

AGREEMENT TO PROVIDE
AIRCRAFT RESCUE AND FIREFIGHTING SERVICES
BETWEEN THE
CITY OF VERO BEACH, FLORIDA
AND
INDIAN RIVER COUNTY
EMERGENCY SERVICES DISTRICT

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**AGREEMENT TO PROVIDE
AIRCRAFT RESCUE AND FIREFIGHTING SERVICES
BETWEEN THE
CITY OF VERO BEACH
AND
INDIAN RIVER COUNTY EMERGENCY SERVICES DISTRICT**

THIS AGREEMENT TO PROVIDE AIRCRAFT RESCUE AND FIREFIGHTING SERVICES (“Agreement”), is made and entered into as of the **1st** day of **October 2021**, by and between **THE CITY OF VERO BEACH**, a municipal corporation organized and existing under the laws of the state of Florida, whose mailing address is 1053 20th Place, P.O. Box 1389, Vero Beach, FL 32961-1389 (“City”) and **THE INDIAN RIVER COUNTY EMERGENCY SERVICES DISTRICT**, a dependent special taxing district, organized under the laws of the state of Florida, whose mailing address is 1801 27th Street, Vero Beach, FL 32960 (“District”). City and District may also be referred to herein individually as a “party” or collectively as the “parties.”

WHEREAS, the Vero Beach Regional Airport (“Airport”) is owned by the City, and the City is vested with the power to operate the Airport, to lease premises and facilities on the Airport, and to grant related rights and privileges; and,

WHEREAS, in complying with the requirements of 14 CFR Part 139, the Airport must meet certain provisions regarding Aircraft Rescue and Firefighting (“ARFF”) services to retain its federal certification and to remain eligible for Federal Airport Improvement Funds; and,

WHEREAS, the City previously entered into an “Agreement to Provide Fire Services” executed on July 19th, 1989, wherein the South Indian River County Fire District (now Indian River County Emergency Services District) and City agreed that the District would provide ARFF services to the Airport; and,

WHEREAS, the District leases property at the Airport to provide ARFF protection at the Airport,

which provides valuable consideration for this Agreement; and,

WHEREAS, the District has the equipment and capability to provide ARFF services, utilizing its leasehold on Airport property; and,

WHEREAS, Agreement shall enable each respective local governmental unit to cooperate and to provide services and facilities in a manner that protects the health, safety, and welfare of its citizens.

NOW, THEREFORE, City and District, for the consideration hereinafter named, agree as follows:

ARTICLE 1

PURPOSE

The parties agree that the above recitals are true and correct by this reference incorporated herein and made part thereof.

ARTICLE 2

TERM; OPTION TO RENEW

Section 2.1. Term.

The Term of this Agreement shall be for a period of thirty (30) years from the Effective Date, commencing on **October 1, 2021**, and terminating on **September 30, 2051**, (“hereinafter Term”).

Section 2.2. Option To Renew.

Provided that this Agreement and any related agreement between the parties are in full force and effect, and neither party is in default or breach, the parties shall have the option to renew this Agreement for **two (2)** additional terms of **ten (10) years** per term. Such option(s) may only be exercised by signed, written agreement by the parties, and may only be exercised on the condition that District continues to provide ARFF services to City in accordance with a valid agreement, if City so requires.

ARTICLE 3

PAYMENT; PAYMENT ADJUSTMENTS

Section 3.1. Payment.

City shall pay District according to the following schedule:

- (1) **Year One.** Beginning with the effective date of this Agreement, City shall pay to District, as compensation for the services set forth herein, the sum of **\$168,950.40** for the year, payable in equal monthly installments of **\$14,079.20** per month for twelve (12) months.
- (2) **Year Two.** After the first year, City shall agree to pay to District the sum of **\$199,583.76** for the year of services, payable in equal monthly installments of **\$16,631.98** per month for twelve (12) months.
- (3) **Year Three.** After the second year, City shall agree to pay District the sum of **\$230,217.24** for the year, payable in equal monthly installments of **\$19,184.77** per month for twelve (12) months.
- (4) **Year Four.** After the third year, City shall pay to District the sum of **\$260,850.60** for the year, payable in equal monthly installments of **\$21,737.55** per month for twelve (12) months.
- (5) **Year Five.** After the fourth year, City shall agree to pay District the sum of **\$291,483.96** for the year, payable in equal monthly installments of **\$24,290.33** per month for twelve (12) months.
- (6) **Years Six to Thirty:** All future monthly payments will be agreed upon in advance by both parties by an Amendment to the Agreement consistent with Section 3.2 below:

Section 3.2. Payment Adjustment.

