

STATE OF ALABAMA
COUNTY OF BALDWIN

AIRPORT FRANCHISE AND LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2021, by and between the CITY OF FOLEY, an Alabama municipal corporation (hereinafter "Owner"), and the STAPLETON VOLUNTEER FIRE DEPARTMENT, an Alabama non-profit corporation (hereinafter "Provider").

WITNESSETH:

WHEREAS, the City of Foley is the owner of the Foley Municipal Airport located in the City of Foley, Baldwin County, Alabama in the Southeast Quarter of the Southeast Quarter of Section 18, Township 7 South, Range 4 East and the East half of the Northeast Quarter of Section 19, Township 7 South, Range 4 East (hereinafter the "Airport"); and

WHEREAS, the Owner desires to enter into this Agreement with the Provider for a non-exclusive franchise allowing the Provider to provide fuel to an air ambulance service at the Airport; and

WHEREAS, the Provider desires to perform the service authorized in this Agreement; and

WHEREAS, the Owner is willing to grant the Provider a license to perform the service pursuant to the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, rights, and duties expressed herein, the parties hereby agree as follows:

1. Owner's Grant of License and Franchise. Owner hereby grants Provider a non-exclusive license to occupy and use an area designated by Owner for the term specified herein. Owner hereby grants Provider a non-exclusive franchise to carry out only the specified business activity which is expressly granted in this Agreement for the term specified herein.
2. Term. The term of this Agreement ("Term") begins on the date first above written and remains in effect for two years unless sooner terminated as provided herein.
3. Owner's Duties and Responsibilities. Owner shall provide a designated area to Provider to provide the Service.
4. Owner's Rights. Owner reserves all rights not expressly granted in this Agreement.
5. Provider's Duties and Responsibilities. Provider shall:
 - a. Locate its 3,000-gallon fuel truck in an area designated by Owner and provide Jet A Fuel for sale to Med Trans Ambulance Service for its air medical helicopter (the "Service") with price not to exceed \$1.00 per gallon over cost without prior approval from the Owner;
 - b. Conform to all Federal, State and local laws, regulations and ordinances which apply to the Service to be performed by Provider.

6. Rent. In consideration for the rights and privileges granted in this Agreement to the Provider by the Owner, the Provider agrees to pay the Owner rent equal to \$0.10 per gallon fuel flowage. Payment will be made to the Owner when the Provider purchases fuel to replenish the fuel truck.
7. Prohibited Activities. The Provider may not conduct any activity at the Airport other than the Service.
8. Security Requirements. The Provider shall observe all security requirements of the Transportation Security Administration and the Airport Security Plan, as may be applicable, and as either may, from time to time, be amended, and to take such steps as may be necessary or directed by the Owner to ensure that employees, invitees, agents and guests observe these requirements.
9. Assignment.
 - a. Owner may assign all or part of its rights or obligations under this Agreement to any person or legal entity. Owner is not relieved of its obligations under this Agreement by assigning this Agreement.
 - b. Provider's rights and duties under this Agreement are personal to Provider. Owner granted this Agreement to Provider in reliance on the business skill, financial capacity and personal character of Provider. Provider may not sell, assign, transfer, or otherwise encumber any rights or obligations under this Agreement without giving Owner at least 30 days prior written notice and without first obtaining Owner's prior written consent. If Provider assigns or transfers all or part of this Agreement without Owner's written consent, Provider will be in breach of this Agreement and Owner may immediately terminate this Agreement.
10. Default and Termination.
 - a. Termination by Provider. If Owner defaults in its material obligations under this Agreement, Provider may terminate only if Provider first gives Owner written notice of the defaults and of Provider's intention to terminate this Agreement. Provider may then terminate this Agreement if Owner does not cure those defaults within 30 days after receiving written notice. If a cure cannot be accomplished within 30 days, then Owner shall have 30 days to begin diligent efforts to cure the default, and Owner must proceed in an expeditious and diligent manner until the default is cured.
 - b. Termination by Owner.
 1. Termination with Notice. If Provider defaults in its material obligations under this Agreement, Owner may terminate the Agreement, effective on the date stated in Owner's notice (or the earliest date permitted by applicable law):
 - a. If Provider does not pay rent or other amounts due under this Agreement within ten (10) days of Owner's written notice of default to Provider; or
 - b. If Provider does not cure fully any other breach of its obligations or warranties under this Agreement within thirty (30) days of Owner's written notice of default to Provider.
 2. Immediate Termination Effective on Notice. On written notice to Provider, Owner may terminate this Agreement immediately, without giving Provider an opportunity to cure the default, if;
 - a. There is an imminent threat or danger to public health or safety resulting from Provider's operation;

