

ATTACHMENT "A"

RESOLUTION 2015- 30

A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, PROVIDING FOR AN AIRPORT LEASING POLICY; REPEALING AND REPLACING RESOLUTION 2007-18; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Vero Beach ("City") owns and operates the Vero Beach Regional Airport ("Airport"), and leases Airport property to various tenants; and,

WHEREAS, federal law implemented by the Federal Aviation Administration ("FAA") through deed restrictions and grant assurances requires the City to operate the Airport as a public facility and to receive fair market value for the use of Airport property; and,

WHEREAS, pursuant to these federal requirements, the City sets general leasing policy, including rental rates and concession fees for fixed base operators, other aviation-related uses, and non-aviation commercial uses at the Airport as established by resolution; and,

WHEREAS, the Airport Leasing Policy ("Policy") established in this Resolution shall repeal and replace Rate Resolution 2007-18 and will ensure that the City continues to receive fair market value for leasehold interest in real property, as well as set concession fees for the privilege of doing business at the Airport; and,

WHEREAS, the Policy will ensure that the Airport operates under good business practices by ensuring that each tenant receives fair and equitable treatment and continues to comply with federal law; and

WHEREAS, the City Council of the City of Vero Beach ("City Council") finds that the adoption of the recommended Policy serves a municipal purpose and promotes the health, safety and welfare of the public and of the community.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1. Adoption of “Whereas” Clauses.

The foregoing “WHEREAS” clauses are hereby adopted and incorporated herein as forming the legislative findings, purpose, and intent of this Resolution.

Section 2. General Airport Leasing Policy.

A. Lease Negotiations.

Lease negotiations by Airport staff shall consider the highest and best use of Airport property in accordance with FAA and Florida Department of Transportation (“FDOT”) regulations, the Airport Master Plan, and direction by the City Manager. Lease terms shall not deviate from those herein unless recommended by the Airport Director and approved by the City Manager. Long term leases with an initial term of one (1) year or more shall be approved by the City Council; however, pursuant to the City Code, leases for a nonrenewable term of one (1) year or less may be executed on behalf of the City by the City Manager. All leases shall be approved by the City Attorney as to form and legal sufficiency.

B. Competitive Proposals.

In situations where more than one (1) prospective tenant indicates an interest in leasing the same property within the same general period of time, and all application requirements have been satisfied, the Airport Director’s office will evaluate and select the proposal which best represents the overall public interest. The parties will then be notified of the Airport staff’s recommendation, and will have the opportunity to support their individual proposals at a scheduled meeting before the Airport Commission and City Council. Final approval authority for the lease of airport real property rests with the City Council.

C. Right of First Refusal.

Airport policy does not allow a prospective tenant to secure a “right of first refusal,” nor will the Airport remove any property from the market for any period of time for the purpose of future lease negotiations. Impartial consideration will be given to all parties who express a current interest in leasing real property, and who satisfy the following requirements:

1. Letter of Intent:

Letter of intent must be provided by the prospective tenant to the Airport Director's office. The purpose of the letter is to confirm the desire of the prospective tenant to enter into a lease agreement with the City, and to provide all required information for preparation of the lease agreement by including all of the following:

- a. Identify property to be leased.
- b. Describe the term of the lease, including any renewal options, along with the beginning and termination date.
- c. Names and addresses of authorized signatories.
- d. If a business is involved, provide business name as filed with the Division of Corporations, as well as, titles, names, and addresses of Officers, Directors, Managing Partners, and/or Authorized Person(s) who will be signing the lease.
- e. Detailed description of the intended use of the property, including any special conditions that apply.
- f. Fully completed application form.

2. Advance Rent:

Payment shall be in the amount of one (1) months' advance rent. Advance rent is not a security deposit. If the prospective tenant enters into a lease agreement with the City, these funds shall be considered to be the rent payment for the first month of the new lease agreement. If the prospective tenant is subsequently unable to reach an agreement with airport staff, or if the City Council declines to approve the proposed lease agreement for any reason, the money will be returned to the prospective tenant in full. If however, the prospective tenant decides not to enter into a lease agreement after the City has incurred expenses for the survey work, appraisal, environmental assessment, legal fees, etc., the prospective tenant shall forfeit the money to the

City as liquidated damages.

3. Rent Payment Protection (Security Deposit):

a. New commercial tenants shall be required to provide a security deposit. All tenants are required to provide a security deposit to the City in the amount of three (3) months' rent, as protection for the performance of the terms of the lease. This requirement applies to prospective new tenants, as well as existing airport tenants who enter into new lease agreements with the City. Arrangements to provide the security deposit must be completed by the prospective or existing tenant and approved by the Airport Director prior to the time the proposed lease agreement is submitted to the Airport Commission and City Council for consideration. Unless this requirement is waived under the conditions set forth in Section 2(C)3(b), the security deposit must remain in effect throughout the entire term of the lease agreement, including any option periods which are exercised by the tenant. The security deposit may be provided in any of the following forms:

(1) Cash payment in the amount of three (3) months' rent.

