

NANTUCKET MEMORIAL AIRPORT COMMISSION

June 10, 2014

1. Review and Approve:
 - a. Agenda
 - b. 5/6/14 Minutes
 - c. 5/13/14 Minutes - *Pending*
 - d. 6/2/14 Special Minutes
 - e. Ratify 6/4/14 Warrant
2. Public Comment
3. Pending Leases/Contracts as Set Forth on Exhibit 1, which Exhibit is Herein Incorporated by Reference.
4. Pending Matters
 - a. **070913-1** TON Memorandum of Understanding (MOU) Update
 - b. **042214-2** Formerly Used Defense Site (FUDS) Status
5. **061014-1** – Discussion of Noise Abatement Program
6. **061014-2** – MassDOT Subordination, Non-Disturbance and Attornment Agreement
7. Accept FAA Grant Award(s)
 - a. **061014-3** – Security Enhancements (\$349,200)
 - b. **061014-4** – ARFF Vehicle – *Pending*
8. Finance
 - a. FY14 Budget Update
9. **022613-2** Master Plan and Sustainability Program Update
10. Manager's Report
 - a. Project Updates
 - b. RFP/Bid Status
 - c. Operations Update
 - d. Part 139 Inspection Update
11. Sub-Committee Reports
12. Commissioner's Comments
13. Public Comment



Town of Nantucket
NANTUCKET MEMORIAL AIRPORT
14 Airport Road
Nantucket Island, Massachusetts 02554

Thomas M. Rafter, A.A.E., Airport Manager
Phone: (508) 325-5300
Fax: (508) 325-5306



Commissioners
Daniel W. Drake, Chairman
Arthur D. Gasbarro, Vice Chair
Andrea N. Planzer
Neil Planzer
Jeannette D. Topham

DRAFT

AIRPORT COMMISSION MEETING

May 6, 2014

The meeting was called to order at 2:30 PM by Chairman Daniel W. Drake with the following Commissioners present, Arthur D. Gasbarro, Vice Chair, Andrea N. Planzer, Neil Planzer and Jeanette D. Topham.

The meeting took place in the 1st Floor meeting room at the Public Safety Facility, 4 Fairgrounds Rd.

Airport employees present were Thomas M. Rafter, Airport Manager, Jamie Miller, Business/Finance Manager, Noah Karberg, Environmental Coordinator and Janine Torres, Office Manager.

Mr. Drake announced the meeting was being recorded.

Mr. Drake, hearing no comments, noted approval of the Agenda.

Public Comment

None.

Pending Leases & Contracts

Mr. Rafter presented the **TSA Lease** extension for a three year term with a CPI increase built into the new rent amount.

Mr. Gasbarro made a **Motion** to approve the lease with TSA as described on Exhibit 1. **Second** by Ms. Topham and **Passed** unanimously without comment.

Mr. Rafter presented a Mass DOT Grant in the amount of \$4,252.88 explaining this amount covers the final invoice from the South Apron Taxiway Connector project. Ms. Topham made a **Motion** to accept the MassDOT Grant. **Second** by Mr. Gasbarro and **Passed** unanimously without comment.

050514-1 Discussion of Proposed Comments on Action of Steamship Authority to Approve Hy-Line Service Changes and Possible Action Thereon. – Mr. Drake noted this topic was prompted by the Public Notice in the newspaper by the Steamship Authority (SSA) asking for comments by May 9th on Hy-Line's request to change their service. Mr. Drake noted this subject matter is also topic on the Board of Selectman (BOS) agenda on May 7th.

Mr. Drake presented for discussion a draft letter, from the Commission, to the BOS and SSA jointly expressing concern over the SSA's consideration to allow the Hy-Line to replace its traditional ferry with a new larger fast ferry and the effect it may have on air taxi service between ACK and Hyannis. The letter requests the SSA postpone their decision for one year to allow the BOS, possibly in conjunction with other towns, to study the future of surface and air transportation needs and develop a transportation plan. Additionally, the letter requests the SSA Board meeting at which this decision is made, be held on Nantucket.

Mr. Drake added his opinion that the Airport Commission needs to look after the tenants of the airport on matters that will have an impact on the tenants. He believes if the SSA awards the change in Hy-Line's license allowing for increased fast ferry service, the tenants of the airport will be negatively impacted.

Mr. Drake read an excerpt from Phase 2 of the 1998 Airport Master Plan Update where the Advisory Committee discussed the diversion of SSA passengers to the high speed ferry.

Initial Commission discussion was mixed on whether the letter should be submitted as written.

Mr. Drake invited audience members to comment and introduced Mr. Rob Ranney, Nantucket's representative on the SSA Board of Governors.

Mr. Ranney noted that should the Commission move forward with a letter to the SSA Board of Governors, he would be the one to deliver it. Mr. Ranney introduced Steve Sayers, General Counsel to the SSA.

Mr. Sayers explained the SSA regulates all ferry operators in excess of 40 passengers and gave a brief history of Hy-Line's licensing to date and explained the Hy-Line is grandfathered which allows them to carry a certain amount of passengers per day. Hy-Line pays a license fee to the SSA because the SSA runs the slow boat out of necessity to sustain the Island.

Mr. Drake asked how the SSA defines the revenue they're losing to the Hy-Line. Mr. Sayer explained they look at passenger revenues as one of three that define their revenue, with the others being freight and automobiles.

Mr. Drake asked if the SSA analysis considered the direct impact on enplanements. Mr. Sayer answered no.

Martin Riley, Hy-Line Cruises Director of Public Affairs and Business Development spoke regarding the increase in demand and necessity for a new high speed boat. Mr. Riley explained Hy-Line is seeking permission from the SSA to replace its traditional ferry with a capacity of 720 passengers per trip with a new fast ferry with a capacity of 439 which includes 169 exterior seats. Mr. Riley continued by explaining the Hy-Line is not increasing its service. The Hy-Line will continue to run only nine (9) trips per day.

Mr. Drake asked if analysis was done to determine whether the approximate 70K (round trip) Hy-Line traditional ferry passengers would switch to the fast boat or switch to the SSA traditional ferry. Mr. Riley admitted that is difficult to answer but believes it would be a little of both.

Mr. Riley added their need to receive permission from the SSA is time sensitive due to the upcoming change to boat engine requirements; but would also want to participate in a transportation plan discussion.

Mr. Gasbarro asked Mr. Sayer to elaborate on certain conditions the SSA will impose on the Hy-Line when making this decision. Mr. Sayer noted the Hy-Line will be asked to not have their schedule departures less than half hour before or fifteen minutes after the SSA departures. One other condition pertains to the licensing fee formula for the first two years to allow Hy-Line to absorb the cost of their new vessel.

Nat Lowell, a member of the Port Council for the SSA, spoke about the importance of the fast ferries to high school sports teams as well as the need for three fast ferries for when one boat is out of service for maintenance and added he is against a transportation policy.

Mr. Planzer recommended the letter state we are working as a community to develop a positive outcome for our year round citizens and not hinder the competition of the groups involved.

Thomas Cunningham, principal of Island Airlines, Ocean Wings and Cape & Island Air Freight (IA) remarked he is regulated by the FAA and does not have the luxury of coordinating schedules with his competition.

Mr. Cunningham urged the Commission to recognize enplanements are down 30% in first quarter. IA has spent millions to upgrade their service by changing to Caravan's but cannot charge more or receive subsidies. The Caravan pays a higher landing fee than the 402, and after factoring in higher DOT fees and upcoming PFC fees combined with fewer passengers makes scheduled air carriers unsustainable. Mr. Cunningham added, now the Town is providing free parking for those who wish to take the boat while air travelers are required to pay for parking.

Mr. Planzer noted the Airport should help level the playing field and believes a transportation policy can help do that.

