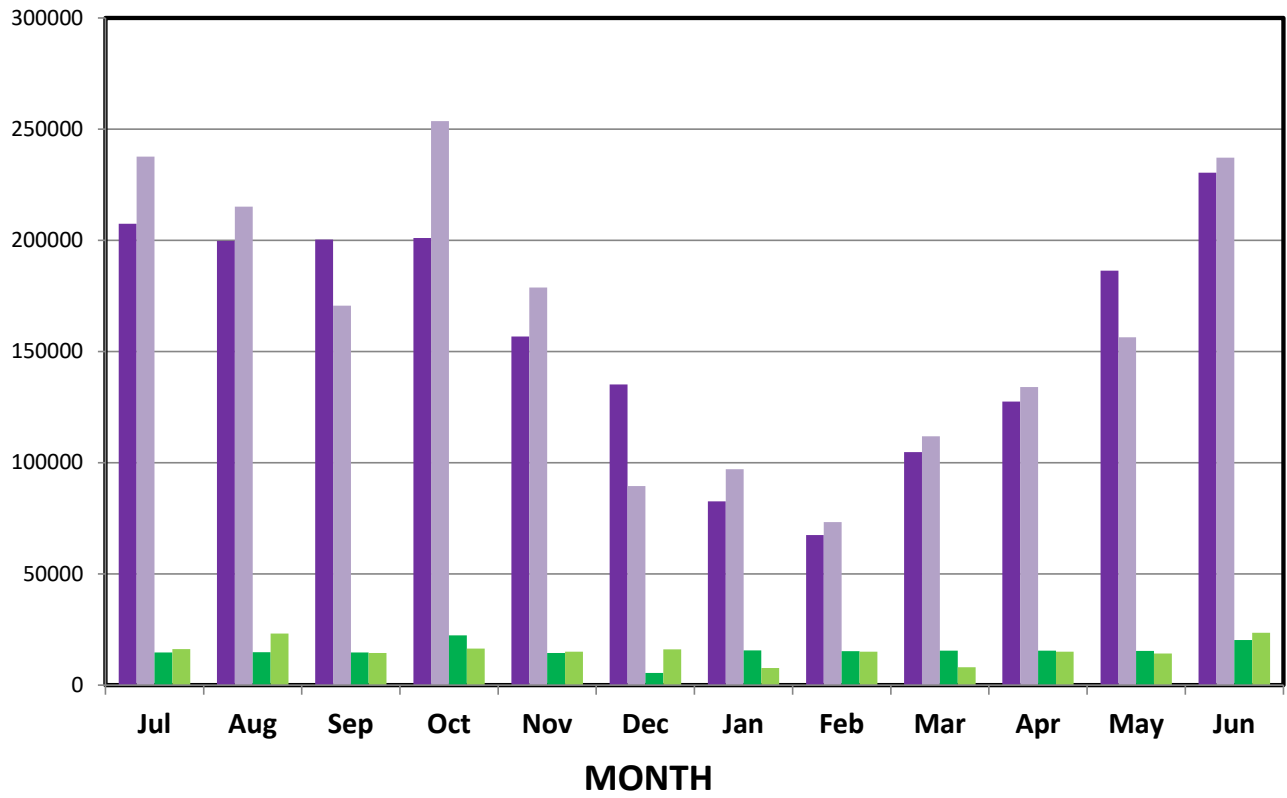
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Jet A - 230,412 Gallons  
 100LL - 20,249 Gallons  
 Airline - 1,047,314 Gallons

**ASHEVILLE REGIONAL AIRPORT  
GENERAL AVIATION FUEL SALES - GALLONS  
June 2023**

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- Jet A - FY23
- Jet A - FY22
- 100LL - FY23
- 100LL - FY22

Jet A - 230,412 Gallons  
100LL - 20,249 Gallons

Greater Asheville Regional Airport Authority  
Construction Project Report - August 2023

