

## **FIXED-BASE OPERATOR'S LEASE AND OPERATING AGREEMENT**

THIS Fixed-Base Operator's Lease and Operating Agreement ("Agreement") is made and entered into this 1<sup>st</sup> day of \_\_\_\_\_ 2023 ("Effective Date"), by and between the CITY OF CROSSVILLE, a municipal corporation organized under the laws of the State of Tennessee, having its principal offices at 392 N. Main Street, Crossville TN 38555 ("City"), and AZURE FLIGHT SUPPORT, LLC, a Tennessee Limited Liability Company having its principal offices at 276 Doug Warpoole Road, Smyrna, TN 37167("FBO").

WHEREAS, the City owns and operates an airport known as the Crossville Memorial-Whitson Field Airport (Airport) located in Crossville, Cumberland County, Tennessee (hereinafter referred to as "Airport"); and

WHEREAS, the City and the FBO desire to enter into this Agreement to identify the services to be provided by the FBO at the Airport; and

WHEREAS, the City is desirous of leasing to the FBO certain premises and facilities located at the Airport, together with the right to use and enjoy, individually and in common with others, the Airport; and

WHEREAS, the FBO desires to lease property, facilities, and rights from the City at the Airport as set forth herein; and

WHEREAS, the FBO desires to engage in business activities at the Airport, which activities may include but are not limited to selling aviation fuel and lubricants, aircraft hangar rental and ramp tie down and parking, flight training, aircraft rental, aircraft maintenance, aircraft sales, car rental, greeting and meeting based and transient aircraft; and

WHEREAS, the FBO has agreed to provide various services on behalf of the City, at the Airport under the terms and conditions stated herein; and

WHEREAS, the parties desire to set forth their agreement in writing.

NOW, THEREFORE, for and in consideration of the foregoing premises, and of the mutual covenants, agreements and undertakings hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. Term**

The term of this Agreement and all of the rights and obligations of the parties hereunder shall be for a period of sixty (60) months, commencing on the Effective Date and ending on \_\_\_\_\_, 2028 (the "Expiration Date"), unless sooner terminated as provided for herein. The term will automatically renew for an additional period of sixty (60) months, unless FBO gives a ninety (90) day notice of non-renewal prior to the end of the initial term.

Should this Agreement be terminated prior to the Expiration Date, the FBO shall remove itself and all its possessions and vacate the Leased Premises described in Section 2 hereof in accordance with the other terms and conditions of this Agreement.

## **2. Lease and Occupancy of Premises**

The City does hereby demise and lease unto the FBO and the FBO does hereby lease and take from the City, certain exclusive use space in the Terminal Building and Maintenance Hangar (the "Leased Premises") which are identified in Exhibit "A" hereto. Exhibit "A" is an integral part of this Agreement and is incorporated herein by reference as if reproduced in full.

The City reserves the right to use and occupy two office spaces in the Maintenance Hangar to be used by the Crossville City Police Department and the Tennessee Highway Patrol.

The Leased Premises are accepted by FBO, subject to any and all existing easements or other encumbrances. The City reserves the right to establish, grant, or utilize easements or rights-of-way over, under, along and across the Leased Premises for utilities, pipelines, drains or access as it may deem advisable for the public good; provided, however, that the City agrees to exercise such rights in a manner that will not unreasonably interfere with FBO's use of the Leased Premises.

Except as expressly provided in this Agreement, the City is solely responsible for the maintenance and repair of the Airport, its buildings, grounds, and facilities, including the Leased Premises during the term of this lease.

The City agrees that upon payment of fees and other charges provided for herein and the performance of the covenants and agreements on the part of the FBO to be performed hereunder, the FBO shall peaceably have and enjoy the Leased Premises, appurtenances, facilities, rights, licenses, and privileges granted herein.

The FBO will not be responsible for the payment of any real property tax assessed on the Leased Premises. The FBO will be responsible for the payment of any tax assessed on its personal property at the Airport.

## **3. Right of Use of Premises**

FBO shall use and occupy the Leased Premises for the purpose of operating as a Fixed Based Operator.

In addition to the services to be performed by the FBO for the City under this agreement as described herein, FBO may, during the term of this Agreement, also offer flight instruction, aircraft rental, aircraft tie down and overnight parking, aircraft maintenance and aircraft sales.

The City will permit the FBO to use the 931-484-5278 phone number and the 122.7 UNICOM frequency for its operations at the Airport.

#### **4. Insurance**

FBO shall purchase, effective upon the Effective Date, and shall maintain in force throughout the Term, insurance in the following types and amounts. Such insurance shall include contractual liability insurance, to insure FBO's obligation to indemnify and hold harmless the City, and its employees, members, and officers in accordance with Section 11 hereof.

