

1 AN ORDINANCE TO AMEND CHAPTER 10, ARTICLE II OF THE FULTON COUNTY  
2 CODE OF ORDINANCES TO CREATE A NEW DIVISION 4, SECTION 10-130 ET  
3 SEQ., TO ADOPT RULES AND REGULATIONS FOR THE LEASING OF PROPERTY  
4 AND FACILITIES AT THE FULTON COUNTY EXECUTIVE AIRPORT – CHARLIE  
5 BROWN FIELD; AND FOR OTHER PURPOSES.

6  
7 **WHEREAS**, the Fulton County Executive Airport – Charlie Brown Field (FAA  
8 identifier: “FTY”) (“Fulton County Executive Airport”) is owned and operated by Fulton  
9 County and is a public-use airport in Fulton County, Georgia, that is located six nautical  
10 miles (7 mi, 11 km) west of the central business district of the City of Atlanta; and

11 **WHEREAS**, the Fulton County Executive Airport covers an area of 985 acres  
12 and is at an elevation of 841 feet above mean sea level, with two asphalt paved  
13 runways; and

14 **WHEREAS**, the Fulton County Executive Airport is considered to be a local  
15 Class D airport and is the nearest airport to Hartsfield-Jackson Atlanta International  
16 Airport; and

17 **WHEREAS**, the Fulton County Executive Airport handles much of the general  
18 aviation traffic that would otherwise go to Hartsfield-Jackson Atlanta International  
19 Airport, which is considered one of the busiest international airports in the world; and

20 **WHEREAS**, pursuant to its Home Rule powers (codified as Fulton County Code  
21 § 1-117) and O.C.G.A. § 36-5-22.1, the Board of Commissioners has original and  
22 exclusive jurisdiction over directing and controlling all the property of Fulton County,  
23 according to law, as the governing authority deems expedient; and

24 **WHEREAS**, Fulton County engages in the leasing of public property as a  
25 revenue source and to provide services for the benefit of its citizens and visitors; and

1       **WHEREAS**, under the authority of O.C.G.A. § 6-3-25, Fulton County is  
2 authorized to lease its airport property and facilities, establishes rates and collect fees  
3 for use of its property; and

4       **WHEREAS**, the Federal Aviation Administration ("FAA") strongly recommends  
5 that local airports adopt rules and regulations and Minimum Standards in order to  
6 assure fair and objective access for private individuals and business entities to  
7 negotiate and execute airport ground lease agreements with Fulton County that comply  
8 with the Grant Assurances requirements and do not negatively impact Fulton County's  
9 ability to receive federal funds; and

10       **WHEREAS**, an airport's rules and regulations and minimum standards are an  
11 accepted method of showing compliance with the Grant Assurances; and

12       **WHEREAS**, the Board of Commissioners finds that the adoption of rules and  
13 regulations regarding the leasing of real property and facilities at the Fulton County  
14 Executive Airport will ensure that an entity desiring to enter into a lease at Fulton  
15 County Executive Airport will not have an unfair advantage over another; and

16       **WHEREAS**, the Board of Commissioners of Fulton County finds that amending  
17 Chapter 10, Article II, of the Fulton County Code of Ordinances so as to adopt rules and  
18 regulations for the leasing of property and facilities at the Fulton County Executive  
19 Airport will best serve the interest of the citizens of Fulton County, as well as supporting  
20 fairness and openness in the leasing of airport property.

21       **NOW, THEREFORE, BE IT ORDAINED**, that the Board of Commissioners of  
22 Fulton County hereby amends the Fulton County Code of Ordinances to adopt rules  
23 and regulations for the leasing of property and facilities at the Fulton County Executive

1 Airport – Charlie Brown Field, a copy of which is attached hereto as Attachment “A”, and  
2 incorporated herein by reference.

3 **BE IT FINALLY ORDAINED**, that this Ordinance shall become effective when  
4 passed and adopted, and that all ordinances and resolutions and parts of ordinances  
5 and resolutions in conflict with this Ordinance are hereby repealed to the extent of the  
6 conflict.

7 **PASSED AND ADOPTED** by the Board of Commissioners of Fulton County,  
8 Georgia this 19<sup>th</sup> day of May, 2021.