Mr. Drake agreed this is an important issue and warrants future discussion, perhaps through the Master Plan process, but the matter tonight is whether the Commission should submit comment to the BOS and SSA regarding the proposed new fast ferry.

Mr. Drake noted once the SSA makes their decision, there's no going back. More time is needed to understand what the consequences may be and the two week time period given for public comments isn't enough time.

Discussion moved back to Mr. Drake's draft letter.

Mr. Planzer remarked the night's discussion suggests three points to the letter: to develop a transportation policy, to establish a forum for discussion and to propose a longer period for the community to comment.

Mr. Planzer would support such a letter. However if the letter suggests a boat not be built, he would be wary of supporting it. Mr. Planzer believes this can be done in a timeframe before the new engine requirement is in effect.

Mr. Drake agreed the preamble of the letter may need revision, but notes the letter does suggest the BOS undertake to prepare and adopt a transportation policy, and the SSA postpone their decision for one year.

Discussion took place in regards to the suggested year timeframe. A year is too long for the SSA decision due to the new engine requirement rules and less than a year is unrealistic to develop a transportation policy.

Rick Atherton, Chair of the Board of Selectman, commented he doesn't have a good sense of the numbers for boat capacity, number of trips per day and what that means for total number of passengers and noted he would find it helpful to have a consolidated report comparing boat numbers, both fast and slow as well as enplanement numbers for future meetings.

Mr. Atherton next spoke about the subsidy from the Town to the Hy-Line as it relates to free parking noting it warrants future discussion.

Mr. Atherton added the BOS will most likely not want to delay the Public Hearing more than a week or two. He also noted he is in favor of a transportation policy but believes it isn't possible to do so within a year.

Mr. Rafter noted speaking with the Barnstable Airport Manager, Bud Breault, who was not aware of the comment period. Mr. Breault will be mentioning it to his Finance Sub-Committee meeting tomorrow. Mr. Atherton added he would think Barnstable would be highly interested in this seeing that the bulk of their traffic is between Hyannis and Nantucket.

Discussion moved to an acceptable timeframe to extend the comment period. Mr. Sayer suggested until the next SSA Board of Governors meeting, the 3rd Tuesday of June which is being held on Nantucket; but added the Hy-Line is anxious for the SSA's decision.

Mr. Planzer made a **Motion** to request to the Steamship Authority Board of Governors to extend the comment period until Thursday, June 12th. **Second** by Ms. Topham and **Passed** unanimously.

Mr. Planzer made a **Motion** to ask the Board of Selectman to establish an ADHOC committee, recommending participation by the SSA, Hy-Line and airlines who provide service to Hyannis, with the intent to work for 6 months to present recommendation to the Board of Selectman for an overall transportation policy. **Second** by Ms. Planzer.

During discussion, Mr. Gasbarro suggested the motion may be premature and recommended waiting until the next meeting suggesting the Master Plan process may enable the Commission to refine the motion.

Mr. Planzer withdrew his **Motion**. Ms. Planzer agreed.

Mr. Planzer commented when the dialog happens, it must be broader to include parking and other ancillary fees that effect the commuter experience.

Mr. Drake commented he is troubled at the Commissions lack of action, feeling the end result will be the same in 30 days. He added as public agencies, the Airport Commission, the SSA and particularly the BOS have a fiduciary responsibility to the community to understand what is happening.

042214-2 Formerly Used Defense Site (FUDS) Status – Mr. Rafter reported on a conference call that took place with the Army Corps of Engineers (Corps), the DEP and Legal Counsel. The Corps is proceeding with an RFP for a consultant to create an action plan, hopefully by year end, on the site remediation. The Corps indicated this site was not a major issue.

Mr. Rafter reported receiving testing results on the stockpile of material removed from the Bunker Rd site to inside the fence. The results indicated an elevated level of one reportable metal material. Notices are going out to the tenants within the area of concern to update them on the test results as well as the overall FUDS process.

Mr. Rafter indicated the entire process including analysis and clean up could take up to three years to complete. For this reason, Legal Counsel has recommended revoking the procurement for the two leases that have not yet been signed citing the procurement would be considered stale from the time it was first issued. Mr. Rafter added some alternative sites are being examined through the Master Plan process but this will also take time to accomplish.

Stephen Cohen, representing G.J. Smith, respects the 30B Procurement Laws as well as the public safety concerns but notes Mr. Smith's proposed lease site is outside the 2 acres of concern. Mr. Cohen requests if the Corps agrees, can private testing occur outside the two acre area.

Mr. Rafter noted the Corps when asked would not be specific on the exact location of the investigative site; and additionally, told the Airport it would risk becoming responsible for the entire site.

Mr. Cohen announced he received an email from the Corps that states the complete opposite. Mr. Cohen suggests the Corps be asked for a formal letter and on the meantime, the Commission delay any decision on the procurement.

Mr. Rafter indicated he has asked for something in writing from the Corps since the initial conference call. Mr. Cohen read aloud the email that he received earlier in the day.

The Commission asked Mr. Cohen to forward the complete correspondence to Mr. Rafter to follow-up with the Corps. And will wait for their response to make a decision. Mr. Cohen agreed.

Having no further business, Mr. Gasbarro made a **Motion** to adjourn. **Second** by Ms. Topham and **Passed** unanimously.

Meeting was adjourned at 4:24 p.m.

Respectfully submitted,

Janine M. Torres Recorder

Master List of Documents Used
5/6/14 Agenda including Exhibit 1
TSA Lease Amendment No. 1
MassDOT Grant Award for \$4,252.88 for AIP 58
SSA Public Notice from Inquirer & Mirror
Draft AirComm Letter to BOS/SSA Board of Governors dated 5/7/14
Draft Third Notice to Bunker Tenants re Unexploded Ordnance

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Commissioners
Daniel W. Drake, Chairman
Arthur D. Gasbarro, Vice Chair
Andrea N. Planzer
Neil Planzer
Jeannette D. Topham

DRAFT

AIRPORT COMMISSION MEETING

June 2, 2014

The special meeting was called to order at 3:18 PM by Chairman Daniel W. Drake with the following Commissioners present, Neil Planzer and Jeanette D. Topham.

Vice Chair Arthur D. Gasbarro and Andrea N. Planzer were absent.

The meeting took place in the 1st Floor meeting room at the Public Safety Facility, 4 Fairgrounds Rd.

Airport employees present were Thomas M. Rafter, Airport Manager and Janine Torres, Office Manager.

Pending Leases & Contracts

Mr. Rafter presented an Authorization to Proceed (ATP) to Jacobs Engineering Group for the first phase of the Air Traffic Control Tower (ATCT) Modernization Project which covers data collection and the design charrette for a total of \$73,124.00. Mr. Rafter explained the contract for the entire project is still under review by the FAA. However, due to the tight project completion due to the FAA funding expiration, the parties agreed to issue the (ATP) to allow the work covered under phase 1 to commence July 10, 2014.

Ms. Topham made a **Motion** to approve the Authorization to Proceed. **Second** by Mr. Planzer and **Passed** unanimously without comment.

Having no further business, Ms. Topham made a **Motion** to adjourn. **Second** by Mr. Planzer and **Passed** unanimously.

Meeting adjourned 3:21 PM.

Respectfully submitted,

Janine M. Torres Recorder

Master List of Documents Used

6/2/14 Agenda

5.30.14 Email String between Torres & Holland Subject Authorization to Proceed – Article A Services

Authorization to Proceed with Town Counsel Edits

Jacobs Scope of Work Article A

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Commissioners
Daniel W. Drake, Chairman
Arthur D. Gasbarro, Vice Chair
Andrea N. Planzer
Neil Planzer
Jeanette D. Topham

AIRPORT COMMISSION MEETING
Related to the Master Plan Advisory Group Meeting

May 29, 2014

At 1:05 PM, in the training room in the Aircraft Rescue Fire Fighting Building, 14 Airport Road, Chairman Daniel W. Drake noted that the only Commissioner present in addition to himself was Arthur D. Gasbarro. Commissioners Andrea N. Planzer, Jeanette D. Topham and Neil Planzer were absent.