(2) An irrevocable Letter of Credit from a financial institution, in the form acceptable to the City, in the amount of three (3) months' rent.

(3) A Certificate of Deposit from a financial institution, assigned to the City, in the amount of three (3) months' rent.

b. For existing airport tenants only, the requirement for a security deposit may be waived (or a previously paid deposit may be refunded, if applicable) by the Airport Director. The security deposit shall be waived ONLY if the tenant has demonstrated an excellent rent payment history (no late payments) at the Vero Beach Regional Airport for a minimum of two (2) consecutive years, and either of the following

conditions is met:

- (1) Permanent improvements with an estimated value exceeding the amount of the normal security deposit (3 months' rent) have been constructed on the leased property; or
 - (2) The tenant has signed a lease agreement in an individual capacity rather than as an officer of a corporation, thereby providing a personal guarantee for the performance of the terms and conditions of the lease agreement.
- c. The requirement for a security deposit relative to leasing scenarios other than those described herein shall be subject to review by City Management, Airport Commission, and City Council.

Section 3. Rates and Fees.

A. Land Rent and Concession Fees for Fixed Base Operators (FBOs):

Rental rates shall be determined as described in this Section for leasehold interest in real Airport property, subject to CPI adjustment as provided in Section 3(H) below. In addition, for the privilege of doing business at the Airport, concession fee(s) may be charged as described in this Section.

1. Standard Land Rental Rate: (Aviation Development Land):

- a. Land Rental Rate: Rates per square foot per year will be determined based upon current market values; plus,
- b. Easement and/or Restricted-Use Land Rental Rate: One-half (1/2) of land rent rate determined in Section 3(A)1(a) above.

2. Concession Fees:

- a. Concession Fee 1 (Gross Receipts): Fees will be determined based upon current market values or at minimum of two percent (2%) of gross receipts, excluding

aircraft sales, whichever is greater on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.

- b. Concession Fee 2 (Fuel Flowage sales): Fees, if applicable, will be charged at a rate of \$0.05 per gallon of fuel pumped, whether for sale or not, said rate to be adjusted periodically based on current market values, with the approval of the City Manager.

B. Land Rent and Concession Fees for Specialized Aeronautical Service Operators (SASOs):

Rental rates for leasehold interest in real property (subject to adjustment as provided in Section 3(H)), and, if applicable, concession fee(s) for the privilege of doing business at the Airport, for aviation-related uses, which are not defined as "Fixed Base Operators" in the Airport's Minimum Standards shall be as follows:

1. Standard Land Rental Rate (Aviation Development Land):

- a. Land Rental Rate: Rates per square foot per year will be determined based upon current market values; plus,
- b. Easement and/or Restricted-Use Land Rental Rate: One-half (1/2) of land rental rate determined in Section 3(B)(a) above.

2. Concession Fees:

- a. Concession Fee 1 (Gross Receipts): Percentage fees (if applicable) will be determined based on current market values or at minimum of two percent (2%) of gross receipts, excluding aircraft sales, whichever is greater, on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.
- b. Concession Fee 2 (Fuel Flowage usage): Fees (if applicable) will be charged at a rate of \$0.05 per gallon of fuel pumped, whether for sale or not, said rate to be adjusted periodically based on current market values, with approval of the City

Manager.

C. Land Rent and Concession Fees for Commercial Users (Aviation-Use Only):

Rental rates for leasehold interest in real property (subject to CPI adjustment as provided in Section 3(H)), and, if applicable, Concession Fee(s) for the privilege of doing business at the Airport, for aviation-related uses for commercial aviation-use only shall be as follows:

1. Standard Land Rental Rate: (Aviation-Use Development Land):

- a. Land Rental Rate: Rates per square foot per year will be determined based on current market values, plus,
- b. Easement and/or Restricted-Use Land Rental Rate: One-half (1/2) of land rent rate determined in Section 3(C)1(a) above.

2. Concession Fee 2 (Fuel Flowage): Fees (if applicable) will be charged at a rate of \$0.05 per gallon of fuel pumped, whether for sale or not, said rate to be adjusted periodically based on current market values, with the approval of the City Manager.

D. Land Rent and Concession Fees for Commercial Users (Non-Aviation Use):

Rental rates for leasehold interest in real property (subject to adjustment as provided in Section 3(H)), and if applicable, Concession Fee(s) for the privilege of doing business at the Airport, for non-aviation commercial uses shall be as follows:

1. Standard Land Rental Rate: (Non-Aviation Development Land):

- a. Land Rental Rate: Rates per square foot per year will be determined based on current market values, plus,
- b. Easement and/or Restricted-Use Land Rental Rate: One-half (1/2) of land rent rate determined in Section 3(D)1 (a) above.

2. Concession Fee 1 (Gross Receipts): Percentage fees (if applicable) will be determined based on current market values or at minimum of two percent (2%) of gross receipts, excluding aircraft sales, whichever is greater, on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.

