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COMMONWEALTH of VIRGINIA
DEPARTMENT OF AVIATION
5702 Gulfstream Road
Richmond, Virginia 23250-2422

**Master Agreement on Terms and Conditions
for Accepting State Aviation Funding Resources**

Sponsor: <sponsor>
Airport: <airport>

This document contains the terms and conditions for accepting state aviation funding from the Commonwealth of Virginia (hereinafter referred to as the "Commonwealth") for capital, facilities and equipment, security, maintenance, and aviation promotion. These terms and conditions become applicable when the <sponsor> (hereinafter referred to as the "Sponsor") accepts funds from the Commonwealth Airport Fund and/or the Aviation Special Fund. The terms and conditions of this Master Agreement may be modified or amended by the Virginia Aviation Board (hereinafter referred to as the "Board") and/or the Virginia Department of Aviation (hereinafter referred to as the "Department") at which time a revised Master Agreement or a written amendment to the Master Agreement will be provided to the Sponsor for execution. The new or revised terms and conditions of the revised Master Agreement or amendment will apply to funds allocated from the Commonwealth Airport Fund and/or the Aviation Special Fund after the effective date specified by the Board or Department for the new or revised language.

Part I - Definitions

For the purpose of this Master Agreement, the following definitions are used:

Airport: an area of land or water that is used, or intended for public use, for the landing and takeoff of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights-of-way or easements, and together with all airport buildings and facilities located thereon.

Airport Layout Plan: a scaled drawing of the existing and planned land and facilities required for the development and operation of an airport.

Airport Real Property: property consisting of land, buildings, or other resources attached to or within the land or improvements or fixtures permanently attached to the land or a structure on an airport.

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Airport Program Manual: the document, approved by the Board and issued by the Department that provides information on state aviation funding programs, Board policies, and administrative processes used by the Department to implement the policies, as it now exists or may hereafter be modified.

Allocation: the authorization to expend a specific amount of state funds for an eligible project approved by the Board and/or Department.

Contractor: a private entity, including consultants and sub-contractors, engaged by a Sponsor to perform work.

Equipment: all fixed assets other than land and buildings of an airport environs to include maintenance equipment, navigational aid equipment, and security equipment.

FAA: Federal Aviation Administration, an agency of the federal government.

Federally Funded Project: a project that is funded with monetary participation by one or more federal agencies, the Commonwealth, and the Sponsor.

Force Majeure Event(s): an event(s) of fire, flood, war, rebellion, riots, strikes, terrorism, or acts of God that may affect or prevent either party from timely or properly performing its obligations under the Master Agreement.

Grant Agreement: the contract created upon the Sponsor's acceptance of the terms and conditions set forth in the Department's Grant Offer, as evidenced by the Sponsor's execution of the Grant Offer.

Grant Amendment: the modification of the terms and conditions of a Grant Agreement, the acceptance of which is evidenced by the Sponsor's execution of the Grant Amendment.

Grant Obligation Term: the time period specified in the Grant Agreement during which the terms, conditions and assurances of the Grant Agreement, including the Master Agreement, remain in effect. The Grant Obligation Term shall begin upon the date the final payment under the Grant Agreement is made by the Commonwealth.

Grant Offer: the terms and conditions upon which the Department is willing to provide funds to a Sponsor for a **specified** project, as specified in the Grant Agreement.

Grant Term: the time period within which the Commonwealth will **accept requests for reimbursement from** the Sponsor pursuant to the Grant Agreement. The expiration date for such **Grant Term** will be specified in the **Grant Agreement**.

Master Agreement: the document that contains the terms and conditions of accepting funding from the Commonwealth of Virginia for the purpose of improving and maintaining airports included in the *Virginia Air Transportation System Plan*. These terms and conditions become applicable when the sponsor accepts a Grant Offer from the Commonwealth of Virginia that references this document. The terms and conditions may be unilaterally amended by the Commonwealth of Virginia, by notification in writing, and such amendment will only apply to Grant Agreements accepted after notification.