Accordingly, the Airport Commission meeting could not be called to order for lack of a quorum. The concurrently scheduled Master Plan Advisory Group meeting continued as planned.

Respectfully submitted,

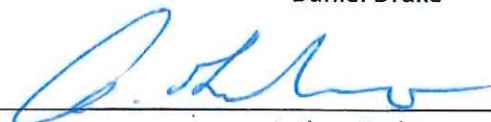
Daniel W. Drake, Recorder

Warrant 06/04/2014

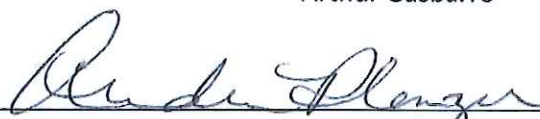
Please Sign and Date

 5/27/14

Daniel Drake

 5/27/14

Arthur Gasbarro

 5/29/14

Andrea Planzer

 5/27/14

Jeanette Topham

 5/30/14

Neil Planzer

Batch# <u>1430</u>	Total <u>\$9,467.37</u>	Batch Date <u>5/20/14</u>	Initial <u>DD TT AG AP QP</u>
Batch# <u>1431</u>	Total <u>\$49,335.42</u>	Batch Date <u>5/20/14</u>	Initial <u>DD TT AG AP QP</u>
Batch# <u>1432</u>	Total <u>\$4,332.39</u>	Batch Date <u>5/21/14</u>	Initial <u>DD TT AG AP QP</u>
Batch# <u>1447</u>	Total <u>7,762.55</u>	Batch Date <u>5/27/14</u>	Initial <u>DD TT AG AP QP</u>
Batch# _____	Total _____	Batch Date _____	Initial _____
Batch# _____	Total _____	Batch Date _____	Initial _____
Batch# _____	Total _____	Batch Date _____	Initial _____
Batch# _____	Total _____	Batch Date _____	Initial _____

EXHIBIT 1
PENDING LEASES/CONTRACTS/AGREEMENTS
June 10, 2014

Type of Agreement/Description	With	Amount	Other Information	Source of Funding
Lease	Island Airlines LLC	(\$44,360)	Annual Terminal Lease	Income
			Plus \$1,500 Annual Business Fee	
			Plus Landing and Freight Fees	
Contract Amendment	Weston Solutions, Inc	\$16,752	Sample Collection/Analytical Mgmt of dirt pile removed from FUDS site	Operating
Contract	World Fuel Services	??	Aviation Fuel Supply & Branding Agreement	Fuel Revolver
		89,280	Fuel Truck Leasing	Operating

Pending as of Meeting Posting Date

NANTUCKET MEMORIAL AIRPORT COMMISSION

LEASE AGREEMENT

LESSEE NAME: Island Airlines, LLC
Dbas Island Airlines

ADDRESS: Barnstable Municipal Airport
550 Barnstable Road, Hangar 1
Hyannis, MA 02601

PHONE: 508-771-7774

SPACE: (counter, office, etc.)

INTENDED USE: Commuter Airlines

LOCATION: Terminal

SIZE: 2009 (SQ.FT.)
(809 Office/counter, 1200 Common)

ANNUAL FEES: \$1,500.00 (Business Fee)
\$ 480.00 (Intercom)

RENT (PAYABLE MONTHLY): \$3,696.66

PLUS: Landing Fees/Freight

AMOUNT IN LIEU OF TAXES: None

SECURITY DEPOSIT: \$11,090 (Paid)

STARTING DATE: 6/1/2013

ENDING DATE: 6/30/2013

This Lease Agreement, made this _____ day of _____, 2014, by and between the Town of Nantucket acting by and through the Nantucket Memorial Airport Commission, a commission established, pursuant to the powers contained in G.L. c.90, Section 51E, having an address of Nantucket Memorial Airport, 14 Airport Road, Nantucket, MA 02554 hereinafter called "LESSOR" and Island Airlines, LLC, hereinafter called "LESSEE".

In consideration of the mutual covenants and agreements hereinafter set forth, LESSOR and LESSEE agree as follows:

1. PREMISES: LESSOR agrees to lease to LESSEE the above space (the "space" or "Premises") at LESSOR's facility known as Nantucket Memorial Airport (the "Airport"), all on the terms and subject to the conditions of this Agreement. Notwithsatnding anything to the contrary in this Lease, the Premises are hereby leased in an "as is" condition without any representations or warranties whatsoever, express or implied.

2. TERM: The initial term of this Agreement shall be for a period of up to one (1) month, commencing on the starting date above, automatically renewable without notice, up to a total of 12 months, provided LESSEE is not in default. Either party shall give thirty (30) days written notice of its or their intent not to renew the monthly term. If after the termination of this Lease, LESSEE shall be deemed to be a tenant from day to day at a daily fee for use and occupancy as may be established by LESSOR, subject to the terms of this Lease.

3. RENT: LESSEE shall pay LESSOR its rent monthly, the sum of \$3,696.67 in advance of the first day of the term. Payment shall be made at LESSOR's office located at the Airport. LESSEE shall also be responsible for Airport fees determined annually by LESSOR. The amount of rent may be changed by the LESSOR upon thirty (30) days written notice to the LESSEE prior to the commencement of the term or any renewal term. In addition to the rent, the LESSEE shall also pay a monthly fee and an amount in lieu of taxes apportioned on a monthly basis, as set forth above.

4. PERMITTED USE OF PREMISES: The Premises shall be used and occupied by LESSEE solely for its intended use or uses as stated above, and may not be used for any other purpose. No commercial activity of any kind whatsoever shall be conducted by LESSEE in, from, or around the Premises without the prior written consent of the LESSOR. In utilizing the Premises, LESSEE agrees to and shall comply with all applicable ordinances, resolutions, rules and regulations established by Federal, State, Local Government Agency, or by the LESSOR. For additional terms of lease, see "Addendum" (if any) attached hereto and made a part hereof.

5. MAINTENANCE AND USE OF PREMISES: The Lessee shall at its own cost and expense agree:

(a) To furnish, install and maintain in the Premises equipment and fixtures necessary for carrying on the purpose as hereinabove described, together with electrical rearrangements, decorating and other work, all at LESSEE's sole cost and expense, and all subject to the prior approval of the Board of Commissioners of the Nantucket Memorial Airport or such Commissioners acting through the Airport Manager of the Nantucket Memorial Airport (the "Airport Commissioners") who may require that said fixtures and equipment be of the same design and appearance as other lessees.

(b) Not to exhibit any sign or advertisements in or about the Premises without the prior approval of the Airport Commissioners.

(c) To keep its furniture, equipment and fixtures and the areas immediately adjoining the Premises in a clean, safe, and sanitary condition, providing proper waste receptacles, and any other service which is necessary to keep the Premises and the improvements free of any condition that may pose a threat or risk of damage or injury to person or property. LESSOR shall have the right, without any obligation to do so, to enter upon the Premises and put them in a clean and sanitary condition in the event that LESSEE fails to do so within twenty-four (24) hours after notice of such condition. In the event the LESSEE fails to comply with any such notice and LESSOR acts to clean the Premises, LESSEE shall reimburse the LESSOR for all cost and expense incurred by the LESSOR to clean the Premises.

(d) To remedy promptly any condition or discontinue any practice to which the Airport Commissioners may reasonably object.