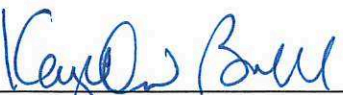
10 **FULTON COUNTY BOARD OF**  
11 **COMMISSIONERS**

14   
15 Robert L. Pitts, Chairman

17 ATTEST:

18   
19   
20  
21 Tonya R. Grier, Clerk to the Commission  
22  
23

24 APPROVED AS TO FORM:

25   
26  
27  
28 Kaye Woodard Burwell, Interim County Attorney  
29

30 P:\CALegislation\Airport\Airport Leasing Policy\5.19.21.Ordinance Enacting Rules and Regulations for Leasing Airport Property.doc  
31  
32

3  
ITEM # 2-0377 RCS 5.19.21  
RECESS MEETING

LEASING RULES AND REGULATIONS FOR  
FULTON COUNTY EXECUTIVE AIRPORT –  
CHARLIE BROWN FIELD (FTY)



## **Fulton County Executive Airport – Charlie Brown Field**

### **Leasing Procedures**

#### **Section 10-130. Intent.**

The primary goal for establishing the rules and regulations for leasing property (the “Leasing Rules and Regulations”) at the Fulton County Executive Airport – Charlie Brown Field (the “Airport” or “FTY”) is to ensure that leasing activities are consistent with Local, State, and Federal requirements including, but not limited to, the policies and rules of the airport owner, Fulton County, Georgia (the “County”), the United States Department of Transportation Federal Aviation Administration (“FAA”), the Georgia Department of Transportation (“GDOT”) and other formal procedures, rules, laws and regulations adopted by the County. These Leasing Rules and Regulations should be followed whenever possible; however, the Board of Commissioners, acting through the County Manager or his designee shall have the authority to change, update and/or waive any provisions that do not directly benefit the Airport, as long as such changes are not inconsistent with the requirements of the Airport’s regulatory agencies.

#### **Section 10-131. Purpose**

As the owner of the Airport that receives federal Airport Improvement Program (“AIP”) grant funding, the County is required to adhere to certain federal obligations in the leasing of property for aviation purposes. Once the Airport receives federal funds to develop or improve the Airport, it is considered a federally “Obligated Airport”, which requires the Airport to adhere to certain Airport Sponsor Grant Assurances (the “Grant Assurances”). The intent of these obligations is to ensure that the public interest in civil aviation is adequately served.

Further, the Grant Assurances obligate the County to seek recovery of the capital and operating costs of providing a public use airfield and to maintain a fee and rental structure that makes the Airport as financially Self-sustaining as possible under its particular circumstances. The Leasing Rules and Regulations described herein shall be applied to all Airport Tenants in a uniform manner to the greatest extent possible to ensure the equitable treatment of Airport users. The Leasing Rules and Regulations shall apply to all Aeronautical and Non-Aeronautical Agreements after the Effective Date of these Leasing Procedures.

#### **Section 10-132. Goals.**

These Leasing Rules and Regulations are established to:

1. Maximize Airport revenue to ensure the Airport’s Self-sustainability;
2. Ensure federal obligations are met in the leasing of Airport property;
3. Ensure County policies and procedures are met in the conveyance of Airport property;
4. Protect the County from uses that are detrimental to its operation, development, and future needs;

5. Implement standard procedures for responding to entities expressing interest in leasing property at the Airport;
6. On a fair and reasonable basis, and without discrimination, ensure tenant compliance with all rules and regulations for persons offering services and commodities to the public which are related to aeronautical activities;
7. Ensure equitable treatment of current and future Tenants and users of the Airport;
8. Provide a consistent and fair process for entering into Airport leases;
9. Attract private investment and development of Airport facilities and land;
10. Mitigate Airport's over-all exposure to risk;
11. Minimize Airport financial obligations for maintaining facilities and properties; and

From time to time, these rules and regulations may be amended to promote Airport safety, efficiency and optimal revenue for a Self-sustaining Airport.

Operate the Airport and all facilities which are necessary to serve the aeronautical users of the Airport at all times in safe and serviceable condition and in accordance with the minimum standards as may be required by applicable local, state and federal agencies for maintenance and operation, and not permit any activity or action which would interfere with the operation of the Airport for aviation purposes.

### **Section 10-133. Terms and Definitions**

*Aeronautical Activity or Use.* Any activity which involves, makes possible, or is required for the operation of aircraft or which contributes to, or is required for, the safety of such operations and shall include, all activities commonly conducted at Airports.

*Aeronautical Agreements.* Agreements that contain terms and conditions for Aeronautical Activity providers that involve or are directly related to the operation of aircraft, including activities that make the operation of aircraft possible and safe.

*Airport (FTY).* Owned and operated by Fulton County, Georgia including all real property easements or any other interest therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by the County.

*Airport Improvement Program ("AIP").* FAA program that provides grants to public agencies and, in some cases, to private owners and entities for the planning and development of public- use airports that are included in the National Plan of Integrated Airport Systems (NPIAS).

*Airport Layout Plan ("ALP").* A scaled drawing of the existing and planned land and facilities necessary for the development and operation of an airport that are used for planning, verifying airport



data, obstruction evaluation, and project coordination.

*Airport Master Plan.* The planning document that sets forth the concept for the long-term development of the Airport, providing guidelines for future Airport development sufficient to satisfy aviation demand in a financially feasible manner, addressing the aviation, environmental, and socio-economic issues existing in the community.