- a. Aircraft Liability - \$1,000,000 per occurrence combined single limit for bodily injury and property damage including passengers. Aircraft liability insurance provides coverage to the owners and operators of an airplane in the event that a person or property is damaged while on airplane. That is, if a person slips and falls in the bathroom, or if the plane crashes into another on the ground, aircraft liability insurance would protect the plane's owners or operator from any ensuing lawsuits.
- b. Comprehensive Public Liability and Property Damage (Premises) - \$1,000,000 per occurrence of combined single limit bodily injury and property damage. Limit \$250,000 for maintenance hangar used by FBO.
- c. Hangar Keeper's Liability - \$1,000,000 per occurrence. Provides coverage for damage to or destruction of the aircraft of others while in the insured's custody for storage, repair, or safekeeping and while in or on the scheduled premises.
- d. Products & Completed Operations Liability - \$1,000,000 per occurrence. This is an insurance policy that covers the liability incurred by a contractor for property damage or injuries that may happen to a third party once contracted operations have ceased or been abandoned. Even though the operations are deemed to be "completed" by the contractor, the loss or injury is deemed to be as a result of those operations.
- e. Workers Compensation and Employers Liability Coverage in the statutory amounts required by Tennessee law.

An original certificate or certificates of insurance indicating that all insurance required hereunder in effect shall be furnished to the City at least ten (10) days prior to the commencement of this Agreement, and such certificate or certificates shall name the City and its employees, members, and officers as additional insureds.

Each such policy or certificate shall provide that such insurance coverage will not be reduced, non-renewed or cancelled without first giving at least thirty (30) days' prior written notice to the City, and shall expressly provide for waiver of subrogation against the City.

Such insurance must provide that it will be considered primary insurance as respects any other valid and collectible insurance or self-insured retention or deductible the City may have, and any other insurance or self-insured retention of the City shall be considered excess insurance only.

FBO shall obtain all insurance required from an insurance company or companies authorized to do and doing business in the State of Tennessee. Any insurance company must be acceptable to the City for the City's protection only, and the City's approval may be denied to a company based on its lack of financial stability.

The monetary limits or coverages of any insurance shall comply with the requirements of the Minimum Standards, as they may be amended from time to time.

FBO shall replace any cancelled, adversely changed, restricted or non-renewed policies with new policies acceptable to the City and shall file with the City certificates of insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction.

If any policy is not timely replaced in a manner acceptable to the City, the City may do all things necessary to obtain or affect such insurance and all expenses reasonably incurred by the City shall be paid by FBO immediately following the City's demand. The City shall have the right, but not the obligation, to obtain the said insurance, and if for any reason any policy is not replaced in a timely manner acceptable to the City, FBO shall upon instructions of the City, cease all operations until the coverage is obtained and until directed by the City in writing to resume operations.

The City agrees to provide property insurance coverage solely for the buildings included in the Leased Premises and the City's personal property, but FBO shall be responsible for obtaining insurance covering FBO's personal property and possessions located at the Airport. All policies of property insurance obtained and provided by the City shall name FBO as an additional insured and shall provide a waiver of subrogation against the FBO.

## **5. Utilities**

City shall pay for all water, sewage, gas heat, electric power, refuse disposal, telephone, cable TV, and internet for the Terminal building. FBO shall pay for gas heat and electric power for the Maintenance Hangar and City shall pay for water, sewage, telephone and internet for the Maintenance Hangar.

## **6. FBO Rights**

FBO shall have the right:

- a. In common with others so authorized, to use common areas of the Airport, including runways, taxiways, aprons, roadways, signals, approach and landing lights and other conveniences for the take-off, flying and landing of aircraft.
- b. To the nonexclusive use, in common with others, of the Airport parking areas, appurtenances and improvements thereon.

- c. To install, operate, maintain, repair and store subject to approval of City in the interests of safety and convenience of all concerned, all equipment necessary for the conduct of FBO's business.
- d. Of access to and from the Airport and the Leased Premises, limited to streets, driveways or sidewalks designated for such purposes by the FBO, and which right shall extend to FBO's employees, vendors, subcontractors, tenants, passengers, guests, invitees, and patrons.
- e. In and on the Leased Premises, to maintain and operate an FBO.
- f. To offer flight instruction, aircraft rental, aircraft maintenance services, aircraft sales and aircraft tie down and overnight parking service subject to all appropriate laws of the Federal Government, the State of Tennessee, the Minimum Standards, and the requirements of the FAA and the Tennessee Department of Transportation, Aeronautics division, or any other duly authorized governmental agency.

In addition, the FBO shall have all other exclusive and non-exclusive rights granted under this Agreement, regardless of whether those rights are expressed or implied herein.

## **7. Construction of Improvements**

FBO covenants and agrees not to install any signs or fixtures inside or outside of the Leased Premises or make any alterations, additions or improvements to the Leased Premises without prior written approval of the City Manager. Such approval shall not unreasonably be withheld.

FBO shall pay all costs associated with any of its approved alterations and shall keep the Airport property including the Leased Premises free from any liens, claims and/or encumbrances, and shall indemnify and hold the City harmless from and against all loss, cost and expense including, without limitations, reasonable attorney's fees, arising out of or resulting from FBO's approved alterations.

All fixtures installed or additions and improvements made to the Leased Premises shall, upon completion of such additions and improvements, become the City's property and shall remain in the Leased Premises at the termination of this Agreement, or, alternatively, the same shall be removed at the option of the FBO, with the additional requirement that the FBO shall then restore the Leased Premises to its original condition (normal wear and tear excepted), with such restoration to be at FBO's sole expense.