- b. Provider stops providing the Service;
 - c. Provider transfers or purports to transfer any rights or obligations under this Agreement without Owner's prior written consent;
 - d. Provider becomes insolvent or makes a general assignment for the benefit of creditors or is unable to pay its debts to creditors on a timely basis;
 - e. Provider does not buy, maintain or send Owner evidence of insurance required by this Agreement; or
 - f. If Owner sends Provider two (2) or more written notices of default under this Agreement for the same or a similar cause or reason in any consecutive twelve (12) month period, whether or not cured.
 3. It is expressly acknowledged by Provider that this Agreement shall terminate when Owner is able to install a Jet A Fuel tank at the Airport.
11. Owner's Remedies. On termination or expiration of this Agreement for any reason, Provider shall remain obligated to pay the Owner: (1) any rental payments past due for prior months and (2) rent for the month in which the termination is effective. Provider shall also remain liable to the Owner for any breach of this Agreement, any damage to or destruction of the Airport caused by Provider and for any rights Owner has under the section titled Indemnification.
12. Obligations on Termination. On termination or expiration of this Agreement for any reason, Provider must, at its expense:
 - a. Immediately discontinue all its Service at the Airport and remove its fuel truck from the Airport;
 - b. Promptly pay all sums owed to Owner and all damages, costs, and expenses, including reasonable attorney's fees, (whether incurred prior to trial or on an appeal of any decision) that Owner incurs as a result of Provider's default, including outstanding rent due under this Agreement;
 - c. Pay Owner all damages, costs and expenses, including reasonable attorney fees (whether incurred prior to trial or on an appeal of any decision), that Owner incurs after the termination or expiration of the Agreement in obtaining injunctive or other relief for the enforcement of any section of this Agreement.

The obligations in this section will survive the termination or expiration of this Agreement.

13. Insurance.
 - a. Beginning no later than the date first above written and for the rest of the Term, Provider must purchase and maintain, at its expense, the following insurance coverage:
 1. Comprehensive General Liability Insurance policies written on an occurrence form protecting Provider and protecting the Owner, Owner's officers, directors, agents and employees as additional insured's from and against all types of liabilities, including personal injury and property damage of any nature, together with the costs and expenses of the defense and/or adjustment of injury or damage, without exception, from or in any way related to any operation or activity conducted under this Agreement. The policy described in this section must apply to lawsuits or actions brought anywhere in the world. The policy must provide limits per location of not less than \$2,000,000 per occurrence and must be accompanied by a waiver of subrogation. The required

total minimum limits may be met through a combination of primary and umbrella policies. The coverage must be primary to any coverage the Owner maintains and it must include, without limitation, Broad Form Contractual, Products and Completed Operations, Independent Contractors, Personal Injury, Broad Form Property Damage, and Extended Bodily Injury coverages; and