*Airport Sponsor.* Fulton County, Georgia as the Airport owner, that has accepted AIP funding; the entity that is legally responsible for the management and operation of an airport, including the fulfillment of the requirements of laws and regulations related thereto.

*Airport Manager.* The person appointed by the County for the daily management of the Airport and as provided in Section 10-31.

*Airport Tenant or Tenant.* Any person, leasing property or facilities at the Airport under a valid Lease.

*Attorney's Office.* The Fulton County Attorney's Office providing legal counsel and representation to the Airport.

*Board of Commissioners.* The governing authority of Fulton County, Georgia.

*Capital Investment or Improvements.* The improvements, structures and fixtures installed by a Tenant including, without limitation, finish-out work on floors, ceilings, demising walls and store facades; storefront signage; panel boxes and hook-ups to utilities; wires and conduits infrastructure; decorations; furniture; equipment; shelves; counters; cash wraps; lighting; and interior design and construction work necessary in general to accommodate concession operations.

*Department of Transportation ("DOT").* The federal agency that coordinates the planning and development of a safe, viable, and balanced state transportation system serving all regions of the state to assure the compatibility of all components, including multimodal facilities.

*Disadvantaged Business Enterprise ("DBE").* A for-profit small business concern wherein socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations.

*Federal Aviation Administration ("FAA").* The Federal Aviation Administration of the United States is a national authority with powers to regulate all aspects of civil aviation. These include the construction and operation of airports, the management of air traffic, the certification of personnel and aircraft, and the protection of United States' assets during the launch or reentry of commercial space vehicles.

*FAA Office of Airports (several different offices).* The airport organization responsible for all programs related to airport safety and inspections and standards for airport design, construction, and operation (including international harmonization of airport standards) and is also responsible for national airport planning and environmental and social requirements and establishes policies related to airport rates and charges, compliance with grant assurances, and airport privatization.

*Fair Market Value.* An estimate of the market value of a property, based on what a knowledgeable,

willing, and unpressured buyer would likely pay to a knowledgeable, willing, and unpressured seller in the market. An estimate of fair market value may be founded either on precedent or extrapolation.

*Fixed Based Operator ("FBO").* A commercial business granted the right by an airport to operate on the airport and provide aeronautical services such as fueling, hangar leasing, tie-downs and parking, aircraft rentals, aircraft maintenance, flight instruction and other aviation-related services.

*Fulton County (the "County").* The Airport Sponsor and governmental entity possessing ownership, custody, control and management of the Fulton County Executive Airport – Charlie Brown Field, located in Fulton County, State of Georgia.

*Georgia Department of Transportation ("GDOT").* The State of Georgia leading transportation agency as defined by Georgia law.

*Grant Assurances.* The obligations that the Airport agrees to when it accepts AIP grant funding for the planning and development of the Airport.

*Ground Lease Agreement.* Ground Lease Agreements are standard agreements between the Fulton County and a Lessee for Airport property and/or facilities outside the terminal building.

*Hangar.* A large building with extensive floor area used for storing and maintaining aircraft.

*Invitation for Bid ("IFB").* A competitive solicitation released by the County to invite providers to submit a fee proposal for a specific project or service to be furnished.

*Lease.* A contract between the County and a Tenant for the use of property and facilities for specified activities in exchange for periodic payment.

*Leasing Procedures.* A procedures document that outlines best practices for leasing property at the Fulton County Executive Airport – Charlie Brown Field (FTY).

*Lessee.* A tenant leasing property and facilities from the County.

*Minimum Standards for Airport Aeronautical Service and Aeronautical Activity Providers ("Minimum Standards").* The qualifications and criteria that have been established by County as minimum requirements that must be met as conditions for the right to conduct a commercial Aeronautical Activity on the Airport, as now exists or as may be amended in the future.

*Non-Aeronautical Activity or Use.* All activities that do not involve or are not directly related to the operation of aircraft.

*Obligated Airport.* Any public airport having signed grant assurances/agreements to receive AIP funding from the FAA.

*Premises.* A Tenant's occupied land and/or facilities or portion thereof along with improvements used to carry out business activities, as identified in the Tenant's Lease with the County.

*Real Estate and Asset Management (Department of) (DREAM).* The County department responsible



for all County, including Airport, owned real estate and property management.

*Request for Proposals ("RFP").* A competitive solicitation released by the County to encourage providers of a particular service or asset to submit business proposals, including a technical proposal and a fee proposal.

*Revenue Use Policy.* Policies and procedures established within the Federal Register concerning the use of Airport revenue.

*Specialized Aeronautical Service Operators.* A single service provider or specialized aeronautical service provider performing less than the full services for an FBO.

*Sublease.* A contract used by an existing Tenant to lease a portion or all of the land, building and/or facilities leased from the Airport to another entity under specified terms and conditions.

