

REVOCABLE USE OF PUBLIC PLACES PERMIT AND AGREEMENT
FLIGHT DECK GRILL, LLC

This Revocable Use of Public Places Permit and Agreement (“Agreement”) is made and entered into as of the _____ day of _____, 2024, by and between the City of Longmont, Colorado, a municipal corporation, (“City”) and Flight Deck Grill, LLC (“Permittee”), a Colorado limited liability company, whose address is 1224 Sunset Street, Longmont, CO 80501.

WITNESSETH

WHEREAS, the City is owner and operator of the Vance Brand Municipal Airport, together with the land on which the airport is located in the City of Longmont, County of Boulder, State of Colorado, hereinafter called the "Airport;" and

WHEREAS, Permittee operates a food and beverage service as Flight Deck Grill, LLC, and part of that business includes operating a twenty-two (22) foot trailer from which Permittee prepares and sells food and beverages within the City; and

WHEREAS, the City has enacted Chapter 13.37 of the Longmont Municipal Code (“LMC”) to implement Article XII of the City Charter, and in particular sections 12.4 and 12.7 of the City Charter concerning authorized temporary use or occupation of public places; and

WHEREAS, section 13.37.030(B) of the LMC provides that the City Council may issue a permit for any use of City property; and

WHEREAS, the Permittee seeks a temporary permit to operate a twenty-two (22) foot food and beverage trailer at the Airport, and more specifically at the location(s) delineated herein as Exhibit A (“Premises”), during the term of this Agreement; and

WHEREAS, the Council finds Permittee's operation of a twenty-two (22) foot food and beverage trailer at the Airport under the conditions of this Agreement is a reasonable and acceptable use of City property; and

WHEREAS, the City and Permittee desire to enter into this Agreement and Permittee accepts all of the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, terms and conditions set forth herein, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Purpose of this Permit. The purpose of the City in granting the privileges under this Agreement is to permit the sale of food and beverages by Permittee to the public. The interest of the Permittee in the Premises under this Permit shall not constitute a lease, tenancy or other real property right, but rather shall be a mere license personal to the Permittee and revocable at the discretion of the City at any time upon notice as set forth

herein. Permittee acknowledges that this Permit grants a temporary and permissive use only. No use of public property shall constitute occupation hostile to the public for purposes of initiating a claim of adverse possession or prescriptive rights.

2. Use of Area. During the term of this Agreement, the City grants to the Permittee a permit to place and remove a twenty-two (22) foot food and beverage trailer on public property at the Airport in strict conformance with the requirements imposed by the Airport Manager and compliance with the terms of this Agreement, the Longmont Municipal Code, and any other applicable federal, state or local law. Permittee is authorized to locate the twenty- two (22) foot trailer in the public parking lot adjacent to Elite Aviation as indicated on the map attached as Exhibit A.
3. Term. The term of this Agreement shall be five (5) years from the date first set forth above.
4. Permit Fees. Permittee shall annually pay a nonrefundable fee as established by the Longmont City Council for mobile vendor carts, currently \$100 per year, and post a refundable \$500.00 security deposit with the City in a form acceptable to the City before placing the trailer on City property. The deposit shall serve as security for any damage to City property Permittee may cause to City property. Upon expiration or termination of this Agreement, the security deposit will be refunded to Permittee less any amount reasonably necessary for damage to City property caused by Permittee.
5. Termination. The City may, at its sole discretion, terminate this Agreement and Permit upon conditions set forth for cause or without cause.
 - a. For Cause. The City may terminate this Agreement in the event that any payment or amount is not furnished to the City as required by this Agreement, when due. City shall give seven days written notice to the Permittee of the City's intention to terminate and unless full and proper payment is made to the City of all monies due on or before the expiration of the seven (7) day period indicated in the notice, this Agreement shall be terminated. In like manner, upon thirty (30) days written notice, the City may terminate this Agreement in the event any of the other terms of this Agreement, other than involving violation of any law or providing of insurance or proof of insurance, have been violated, unless Permittee has fully rectified any such failure to conform to the conditions of the Agreement within such period.
 - b. For Cause, Compliance with Laws. The City may, at its sole discretion, terminate this Permit Agreement, effective immediately, upon the giving of written notice of termination, in the event that Permittee engages in, or permits, the violation, of any federal, state or local law or ordinance in the course of Permittee's operations. City may also terminate this Permit Agreement, effectively immediately, upon the giving of written notice of termination, if such termination is required by the Federal Aviation Administration, or other federal, state or local regulatory agency.