2. Statutory Workers Compensation and Employers Liability insurance with minimum Employers Liability limits of \$100,000 by accident and \$100,000 by disease.
 3. The City of Foley shall be listed as an additional insured.
- b. Provider's insurance must contain a waiver of subrogation in Owner's favor and the favor of its officers, directors, agents and employees. Provider must place its insurance with an insurance company licensed to sell insurance in the State of Alabama which is reasonably acceptable to the Owner. All insurance that Provider provides will be specifically endorsed to state that the coverage will be primary and that any insurance carried by Owner or its officers, directors, agents or employees will be excess and non-contributory.
 - c. Provider must send Owner, within ten (10) days of the date first above written, certificates of insurance indicating these requirements along with evidence that the insurance premiums have been paid. Provider must also provide Owner with evidence of renewal before the expiration date. Each policy and certificate of insurance must include a statement by the insurer that the policy will not be canceled, reduced in coverage, or otherwise altered without thirty (30) days advance written notice to Owner.
 - d. Provider's purchase and maintenance of insurance and Provider's performance of its obligations under this Agreement are in addition to its obligation to indemnify Owner. Provider may obtain additional insurance coverage since Owner does not require insurance against all potentially insurable risks; if Provider does, it will name Owner and Owner's officers, directors, employees and agents as an additional insured if there is no additional premium for this coverage.
14. Indemnification. Provider must defend, indemnify and hold harmless Owner, Owner's officers, directors, agents and employees (the "Indemnified Parties") from any claim, loss, cost, damage, expense and liability (a "Claim"), including reasonable attorneys fees (whether or not a lawsuit has been filed) and any court costs, by reason of damage or loss, including personal injury, of any nature, from or connected with the Airport or out of, or as a result of, Provider's (or Provider's agent's or employee's) error, omission, act or failure, even where negligence of an Indemnified Party is alleged, except to the extent that the loss, costs, damage, expense or liability is proximately caused by the negligence of an Indemnified Party. The amount of Owner's contribution will be calculated by applying principles of comparative negligence where a claim was jointly caused by Provider's negligence and by Owner's negligence. Provider must reimburse Owner for all amounts Owner reasonably spends, including attorney's fees and court costs, to protect the Indemnified Parties from or to remedy Provider's defaults under this Agreement or claims arising out of Provider's operation of the Facilities or the Airport. Owner will have the sole and exclusive control (including the right to be represented by attorneys of its choosing) over the defense of any Claims against an Indemnified Party and over their settlement, compromise or other disposition. However, nothing herein contained shall require Provider to indemnify Owner for Owner's negligence.
 15. Casualty. If the Airport is damaged by fire or other casualty to such an extent that the Provider can no longer substantially enjoy the benefits of this Agreement, this Agreement may be terminated by either party without additional penalty. This section shall not relieve the Provider of any liability

it may have to the Owner under the terms of this Agreement or otherwise if the Provider is liable to the Owner for the damage to or destruction of the Airport.

16. Notices. All notices required or permitted under this Agreement must be in writing, must be personally delivered or mailed by registered or certified mail, return receipt requested, or by a nationally recognized courier service, to Owner and Provider at the address below. Either party may change the address by written notice to the other party. Any notice sent by registered or certified mail or by courier service is deemed given and received at the date and time of sending.

If to Owner:

City of Foley
Attention: Rachel Keith
P.O. Box 1750
Foley, AL 36536

If to Provider:

Stapleton Volunteer Fire Department
Attention: Chief Charles Scholl
36276 AL-59
Stapleton, AL 36578

17. Business Relationship.

- a. The Owner and the Provider agree that:
1. This Agreement does not create a fiduciary relationship between Owner and Provider;
 2. Provider is an independent contractor. Nothing in this Agreement is intended to make and does not make either party an agent, principal, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other; and
 3. Provider is not authorized to make any contract, agreement, warranty, or representation on Owner's behalf, or to incur any debt or other obligation in Owner's name.
- b. Neither party assumes liability for, or will be deemed liable as a result of action or omission of the other party, or any claim or judgment arising from such action or omission, except as provided in the section titled Indemnification.

18. Attorneys' Fees. If either or both parties are reasonably compelled to hire an attorney to enforce any of the provisions of this Agreement, whether or not a lawsuit is ever filed, the prevailing party in such action shall, in addition to all other remedies available, recover from the other party the actual and reasonable expenses of its attorneys, plus the actual court costs and the actual and reasonable costs of its expert witnesses.

19. Taxes, Permit; Compliance with Laws; Notice of Legal Actions.

- a. Provider must pay when due all taxes related to the Service that may be levied or assessed by any federal, state, or local tax authority, and all other indebtedness related to the Provider's operations, including sales tax, gross receipts tax, or similar taxes.
- b. Provider must comply with all federal, state, and local laws, rules and regulations applicable to it. Provider must timely obtain all permits, certificates, or licenses necessary for the provision of the Service.
- c. Provider must notify Owner in writing, within five (5) days of its receipt of information about any action, suit, proceeding, or the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, that may adversely affect the provision of the Service or Provider's financial condition.