FBO shall make no changes to the structures or other physical facilities at the Airport without the express prior written permission of the City Manager.

FBO shall at its own expense promptly repair, replace or rebuild any structures, facilities, equipment or other property of the City or of tenants or other users located on the Airport which may be damaged or destroyed by the acts of FBO, its employees, agents or sub-contractors, and it shall at all times maintain in a clean and orderly condition, all structures, fixtures, equipment and personal property of the City which are a part of the Leased Premises.

## **8. Rights, Reservations, and Obligations of City**

The City shall have the right at all times to enter upon the Airport for the purpose of inspecting the same, for the observance of FBO's performance under this Agreement, or for the purpose, after reasonable notice to FBO, of making any repairs, alterations or additions to the structures or the Airport (which shall be the City's absolute right at any time) as may, in the opinion of the City, be necessary or advisable.

The City reserves the right (but shall not be obligated to FBO) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the same.

The City reserves the right further to develop or improve the landing area and all publicly owned air navigation facilities of the Airport

The City reserves the right to enter upon the Leased Premises at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this Agreement.

Furthermore, the City will not implement any new charges or impose any new requirement solely implemented or directed to the FBO during the Term or any extensions thereof, unless required by applicable law or regulation.

## **9. Assignments, Subleases, Subcontracting**

FBO shall have no right to assign or delegate any of its rights or duties pursuant to this Agreement or to lease the whole or any part of the Airport or license the use of the Airport in whole or in part without the prior written consent of the City.

FBO shall not subcontract for performance of any of the obligations or conditions of this Agreement without the prior written consent of the City.

Any sublease, license, or assignment by FBO of property or operating rights at the Airport to a commercial operator for the purpose of generating revenues from the Airport shall require the advance written approval of the City; and any request for consent to such a sublease, license, or assignment must be accompanied by an agreement executed by or on behalf of the proposed sublessee, licensee, or assignee, in a form approved in advance by the City. Any subletting, license, assignment or subcontracting so permitted and so made shall be subject to all the terms, conditions and other provisions of this Agreement; and notwithstanding any such assignment or subcontracting, FBO shall remain obligated and responsible to the City for the performance of all terms and conditions and other provisions of this Agreement to the same extent as if no assignment or subcontracting had been made. Any attempted assignment or subcontracting in violation of this provision shall be void and of no force or effect.

## **10. Laws and Regulations**

FBO agrees to observe and obey all present and future laws, and rules and regulations promulgated and enforced by the City, having jurisdiction over the conduct of the operations at the Airport.

FBO covenants that it will conduct its activities and business at the Airport in compliance with the FBO Minimum Standards and Airport Rules and Regulations as the City may amend them from time to time during the Term of this Agreement and any extensions thereof. Non-compliance with the FBO Minimum Standards and Airport Rules and Regulations shall constitute grounds for termination of this Agreement by the City.

FBO shall comply with and shall cause its employees, agents and subcontractors, sub-lessees and licensees, if any, to comply with all applicable laws and the FBO Minimum Standards and Airport Rules and Regulations and FBO shall procure and keep in force during the term of this Agreement, all necessary licenses, certificates or permits required by law for the operation of its business. FBO shall pay when due all license fees, permit or examination fees and all taxes and other charges in connection with its operations, which may be levied, assessed, or imposed by any governmental entity.

## **11. Hold Harmless and Indemnification**

- a. FBO shall protect, defend, indemnify and hold harmless the City and its members, officers and employees from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities (including statutory liability and liability under Workers' Compensation laws) arising by reason of the injury to or death of any person or damage to any property, including all reasonable cost for investigation and defense thereof (including, but not limited to, attorneys' fees, court costs and expert fees) of any claim of any nature whatsoever arising out of or incident to:
  - (i) FBO's use of, occupancy of, or activities in or about Airport;
  - (ii) any breach or default by FBO of the provisions of this Agreement;
  - (iii) the wrongful, negligent, or careless acts or omissions of FBO's officers, agents, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death or damage may occur.

The City shall give to FBO written notice of any such claim or suit for which indemnification will be sought hereunder. In carrying out its obligations under this section, FBO shall use counsel reasonably acceptable to the City.

- b. Regarding hazardous material for which the FBO has knowingly accepted care, custody, and control, the FBO shall also indemnify the City, defend it with counsel reasonable and acceptable to City, and hold City free and harmless from any and all liabilities, damages, claims, penalties, fines, settlements, causes of action, costs or expense (including reasonable

attorneys' fees, environmental consultant and laboratory fees and the costs and expense of investigation and defending any claims or proceedings) resulting from or attributable to:

- i. the presence, disposal, release, or threatened release of any hazardous material that is on, from or affecting the Leased Premises, including the soil, water, vegetation, buildings, personal property, persons, animals or otherwise;
- ii. any personal injury (including wrongful death) or property damage (real or personal) arising out of or relating to the hazardous material;
- iii. any lawsuits or administrative order relating to the hazardous material; or
- iv. any violation of any laws applicable to the hazardous material for which FBO is responsible under this Agreement, or under the Minimum Standards.