6. ALTERATIONS; ADDITIONS: The LESSEE shall not make structural alterations or additions to the Premises or non-structural alterations without the LESSOR's consent thereto in writing. All such allowed alterations shall be at LESSEE's sole cost and expense and shall be completed in a good and workmanlike quality and in a condition at least equal to the present construction. All local state and federal permits for renovations are to be provided to the LESSOR for the files. LESSEE shall not permit any mechanics' liens, or similar liens, to remain upon the leased premises for labor and material furnished to LESSEE or claimed to have been furnished to LESSEE in connection with work of any character performed or claimed to have been performed at the direction of LESSEE and shall cause any such lien to be released of record forthwith without cost to LESSOR. At the termination of occupancy, as provided herein, any alterations or improvements made by the LESSEE shall become the property of the LESSOR, at the discretion of the LESSOR.

7. UTILITIES: LESSEE shall have all telephone and other services used by it, in its own name, where practicable and shall pay the bills therefor. LESSEE is also required to be connected into the Airport paging system through the Airport's contractor. The LESSOR agrees to provide all other utility service and to furnish heat, air condition, if applicable to the space, all subject to interruption due to any accident, to the making of repairs, alterations, or improvements, to labor difficulties, to trouble in obtaining fuel, electricity, service, or supplies from the sources from which they are usually obtained for said building, or to any cause beyond the LESSOR's control. LESSOR shall have no obligation to provide utilities or equipment other than the utilities and equipment within the Premises as of the commencement date of this lease. In the event LESSEE requires additional utilities or equipment, the installation and maintenance thereof shall be the LESSOR's sole obligation, provided that such installation shall be at the LESSEE's expense and, shall be subject to the written consent of the LESSOR.

8. LESSOR RIGHTS RESERVED: LESSOR reserves for itself the following rights, which LESSEE agrees to observe, and LESSEE agrees that the same may be exercised by LESSOR and that any such exercise of said rights shall not be deemed to effect an eviction or to render LESSOR liable for damages by abatement of rent or otherwise to relieve LESSEE from any of its obligations.

(a) To adopt from time to time rules and regulations not inconsistent with terms of this Lease for the use, protection and welfare of Nantucket Memorial Airport and its occupants, with whom LESSEE agrees to comply; and

(b) To enter upon Premises and facilities of the LESSEE any reasonable time for that purpose of inspection or for any purpose incident to the performance of its obligations hereunder, in the exercise of any of its governmental functions or by others with the permission from the LESSOR. LESSOR in such case is to use its best efforts to avoid disruption of LESSEE's operation.

No compensation or claim will be allowed or paid by the LESSOR, by reason of inconvenience, annoyance or injury to business, arising from the necessity of repairing, altering, or developing any portion of the Airport.

9. COMPLIANCE WITH AIRPORT AND REGULATORY RULES: LESSEE shall observe and obey all laws and rules and regulations of Airport, any Airport standards of operation and procedures, if any, as adopted by the LESSOR, including but not limited to applicable rules or regulations of the Federal Aviation Authority (FAA) or any other state or federal regulatory agency having jurisdiction. The Airport Commissioners of Nantucket Memorial Airport shall furnish LESSEE with a copy of the Airport rules and/or standards, and it shall be the responsibility of the LESSEE to be familiar with those and any other applicable rules and regulations. LESSEE, its members or visitors, shall comply with all provisions of said procedures.

In amplification of Article Nine, above, Compliance with Airport and Regulatory Rules, LESSEE acknowledges the existence of a body of procedures for the abatement of noise caused by aircraft which have been adopted by the Airport and community as of December 1, 1987, as part of a study performed under Part 150 of the Federal Air Regulations. It is further understood that all lessees conducting commercial airlines operations, or general aviation operations, at the Nantucket Memorial Airport are required to comply with those flight procedures as a condition of their tenancy. Each lessee must satisfy the Nantucket Memorial Airport of their continuing compliance no more seldom than once each year prior to lease renewal and at any time that the Airport Commission has reason to believe that non-compliance has occurred. A finding after hearing that the LESSEE has failed to comply with such flight procedures shall be deemed to be sufficient cause for non-renewal or cancellation of LESSEE's lease.

LESSEE will recognize the importance of federal funding to the Airport under the Airport Improvement Program (or other future program) and will submit to the DOT (whether required by the DOT or not) Form Number 1800-31 on a timely basis with a copy to the Airport Manager's office. This report is for reporting enplanements, from which our Airport receives its federal funding for capital improvement projects. Also, monthly enplanement numbers shall be supplied to the Airport Manager's office within 15 days after the month being reported.

10. HAZARDOUS MATERIALS. Except for common office or household cleaning products used in accordance with manufacturer's instructions and all applicable governmental laws, regulations and requirements, LESSEE shall not use, handle, store or dispose of any Hazardous Waste, Hazardous Material, Oil or radiomactive material, as such terms are used or defined in Section 2 of Chapter 21C, Section 2 of Chapter 21D, and Section 2 of Chapter 21E of the General Laws of Massachusetts, and the regulations promulgated thereunder, as such laws and regulations may be amended from time to time (collectively "Hazardous Materials") in, under, on or about the Premises except for such storage and use consented to by LESSOR in advance in writing, which consent may be withheld in LESSOR'S sole and absolute discretion. Any Hazardous Materials on the Premises, and all containers therefore, shall be used, kept, stored and disposed of in conformity with all applicable laws, ordinances, codes, rules, regulations and orders of governmental authorities. Any violation of said laws, rules or regulations shall be deemed a material breach of this Lease for which LESSOR may terminate this Lease without penalty. LESSEE shall (i) notify LESSOR immediately of any release or threat of release of any Hazardous Material on or from the Premises and any loss or damage or claim of loss or damage resulting therefrom, (ii) be solely responsible for remediating all contamination in compliance with all applicable statutes, regulations and standards, at LESSEE'S sole cost and expense, and in addition to

any other rights and remedies available to LESSOR, (iii) indemnify, defend and hold LESSOR harmless from and against all liability, loss, damage, costs and expenses (including without limitation, reasonable attorney's fees and expenses), causes of action, suits, claims, demands, or judgments of any nature in any way suffered, incurred or paid as a result of the presence or release or threatened release of Hazardous Materials on or from the Premises which is caused or exacerbated by LESSEE, its agents, employees, contractors, representatives, licensees, or invitees. LESSEE hereby acknowledges and agrees that LESSOR shall have no responsibility to LESSEE, its agents, employees, representatives, permittee and invitees, for the presence of such Hazardous Materials on the Premises or be required to abate or remediate the same. This provision shall survive the expiration or termination of this Lease.

11. INSURANCE AND INDEMNIFICATION: THE LESSEE SHALL DEPOSIT WITH THE LESSOR CERTIFICATES FOR ALL INSURANCE REQUIREMENTS LISTED BELOW PRIOR TO THE COMMENCEMENT OF THEIR TERM, AND THEREAFTER WITHIN THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF ANY SUCH POLICIES. ALL SUCH INSURANCE CERTIFICATES SHALL PROVIDE THAT SUCH POLICIES SHALL NOT BE MATERIALLY CHANGED, ALTERED OR CANCELED WITHOUT AT LEAST TEN (10) DAYS PRIOR WRITTEN NOTICE TO EACH ASSURED NAMED THEREIN.

ADDITIONAL INSURED:

All certificates will indicate the "**Town of Nantucket/Nantucket Memorial Airport (LESSOR)**" as **an additional insured**, under liability coverages, but only as respects operations of the Named Insured as their interests may appear.