20. Approvals and Waivers.

- a. Owner's approvals and consents will not be effective unless signed by one of its duly-elected officers. Owner may withhold its consent if, at the time of Provider's request, Provider is in breach of a material obligation under this Agreement, whether or not Owner has notified Provider of the breach at the time of Provider's request.
- b. Except as otherwise expressly stated in this Agreement (including any amendments), Owner makes no warranties or guarantees on which Provider may rely. Owner assumes no liability or obligation to Provider by providing any waiver, approval, consent, or suggestion to Provider with this Agreement, or by reason of any delay or denial of any request.
- c. Failure to exercise any power or to insist on strict compliance with any obligation or condition under this Agreement is not a waiver of any future right to demand exact compliance with any of the terms in this Agreement. Waiver of any particular default will not affect or impair a party's right with respect to any later default of the same, similar, or different nature. No delay, forbearance, or omission to exercise any power or right following any breach or default of any of the terms, sections, or covenants of this Agreement, will affect or impair a party's rights.

21. Severability and Construction.

- a. If any section of this Agreement is held to be illegal, invalid or unenforceable, both parties agree that: (1) the section will be removed; (2) this Agreement will be understood and enforced as if the illegal, invalid, or unenforceable section had never been in this Agreement; and (3) the remaining sections will remain in full force and will not be affected by the illegal, invalid, or unenforceable section or by its removal.
- b. Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended, nor will anything in this Agreement be deemed, to confer on any person or legal entity other than the undersigned parties hereto, or to our respective successors, heirs and assigns, any rights or remedies under or by reason of this Agreement.
- c. All captions in this Agreement are intended solely for the convenience of the parties and do not affect the meaning or construction of any section.
- d. All references to the masculine, neuter, or singular, include the masculine, feminine, neuter, or plural
- e. If this Agreement is executed in multiple counterparts, each executed copy is an original.
- f. This Agreement will be interpreted under the substantive laws of the State of Alabama, not including its conflict of law provisions.
- g. Rights and remedies stated in the Agreement are cumulative and not exclusive of any other right or remedy.
- h. Each party may obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

- i. **THIS AGREEMENT CONTAINS THE COMPLETE UNDERSTANDING OF THE PARTIES AND REPLACES ANY PREVIOUS WRITTEN OR ORAL AGREEMENT ON THE SAME SUBJECT MATTER, NO REPRESENTATION, INDUCEMENT, PROMISE OR AGREEMENT, ORAL OR OTHERWISE, NOT IN THIS AGREEMENT, WILL BE OF ANY FORCE OR EFFECT.**
- j. Amendments to this Agreement will not be effective unless signed by both parties.

22. Acknowledgements.

- a. Provider has conducted an independent investigation of the benefits, risks and detriments of signing this Agreement, and Provider understands that the business venture contemplated by this Agreement involves substantial business risks, and that its success will be largely dependent on its ability as an independent business person/entity. Owner has not made, and Provider acknowledges that it has not received from Owner or its officers, employees or agents, any projection, warranty or guarantee, express or implied, as to the profitability or other potential success of the business venture contemplated by this Agreement. By signing this Agreement, Provider represents to Owner that it has neither received nor relied on representations of any kind made by Owner or its officers, employees or agents concerning this Agreement except as written in this Agreement.
- b. Provider is solely responsible for exercising ordinary business control over the Facilities, including personnel matters of its employees and independent contractors and pricing of goods and services Provider avails.

23. Immigration Law. By signing this Agreement, the Provider affirms, for the duration of the Agreement, that they will not violate state immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. It shall be deemed a breach of this Agreement if Provider is found to be in violation of this provision and Provider will be responsible for all damages resulting therefrom.

Provider shall participate in the E-Verify program and shall provide Owner appropriate documentation of enrollment.

IN WITNESS WHEREOF, both parties, individually and/or by and through their duly authorized representatives, have set their hands and seals this the _____ day of _____, 2021.

**OWNER,
THE CITY OF FOLEY, ALABAMA**

**PROVIDER,
STAPLETON VOLUNTEER FIRE DEPARTMENT**

Mayor

Owner

Attest:

City Clerk

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____ and _____, who hold the positions of Mayor and City Clerk respectively with the City of Foley, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of this instrument, they executed the same voluntarily on the day the same bears date with the authority and intent to bind the City of Foley.

GIVEN under my hand this the _____ day of _____, 2021.

NOTARY PUBLIC
My Commission Expires: _____
(NOTARIAL SEAL)

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name is signed to the foregoing instrument as _____ of Stapleton Volunteer Fire Department, an Alabama non-profit corporation and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date with the full authority and intent to bind said non-profit corporation.

GIVEN under my hand this the _____ day of _____, 2021.

NOTARY PUBLIC
My Commission Expires: _____
(NOTARIAL SEAL)