The provisions of this Section 11.b do not, and are not intended to, apply to occurrences pre-dating the Effective Date, hazardous materials for which the FBO has not knowingly and willingly accepted care, custody and control, hazardous material that is in the care, custody and control of the Airport or others, or for which the FBO is not responsible under this Agreement.

This Section 11 shall survive the expiration or termination of this Agreement.

## **12. Defaults and Termination**

In addition to any other rights of termination under this Agreement, the parties shall have the following termination rights:

### a. Termination by the City

This Agreement may be cancelled and terminated by the City in the event of any default by FBO in any of the terms, agreements, obligations, conditions or covenants herein contained, which default is not cured within thirty (30) days after delivery of written notice of such default.

The FBO shall be deemed in default upon occurrence of any of the following:

- a. The filing of a petition under the Federal Bankruptcy Act or any amendment, including a petition for reorganization or an arrangement;
- b. The commencement of a proceeding for dissolution or for the appointment of a receiver;
- c. The making of an assignment for the benefit of creditors;



- d. Violation of any restriction or provision in this Agreement, or failure to keep any of FBO's obligations or covenants after written notice to cease such violation and failure or to correct such violation;
- e. Abandonment of Leased Premises.
- f. Failure to meet or comply with the FBO Minimum Standards and Airport Rules and Regulations.

In the event of termination by the City for default by the FBO, the City shall have the right to enter and take possession of the Leased Premises occupied by the FBO, and expel, oust and remove any and all parties who may occupy any portion of the Leased Premises or Airport covered by this Agreement. In such an event, FBO shall have no further rights hereunder and shall cease forthwith operations upon the Airport premises; and the City shall be entitled to all reports due and to exercise all other rights hereunder.

b. Termination by FBO

This Agreement may be cancelled and terminated by the FBO in the event of any default by the City in any of the terms, agreements, obligations, conditions or covenants herein contained or contained in the FBO Minimum Standards and Airport Rules and Regulations, which default is not cured within thirty (30) days after delivery of written notice of such default.

Furthermore, the FBO may terminate this Agreement under the following conditions:

- i. The issuance by any court of competent jurisdiction of any injunction in any way preventing or restraining the use of Airport or any part thereof so as to substantially affect FBO use of the Leased Premises or other Airport facilities, in its conduct of its FBO service at Airport, and the remainder in force of such injunction for a period of at least thirty (30) days.
- ii. The inability of FBO to use the Leased Premises or other Airport facilities continuing for a period longer than thirty (30) days when due to any law, order, rule, or regulation of any appropriate governmental City having jurisdiction over the premises or the operations for FBO.

Upon expiration or other termination of this Agreement, all fixtures, improvements, equipment, and other property belonging to FBO on the Airport shall be removed immediately by FBO and at its sole expense.

At the termination of this Agreement, FBO shall cooperate with the City in the transition to a new FBO of the Airport and shall promptly upon request turn over all keys and operating manuals related to facilities and equipment on the Airport.

**13. Fair and Nondiscriminatory Services**

FBO, in the conduct of any aeronautical activity for furnishing services to the public at the Airport, shall furnish services on a fair, equal and not unjustly discriminatory basis to all users,

and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that the FBO may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

FBO hereby agrees that it will not discriminate against any person or persons by reason of sex, race, creed, color, age, disability, or national origin, in furnishing or declining to furnish the use of any facilities, provided for the use of the public on the Airport premises, including any and all services, privileges, accommodations and activities related thereto.

FBO will not discriminate against any employee or applicant for employment because of sex, race, creed, color, age, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Title VI, Civil Rights Assurances. The FBO for itself, and its successors in interest, and assigns, agrees that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination of the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the FBO shall use the Leased Premises and all other areas of the Airport from which it provides services or products hereunder 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, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

#### **14. Affirmative Action**

The FBO assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the ground of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The FBO assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The FBO assures that it will require that its covered sub organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

#### **15. Nonexclusive Rights**

FBO shall have the right and privilege of engaging in and conducting a business on the premises of the Airport under the terms and conditions as set forth herein, provided, however, that this Agreement shall not be construed in any manner to grant FBO or those claiming under it the

exclusive right to the use of the premises and facilities of the Airport other than the Leased Premises.

#### **16. Aircraft Service by Owner or Operator**

It is clearly understood by the FBO that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform.

#### **17. General Responsibilities of FBO**

In performing all services for the City described herein, the FBO shall conduct its operations in such a manner as to provide a high level of service at the Airport during the agreed hours of operations of the Airport for so long as this Agreement remains in effect. FBO will work diligently to ensure that all passengers and customer's needs are addressed in a courteous and professional manner at the Airport.

FBO shall furnish sufficient knowledgeable and appropriately trained personnel, including qualified, competent and experienced supervisory personnel and clerical staff necessary to perform the FBO's obligations under this Agreement in accordance with applicable regulations of the FAA, the TSA, or other government agencies having jurisdiction.