*Self-sustaining.* The Airport maintains rates, charges and fees that conform to the grant assurances and ensure the Airport's financial solvency without reliance on outside funding.

*Sub-Tenant.* A person occupying Airport property under a Sublease with an existing tenant.

*T-hangar.* An enclosed metal structure designed to hold aircraft in protective storage, primarily used for private aircraft.

*Term.* A fixed or limited period of time for which contract terms and conditions are applicable.

#### **Section 10-134. Controlling Documents**

Agreements entered into on behalf of the Airport must be consistent with, but not limited to, compliance with the FAA's Code of Federal Regulations, Airport Grant Assurances, Airport Master Plan, Airport Layout Plan ("ALP"), Airport Regulations, Minimum Standards for Airport Operations ("Minimum Standards"), FAA Revenue Use Plan, Disadvantaged Business Enterprise ("DBE") plan, the County's Leasing Rules and Regulations and the Airport's Schedule of Rates and Charges, as these exist or as may be created or amended in the future, and as fully incorporated herein by reference.

#### **Section 10-135. Ground Lease Agreements**

The primary lease agreement used by the County to lease convey Airport property to a Tenant is the Ground Lease Agreement. The Ground Lease Agreement is an agreement between the County and a Lessee for Airport property and/or facilities. The Ground Lease Agreement articulates the general terms and conditions, the space to be occupied, the rates and charges, and Aeronautical and/or Non-aeronautical activities in which the Lessee is authorized to engage.

(a) Approval Process for a Ground Lease Agreement:

1. *Aeronautical.* If an interest has been expressed by more than one (1) party to lease a particular piece of land and/or a particular facility for aeronautical purposes, or to offer a particular aeronautical service, the Airport shall develop a competitive solicitation in accordance with the County's procurement process. If only one (1) party has expressed interest to lease a particular parcel of land and/or facility for aeronautical purposes, or to offer a particular type of aeronautical service, a Ground Lease Agreement shall be directly negotiated between the Airport Manager or his designee, in consultation and with the assistance of the Department of Real Estate and Asset Management ("DREAM") and the business entity seeking to lease property and/or facilities from the County to determine if a lease agreement can be reached between the parties. In the event acceptable lease terms cannot be reached, the County shall inform the interested party in writing of the basis for cessation of negotiations.
2. *Non-Aeronautical.* For interest expressed by one (1) party or more than one (1) party to provide non-aeronautical services at the Airport, the County may elect to (i) negotiate with one (1) party over another, (ii) develop a competitive solicitation in accordance with the County's procurement process, or (iii) inform the interested party or parties in writing that the County is not interested in entering into negotiations for the proposed services being offered. The primary lease agreement used by the County to lease Airport property to a Tenant is the Ground Lease Agreement. The Ground Lease Agreement is an agreement between the County and a Lessee for Airport property and/or facilities. The Ground Lease Agreement articulates the general terms and conditions, the space to be occupied, the rates and charges, and Aeronautical and/or Non-aeronautical activities in which the Lessee is authorized to engage.
3. The County's designated department(s) shall review and approve the Ground Lease Agreement as to content and adequacy of insurance coverage and other provisions needed to protect the County from exposure to risk.
4. All Agreements shall be approved as to form by the County Attorney or designee prior to execution.
5. The Board of Commissioners' approval on its meeting minutes shall be required prior to execution and effective date.

**Section 10-136. Aeronautical and Non-Aeronautical Agreements**

(a) Aeronautical Agreements are contracts that contain terms and conditions for Aeronautical Activity providers that involve or are directly related to the operation of aircraft, including activities that make the operation of aircraft possible and safe.

(b) Non-Aeronautical Agreements are contracts that do not involve or are not directly related to the operation of aircraft.

(c) The first step in considering any lease proposal is to review the "ALP" to determine if the prospective premises is designated for Aeronautical or Non-Aeronautical use. It is important to ensure all agreements are consistent with the ALP and that there is no conflict with



future Airport plans.

### **(1) Aeronautical Agreements**

Any individual, partnership, firm, or other entity desiring to initiate any Aeronautical Activity at the Airport must prove they are financially and technically capable. The Aeronautical Ground Lease Agreement must include reference to the applicable Section(s) of the Minimum Standards that identifies the minimum requirements for conducting specified Aeronautical Activities, such as square footage of facilities, parking, insurance and others.

#### **(i) AERONAUTICAL REVENUE**

Although aeronautical revenue is an important source of Airport revenue, the Airport's focus lies more toward ensuring that aviation needs are served by its Aeronautical Activity providers and ensuring the self-sufficiency of the Airport. This strategy encourages the Airport's long-term survival.