Beginning on **October 1, 2026**, and annually on each October 1st thereafter, including any renewal Term, City shall pay District an amount agreed upon by both parties. District shall submit to the City no later than **May 1, 2026**, and annually on each May 1st thereafter its proposal for any increases

in the annual payment amount, which must be directly related to providing ARFF services under this Agreement. Any proposed increase is limited to a maximum of fifteen percent (15%) of the prior year's total annual amount. Proposed increases shall be effective only upon the execution of an addendum to the Agreement that is signed by both parties. In the event the parties are unable to agree upon a proposed increase, City agrees to pay District the amount paid for the previous year.

ARTICLE 4

ARFF VEHICLES; MINIMUM OBLIGATIONS AND RESPONSIBILITIES

The District shall provide the City, and the City shall accept from the District, certified firefighting personnel as necessary to meet the requirements of Federal Aviation Regulations, Part 139 as provided herein, at the Airport:

Section 4.1. ARFF Vehicles.

(a) **PURCHASING/OWNERSHIP**: The vehicles dedicated to ARFF duties, hereinafter "Vehicles," shall be purchased by City and shall be provided to District for the purpose of complying with the Terms of this Agreement. Title to and ownership of Vehicles shall remain with City. Fuel for Vehicle shall be purchased by City. Unless expressly directed in writing by the Airport Director, or designee, Vehicles' sole purpose shall be the performance of ARFF services at the Airport. Vehicles may also be used for periodic ARFF training, and equipment testing and servicing.

The City, in consultation with the District, will determine when replacement Vehicles or additional Vehicles are needed, and will coordinate to determine the type of Vehicles and associated equipment to be purchased.

In the event of the temporary unavailability of any Vehicles, the City shall be responsible for ensuring that a temporary replacement Vehicle is available. In the event that there is a change in ARFF Index under Part 139 as determined by the City, the City shall be responsible for any additional

necessary training costs required by such change.

(b) **INSURANCE**: Commercial Auto Insurance: District shall maintain commercial auto insurance for replacement value and automobile liability insurance for the Vehicle(s). The liability insurance shall be a combined single limit of \$3,000,000.

(c) **MAINTENANCE**: District shall, at all times, ensure the operational condition of ARFF Vehicles through regular functionality checks and inspections. Maintenance/repair of the chassis/drive train/engine and pump components shall be the responsibility of the City and shall be coordinated through the City's Central Garage.

(d) **LIFE SAFETY**: The maintenance and repair of Life Safety components and systems shall be the responsibility of District. In the event that repair and/or replacement of a Life Safety component is necessary, District shall follow the purchasing procedures of Indian River County. District shall then complete the purchase/repair, including payments of the vendor(s), and District may then request reimbursement from the City. All reimbursement requests must include proof of vendor payment and any backup documents required by City to ensure compliance with purchasing procedures and state and local law.

Section 4.2. Minimum Obligations and Responsibilities.

(a) **ARFF RESPONSE**: On a twenty-four (24) hour daily basis, District shall keep and maintain at least one (1) ARFF-trained firefighter at Fire Station No. 3 located at the Airport , to be prepared and assigned the sole duty of responding to Airport accidents and incidents as necessary, with the Vehicle(s).

(b) **EQUIPMENT**: District shall, at all times, maintain and keep in operable condition at the Airport fire station, a Vehicle equipped to meet the applicable provisions of 14 CFR Part 139. The Vehicle's sole purpose shall be to respond only to ARFF duties at the Airport. The Vehicle shall respond

only to such emergencies unless authorized by the Airport Director or City Manager. The City agrees to provide all necessary communications equipment for all ARFF vehicles and the personnel assigned to these vehicles for continuous communications with all responding agencies on the Harris 800Mhz system.

(c) **FUELING AGENT INSPECTIONS:** District shall ensure that ARFF personnel conduct fire safety fueling inspections at the physical facilities of each airport fueling agent, as defined by the Airport Certification Manual, and in accordance with the provisions of FAR 139.321.