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Operating Costs: expenses associated with the maintenance and administration of an airport on a day-to-day basis, including but not limited to, repair and maintenance costs, snow removal, utility expenses, and salary and wage expenses.

Reimbursement: amount refunded for eligible costs incurred or expenses paid.

Scope of Work: a document that describes the tasks, schedule, deliverables, man hours, costs, and responsible parties for a project and is to be approved by the Department, FAA, Board and/or applicable state or federal agency as appropriate.

Sponsor: an entity that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other obligations required in this document and in the executed Grant Agreement.

State Funded Project: a project that is funded with monetary participation by the Commonwealth and the Sponsor.

Usable Unit of Work: a deliverable that allows the next phase of a project to begin or results in a facility or airport infrastructure that can be utilized for its intended purpose.

Part II - General Conditions

- A. The Sponsor agrees to comply with this Master Agreement and Grant Amendments in accordance with all provisions of the Code of Virginia, Virginia Administrative Code, and Airport Program Manual as approved by the Board and in force on the date of execution of each Grant Agreement.
- B. Consistent with the Airport Program Manual, the Sponsor shall annually certify to the Department that the Sponsor has adequate liability insurance or other means of financial responsibility to satisfy the minimum dollar amount required by the §5.1-88.7 et seq. of the Code of Virginia (1950), as amended.
- C. A Grant Offer, if not fully and properly accepted, shall expire and cease to be effective upon the expiration date stated on each Grant Offer.
- D. OSIG recommended strengthening the master agreement by including statements related to allowable costs (6). This section already provides language related to allowable costs. The maximum obligation of the Commonwealth shall be specified in the Grant Offer for each project.
- E. The expiration date of a Grant Term shall be specified in the Grant Offer for each project. No requests for reimbursement shall be accepted under the Grant Agreement after said date and no further commitment for payment of monies under the Grant Agreement shall continue after said date, whether or not the project described in the Grant Agreement is completed; provided, however, the Department may extend the end date of the Grant Term for good cause shown in accordance with the Airport Program Manual.

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- F. For Federally Funded Projects, at the time of execution of the state Grant Offer, the Sponsor shall have a commitment by federal funding agency(ies) for the federal funds identified in the state Grant Offer to provide financial support for the project described in said Grant Offer.
- G. For all projects, at the time of execution of a state Grant Offer, the Sponsor shall have a commitment for local funds to support the project described in said Grant Offer. By executing the state Grant Offer, the Sponsor certifies that it has sufficient funds available to assure the operation and maintenance of the **owned** improvements and/or equipment funded under said Grant Offer.
- H. OSIG recommended strengthening the master agreement by including statements related to the right to amend projects and related funding (6). This section already provides language related to allowable costs. The Sponsor shall carry out and complete the project (identified in a Grant Agreement) in accordance with the approved Scope of Work to provide a Usable Unit of Work. The approved Scope of Work may be revised with prior approval of the Department.
- I. The Sponsor shall operate and maintain the Airport, now existing or built in whole or in part as a result of all projects undertaken with state funds, as a public-use facility for the duration of the Grant Obligation Term. The Grant Obligation Term included in any Grant Agreement begins upon final payment of the executed Grant Agreement. Sponsors of Part 139 Airports who receive state entitlement funds are obligated for 20 years from the last entitlement payment received.
- J. If the Airport closes or ceases to operate as a public-use facility, the Sponsor shall repay to the Commonwealth a sum which is equal to the pro-rata share (computed monthly) of all state funding for Grant Agreements for which the Grant Obligation Term has not expired.
- K. The Sponsor is obligated to keep the Airport Layout Plan current, providing the Department with revisions of the appropriate Airport Layout Plan sheets.
- L. A Grant Agreement will be considered fully repaid to the Commonwealth in public benefits at the expiration of the Grant Obligation Term, and the Sponsor shall have no further financial obligation to the Commonwealth under the Grant Agreement, with the exception of Grant Agreements for the purpose of land acquisition in either fee simple or easement, which are described in Part III - Special Conditions.
- M. All professional services, non-professional services, and goods associated with any Grant Agreement or Allocation shall be procured in accordance with the Virginia Public Procurement Act and/or the appropriate federal procurement regulations as specified in the FAA Grant Agreements and Airport Improvement Program Handbook in effect at the time a Grant Agreement is executed.
- N. The Sponsor shall maintain the Airport free and clear of obstructions to navigable airspace in accordance with applicable standards of Federal Aviation Regulation Part 77, FAA Advisory Circular 150/5300-13, and Virginia Administrative Code Section 24 VAC 5-20-140 (and specifically that version applicable on the date of execution of each Grant Offer) for as long as the Airport remains a public-use airport licensed by the Commonwealth.