#### **(ii) AERONAUTICAL USE**

The FAA, by way of its Grant Assurances requires all airports developed with federal grant assistance funding, such as the County's Airport, to operate for the use and benefit of the public and for the Airport to be made available to all types, kinds, and classes of Aeronautical Activity on fair and reasonable terms and without discrimination. The Grant Assurances also require an Airport to maintain a fee and rental structure for the facilities and services at the Airport that will make the airport as Self-sustaining as possible under the circumstances existing at the Airport and to avoid economic discrimination within classes of users, taking into account such factors as the volume of traffic and economy of collection. The Airport may not grant a special privilege or a monopoly to anyone providing aeronautical services on Airport property or engaging in an Aeronautical Use. The intent of this restriction is to promote Aeronautical Activity and protect fair competition at federally Obligated Airports.

#### **(iii) REVIEW PROCESS**

Upon request, the FAA Airport's District Office ("ADO") may review aeronautical agreements, advise the Airport of its federal obligations and ensure that lease terms do not violate the Airport's federal obligations. The FAA does not review all leases, however, and there is no requirement for the Airport to obtain FAA approval before entering into an Aeronautical Agreement. The type of document or written instrument used to grant airport privileges is the sole responsibility of the Airport. Accordingly, the County's policies and procedures for contract administration will be followed. The FAA does not approve Aeronautical Agreements and will only indicate whether or not it has an objection to a particular lease agreement. It is the Airport's sole responsibility to ensure that it has not entered into an agreement that would relinquish its ability to control the Airport and prevent the Airport from realizing the full benefits for which it was developed. Further, the Self-sustaining Grant Assurance requirements do not require airports to charge Fair Market Value ("FMV") rates to Aeronautical Users.

#### **(iv) RATES AND CHARGES**

For facilities that are directly and substantially related to air transportation, the Airport must impose nondiscriminatory and substantially comparable rates, fees, rentals, and charges on all air carriers and users that assume similar obligations, use similar facilities, and make similar use of the Airport.



Individual circumstances, however, may still allow differences in rental rates among Aeronautical Use Tenants, especially when a substantial capital investment is made that will benefit the Airport and its traveling public. Airport property identified for Aeronautical Use may be leased without seeking competitive proposals when it is in the best interest of Airport. This is typically only done when there is a surplus of Airport land available for lease and not more than one (1) party has expressed an interest in leasing a particular parcel of land or offering the same aeronautical services. In situations where known competition exists, the County's solicitation process established in these Regulations will be followed in the procurement of Aeronautical Use Tenants.

**(v) AERONAUTICAL AGREEMENT TYPES**

Aeronautical Use Agreements include full service Fixed Base Operators ("FBOs"), Specialized Aeronautical Service Operators ("SASOs"), Aircraft Hangar leases, and any other commercial or non-commercial activities that require the use of the airfield.

**(2) Non-Aeronautical Agreements**

Any individual, partnership, firm or corporation desiring to initiate any Non-Aeronautical Activity at the Airport must submit a proposal that identifies the scope of services and/or activities to be provided to the public. Non-Aeronautical Uses of Airport property will only be considered when there is not an immediate Aeronautical need for the property and/or facilities to be occupied. The Airport may seek input from the ADO at its discretion.

**(i) NON-AERONAUTICAL REVENUE**

Maximizing Non-Aeronautical revenue benefits both the Airport and its Aeronautical Users by decreasing the Airport's reliance on aeronautical fees and charges and by strengthening the Airport's ability to attract new air service and passengers. Non-Aeronautical uses of Airport property include Non-Aeronautical businesses such as solar farms, warehouses, distribution centers, light industry, and other non-aviation related businesses. The County has a limited amount of undeveloped property that may be considered for Non-Aeronautical use. Accordingly, care must be taken to ensure that Non-Aeronautical developments will not interfere with the long-term aeronautical needs of the Airport.

**(ii) NON-AERONAUTICAL USE**

The Airport must receive a benefit for the use of its Non-Aeronautical property and the value of that benefit must be equal to or more than the FMV for similar, off-Airport property. Most importantly, Non-Aeronautical Use must not interfere with the aviation use of the Airport and must not jeopardize future Airport development or create or contribute to a flight hazard. For all Non-Aeronautical Uses of Airport property, Airport resources should not be used to support Non-Aeronautical activities, unless there is a means for the Airport to recover such costs. Further, the Airport should not provide any support services such as lawn care, irrigation, leasehold improvements, maintenance, trash removal, etc. to support Non-Aeronautical Uses of the Airport, unless payment terms have been established.