(d) **SPILLAGE; HAZARDOUS MATERIALS:** District shall ensure that ARFF personnel supervises and directs all activities relating to accidents involving the spillage or possible release of fuel, oil, and other hazardous materials, which may occur at the Airport, in accordance with all applicable laws and professional standards.

ARTICLE 5

ARFF PERSONNEL AND TRAINING

(a) **REQUIREMENTS:** The District shall ensure that all firefighters assigned to ARFF services at the Airport shall be trained, by District, in accordance with the applicable provisions of Part 139, the Federal Regulations governing Airport certification as they now exist or may hereafter be amended, or to an alternate level of training and proficiency as agreed upon by both parties in the event that Part 139 no longer applies. District shall provide ARFF services to Airport in accordance with 14 CFR Part 139, or to an alternate level of training and proficiency as agreed upon by both parties in the event that Part 139 no longer applies, or to the training requirements necessary for any change in ARFF index as determined by the FAA, Airport, or the City. In the event that Part 139 no longer applies, but ARFF services are still required, the City shall be responsible for any training costs that exceed those required by Part 139.

The District shall comply with all initial and recurrent training and recordkeeping required under Part 139.303, Federal Regulations. The District shall keep and maintain all training records for each individual performing such duties, whether on a full or part-time basis, at all times during the term of this Agreement and for at least five (5) years subsequent to the termination of this Agreement, or as required by law. In the event that there is a change in ARFF Index under Part 139 as determined by the City, the City shall be responsible for any additional necessary training costs required by such change.

(b) **COSTS**: Except as specifically stated herein, costs incidental to District's performance of services under this Agreement, including, but not limited to, salaries, employee benefits, worker's compensation coverage, utilities, liability, personal injury insurance, and required firefighting personnel, ("Costs") shall be at District's sole expense.

The cost of the annual "Live Burn" training shall be divided evenly between District and City. City shall solicit and contract for live-burn training providers, and shall pay the entire upfront cost of each "Live Burn" training session as required by Part 139. Upon receipt of the Invoice, District shall promptly reimburse City for half (50%) of the total amount paid by City.

ARTICLE 6

AMENDMENTS TO AGREEMENT

The parties hereto agree to attempt to informally resolve the issue of whether any adjustments or amendments to the Costs contained herein may be necessary, before taking any other action. The parties agree to amend this Agreement and to adjust the cost, if necessary, to comply with any future amendments to 14 CFR Part 139 or as may be necessary due to a reclassification of the Airport under that provision. The parties may amend this Agreement only by written agreement of the parties.

ARTICLE 7
ATTORNEY’S FEES AND COSTS

In the event there arises between the parties any dispute or litigation regarding the terms and conditions of this Agreement, each party shall be responsible for its own attorney’s fees and costs.

ARTICLE 8
NOTICE

Any notices that are required, or which either party may desire to serve upon the other, shall be in writing and shall be deemed served when hand-delivered, or when actually received via U.S. Mail, postage prepaid, return receipt requested, addressed:

To DISTRICT: Indian River County Emergency Services District
 Attn: Chairman
 1801 27th Street
 Vero Beach, Florida 32960

To CITY: Vero Beach Regional Airport
 Attn: Airport Director
 3400 Cherokee Drive
 P. O. Box 1389
 Vero Beach, Florida 32961-1389

Either party may change these addresses by providing written notification to the other.

ARTICLE 9
INSURANCE

District must procure and maintain during the Term of this Agreement, at its own expense, for the protection of City and District, in form satisfactory to City:

Section 9.1. General Liability Insurance.

District shall maintain general liability insurance providing all risks coverage which protects the City, the City’s elected officials, employees, officers, and agents, and District, from claims arising from

bodily injury, property damage, operations, fire and legal liability. Such insurance coverage shall have a combined single limit of not less than \$3,000,000 per occurrence/\$3,000,000 aggregate.

Coverage shall be provided in a form no more restrictive than the latest edition of the commercial general liability policy filed by the Insurance Services Office. District's insurance shall be primary and any other insurance maintained by the City shall be in excess of and shall not contribute with District's insurance.

Section 9.2. Worker's Compensation Insurance.

District shall maintain worker's compensation insurance meeting mandatory statutory limits, and include:

- \$1,000,000 each accident
- \$1,000,000 bodily injury by disease each employee
- \$1,000,000 bodily injury by disease policy limit.