FBO shall have at least one (1) employee on site at all times that the FBO is open for business (except for call outs occurring before or after the FBO's normal published business hours).

All FBO employees who have any responsibility for dispensing or handling of aircraft fuel shall, at all times, be properly trained in the handling and dispensing of aircraft fuel. Employees shall be trained, at a minimum, to meet the standards of the National Air Transportation Association "Safety 1st" Professional Line Service Technician training program. The FBO will dispense and handle aviation fuel in accordance with ATA Specification 103 and Titan Aviation Fuels Quality Assurance Training. Documentation evidencing this training shall be provided by the FBO to the City on request.

FBO shall provide the City with a list of all of FBO's employees having responsibilities at the Airport, including emergency telephone numbers, and shall keep the list updated at all times.

FBO shall notify the City immediately upon receipt of any notice of a claim, accident, or incident involving the Airport or FBO's operations at the Airport.

FBO shall have available at the Leased Premises its current prices and charges for goods sold, services provided, and activities conducted under this Agreement, and agrees to provide same to the City upon request. FBO shall also maintain current prices of fuel products on aviation-related websites such as AirNav.com and Foreflight.com.

Any fines incurred as a result of violations by the FBO or its employees, or the failure by FBO or its employees to fulfill any obligations with respect to Airport safety or security measures adopted by the City in the form of an Emergency and Security Plan or a Spill Prevention Counter-Measures and Control Plan (as said programs may be amended from time to time) and/or any directive from the FAA, TSA, or other governmental agency having jurisdiction, within its assigned area of responsibility, shall be the sole responsibility of FBO.

### **18. Maintenance Responsibilities of FBO**

Subject to the terms and conditions of this Agreement, and the rules and regulations and the Minimum Standards, the City hereby grants to FBO, and the FBO hereby accepts from the City, certain responsibilities for the Airport and its related facilities. The specific duties to be performed and services to be offered by the FBO are as follows:

- (i) Cleaning/Janitorial Services: FBO shall be responsible for janitorial services and cleaning of the following buildings located at the Airport:
  - (a) Terminal Building
  - (b) Maintenance Hangar

City will provide supplies for FBO's use in fulfilling this obligation.
- (ii) FBO shall be responsible for installation and replacement of light bulbs in the buildings listed in Paragraph (i) above. City will provide supplies for FBO's use in fulfilling this obligation.
- (iii) Fuel Farm: FBO is responsible for the scheduled maintenance of fuel filtration system including replacement of separator and coalescer cartridges. City will pay for the fuel filters, separator, and cartridges. City is responsible for the cost of major fuel farm maintenance including the self serve kiosk and pumps.
- (iv) Fuel Trucks: FBO is responsible for all costs associated with providing fuel trucks for the dispensing of Avgas 100LL and Jet A products into aircraft.

FBO is responsible for the cleanliness and orderliness of the Terminal Building and the Maintenance Hangar. The FBO shall insure that the Terminal Building is free from all trash, debris, rubbish, extraneous matter or waste of any kind or character, and shall remove such materials and deposit them in receptacles in a manner acceptable to the City. The FBO shall also clean the restrooms in the Terminal Building and the Maintenance Hangar. If the City, in its sole discretion, determines that the Terminal Building and the common areas of the Maintenance Hangar are not adequately cleaned, FBO shall immediately correct the situation to the City's satisfaction.

FBO shall also maintain the apron areas immediately adjacent to the Terminal Building in a neat, clean and orderly condition, free from litter, debris, refuse, petroleum products and grease that

may result from operations at the Airport, including spillage of any type regardless of who is responsible or where the spillage is located. The FBO and the City agree to cooperate with each other to pursue compensation from third parties for remediating spills caused by third parties.

FBO employees shall continually and diligently survey the Airport operations area surfaces including the runway, taxiways, and ramps for Foreign Objects or Debris (“FOD”) which may cause damage to aircraft or harm to personnel. All FOD is to be addressed immediately following discovery by the FBO employees.

### **19. Additional Obligations of FBO**

(i) Fuel Sales, including Fuel Flowage Fees: During the term of this agreement, the FBO will be dispensing aviation fuel and receive all revenues from fuel sales. The FBO will pay the City a fuel flowage fee of \$.05 per gallon of fuel dispensed on a monthly basis and provide City a report showing monthly fuel flow. City has the right to audit FBO’s fuel records at any time to validate fuel flow.

(ii) Ramp fee Collection/Overnight Tie-Down Fees: FBO will collect and retain all ramp fees, facility use fees, after hours call out fees and overnight tie-down fees and monthly ramp tie down fees.

(iii) Flight Training and Aircraft Rental: FBO may offer flight training and aircraft rental and shall retain any fees associated with these activities. FBO is responsible for all financial and legal liability risks of operating these business lines.

(iv) Aircraft Storage in Commercial Hangar and Quonset Hangar: FBO shall assist City in managing the Commercial Hangar and Quonset Hangar and City shall pay FBO 40% of the short term / overnight and monthly lease revenues from these hangars.