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- O. To the extent permitted by law, the Sponsor shall not release title to any Airport Real Property without first receiving written approval from the Department, and, *as appropriate, the FAA.*
- P. Any equipment purchased under a State Funded Project shall be used only for maintaining facilities on Airport property as identified on the approved Airport Layout Plan, and *for any non-federal navigational aid facilities owned by the Department.*
- Q. During the applicable Grant Obligation Term, the Sponsor shall not sell, trade in, or donate *any* equipment purchased as part of a State Funded Project without the approval of the Department.
- R. All revenues generated by the airport shall be expended by the Sponsor for capital and non-capital improvements on the airport, or *for airport land acquisition*, or operating costs of the airport.
- S. The Sponsor shall *at all times* operate the Airport and all *those* facilities which are necessary to serve the aeronautical users of the Airport in a safe and serviceable condition, with due regard to weather related conditions. For airports with runway lighting systems, the Sponsor must keep the runway open 24 hours a day, 7 days a week, unless otherwise approved by the Department, or unless temporarily affected by weather, mechanical conditions or other emergency. The Sponsor must promptly issue *Notice(s)* to Airmen (NOTAM) and notify the Department of any condition affecting the use of the Airport. *Airport terminal buildings* must be kept open during the hours published in the most current edition of FAA's *Chart Supplement*.
- T. If *any* specifics of a project generate the need for terms and conditions not provided for in this Master Agreement, any additional terms and conditions will be stated in the Grant Agreement for the project. In the event of any conflict between a provision in this Master Agreement and *any* provision in a specific Grant Agreement, then the conflicting provision in the Grant Agreement shall govern, but only for the purposes of that Grant Agreement.
- U. *OSIG recommended strengthening the master agreement by including statements related to litigation protection (6). This section already provides language related to litigation protection. Should a court of competent jurisdiction invalidate or hold unenforceable any provision of this Master Agreement, or any provision of any Grant Agreement or Grant Amendment entered into hereunder, or the application thereof in any particular circumstance, the remainder of the Master Agreement, Grant Agreement, or Grant Amendment not dependent on the invalidated provision shall remain in full force and effect.*
- V. *OSIG recommended strengthening the master agreement by including statements related to litigation protection (6). This section already provides language related to litigation protection. This Master Agreement shall be construed and governed by the laws of the Commonwealth of Virginia. The parties hereto agree that any legal actions regarding the interpretation or enforcement of the Master Agreement, Grant Agreement, or Grant Amendment entered into hereunder, shall be heard in the Circuit Court of the County of Henrico, Virginia.*
- W. *Section W supports the OSIG recommendation to strengthen the master agreement by including statements related to reserving the rights to amend/withdraw grants (6). The Master Agreement, subsequent Allocations and Grant Agreements, and any associated Grant*

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Amendments, may be terminated or amended by the Department upon the occurrence of any of the following:

1. The Sponsor may terminate the project at any time by notifying the Department 60 calendar days in advance in writing that it intends to terminate the project. If such a termination occurs, the Sponsor shall repay the Department the grant funds received, according to the provisions of this Master Agreement or the Grant Agreement.
2. This subsection supports the OSIG recommendation to strengthen the master agreement by including statements related to litigation protection (6). The Sponsor may terminate an Allocation, Grant Agreement or Grant Amendment(s) at any time it is determined under Virginia law that the Department has materially breached any Grant Agreement and has failed to cure such breach within 90 calendar days. Should a material breach occur, the Sponsor shall be entitled to whatever remedies may be provided under Virginia law. However, nothing herein shall constitute a waiver of the Commonwealth's or the Department's sovereign immunity.
3. Upon 60 calendar day notice to the Sponsor, the Department may terminate, in whole or in part, any funding under a Grant Agreement or Allocation any time it is determined that the Sponsor has materially breached the Grant Agreement or Allocation and has failed to cure said breach after 90 calendar days, or if the Department in its sole judgment determines that compliance within 90 calendar days is not reasonable, then within such time period as the Department may thereafter specify in writing. The Department shall notify the Sponsor promptly in writing of such a determination and provide the effective date of the termination. The Sponsor may request reconsideration from the Department in writing within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until the request has been reconsidered but may withhold funds in the interim. Following a request for reconsideration, the decision of the Department will be made within 60 calendar days and will be final. If the Grant Agreement or Allocation is terminated by the Department, the Sponsor shall repay the Department thereafter all funds received for the project. Such repayment shall be made within 60 calendar days following written notification by the Department of the amount to be repaid.
4. Upon 60 calendar day notice to the Sponsor, the Department may at any time terminate, in whole or in part, the funding under a Grant Agreement or Allocation if (1) the Department fails to secure the necessary budgetary appropriation or allocation to fulfill its obligations under the Grant Agreement or Allocation, (2) the Sponsor becomes insolvent, (3) the Sponsor fails to properly apply provided funds as intended under the Grant Agreement or Allocation, or (4) statutory changes affecting the program under which the funds were allocated render funding the Grant Agreement or Allocation impossible. The Department shall notify the Sponsor promptly in writing of any such determination and the effective date of such termination. The Sponsor may request reconsideration from the Department in writing within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following a request for reconsideration, the decision of the Department will be made within 60 calendar days and will be final.

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5. Should the project be terminated by the Department as a result of lack of funds or statutory changes, the Department will exercise its best efforts to seek funds to be used to defray costs of shutting down the project, and the Sponsor need not repay those funds already paid to the Sponsor if such funds represent eligible project costs. If the Sponsor becomes insolvent or declares bankruptcy, or if the Sponsor fails to properly apply funds as intended under a Grant Agreement or Allocation, the Sponsor shall repay the Department all funds associated with the Grant Agreement or Allocation.
 6. Reasonable delays, as determined by the Department, caused by any Force Majeure Events during construction shall not be deemed a breach or default under a Grant Agreement or Allocation. Upon the occasion of any Force Majeure Event, solely determined by the Department, (which makes it impossible for the project to be constructed and/or prevents the need for the project), the Department may at its sole discretion terminate the Grant Agreement or Allocation. Force Majeure Events occurring during the period of the Grant Agreement or Allocation may, in the sole discretion of the Department, result in day-for-day extension(s) to any performance specified in the Grant Agreement or Allocation.
 7. Reimbursements from the Sponsor may also require the payment of interest, using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date payment is made by the Department to the date of repayment by the Sponsor.
- X. This section supports the OSIG recommendation to strengthen the master agreement by including statements related to recordkeeping requirements, audits, and report and inspection requirements (6, 12). The Sponsor and its contractors and subcontractors shall maintain all books, documents, papers, accounting records, and any other written or electronic evidence supporting their project activities and the costs incurred. Such information shall be made available for audit and inspection at the respective Sponsor's offices at all reasonable times during the full Grant Agreement period; and for a period of four (4) years from the end of the state fiscal year (i.e., June 30) in which the final payment is made for any Grant Agreement, except for records pertaining to terminal buildings and land. Records for terminal buildings shall be kept for the useful life of the terminal building, and records for the land shall be kept in perpetuity. Copies of any such information shall be furnished by the Sponsor to the Department upon request.
- Y. This section supports the OSIG recommendation to strengthen the master agreement by including statements related to the review of audited financial statements, the rights to audit, and report and inspection requirements (3, 12, 13). The Sponsor, its agents, and its contractors and subcontractors, shall permit any authorized representatives of the Department to inspect and audit all records of the Sponsor and its contractors and subcontractors related to the performance of the Master Agreement or any Allocations, Grant Agreements, and any Grant Amendments. This shall include but not be limited to the following:
1. All Sponsors must follow the requirements of *Generally Accepted Government Audit Standards*.
 2. A third party audit is required when a Sponsor of a Part 139 Airport receives an Entitlement Fund allocation from the Department. Sponsors that do not receive an