INDEMNIFICATION: LESSEE shall defend, indemnify and hold harmless, the LESSOR, its Commissioners, officers, agents and employees, from and against any and all claims, expenses or liabilities of whatever nature from any suits, claims and demands (including without limitation reasonable attorney's fees and experts' fees), (a) arising directly or indirectly from the failure of the LESSEE or LESSEE'S contractors, agents, employees or invitees to comply with the terms of this Lease or with any applicable laws, codes, bylaws, rules, orders, regulations or lawful direction now or hereafter in force of any public authority, and (b) arising directly or indirectly from any accident, injury or damage, however, caused to any person or property, on or about the Premises where such accident, injury, or damage results, or is claimed to have resulted, from any act, omission or negligence on the part of the LESSEE or LESSEE's contractors, license, agents, employees or customers, or anyone claiming by or through the LESSEE.

LIABILITY INSURANCE: The LESSEE shall maintain, in full force from the date of commencement of the Lease throughout the Term and thereafter so long as LESSEE is in occupancy of the Premises with respect to the Premises and the property of which the Premises are a part, comprehensive public liability insurance, in the amount of \$1,000,000, for each occurrence with property damage insurance in limits of \$500,000, for each occurrence. The policy shall be written with responsible companies qualified to do business in Massachusetts, and in good standing therein, insuring the LESSOR as well as LESSEE against injury to persons or damage to property as provided (unless different amounts specified on front page of contract).

FIRE INSURANCE: The LESSEE shall procure and keep in force, fire and extended coverage insurance upon its leasehold improvements, furniture, furnishings, fixtures and equipment to the full insurable value thereof and any applicable equipment vendors or lenders give the Airport satisfactory releases from fire and extended coverage liability.

WORKER'S COMPENSATION INSURANCE: The LESSEE and any of its contractors shall maintain and keep in force Workers' Compensation Insurance, which is recognized by the Commonwealth of Massachusetts, and shall deliver to the LESSOR copies of certificate of insurance naming the LESSOR as an additional insured. Without limiting LESSOR's other rights under any other provisions of this Lease, if LESSEE shall fail to keep the Premises insured as provided herein, and if such failure shall continue for a period of ten (10) days following written notice by LESSOR to LESSEE thereof, then LESSOR, without further notice to LESSEE, may take out and pay for such insurance, and the amount of such payment shall become due and payable as Additional Rent on demand.

12. **DEFAULT AND BANKRUPTCY:** If at any time subsequent to the date of this Lease any of the following events shall occur, LESSEE shall be in default under the terms and provision of this Lease:

- (a) The failure of LESSEE to make payment of any installment of rent or other sum therein specified and such default shall continue for ten (10) days after written notice thereof; or
- (b) The failure of the LESSEE to observe or perform any other of the LESSEE's covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) days after written notice thereof; or if such failure is of such a nature that LESSEE cannot reasonably remedy the same within such thirty (30) day period, LESSEE shall fail to commence promptly (and in any event within such thirty (30) day period) to remedy the same and to prosecute such remedy to completion with diligence and continuity, or
- (c) The filing by LESSEE of a voluntary petition or the filing against LESSEE of an involuntary petition in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of LESSEE, or the filing by LESSEE of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or future applicable federal, or state law, or the assignment by LESSEE for the benefit of creditors, or appointment of a Trustee, receiver, or liquidation of all or any part of the assets of LESSEE, and within sixty (60) days after the commencement of any such proceeding against LESSEE, such proceeding shall not have been dismissed, or if within ninety (90) days after the appointment of any such trustee, receiver or liquidator of LESSEE or of all or any part of LESSEE's property, without the acquiescence of LESSEE, such appointment shall not have been vacated or otherwise discharged, or if any execution or attachment shall be issued against LESSEE or any of LESSEE's property pursuant to which the Premises shall be taken or occupied or attempted to be taken or occupied. Then in any such case, LESSOR may terminate this Lease by written notice to LESSEE specifying a date not less than five (5) days after the giving of such notice on which this Lease shall terminate, and LESSEE shall then quit and surrender the Premises to LESSOR, but LESSEE shall remain liable as hereinafter provided.

If LESSEE defaults under the terms of this Lease as defined above, then the LESSOR shall have the right thereafter, while such default continues, to re-enter and take complete possession of the Premises, to declare the term of this Lease ended, and remove the LESSEES's effects, without prejudice to any remedies which might be otherwise used for arrears of rent or other default. The LESSEE shall indemnify the LESSOR against all loss of rent and other payments which the LESSOR may incur by reason of such termination during the residue of the term. If the LESSEE shall default, after reasonable notice thereof, in the observance or performance of any conditions or covenants on LESSEE's part to be observed or performed under or by virtue of any of the provisions in any article of this Lease, the LESSOR, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of the LESSEE. If the LESSOR makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to, reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of ten percent (10%) per annum and costs, shall be paid to the LESSOR by the LESSEE as additional rent.

13. SURRENDER: The LESSEE shall at the expiration or other termination of this Lease peaceably and quietly leave, surrender and yield to the Premises and all other improvements thereon in good order, repair and condition ordinary wear and tear excepted and remove all LESSEE's goods and effects from the Premises, (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the LESSEE, either inside or outside the Premises). LESSEE shall deliver to the LESSOR the Premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the Premises, in good condition, damage by fire or other casualty only excepted. In the event of the LESSEE's failure to remove any of LESSEE's property from the Premises, LESSOR is hereby authorized, without liability to LESSEE for loss or damage thereto, and at the sole risk of LESSEE, to remove and store any of the property at LESSEE's expense, or to retain same.

14. TITLE SIX ASSURANCES – NONDISCRIMINATION:

(a) The LESSEE for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

That in the event of a breach of any of the above nondiscrimination covenants, the LESSOR shall have the right to terminate this Lease and to re-enter and repossess the Premises, and hold the same as if said Lease had never been made or issued.

(b) The LESSEE for itself, its personal representatives, successors in interest, and assigns, as apart of the consideration hereof, does hereby covenant and agree as a covenant running with the land 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 in 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 otherwise be subjected to discrimination,

(3) that the LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation – Effectuation of Title of the Civil Rights Act of 1964 and as said Regulations may be amended.

That in the event of a breach of any of the above nondiscrimination covenants, the LESSOR shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

15. GENERAL PROVISIONS:

(a) Subordination of Lease. This Lease shall be subordinated to the provisions of:

(1) any existing or future agreement between LESSOR 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 or improvement of the Airport; and

(2) any pledge, transfer, hypothecation or assignment made at any time by the LESSOR to secure bonds or other financing.

(b) Compliance by Other Lessees. LESSOR shall, whenever possible, make reasonable efforts to obtain, uniform compliance with its rules and regulations; however, LESSOR shall not be liable to LESSEE for any violation or non-observance of such rules and regulations by any tenant, concessionaire or LESSEE at the Airport.

(c) Independent Contractor. It is agreed that LESSEE is an independent contractor hereunder and not an agent or employee of LESSOR with respect to its acts or omissions.

(d) Sublease; Successors and Assigns. LESSEE shall have no right to sublease the Premises or assign this Agreement without the prior written approval of LESSOR. All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the respective parties hereto.

(e) Notices. All notices required to be given to LESSOR or LESSEE shall be in writing and shall be given personally or sent by certified mail, return receipt requested, addressed to such party at its latest address of record. Notices to LESSOR shall be addressed to Airport Commissioners, Nantucket Memorial Airport, 14 Airport Road, Nantucket, MA 02554 and notices to LESSEE addressed to its address on the first page of this Agreement, or to such other addresses as the parties may designate to each other by such notice from time to time.

(f) Governing Law. This Lease is read and construed in accordance with the laws of the Commonwealth of Massachusetts except where State law shall be preempted by any rules, laws or regulations of the government of the United States of America. The parties hereto agree that any court of proper jurisdiction sitting in Nantucket County, Massachusetts, shall be the proper forum for any actions brought hereunder.