**Design Phase**

Project Number	Project Name	Project Description	Professional Services Consultant	Professional Services Contract	General Contractor	Original Construction Contract	Change Orders (thru 08/01/2023)	Percent of Original Contract	Board Approved Project Cost	Percent Complete	Expensed to Date (thru 08/01/2023)	Start Date	End Date	Current Project Status (as of 08/01/2023)
1	Terminal Building Renovations	Phase 2 - Terminal Building Modernization Design	Gresham Smith	\$12,608,794.00	N/A	N/A	\$7,843,633	60.4%	\$20,141,760	71.3%	\$14,360,988	Nov-19	Apr-27	CA services continues.
2	Terminal Building Renovations	Program Management Services	Parsons Transportation Group, Inc.	\$1,329,368.36	N/A	N/A	\$0	0.0%	\$1,329,368	69.0%	\$918,037	May-22	Jun-23	Closed contract - no further reporting.
2A	Terminal Building Renovations	Program Management Services	Parsons Transportation Group, Inc.	\$1,279,968.00	N/A	N/A	\$0	0.0%	\$1,279,968	0.0%	\$0	Jul-23	Dec-27	Project management in process. (2nd year)
3	Air Traffic Control Tower	Design new facility	Pond Company	\$4,157,923.00	N/A	N/A	\$661,133	15.9%	\$4,819,056	75.4%	\$3,631,432	Mar-21	Dec-24	Project management in process.
4	Airport Master Plan	Update current Master Plan	CHA	\$989,004.00	N/A	N/A	\$0	0.0%	\$989,004	63.3%	\$625,820	Jul-21	Dec-23	Working Paper #3 CHA finalizing.
5	South Parking Lot	Enabling Pre-Construction work including design, tree removal and clearing.	AVCON	\$374,976.00	N/A	N/A	\$0	0.0%	\$374,976	72.7%	\$272,645	Jan-23	Nov-23	401/404 permit application submitted. Project management in process.

**Construction Phase**

Project Number	Project Name	Project Description	Professional Services Consultant	Professional Services Contract	General Contractor	Original Construction Contract	Change Orders (thru 08/01/2023)	Percent of Original Contract	Board Approved Project Cost	Percent Complete	Expensed to Date (thru 08/01/2023)	Start Date	End Date	Current Project Status (as of 08/01/2023)
1	Terminal Building Modernization - CMR Construction	CGMP-1 Utilities relocation \$6,215,900 CGMP-2 CEP and Equipment Purchase \$77,999,756 and CGMP-3 \$261,577,165	Gresham Smith	Construction Cost	Hensel Phelps	\$345,792,821.00	\$0	0.00%	\$345,792,821.00	8.4%	\$28,877,725	Jan-22	Apr-27	North concourse to begin demo on Aug 11 at Groundbreaking Event. New tug lane open for airlines. New CBIS bag line is under construction.
2	Air Traffic Control Tower	Construction of ATCT and Base Building Facility	Pond	Construction Cost	J Kokolakis Contracting	\$44,344,052.00	\$0	0.00%	\$46,561,255.00	5.5%	\$2,432,322.00	Dec-22	Dec-24	ATCT pier foundations ongoing, stormwater pipe install progressing.
3	South Parking Lot	Enabling Pre-Construction work including tree removal, clearing, and mulch.	AVCON	Construction Cost	Multiple Companies	\$200,000.00	\$0	0.00%	\$200,000.00	6.3%	\$12,633	Jan-23	Nov-23	Site cleanup in North area continues.
4	South Parking Lot	Construction work including clearing, paving, stormwater pipe and landscaping	AVCON	Construction Cost	Tennoca Construction Company	\$8,388,839.20	\$0	0.00%	\$10,827,723.20	0.0%	\$0	Jun-23	Nov-23	E&S measures in place. Clearing of mulch and tree stumps continues. Subgrade and stormwater drainage work in progress.

\*(bal of approved contract)

# Key strategic priorities

**Governance vs. Management** : Focus on setting governing direction (“guard rails”) for the organizational and holding management accountable for the execution of operational tactics. Pursue continuous educational opportunities for Authority Member development.

1. **Organizational Relevance**: Remaining relevant in an era of airport consolidation
2. **Financial Stewardship**: Sustainability/Operating Performance/Audit & Compliance
3. **Municipal Relations**: Positive relationships with all municipalities surrounding the airport
4. **Stakeholder Relations**: Positive relationships with neighbors and other community organizations
5. **Community Image**: Public Perception/Public Relations/Customer Service/Legal Entity
6. **Facilities Stewardship**: Future Master Facilities Plan
7. **Environmental Stewardship**: Accountability/Awareness of Environmental Issues
8. **Economic Development**: Engage Community Partners/Airline Service Development
9. **Vendor-Partner Relations**: General Aviation/Rental Car Agencies/Vendors
10. **Public Safety**: Airport Emergency Safety/TSA Relations/Municipal Partners
11. **Organizational Accountability**: President & CEO Supervision