(v) Other services: City will provide two crew or courtesy cars for use by transient pilots. The FBO will be responsible for keeping the crew cars cleaned and fueled. The FBO will maintain relationships with local and national rental car companies to assist customers of the Airport with rental car reservations.

(v) Hours of Operation: FBO will provide FBO services from 7 am until dusk, seven days per week or increased hours as demand warrants at the sole discretion of the FBO.

(vi) Recordkeeping requirements for FBO: FBO shall submit a detailed Monthly Activity Report to the City by the 10<sup>th</sup> day of the following month. This monthly report shall include, at a minimum, the following items: All fuel sold by the FBO (gallons sold) along with a calculation of fuel flowage fees and rent fee collected on hangar space where the FBO and City share in the rental fee. The City shall have the right upon reasonable written notice to FBO to perform a periodic audit of the books and records of FBO.

(vii) Advertising, Marketing and Promotion: FBO shall use its best efforts to advertise, market and promote the airport and the services FBO provides at the airport. FBO will cooperate with the City and the Cumberland County Chamber of Commerce in marketing and promoting the airport.

## **20. Compensation from City to FBO for Services Performed**

As compensation for the services provided by the FBO under this agreement, the City will reimburse the FBO for a monthly management fee of \$6,050 per month.

On an annual basis at the anniversary of the date of this agreement the management fee shall be adjusted by computing the current management fee for the previous 12 months and multiplying by a factor of 1.0 plus the percent increase equivalent to the Consumer Price Index (CPI) increase. For example if the CPI rose by 5% then the new management fee would be 105% of the previous year's management fee. The CPI index will be derived from the previous annual published CPI prior to the anniversary of this agreement.

## **21. Equipment to be Provided by City**

In order for FBO to provide the services described herein, City will provide FBO with the following ground support equipment in serviceable condition:

1. Aircraft Tug.
2. Four wheel ATV for use on airport property
- 3) Universal Tow Bar

FBO will maintain in good working order all equipment provided by the City as described in this Section 20. FBO will provide any additional tow bars required to service new aircraft.

## **22. Damage or Destruction of Leased Premises**

a. Partial Damage. If any part of the Terminal Building, or other Airport facilities directly and substantially affecting the use of the Terminal Building or the business of the FBO, shall be partially damaged by fire or other casualty or by any City required construction or renovation project, but such circumstances do not render the Terminal Building untenable as reasonably determined by the City and the FBO, the same shall be repaired, constructed or renovated to usable condition with due diligence by the City as hereinafter provided. No abatement of rents or charges shall occur, so long as the Leased Premises remain tenantable.

b. Substantial Damage. If any part of the Terminal Building or other Airport facilities directly and substantially affecting the use of Leased Premises or the business of the FBO, shall be so extensively damaged by fire or other casualty or by any City required construction or renovation project, as to render any portion of the Leased Premises untenable, but capable of being repaired, as reasonably determined by the City and the FBO, the same shall be repaired to usable condition

with due diligence by the City as hereinafter provided. If such repairs have not been commenced (defined as any material construction related activity, such as preparing plans, applying for permits, etc.) by the City within ninety (90) days after such damage, and FBO has not been provided comparable alternative facilities, FBO shall have the option to terminate this Agreement to the extent relating to the damaged Terminal Building or other Airport facilities. In the case of damage described herein, the rents and charges payable with respect to FBO's affected Terminal Building or other FBO business shall be paid up to the time of such damage and shall thereafter be abated equitably in proportion as the part of the area rendered untenable bears to total Leased Premises or FBO services until such time as the damaged Terminal Building or other Airport facilities are again tenable or comparable alternative facilities are made available to FBO. The City shall use commercially reasonable efforts to provide FBO with comparable, alternative facilities sufficient to allow FBO to continue its operations while repairs are being completed, at rents and charges applicable to such alternative facilities, as if such alternative facilities were covered by this Agreement; provided, however, that FBO shall not be charged for more alternative space or facilities than was rendered untenable.

c. Destruction. If any part of the Terminal Building or other Airport facilities directly and substantially affecting the use of the Leased Premises or the business of the FBO, shall be damaged by fire or other casualty or by any City required construction or renovation project, and is so extensively damaged as to render any portion of the Terminal Building or facilities is untenable or unusable and not economically feasible to repair, as reasonably determined by the City and the FBO, the City shall notify the FBO within a period of forty five (45) days after the date of such damage of its decision whether to reconstruct or replace said space; provided, however, the City shall be under no obligation to replace or reconstruct such premises. The rents and other charges payable hereunder with respect to affected Terminal Building or facilities shall be paid up to the time of such damage and thereafter shall abate until such time as replacement or reconstructed space becomes available for use by the FBO.