E. Building Rent and Concession Fee for Aviation and Non-Aviation Users (Multiple Tenants):

Rental rates for buildings with multiple tenants, where ownership is held by the City, and if applicable, Concession Fee(s) for the privilege of doing business at the Airport, shall be as follows:

1. Standard Building Rental Rate (Multiple Tenants): Rental rates for buildings and improvements, where ownership is held by the City, occupied by multiple tenants, shall be established by the City Manager in the manner set forth in Section 3(G) and shall include a proportionate charge for Common Area Maintenance (CAM).
2. Concession Fee 1 (Gross Receipts): Percentage fees (if applicable) will be determined based on current market values or at minimum of two percent (2%) of gross receipts, excluding aircraft sales, whichever is greater, on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.

F. Building Rent and Concession Fee for Aviation and Non-Aviation Users (One (1) Tenant):

Rental rates for buildings, where the ownership is held by the City, shall be as follows:

1. Standard Building Rental Rate (One (1) Tenant): Rental rates for buildings and improvements, where ownership is held by Landlord, occupied by one (1) tenant who enjoys sole use of the leased premises shall be established by the City Manager in the manner set forth in Section 3(G). In addition to the rental charge for the buildings and improvements, the land included in the leased premises shall carry a rental rate as established in Sections 3(A), 3(B), 3(C), and/or 3(D).

2. Concession Fee 1 (Gross Receipts): Percentage fees (if applicable) will be determined based on current market values or at minimum of two percent (2%) of gross receipts, excluding aircraft sales, whichever is greater, on a monthly basis. One quarter of one percent (0.25%) for aircraft sales.

G. Capitalization Rate:

Rental rates on leases for buildings and improvements, where ownership is held by the City, shall be initiated at a maximum of ten percent (10%) per year of the appraised value of such buildings and improvements, as determined by a state-certified appraiser. The rent charged for such buildings and improvements during the initial term of the lease agreement shall be subject to the annual CPI adjustments described in Section 3(H), and further adjusted prior to the beginning of any extension or renegotiation of the initial term of the lease, as described in Section 3(I).

H. Annual Consumer Price Index (CPI) Adjustment:

Beginning on October 1st of the year following the year in which the lease agreement is executed, and annually on each October 1st thereafter, including the renewal term pursuant to an option exercised under the lease agreement, if any, the rent shall be adjusted in accordance with the percentage change in the index known at the time the lease agreement is executed as the "United States Bureau of Labor Statistics Consumer Price Index (CPI) for All Urban Consumers," using the July to July report. This adjustment shall be referred to as "the CPI adjustment." If the CPI ceases to be published, the successor index shall be used. In no event shall the rental rate be less than the rental rate set for the previous year of the lease agreement.

I. Market Value Rent Adjustment:

In addition to the CPI Adjustment set out above, there shall be a review of building and

improvement market values prior to any lease extension or renegotiation to bring rental rates computed upon market values up to current market levels when applying the Capitalization Rate method above. A market value appraisal shall be completed upon leased buildings and improvements where ownership is held by the Airport prior to confirmation of a tenant's notice of intent to extend the lease of such buildings and/or improvements, to adjust the then current rental amount being charged on the lease to an amount equivalent to the capitalization rate applied to the updated market value. It is the intent of this provision to update rental amounts on buildings and improvements where ownership is held by the City prior to lease extensions or renegotiations in the same manner rental amounts are set upon buildings and improvements in Section 3(G) above. This provision shall apply to new leases entered into by the City after the adoption of this resolution, and to any extension or renegotiation of an existing lease initiated by the tenant.

Section 4. Repeal and replacement.

Resolution 2007-18 is hereby repealed and replaced by this Resolution No. 2015- 30.

Section 5. Conflict and severability.

The provisions of this Resolution shall control over those provisions of previously adopted resolutions in conflict herewith. If any provision of this Resolution is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdictions, such invalidity shall not affect the validity of the remaining portions.

Section 6. Effective date.

This Resolution shall become effective upon adoption.

[Signature Pages Follow]

City of Vero Beach

This Resolution was moved for adoption by Councilmember Kramer, seconded by Councilmember Graves, and adopted on the 1st day of September 2015, by the following vote:

- Mayor Richard G. Winger Yes No
- Vice Mayor Jay Kramer Yes No
- Councilmember Amelia Graves Yes No
- Councilmember Pilar E. Turner Yes No
- Councilmember Randolph B. Old Yes No

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock
Tammy K. Vock
City Clerk

Richard G. Winger
Richard G. Winger
Mayor

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

Wayne R. Comenta
Wayne R. Comenta
City Attorney

James R. O'Connor
James R. O'Connor
City Manager

Approved as to technical requirements:

Approved as conforming to financial policy:

Ericson W. Menger
Ericson W. Menger
Airport Director

Cynthia D. Lawson
Cynthia D. Lawson
Finance Director