(g) Entire Agreement; Amendment Interpretation. This Agreement with attachments mentioned constitutes the entire agreement between the parties superseding all prior or contemporaneous understandings. No amendment, modification, or alteration of the terms of the Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto. No waiver of default by either party of any of the terms, covenants, and conditions herein to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party. If one or more clauses, sections, or provisions of this lease shall be held to be unlawful, invalid, or unenforceable, it is agreed that the remainder of the lease shall not be affected thereby. The paragraph headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Signature Page to Follow

NOTICE TO LESSEE:

DO NOT SIGN THIS AGREEMENT BEFORE YOU HAVE READ THE AGREEMENT SET FORTH ABOVE. YOU ARE ENTITLED TO A COPY OF THIS AGREEMENT AND SHOULD KEEP A COPY OF THIS AGREEMENT TO PROTECT YOUR LEGAL RIGHTS.

LESSEE, BY SIGNATURE HEREON, ACKNOWLEDGES THIS AGREEMENT.

Lessee: Island Airlines, LLC

Lessor: Nantucket Memorial Airport Commission

By:_____

By:_____

Chairman

Title



TOWN OF NANTUCKET
CONTRACT AMENDMENT #1
with
WESTON SOLUTIONS, INC.

Project Name: Environmental Consulting Services Agreement
Nantucket Memorial Airport

Amendment Number: One

Agreement made this _____ day of _____, 2014 by the Town of Nantucket, Nantucket Memorial Airport (hereinafter "TOWN") and Weston Solutions, Inc. (hereinafter "CONTRACTOR").

WHEREAS, on or about the 6th day of February, 2014, the parties hereto entered in a written agreement, copies of which are hereby incorporated by reference; and services covered under this agreement were paid under Purchase Order #14004842 in the amount of \$3,495.00.

WHEREAS, the parties hereto have mutually agreed to modify certain terms of said agreement;

NOW THEREFORE, in consideration of mutual benefits, the same previous agreement referred to, is hereby modified and changed in the following manner:

Include Weston Solutions, Inc. Modification 1 dated February, 2014, in the amount \$16,752.32, a copy of which is attached.

HOWEVER, each and every one of the other provisions and conditions of said previous agreement shall be made and remain in full force and effect, and this amendment shall change said contract only so far as specified herein. This project may be subject to budgetary limits, limiting total funds available hereunder.

THIS AMENDMENT shall be effective as of this _____ day of _____, 2014 and shall continue through the 30th day of June, 2014, unless continued by agreement of the parties in writing prior to said termination date.

IN WITNESS WHEREOF, we have hereunto joined in the Agreement as of the date first above written.

CONTRACTOR:

Weston Solutions, Inc.

Christopher G. Karel, PM

TOWN OF NANTUCKET/NANTUCKET MEMORIAL AIRPORT:

Daniel W. Drake, Chairman



SCOPE OF WORK/COST SUMMARY

1) Sample Collection/Analytical

WESTON will mobilize to the site (1 Geologist/Sample Technician and 1 UXO Specialist), delineate/markout the stockpile into sections for sampling (at base of pile), perform UXO avoidance (to ensure safety of technician), markout sample locations, and collect a total of eight (8) insitu surface soil samples from Stockpile "X" to evaluate contaminants of potential concern to determine if any samples exceed reportable concentrations under the MCP. Additional quality control samples (duplicate and MS/MSD) will be collected. See attached Cost Summary (Attachment 2).

Analysis will include metals and explosives (see below) based on targeted SI and MCP compounds and munitions constituents of concern. Samples will be packaged onsite and shipped to Katahdin Analytical Services, Inc. (Scarborough, ME) for laboratory analysis. Samples will be analyzed based on a 14-calendar day turn-around-time (TAT). WESTON will review and validate all data in Level III-Electronic Data Deliverable (EDD) format and provide a Data Summary to NMA. WESTON will advise if any MCP reporting criteria, i.e., notifications are triggered.

<u>Description</u>	<u>Method</u>
Metals (list of 21)*	SW846 3050B/6010B
Mercury	SW846 7471A
Zirconium	SW846 3050/6010B
Explosives	SW846 8330A
Picric Acid	SW846 8330M
Total Kjeldahl Nitrogen	EPA 351.2
Perchlorate	SW846 6850
MCP 8270 SVOC List	SW846 8270C
Cyanide	SW846 9012

Note**": Al, Sb, As, Ba, Be, Cd, Cr, Co, Cu, Fe, Pb, Mg, Mn, Hg, Mo, Ni, Se, Ag, Ti, V, and Zn

Weston will provide the sampling, UXO avoidance support, laboratory analysis, data validation, and a Data Summary report to NMA for the proposed fixed price. The Data Summary report will identify whether a MCP reportable condition exists.

If the data indicates that NMA has a 2-hour (or other) reporting obligation under the MCP then WESTON effort in support of the 2-hour report and follow-up actions will be provided on a time and materials (T&M) basis. In the event there are no MCP reporting obligations for Stockpile "X", Weston can provide an evaluation and recommendation to NMA on use restrictions, clearance, or characterization and disposal options (if applicable). Weston would perform this work under a time and materials (T&M) upon notice from an authorized NMA Manager.

Additional support regarding Formerly Used Defense Site (FUDS) property use recommendations can be provided on a T&M basis.

Sample Collection/Analytical (LS):

\$16,934.32

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("**Agreement**"), is made as of this _____ day of _____, 2014 by and among the **MASSACHUSETTS DEPARTMENT OF TRANSPORTATION**, a body politic and corporate and public instrumentality of the Commonwealth of Massachusetts, duly established and existing pursuant to Chapter 6C of the Massachusetts General Laws, as amended, with an address of Ten Park Plaza, Boston, Massachusetts 02116, ("**MassDOT**"), the **TOWN OF NANTUCKET**, a municipal corporation acting by and through the Nantucket Memorial Airport Commission with an address of 14 Airport Road, Nantucket, Massachusetts 02554, ("**Landlord**"), and **EMILY AIR, LLC**, a Delaware limited liability company with an address of 550 Barnstable Road, Hyannis, Massachusetts 02601 ("**Tenant**").

Background

A. MassDOT is the holder of a certain Mortgage and Security Agreement dated April 18, 2007 recorded with the Nantucket County Registry of Deeds in Book 1116, Page 139 and filed with the Nantucket County Registry District of the Land Court as Document Number 122574 (the "**Mortgage**") on Landlord's property described more particularly on Exhibit A attached hereto ("**Property**") and on other lands of Landlord as fully described in the Mortgage.

B. Tenant is the present lessee under that certain lease agreement between Landlord and Tenant dated _____, 2014 as evidenced by a Notice of Lease filed with Nantucket County Registry District of the Land Court simultaneous herewith, as thereafter modified and supplemented ("**Lease**"), demising a portion of the Property described more particularly in the Lease (the "**Leased Space**").

C. Subject to the conditions set forth in this Agreement, MassDOT has agreed not to disturb Tenant's possession of the Leased Space in the event that MassDOT takes possession of the Property following a default by Landlord under the Mortgage.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Consents. MassDOT hereby consents to (a) the termination of that certain lease by and between Landlord and Coastal Wings, Inc., d/b/a Ocean Wings Charter Flights, dated as of May 1, 1995 as evidenced by that certain Notice of Lease filed with the Nantucket County Registry District of the Land Court as Document Number 79556 (the "Existing Lease"), and (b) the execution of the Lease.

MassDOT agrees that neither the termination of the Existing Lease nor the execution and delivery of Lease shall constitute a default under the Mortgage.

2. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Mortgage.