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Entitlement Fund allocation are not required to have a third party audit performed unless specifically requested by the Department. [Note: DOAV staff is working with the Virginia Auditor of Public Accounts to provide additional guidance that will assist sponsors to conduct the required audits.]

3. The Department reserves the right to require any Sponsor receiving federal and/or state funds, regardless of amount or funding category, to have an audit performed on any matter relating to a project funded by the Department through a Grant Agreement or Allocation and to designate the scope of such audit.
4. If an independent Certified Public Accountant, other auditor, the Department, or any other party conducting an authorized audit finds the Sponsor not to be in compliance with any provision of the Master Agreement, Grant Agreement, Grant Amendment, or any relevant federal or state law or regulation, the Sponsor must provide a satisfactory corrective action plan to the Department within 60 calendar days of notification of that finding. The scope of any audit conducted must include those expenditures made by the Sponsor for the Allocation, Grant Agreement or Grant Amendment(s), including consultants, subconsultants, and any other recipients of pass-through funds.
5. The Sponsor agrees that following the completion of any audit performed in accordance with this Master Agreement, it will refund to the Department within 60 calendar days any payments that (1) are found by the Department to be unsupported by acceptable records, or (2) are found by the Department to be in violation of any other provisions of the Master Agreement, Grant Agreement, Grant Amendment or the *Airport Program Manual*. Acceptable records are defined as original documents (such as timesheets, travel reimbursements, invoices, etc.) that were used to generate amounts on the reimbursement forms submitted to the Department or FAA. The Department also may require the Sponsor to furnish certified reports of all expenditures under any subcontracts.
6. This subsection supports the OSIG recommendation for DOAV to require audited financial statements by established deadlines (1). All Sponsors of Part 139 Airports must submit audited financial statements including a third party audit for entitlement expenditures to the Department within 120 calendar days following the Sponsor's fiscal year end. The documents should be sent to:

Virginia Department of Aviation
Attention: Director, Airport Services Division
5702 Gulfstream Road
Richmond, Virginia, 23250

Part III - Special Conditions

A. Land Acquisition

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All land acquired in either fee simple or easement as part of a Grant Agreement executed in conjunction with this Master Agreement shall continue to be dedicated exclusively, and in perpetuity, to aeronautical purposes. **The Sponsor shall attach such covenants to the disposition of this land as may be necessary to protect the Airport from encroachment from hazards to navigable airspace or land uses that may be incompatible with Airport operations.** At such time as the land originally acquired under a state grant is no longer required for aeronautical purposes; and upon official written release by the Department and, **as appropriate, the FAA**, the land may be disposed of at fair market value. The **fair market value** proceeds of such disposition repayable to the Commonwealth shall be reimbursed at the same percentage by which the Commonwealth participated in the original acquisition.

B. Public-use Spaces and Areas

Except as stated herein, all spaces and areas constructed as part of a Grant Agreement, and designated as public-use and/or non-revenue producing, shall remain so designated for the Grant Obligation Term. Such public-use and/or non-revenue producing spaces shall be indicated on **an approved structure** floor plan, which shall be attached as an exhibit to the executed Grant Agreement.

If during the Grant Obligation Term, the Sponsor changes the use of these areas designated public-use to proprietary-use (*i.e.*, under the Sponsor's exclusive control); or from non-revenue producing to revenue producing, then the Sponsor shall repay to the Department a sum which is equal to the pro-rata share (computed monthly from the beginning of the Grant Obligation Term) of the space or area that is changed (**as a percentage of the entire square footage based on the original construction costs and the remaining period of the Grant Obligation Term**).