**(iii) REVIEW PROCESS**

The ADO may review and concur with all Non-Aeronautical Agreements, advising the Airport of its federal obligations and ensuring that lease terms do not violate an Airport's federal obligations. It is

the Airport's sole responsibility to ensure that it has not entered into an agreement that would relinquish its capability to control the Airport and prevent the Airport from realizing the full benefits for which it was developed. The Airport must demonstrate to the ADO that all Aeronautical Uses have been accommodated and that any future Aeronautical Users can be reasonably accommodated prior to entering into a Non-Aeronautical agreement. Further, property and facilities being leased must be designated as "Non-Aeronautical" on the Airport's ALP. Non-Aeronautical Agreements must be interim-use, temporary and short-term agreements that require the leasehold to revert back to the Airport in the event that it is needed for aeronautical development, because the Airport is obligated to ensure that its facilities primarily adequately serve the public's interest in Aviation.

**(iv) RATES AND CHARGES**

For Tenant's operating businesses that are not directly and substantially related to air transportation, the Airport must charge at or above Fair Market Value ("FMV"). FMV for Airport facilities can be determined by reference to negotiated fees charged for similar uses of the Airport by appraisal of comparable properties. Airport property identified for Non-Aeronautical Uses may be leased without seeking competitive proposals when it is in the best interest of Airport. In situations where known competition exists for such Airport property, however, the County's solicitation process will be followed in the procurement of Non-Aeronautical Tenants.

**(v) NON-AERONAUTICAL AGREEMENT TYPES**

Non-Aeronautical Agreements include any agreements that do not involve or are not directly related to the operation of aircraft and do not require use of the airfield for commercial or non-commercial activities. Non-Aeronautical Agreements primarily include Non-Aeronautical Ground Lease Agreements.

**(vi) APPROVAL PROCESS FOR NON-AERONAUTICAL USE AND LEASE AGREEMENTS:**

1. The Airport Manager or designee shall have the authority to negotiate the terms of Non-Aeronautical Lease Agreements.
2. The County's designated department(s) shall review and approve the Ground Lease Agreement based on adequacy of insurance coverage and other provisions needed to protect the County from exposure to risk.
3. All Agreements shall be approved as to form by the County Attorney or designee prior to execution.
4. The Board of Commissioners' approval on its meeting minutes shall be required prior to execution and confirmation of the lease effective date.

To ensure consistency among Non-Aeronautical Agreements, the Checklist maintained by the Airport Manager for Non-Aeronautical Agreements, may be used as a guide to ensure that certain terms and conditions are not inadvertently omitted from future Agreements.

**Section 10-137. Proposal Documents**

To the fullest extent possible, all RFP or ITB shall be coordinated through the County's Purchasing Department, which shall assist in the preparation and release of the solicitation and comply with



the County's procurement requirements, except as provided herein.

Each proposal/request for a Lease of Airport Property shall be in writing and in sufficient detail to discern their complete qualifications of the applicant and shall include, as a minimum, include the following:

A cover sheet briefly describing the proposal/request, the offered lease rate, and other key summary information, accompanied by a written proposal/request including, at a minimum, the details listed below:

1. The name, address, electronic mail address, and telephone number of the proposer/requestor.
2. The amount, size, and location of the land and/or facilities desired to be leased via a site plan and detailed conceptual drawings of the proposed facility.
3. Descriptions and cost estimates of any proposed capital improvements to be undertaken by the proposer/requestor, or proposed to be provided by another party. This specifically includes tenant improvements if the lease proposal is for an existing building.
4. The types and amounts of insurance coverage to be maintained for the proposed use of Airport property.
5. A current financial statement prepared or certified by an independent certified public accountant and certified by the Chief Financial Officer of the proposer. The County shall consider financial statements in evaluating the proposer/requestor's financial ability to construct capital improvements, occupy Airport property, and enter into a Lease of Airport property.
6. To the extent allowed by law (if any), proposals for Leases, and the financial terms thereof, shall initially be maintained as confidential, for discussion between staff and the proposer, and for discussion among staff, the applicant and the Board of Commissioners and Airport Manager, or its designee, until same may be released under Georgia's Open Records Act.
7. Evidence, in a form acceptable to the County, of the proposers financial ability to complete construction of proposed capital improvements in one of the following forms:
  - (a) A performance bond in the amount equal to the cost for constructing the proposed improvements;
  - (b) An irrevocable letter of credit guaranteeing funds to complete the project;
  - (c) An escrow agreement administered by a title and escrow company; or
  - (d) A trust administered by a commercial bank.

#### **Section 10-138. Action on Proposal/Request to Lease**

After a proposal or request has been submitted in accordance with the requirements of the solicitation documents, if any, or where a proposal is received and a competitive procurement is not required, it



will be reviewed by the County and a determination made regarding approval in accordance to the solicitation document, if applicable or the conditions set forth below. Where a competitive solicitation is not utilized, the negotiated Lease shall nonetheless be submitted to the Board of Commissioners for consideration after the negotiation is finalized and where it is determined by the County Manager to be in the best interest of the County to pursue the Board of Commissioners' approval.