3. Nondisturbance. MassDOT agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, enforcement of the Mortgage or other sale of the Property in connection with enforcement of the Mortgage or otherwise in satisfaction of the obligations secured by the Mortgage shall operate to terminate or interfere with the Lease or Tenant's rights thereunder to possess, occupy and use the Leased Space and the quiet enjoyment thereof provided, however, that the Lease is in full force and effect and no uncured default exists under the Lease. MassDOT agrees that Tenant shall not be named as a party defendant in any action for foreclosure or other enforcement of the Mortgage (unless required by law).

4. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Mortgage, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Mortgage or otherwise in satisfaction of the obligations secured by the Mortgage ("**Successor Owner**"). Provided that the Lease is in full force and effect and no uncured default exists under the Lease at the time Successor Owner becomes owner of the Property, Successor Owner shall perform all obligations of the landlord under the Lease, and all extensions or renewals thereof, arising from and after the date title to the Property is transferred to Successor Owner. Notwithstanding the foregoing or any provision of the Lease to the contrary, in no event will MassDOT or any Successor Owner be: (a) liable for any default, act or omission of any prior landlord under the Lease (including Landlord); (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease (including Landlord); (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than 30 days in advance; (d) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by MassDOT or any such Successor Owner (as applicable); (e) required to procure or maintain insurance of any kind; (f) be responsible for the commencement or completion of any construction or any contribution toward construction, installation or rehabilitation of any improvements upon the Property required under the Lease, (g) required after a fire, casualty or condemnation of the Property to repair or rebuild the same, or (h) bound by any written amendment to the Lease made without MassDOT's or any such Successor Owner's (as applicable) written consent thereto. Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to MassDOT or any Successor Owner such further instruments as MassDOT or any such Successor Owner may from time to time reasonably request in order to confirm this Agreement. If any liability of MassDOT or a Successor Owner does arise pursuant to this Agreement, such liability shall be limited to MassDOT or such Successor Owner's interest in the Property.

5. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than 30 days in advance. After notice is given to Tenant by MassDOT that Landlord is in default under the Mortgage, Tenant shall, if requested by MassDOT, thereafter pay to MassDOT all rent and all other amounts due or to become due to Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to MassDOT upon reliance on MassDOT's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with MassDOT's written instructions.

6. MassDOT Opportunity to Cure Landlord Defaults. Tenant agrees that, until the Mortgage is released by MassDOT, it will not exercise any remedies under the Lease following a

Landlord default without having first given to MassDOT (a) written notice of the alleged Landlord default and (b) the opportunity to cure such default within a time period equal to the time period specified in the Lease plus 30 days, or, if no time such time period is specified in the Lease, the longer of (i) 60 days from Landlord's receipt of Tenant's notice to MassDOT of a Landlord default, or (ii) if the cure of such default requires possession of the Property, 60 days after MassDOT has obtained possession of the Property; provided that, in each case, if such default cannot reasonably be cured within such 60-day period and MassDOT has diligently commenced to cure such default promptly within the time contemplated by this Agreement, such 60-day period shall be extended for so long as it shall require MassDOT, in the exercise of due diligence, to cure such default, but, unless the parties otherwise agree, in no event shall the entire cure period be more than 120 days. Tenant acknowledges that MassDOT is not obligated to cure any Landlord default, but if MassDOT elects to do so and has done so to the reasonable satisfaction of the Tenant, Tenant agrees to accept cure by MassDOT as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for a Landlord default. Performance rendered by MassDOT on Landlord's behalf is without prejudice to MassDOT's rights against Landlord under the Mortgage or any other documents executed by Landlord in favor of MassDOT in connection with the Mortgage.

7. Miscellaneous.

(a) Notices. All notices and other communications under this Agreement are to be in writing and sent to the addresses as set forth below. Notices shall be deemed to have been duly given upon the earlier of: (i) actual receipt; (ii) one (1) business day after having been timely deposited for overnight delivery, fee prepaid, with a reputable overnight courier service, having a reliable tracking system; or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by certified mail, postage prepaid, return receipt requested, and in the case of clause (ii) and (iii) irrespective of whether delivery is accepted. A new address for notice may be established by written notice to the other parties; provided, however, that no address change will be effective until written notice thereof actually is received by the party to whom such address change is sent.

To MassDOT: Massachusetts Department of Transportation
10 Park Plaza
Boston, MA 02116
Attn: Aeronautics Division

With a copy to:

Massachusetts Department of Transportation
10 Park Plaza
Boston, MA 02116
Attn: General Counsel

To Tenant: Emily Air, LLC
550 Barnstable Road
Hyannis, MA 02601
Attn: Thomas F. Cunningham, Manager

To Landlord: Nantucket Memorial Airport Commission
14 Airport Road
Nantucket, MA 02554
Attn: Thomas Rafter, Airport Manager

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes and replaces all prior discussions, representations, communications and agreements (oral or written). This Agreement shall not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing.

(c) Binding Effect. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors, and assigns, whether by voluntary action of the parties or by operation of law.

(d) Unenforceable Provisions. Any provision of this Agreement which is determined by a court of competent jurisdiction or government body to be invalid, unenforceable or illegal shall be ineffective only to the extent of such determination and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Agreement (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Agreement even though all signatures do not appear on the same document.

(f) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns shall be construed to cover all genders. Article and section headings are for convenience only and shall not be used in interpretation of this Agreement. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or other subdivision; and the word "section" refers to the entire section and not to any particular subsection, paragraph or other subdivision; and "**Agreement**" means the agreement as originally executed and as hereafter modified, supplemented, extended, consolidated, or restated from time to time.

(g) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and all legal actions brought in connection with this Agreement shall be brought in courts within the Commonwealth of Massachusetts.

(h) WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HERETO WAIVES AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.

[Remainder of page is blank; signatures appear on next page.]

IN WITNESS WHEREOF, this Agreement is executed as an instrument under seal as of the date first written above.

MassDOT:

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title:

Landlord:

TOWN OF NANTUCKET

**NANTUCKET MEMORIAL
AIRPORT COMMISSION**

By Its Board of Selectmen:

Name: Rick Atherton, Chairman

Name: Daniel W. Drake, Chairman

Name: Robert DeCosta, Vice Chair

Name: Arthur D. Gasbarro, Vice Chair

Name: Matt Fee

Name: Andrea N. Planzer

Name: Tobias Glidden

Name: Neil Planzer

Name: Bruce D. Miller

Name: Jeanette D. Topham

Tenant:

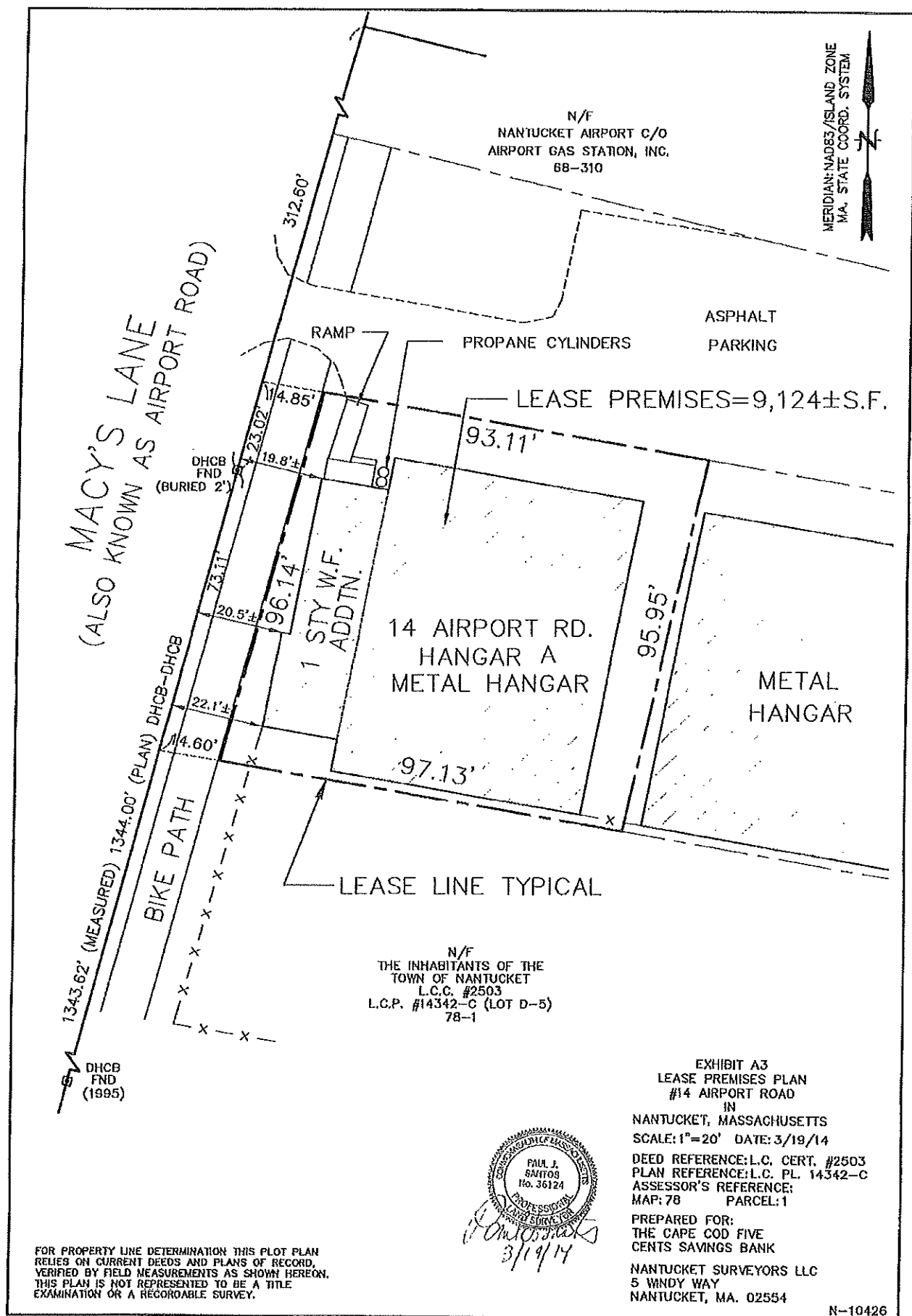
EMILY AIR, LLC

By: _____
Name: Thomas F. Cunningham
Title: President

EXHIBIT A

Legal Description of Property

(See attached)





U.S. Department
of Transportation
Federal Aviation
Administration

GRANT AGREEMENT

PART I – OFFER

Date of Offer

MAY 28 2014

Airport/Planning Area

Nantucket Memorial Airport

AIP Grant Number

3-25-0033-060-2014

DUNS Number

60-628-7670

TO: Town of Nantucket, Massachusetts, acting by and through the Nantucket Airport Commission
(herein called the "Sponsor")

FROM: The United States of America (acting through the Federal Aviation Administration, herein called the
"FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated May 1, 2014, for a grant of Federal funds for a project at or associated with the Nantucket Memorial Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Nantucket Memorial Airport (herein called the "Project") consisting of the following:

Security Enhancements,

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated April 3, 2014, and the Sponsor's acceptance of this Offer, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 90 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$349,200. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b), the following amounts are being specified for this purpose:
\$0 for planning
\$349,200 for airport development or noise program implementation
\$0 for land acquisition.
2. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
3. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
4. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies and procedures of the Secretary. The Sponsor also agrees to comply with the assurances which are part of this agreement.
5. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
6. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **July 10, 2014**, or such subsequent date as may be prescribed in writing by the FAA.
7. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or

other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

8. **United States Not Liable for Damage or Injury.** The United States is not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.
9. **System for Award Management (SAM) Registration And Universal Identifier.**
 - A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - B. Requirement for Data Universal Numbering System (DUNS) Numbers
 1. The Sponsor must notify potential subrecipient that it cannot receive a contract unless it has provided its DUNS number to the Sponsor. A subrecipient means a consultant, contractor, or other entity that enters into an agreement with the Sponsor to provide services or other work to further this project, and is accountable to the Sponsor for the use of the Federal funds provided by the agreement, which may be provided through any legal agreement, including a contract.
 2. The Sponsor may not make an award to a subrecipient unless the subrecipient has provided its DUNS number to the Sponsor.
 3. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-492-0280) or the Internet (currently at <http://fedgov.dnb.com/webform>).
10. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
11. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter to the Sponsor unilaterally reducing the maximum obligation. The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. If the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the FAA can issue a letter to the Sponsor amending the grant description.

By issuing an Informal Letter Amendment, the FAA has changed the grant amount or grant description to the amount or description in the letter.
12. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this grant.
13. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
14. **Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the

United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

15. **Maximum Obligation Increase For Primary Airports.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
 - A. may not be increased for a planning project;
 - B. may be increased by not more than 15 percent for development projects;
 - C. may be increased by not more than 15 percent for land project.
16. **Audits for Public Sponsors.** The Sponsor must provide for a Single Audit in accordance with 2 CFR Part 200. The Sponsor must submit the Single Audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. The Sponsor must also provide one copy of the completed 2 CFR Part 200 audit to the Airports District Office.
17. **Suspension or Debarment.** The Sponsor must inform the FAA when the Sponsor suspends or debars a contractor, person, or entity.
18. **Ban on Texting When Driving.**
 - A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
 - B. The Sponsor must insert the substance of this clause on banning texting when driving in all subgrants, contracts and subcontracts
19. **Trafficking in Persons.**
 - A. Prohibitions: The prohibitions against trafficking in persons (Prohibitions) that apply to any entity other than a State, local government, Indian tribe, or foreign public entity. This includes private Sponsors, public Sponsor employees, subrecipients of private or public Sponsors (private entity) are:
 1. Engaging in severe forms of trafficking in persons during the period of time that the agreement is in effect;
 2. Procuring a commercial sex act during the period of time that the agreement is in effect; or
 3. Using forced labor in the performance of the agreement, including subcontracts or subagreements under the agreement.
 - B. In addition to all other remedies for noncompliance that are available to the FAA, Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), allows the FAA to unilaterally terminate this agreement, without penalty, if a private entity –
 1. Is determined to have violated the Prohibitions; or
 2. Has an employee who the FAA determines has violated the Prohibitions through

conduct that is either—

- a. Associated with performance under this agreement; or
- b. Imputed to the Sponsor or subrecipient using 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the FAA at 49 CFR Part 29.

20. **Exhibit A Incorporated by Reference.** The Exhibit "A" updated October 3, 2003, filed with AIP Project 3-25-0033-040-2005, is incorporated herein by reference.

SPECIAL CONDITIONS

21. The FAA, in tendering this offer on behalf of the United States, recognizes the existence of an agency relationship between the Town of Nantucket, Massachusetts, as principal, and the Massachusetts Aeronautics Commission, as agent, created by an Agreement of Agency dated June 21, 1972, which is incorporated herein by reference. The sponsor agrees that said Agreement of Agency will not be amended, modified or terminated without the prior written approval of the FAA.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**



(Signature)

Mr. Bryon H. Rakoff

(Typed Name)

Acting Manager, Airports Division, New England Region

(Title)

PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.¹

Executed this _____ day of _____.

**Town of Nantucket, Massachusetts, acting by and through the
Nantucket Airport Commission**

(Name of Sponsor)

(Signature of Sponsor's Designated Official Representative)

By:

(Typed Name of Sponsor's Designated Official Representative)

Title:

(Typed Title of Sponsor)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:
(Typed Name of Sponsor's Attorney)

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the Commonwealth of Massachusetts. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this _____ day of _____.

By _____
(Signature of Sponsor's Attorney)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.