The designated public-use and non-revenue producing space and area shown on the **approved** structure floor plan noted above, constructed by the Sponsor under a Grant Agreement executed in conjunction with this Master Agreement shall be open and accessible in accordance with Part II - General Conditions, Section S, as set out above.

C. Bridge Loan

Upon any partial or full reimbursement to the Sponsor by the FAA under a future federal grant agreement for a project funded by the Commonwealth as a bridge loan, as defined by the *Airport Program Manual*, the Sponsor shall reimburse the Department the difference between the state's share of the eligible costs of the State Funded Project and the state's share of the eligible costs of the Federally Funded Project. The Sponsor must reimburse the Department within 60 calendar days of the receipt of reimbursement from the FAA.

Within 60 calendar days of the receipt of the state Grant Offer for a bridge loan, the Sponsor must submit a request to FAA to update its Airport Improvement Program to include the project. The Sponsor must fully reimburse the Department within 48 months from the **beginning of the Grant Obligation Term** or request an extension of the payment period from the Board. Failure to do so will find the Sponsor non-compliant with **grant** assurances and may affect future funding.

D. Facilities and Equipment

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1. The Sponsor shall pay all utility installation, and recurring operating costs, associated with a system owned and maintained by the Department, as described in the *Airport Program Manual*.
2. The Sponsor shall operate facilities and equipment, owned by either the Department or the Sponsor, and installed under a state Grant Agreement, 7 days a week, 24 hours a day, unless otherwise approved by the Department or unless temporarily affected by weather, mechanical conditions, or other emergency.
3. The Sponsor shall immediately notify the Department and issue a NOTAM to the appropriate FAA Flight Services Station or Operation Center about all inoperative equipment.
4. The Sponsor shall purchase and maintain insurance on all facilities and equipment placed in service under a Grant Agreement insuring against loss and damage by fire, theft, or like occurrence, and shall maintain public liability insurance, malicious mischief insurance, and insurance against such other hazards as may reasonably be required. The Department shall be notified in writing no later than 30 calendar days prior to the cancellation of any such policy. The Sponsor shall not permit any condition to exist on the Airport which would wholly or partially invalidate the insurance thereon.

E. Private Ownership

The Sponsor of a privately-owned Airport shall execute and maintain a credit line deed of trust, as defined in §55-58.2 of the *Code of Virginia* (1950), as amended, and in compliance with the *Airport Program Manual* to ensure sufficient collateral for the Commonwealth's investment in the Airport.

The Sponsor shall execute a new credit line deed of trust note for each Grant Agreement and Grant Amendment.

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Part IV - Acceptance

The Sponsor's acceptance of this *Master Agreement on Terms and Conditions for Accepting State Aviation Funding Resources* shall be evidenced by execution of this instrument by, or on behalf of, the Sponsor, as hereinafter provided, and unless terminated or modified, this Master Agreement shall be part of each Grant Agreement for the distribution of funds by the Department as authorized under §5.1-2.2 of the *Code of Virginia* (1950), as amended, executed on or after the effective date of this Master Agreement. Such Master Agreement shall become effective upon the Sponsor's acceptance, and shall remain in full force as provided herein.

The Sponsor hereby accepts and agrees to all the terms, conditions, and assurances contained in this *Master Agreement on Terms and Conditions for Accepting State Aviation Funding Resources*.

Executed this _____ day of _____, 20_____

<sponsor>

By _____

Title _____

Attest _____

Title _____

Certification of Sponsor's Attorney

I, _____,
acting as Attorney for the Sponsor do hereby certify that I have examined the foregoing Master Agreement and find that the Sponsor has been duly authorized and is fully capable under the laws of the Commonwealth of Virginia of fulfilling all obligations under this Master Agreement and that this Master Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms and conditions thereof.

Dated at _____, Virginia this _____ day of _____, 20_____

By _____

Title _____