In the event the City elects to reconstruct or replace affected Terminal Building or other facilities, the City shall use commercially reasonable efforts to provide the FBO with comparable, alternative facilities sufficient to allow the FBO to continue its operation while reconstruction or replacement facilities are being completed, at rents and other charges applicable to such alternative facilities as if such alternative facilities were covered by this Agreement; provided, however, that the FBO shall not be required to occupy and pay for more alternative space or other facilities than was rendered untenable. In the event the City elects to not reconstruct or replace damaged Terminal Building or other facilities, the FBO shall have the right to terminate this Agreement upon written notice to the City.

d. Damage Caused By FBO. Notwithstanding any provision of this Section 21 to the contrary, in the event that due to the negligence or willful act or omission of FBO, its employees, its agents, or licensees, the Terminal Building shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rents during the repair or replacement of such Terminal Building. To the extent that the costs of repairs are not fully recovered from any insurance proceeds payable to the City by reason of such damage or destruction, the FBO shall pay the amount of such additional costs to the City.

e. Limit on City's Responsibilities. The City's obligations to repair, reconstruct, or replace any part of the affected Terminal Building or other Airport facilities under the provisions of this Section 21 shall in any event be limited to restoring affected Terminal Building or other Airport facilities to the extent of insurance proceeds and other funds available to the City for such repair, reconstruction, or replacement, but in any case to a condition no better than substantially the same condition that existed at the date of damage or destruction; provided further that the City shall in no way be responsible for the insuring of, or the restoration or replacement of any equipment, furnishings, property, improvements, signs, or other items installed and/or owned by the FBO.

### **23. FBO Cooperation with City's Manager**

FBO will work diligently and cooperate with City's Manager to:

- a. Monitor the needs of the airport environment – runway conditions, lighting, nav aids, mowing, grounds keeping, interior cleanliness, etc. and schedule with City personnel to perform needed maintenance.
- b. Outline items that need to be purchased by the City for State reimbursement.
- c. Maintain ongoing dialogue between FBO personnel and City Manager including expedient notification by most efficient means possible of any operational irregularities or incidents at the Airport.
- d. Obtain new customers and retain existing customers who are based at the Airport and who fly into the airport.
- e. Work with the Airport Committee and the City to provide adequate staffing and use of facilities to accommodate the annual airport open house and any other special events the City hosts.
- f. Participate in all Airport Committee Meetings
- g. Issues NOTAM's affecting airport operations

### **24. Airport Development**

City reserves the right to further develop or improve the runways, taxiways, terminal building, airplane and auto parking areas and any other infrastructure of the Airport as it sees fit. FBO agrees to work with the City, their engineers, or contractors, and with the state and local authorities on future airport improvement projects at Airport, and participate when requested in all meetings regarding airport funding and development.

### **25. Obstructions**

City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent FBO from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft. FBO shall, upon approval by City, and prior to any construction of any nature within the boundaries of the



Airport, prepare and submit to the Federal Aviation Administration, FAA Form 7460-1, "Notice of Proposed Construction or Alteration", as required by Federal Aviation Regulation Part 77.

## **26. Environmental and Safety Concerns**

FBO covenants that it will under no circumstances dispose of unused or contaminated fuel, oil, solvents, paint or other petroleum or petrochemical products of any type, whether liquid or solid, or any other material deemed a hazardous material, by dumping or burning by fire, either upon or off the Airport premises in any manner or fashion, but shall dispose of the same only in accordance with environmentally accepted practices and disposal procedures and practices set forth above; and shall cause any soil or other portion of the Airport which has become contaminated by any hazardous materials stored or used by FBO on the Airport to be decontaminated, detoxified, or otherwise cleaned up in accordance with the requirements of the responsible governmental authorities.

FBO shall provide the City with written notice upon FBO's obtaining knowledge of any potential or known release, or threat of release, of any toxic or hazardous waste or substance or oil at or from the Airport. FBO shall notify the City, in writing, promptly upon learning thereof, of:

- (a) any notice to the effect that the City, FBO, or FBO's operation of Airport, are:
  - (i) not in full compliance with any of the requirements of applicable laws; or
  - (ii) the subject of any federal, state, or local investigation evaluating whether any remedial action is needed to respond to a release or threatened release of any oil or toxic or hazardous waste or substance into the environment; or
- (b) any notice or claim to the effect that FBO is or may be liable to any third party (including, without limitation, any individual, corporation, or governmental body) as a result of the release or threatened release by FBO (or any agent, licensee, or invitee of FBO) of any oil or toxic or hazardous waste or substance (including, without limitation, asbestos) into the environment at the Airport.

## **27. Force Majeure**

Neither party shall be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections, strikes, labor disputes, civil unrest, unavailability of FBO products, and/or any other cause beyond the reasonable control of the party whose performance is affected. Either party shall have the right, but not the obligation, to

terminate this Agreement upon written notice to the other party should an event of Force Majeure continue for more than 14 calendar days.

**28. Severability**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**29. Notices**

Any notice or other communication to City or FBO pursuant hereto shall be deemed validly given, served or delivered:

- (a) upon deposit in the United States Mail, registered or certified, return receipt requested, and with proper postage and fee prepaid;
- (b) upon delivery by a recognized national courier service; or
- (c) upon transmission by facsimile or electronic mail with evidence of delivery to the following address, or to such other address as either party may designate by written notice to the other party delivered in accordance with the provisions of this Section 28.