In addition to the conditions set forth in a competitive procurement solicitation, if applicable, the County may deny any request if in the County's sole opinion, any one or more of the following:

1. The proposed use of Airport property or construction of leasehold improvement will create a safety hazard on the Airport.
2. The granting of the proposal will require the County to spend funds, supply labor or materials in connection with the proposed activity, or the activity is expected to result in a financial loss to the County.
3. Inappropriate, inadequate, or insufficient space exists at the Airport to accommodate the proposed activity or business.
4. The development or construction on the Airport necessary to accommodate the proposed business does not conform to land uses specified on the FAA-approved ALP.
5. The development or use of the area requested by the proposer will result in congestion of aircraft or buildings or will result in unduly interfering with other Airport operations.
6. The applicant does not meet the requirements of the Airport Leasing Rules and Regulations.
7. The applicant has either intentionally or unintentionally misrepresented or omitted any pertinent information in the application or in supporting documents.
8. The applicant has a record of violating the Rules and Regulations of the Airport or of any other airport, FAA regulations, or any other federal, State, or local statutes, laws, rules, or regulations.
9. The applicant has defaulted in the performance of any lease or any other agreement with the County or other airport(s).
10. The applicant does not, in the opinion of the County, exhibit adequate financial responsibility to undertake the project based upon financial information provided.
11. The applicant cannot provide acceptable surety in the amount required by the County.
12. The proposed activity or development is not in the best interest of the Airport or the public.

**Section 10-139. Competitive Solicitation**

County policy is to ensure nondiscrimination on the basis of race, color, sex, sexual orientation or national origin in the award and administration of all contracts and leases, and to create a level playing field on which small businesses, including Disadvantaged Business Enterprises (DBE), can compete fairly for leases, construction, procurement, and professional service contracts.

To ensure consistency among Ground Lease Agreements, the Airport Manager, in consultation with the appropriate County Departments, may develop checklists to be maintained by the Airport Manager to be used as guides to ensure that essential terms and conditions are included in future Agreements.

#### **Section 10-140. Monitoring and Compliance**

Contract monitoring and compliance are key components of lease management and administration. The Airport must ensure that its Tenants are in compliance with the terms and conditions outlined in their contracts. The Airport Manager, with the assistance of DREAM shall be responsible for follow up and enforcement of the contractual requirements outlined in the Airport's lease agreements. The Airport Manager is responsible for implementing, monitoring, and compliance strategies to ensure the following:

1. The development of a lease management system;
2. Maintenance of contract documents and correspondence;
3. Annual and periodic Tenant site visits and Inspections;
4. Monitoring and follow up to ensure timely action regarding expirations, extensions and other date sensitive requirements such as insurance renewals, performance bond renewals, capital investment requirements, construction completion requirements and the like;
5. Tenant relations and contract negotiations;
6. Follow up contact with Tenants and reminders regarding outstanding contract requirements; and
7. Compliance with the Federal Aviation Administration's Code of Federal Regulations, Airport Grant Assurances, Airport Master Plan, FAA Title VI, Airport Layout Plan, Airport Rules and Regulations, and Minimum Standards for Airport Aeronautical Services and Aeronautical Activity Providers ("Minimum Standards"), FAA Revenue Use Plan, Disadvantaged Business Enterprise ("DBE") plans, and the Airport's Schedule of Rates and Charges, as exists or as may be amended in the future.

#### **Section 10-141. Lease Term Duration Guidance**

In general, the duration for land leases is much longer than that for facility leases. On average land leases should run 25-30 years vs. 3-5 years for facility leases. This allows Tenants making Capital Investments in the Airport, which will ultimately accrue to the Airport, to amortize their investments and make a reasonable profit. The FAA considers leases that exceed fifty (50) years to be a disposal

of property in that the lease will likely exceed the useful life of the structures constructed on the property. Further, Georgia law prevents the County from entering into a lease agreement in excess of fifty (50) years. Section 10-89(g) of the Fulton County Code of Ordinances generally limits leases at the Airport to no more than thirty (30) years. Deviations from this limitation may be considered, as discussed in subsection (b) below, with approval by the Board of Commissioners.



**(a) Land Leases**

Land Leases granted for development projects tend to carry longer lease terms than leases granted for the lease of existing facilities, because such Tenants with development projects make an investment in Airport land that must be amortized over an adequate length of time for the business to be viable. A Lease for unimproved land at the Airport must include a provision that within a certain time period after the Lease effective date the Tenant must construct a specific type of building(s) to accommodate an approved list of services. Any entity desiring to establish a Lease to engage in any activity at the Airport must do so in accordance with Airport's Minimum Standards and Rules and Regulations, as may be amended by the County.