Section 9.3. Pollution Liability Insurance.

District shall maintain pollution liability insurance for sudden or gradual release of pollutants. Such coverage shall have a minimum limit of \$1,000,000 per occurrence.

Section 9.4. Additionally Insured.

The City shall be named as an additional insured for liability insurance, and shall include provision of at least thirty (30) days' advance notice to City prior to any policy change, amendment, termination or expiration of coverage. District shall provide proof of the required insurance to the City before each term of coverage. District's insurance shall be primary and any other insurance maintained by the City shall be in excess of and shall not contribute with District's insurance. District shall be responsible for the payment of any applicable deductibles set out in the insurance.

ARTICLE 10
INDEMNIFICATION

Only to the limits set forth in section 768.28, Florida Statutes, District agrees to indemnify and hold harmless City for any and all actions, claims, losses, and litigation including all costs and attorney's fees, through trial and appeal, arising out of or connected in any way with District's services at the Airport pursuant to this Agreement, except with respect to any condition existing that is in City's sole control or arising from City's willful misconduct or gross negligence. Nothing in this Agreement or any other document shall be deemed to affect, limit, or waive any right, privilege, or immunity of the City or the District or the limited waiver of sovereign immunity set forth in section 768.28, Florida Statutes.

ARTICLE 11
DISCLAIMER OF THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the parties and no right or cause of action shall accrue to or for the benefit of any third party that is not a formal party hereto. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give any person or corporation other than the parties any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions of it; and all of the provisions, covenants, and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto.

ARTICLE 12
MISCELLANEOUS PROVISIONS

(a) This Agreement shall be governed by and construed in accordance with the laws of the state of Florida.

(b) This Agreement and incorporated attachments sets forth all the promises, agreements, conditions, and understandings, either oral or written, between the parties. No subsequent alteration, amendment, change, or addition to this Agreement will be binding on either party unless in writing and

signed by the parties.

(c) District shall not assign or transfer any part of this Agreement without prior written consent of City, which shall be in City's sole discretion.

(d) The terms of this Agreement shall be binding on the respective successors, contractors, representatives, agents, and assigns of the parties.

(e) No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in a writing signed by the aggrieved party.

SIGNATURE PAGES TO FOLLOW

[Remainder of Page Intentionally Left Blank]

DISTRICT – INDIAN RIVER COUNTY EMERGENCY SERVICES DISTRICT
(This section to be completed by DISTRICT only)

INDIAN RIVER COUNTY
EMERGENCY SERVICES DISTRICT,
By its Board of County Commissioners

ATTEST:

By: _____
Jeffrey R. Smith
Clerk of Courts and Comptroller

By: _____
Peter D. O’Bryan
Chairman

Approved by BOCC: _____

Approved as to form and legal sufficiency:

Approved:

By: _____
Dylan Reingold
County Attorney

By: _____
Jason E. Brown
County Administrator

[SEAL]

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____ 2022, by **PETER D. O’BRYAN, Chairman**, of the Board of County Commissioners, on behalf of **INDIAN RIVER COUNTY EMERGENCY SERVICES DISTRICT**, a dependent special taxing district, who is personally known to me or has produced _____ as identification.

Seal:

Sign: _____
Notary Public, State of Florida at Large
Print Name: _____
Notary Commission No.: _____
My Commission Expires: _____

CITY – CITY OF VERO BEACH
(This section to be completed by CITY only)

CITY OF VERO BEACH, a Florida
Municipal corporation

ATTEST:

By: _____
Tammy K. Bursick
City Clerk

By: _____
Robert Brackett
Mayor

[SEAL]

Date: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____ 2022, by **ROBERT BRACKETT**, the Mayor, and **TAMMY K. BURSICK**, the City Clerk, of the City of Vero Beach, Florida. Both are personally known to me.

Seal:

Sign: _____
Notary Public, State of Florida at Large
Print Name: _____
Notary Commission No.: _____
My Commission Expires: _____

ADMINISTRATIVE REVIEW
(For Internal Use Only–Sec. 2-77 COVB Code)

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

John S. Turner
City Attorney

Monte K. Falls, P.E.
City Manager

Approved as to financial requirements:

Approved as to technical requirements:

Cynthia D. Lawson
Finance Director

J. Todd Scher
Airport Director