**TO CITY:**

CITY OF CROSSVILLE  
ADDRESS: 392 North Main Street, Crossville, TN 38555  
ATTENTION: \_\_\_\_\_, City Manager  
EMAIL:  
PHONE:

**WITH A COPY TO:**

CITY MANAGER  
392 North Main Street  
Crossville, TN 38555  
Email:

**TO FBO:**

AZURE FLIGHT SUPPORT, LLC  
ADDRESS: 276 Doug Warpoole Road, Smyrna TN 37167  
ATTENTION: Allen Howell, CEO  
EMAIL: [allen.howell@azureflightsupport.com](mailto:allen.howell@azureflightsupport.com)  
PHONE: 615-220-2957

### **30. Entire Agreement**

This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof. It replaces, in their entirety, all previous discussions, understandings, and agreements between the parties and no representation or other commitment, whether oral or in writing, not included herein shall constitute a part of this Agreement. This Agreement may be amended only by an agreement in writing executed by both parties.

### **31. Applicable Law; Venue and Jurisdiction**

This Agreement has been executed by, delivered to, and accepted by, the City in the State of Tennessee and the provisions hereof shall be governed by the laws of Tennessee; and any disputes arising out of or related hereto shall be resolved in accordance with said laws. The parties agree that any action or legal proceeding arising out of or related to this Agreement shall be brought in the state courts of Bradley County, Tennessee or in the Federal Court in the district where the Airport is located.

### **32. No Partnership or Joint Venture**

The parties agree that nothing herein contained is intended or shall be construed as in any way creating or establishing the relationship of partners, associates or joint venturers between the parties hereto. Rather, FBO shall at all times have the status of independent contractor in the operation of its business and its performance of service under the terms of this Agreement.

### **33. No Liability, No Financial Interest of the City**

No member, officer or employee of the City shall for any reason be deemed to be personally liable under this Agreement. No member, officer or employee of the City presently has, nor will be permitted to have in the future, any financial interest in FBO.

### **34. Agreement Subordinate**

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreement between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Furthermore, this Agreement shall be amended to include provisions required by any agreements with the United States or the State of Tennessee.

### **35. Representations of FBO**

FBO hereby represents to the City as follows:

- (a) FBO is qualified to conduct business within the State of Tennessee and has the corporate power and City to enter into this Agreement;
- (b) This Agreement has been duly authorized by all necessary corporate action by FBO;
- (c) The execution, delivery and performance by FBO of this Agreement does not, and will not, violate its Certificate of Incorporation, Bylaws, or any order, finding or decision of a governmental City applicable to FBO, nor will the execution, delivery and performance by FBO of this Agreement constitute a default under a material contract to which FBO is a party or by which FBO is bound; and
- (d) No consent or approval of any governmental City (other than the City) or other third party is necessary for FBO's performance of its obligations hereunder.

### **36. Successors and Assigns**

This Agreement shall be binding on and shall ensure to the benefit of the heirs, legal representatives, successors and assigns of the parties hereto.

### **37. No Presumption Regarding Drafter**

The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between them, and that this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, neither party shall be deemed to be the drafter of this Agreement, and therefore no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.

### **38. Miscellaneous**

It is understood and agreed that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.

The City owns and operates the Airport, and it is understood that full control of the Leased Premises will revert back to the City following the expiration or termination of this Agreement.

A waiver, whether oral or in writing, expressed or implied, by any party of any failure by a party in the observance and performance of any of the terms, conditions, obligations, responsibilities,

or duties set forth in this Agreement shall not constitute or be construed as a waiver of any subsequent or other failure.

This Agreement may be executed in one or more counterparts (including by means of facsimile or electronic mail), each of which shall be deemed an original and all of which together will constitute one and the same instrument.

The section, paragraph, and subparagraph headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

The Exhibits attached hereto are an integral part of this Agreement and are incorporated herein by reference as if restated in their full text.

Should FBO hold over and remain in possession of the Leased Premises after the expiration of this Agreement without City's consent, it shall not be deemed or construed to be a renewal or extension of this Agreement, but shall only operate to create a month-to-month tenancy which may be terminated by City at the end of any month upon thirty (30) days prior written notice to the FBO.

Each party, upon receipt of notice from the other party, shall sign (or cause to be signed) all further documents, do (or cause to be done) all further acts, and provide all assurances as may reasonably be necessary or desirable to give effect to the terms of this Agreement.

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

CROSSVILLE CITY

By \_\_\_\_\_

AZURE FLIGHT SUPPORT MQY, LLC

By \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF CUMBERLAND

Before me, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_ with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the \_\_\_\_\_ of the City of Crossville, the within named bargainor, a Municipal Airport, and that he as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Crossville Municipal Airport by himself as \_\_\_\_\_.

WITNESS my hand and seal at office in Crossville, Tennessee, this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**SIGNATURE PAGE**

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be \_\_\_\_\_ of AZURE FLIGHT SUPPORT, LLC, the within named bargainer, a limited liability company, and that he as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of AZURE FLIGHT SUPPORT, LLC, by himself as \_\_\_\_\_.

WITNESS my hand and seal at office in Crossville, Tennessee, this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_