**(b) Suggested Terms for Development Projects**

The ability of prospective Tenants to secure adequate funding is a critical issue that can impact the ability of the Airport to attract good Tenants and must be considered in any decision regarding Lease duration. Opinions about the needed duration of a Lease that is required in order to amortize a loan vary. This is because the amount of time required to recoup an investment is dependent on a number of factors that vary from loan to loan and airport to airport. Factors may include, but are not limited to, the construction loan amount, type of service(s) provided, expected useful life of the building to be constructed, amortization period for the building and the particular circumstances at the Airport in terms of activity levels, aircraft operations, sales volume potential and others.

In general, Land Leases should be of sufficient length to permit a Tenant making a substantial Capital Investment to fully amortize the Capital Investment over the Term of the agreement and receive a reasonable rate of return on the investment. The County maintains that a thirty (30) year lease generally should be sufficient for a potential tenant to realize its return on investment.

Equitable Terms will be determined on a case by case basis; however, generally acceptable Terms for specified levels of investment in Airport facilities and infrastructure follow:

**Suggested Investment Levels for Land Lease Terms**

<b>Capital Investment Level</b>	<b>Recommended Lease Term</b>
<b>\$0.00-\$200,000</b>	<b>5-10 years</b>
<b>\$200,001-\$500,000</b>	<b>10-25 years</b>
<b>\$500,001-\$800,000</b>	<b>25-30 years</b>
<b>\$800,001-\$1,500,000</b>	<b>30-35 years</b>
<b>\$1,500,001-\$3,500,000</b>	<b>35-40 years</b>
<b>Over \$3,500,001</b>	<b>Negotiable (Over 40 years)</b>

It is the Airport's position that if a desirable prospective Tenant cannot secure funding for its proposed improvements based upon the Airport's recommended length of Term, consideration will be given for a longer term as long as it is not substantially different from Terms that have been offered to other similarly situated Tenants, operating similar businesses at similar investment costs.

**Section 10-142. Reversion of Capital Improvements**

Upon the termination of a Lease whereby improvements to Airport property were made by the Lessee, if no other arrangement for sale or transfer of improvements has taken place, the Lessee shall agree that all said improvements as well as the property leased to it, shall, without compensation from the County, become the property of the County. Under no circumstances shall the party to such Lease be entitled to any payment by reason of the value of its business, franchise or improvements.

#### **Section 10-143. Facility Leases**

Facilities and Hangar space leased to aviation businesses for the provision of aircraft maintenance, fueling or other services may be for a limited number of years and may or may not be renewable, depending on Tenant performance and future Airport plans. After the Lease period, the premises are offered in a competitive process and the previous Tenant may again compete with other potential Tenants for the premises. Under this arrangement, the Tenant is generally required to carry out only minor maintenance and landscaping.

#### **Section 10-144. Sublease of Leased Premises**

Although the Airport prefers to directly lease most of its property and facilities, Subleases for portions of facilities to other businesses to provide a more complete set of services may be acceptable. Subleases may be appropriate, with written approval of the County, or as provided in the Lease, if an Airport Tenant wishes to sublease space to another business providing complementary services. Such approval must be in writing and shall not be unreasonably withheld. Whether a particular sublease arrangement will be approved largely depends on the situation and the market. Aviation businesses typically operate with very small profit margins; therefore, if space is not needed for the Tenant's own purposes, the ability to get approval for Subleases can be critical to the Operator's financial well-being. In addition, there are many small and specialized operators that could not afford the cost to develop their own facilities, but may be in the market to sublease small amounts of space from a larger Tenant. This type of sublease is generally granted as long as the business subleasing space agrees to comply with the provisions of the prime lease, the County's Minimum Standards and has obtained all relevant licenses and permits.

#### **Section 10-145. Sublease of Entire Premise**

Subleases of entire commercial aeronautical facilities or assignments of an entire commercial aeronautical facility (generally to a successor in interest such as a merger partner or someone buying the business) may be appropriate, with written prior approval from the County, or as provided in the Lease, if the entire leasehold is transferred to a merger partner or someone buying the business. Such approval must be in writing and shall not be unreasonably withheld. This allows the Airport to maintain the range of services that was previously available on the Airport and maintain its attractiveness to other Tenants. This type of Sublease is generally granted as long as the business sharing the space is financially able to do so and agrees to comply with the Minimum Standards that apply to the specific type of service to be provided and has obtained all relevant licenses and permits.

#### **Section 10-146. T-Hangar Subleases**

Subleases for T-hangars or private aircraft storage are handled directly through an Airport Tenant, given the T-hangar facility was originally constructed by the Tenant on its Premises. With the



exception of the T-hangar leases and federal government agreements, all other Subleases require the County's approval. Such approval must be in writing and shall not be unreasonably withheld. The Airport Manager shall provide any approval or denial of a request to sublease in writing.

P:\CAProjects\Airport\Airport Leasing Policy\5.19.21 Fulton County Executive Airport - Charlie Brown  
Field - Leasing Rules and Regulations - Final.docx