- c. For Cause, Insurance. The City may, at its sole discretion, terminate this Agreement, effective immediately, upon the giving of written notice of termination, in the event that Permittee fails to maintain or renew any insurance policy required by this Agreement or fails to provide proof of such insurance coverage as required by this Agreement.
- d. Without Cause. Either party, without cause, may terminate this Agreement by providing the other party with sixty (60) days written notice of intent to terminate.
6. Removal on Termination. Permittee, at its sole, absolute expense, shall, upon notice of termination from the City, remove the food and beverage trailer, and any other related items, from public property. Permittee, at its own expense, shall completely restore any City property Permittee may damage to its former condition, all within sixty (60) days after the City mails notice or personally delivers notice of termination. Any notice by mail will be sent to Permittee at Permittee's address listed above. In the event that removal is required by the City and is not promptly commenced or timely completed, the City may remove said trailer and any other related items, and the Permittee shall be responsible to the City for all costs incurred by the City in removing the trailer and any other related items. Permittee agrees to cease any and all use of City property covered by this Agreement for any purpose, upon the expiration of this Agreement, or following the mailing or personal service of a notice of termination by City, whichever occurs earlier.
7. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and deemed duly given upon delivery, if delivered personally, or upon depositing in the U.S. Mail, postage prepaid and certified, return receipt requested, and addressed to the proper party as follows:
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| <u>City of Longmont:</u>
Airport Manager
229 Airport Road
Longmont, CO 80503 | <u>Permittee:</u>
Flight Deck Grill, LLC
1224 Sunset St., Longmont, CO
80501 |
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8. Indemnity. The Permittee hereby releases and agrees to indemnify, defend and save harmless the City and its agents, employees and officers from and against all claims, actions, causes of action, demands, judgments, costs, expenses and all damages of every kind and nature, incurred by or on behalf of any person or corporation whatsoever, predicated upon injury to or death of any person or loss of or damage to property of whatever ownership, including the parties to this Agreement and their employees, and arising out of or connected with, in any manner, directly or indirectly, the Permittee's operation or use of the Premises.
9. Compliance with Laws. Permittee agrees to properly and periodically maintain and keep in good repair the trailer covered by this Agreement and to comply with all applicable federal, state, and local laws, rules and regulations, including applicable provisions of the

Longmont Municipal Code. Permittee shall also comply with any requirements imposed by the Boulder County Department of Public Health.

10. Insurance.

- a. Permittee shall obtain at its sole cost and expense a commercial general and automobile liability insurance policy covering bodily injury, property damage and personal injury with limits of no less than \$1,000,000 per occurrence.
- b. The City shall be listed as an additional insured in any required liability insurance policy. Such policies shall state that this coverage is to function as the “primary” insurance coverage for the Permittee.
- c. Permittee shall at all times maintain at its sole cost and expense adequate Worker’s Compensation Insurance with an authorized insurance company insuring the payment of compensation to all employees engaged in the operation of the facility as required by Colorado statute.
- d. A certificate evidencing the existence of the required policies shall be delivered to the City’s Airport Manager before the execution of this Agreement for review and approval by the City’s Risk Manager. Permittee shall not place the trailer on Airport property until it provides all required insurance to the City’s Risk Manager for approval.
- e. A renewal certificate shall be delivered to the City upon a policy’s expiration date except for any policy expiring on or after the expiration date of this Agreement.
- f. Permittee shall not cancel, materially change, or fail to renew insurance coverages. Permittee shall notify the City’s Risk Manager of any material reduction or exhaustion of aggregate limits. Failure to maintain or provide proof of insurance shall constitute an immediate breach of this Agreement warranting immediate termination.
- g. Any deviations from these insurance requirements must be submitted to and approved by the City’s Risk Manager.

11. FAA Mandatory Provisions. Permittee shall comply with all required and applicable Federal Aviation Administration (“FAA”) contract provisions, as provided in Exhibit B.

12. Assigning or Subletting Prohibited. Permittee shall not assign, sell, transfer or in any way convey any interest in this Agreement without the prior written consent of the City, which the City may grant or deny in its sole discretion.

13. No Implied Representations. No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Agreement.

14. No Third Party Beneficiaries. This Agreement is for the sole benefit of and binds the parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any party besides City or the Permittee receiving services or benefits under this Agreement is only an incidental beneficiary.
15. Integrated Agreement and Amendments. This Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. The parties shall only amend this Agreement in writing with the proper official signatures attached thereto.
16. Waiver. No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.
17. Severability. Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.
18. Governing Law and Venue. Any tribunal enforcing this Agreement shall apply and construe it according to the laws of the State of Colorado. Venue for any proceeding arising under this Agreement shall be in Boulder County, Colorado.
19. Status of Permittee. The Permittee shall perform all services under this Agreement as an independent contractor, and not as an agent or employee of the City. No City official or employee shall supervise the Permittee. The Permittee will exercise no supervision over any employee or official of the City. The Permittee shall not represent that Permittee is an employee or agent of the City in any capacity. The Permittee has no right to Worker's Compensation benefits from the City or its insurance carriers or funds. Permittee shall pay any federal and state income tax on money earned under this Contract.
20. Financial Obligations of City. All of the City's financial obligations, if any, under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge those obligations. Nothing in this Agreement constitutes a debt, a direct or indirect multiple fiscal year financial obligation, or a pledge of the City's credit.

EXECUTED as of the date first set forth above.

CITY OF LONGMONT:

MAYOR

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

APPROVED AS TO INSURANCE PROVISIONS:

RISK MANAGER

DATE

CA File: 24-002777

State of Colorado)
) ss.
County of Boulder)

I attest that the foregoing instrument was acknowledged before me this _____ day of _____ 2024 by _____, as the Mayor of the City of Longmont.

Witness my hand and official seal.

CITY CLERK

Notary Public, State of Colorado

The foregoing instrument was acknowledged before me by _____,
(Name of party signing)

a limited liability company, this _____ day of _____, 2024.

Notary Public

Exhibit A



Exhibit B

Mandatory FAA Contract Clauses

(See FAA Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, issued May 24, 2023)

GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38; The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)]; Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by

the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by City of Longmont pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will 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 ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, City of Longmont will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.