

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: December 18, 2023

RE: **Airline Facilities Construction and Lease Agreement with Avelo Airlines, Inc.**

Attached hereto for your consideration is a proposed Airline Facilities Construction and Lease Agreement with Avelo Airlines, Inc. (Avelo) to lease facilities at Lakeland Linder International Airport (Airport) in connection with providing Lakeland with commercial air passenger service. As such, the Airport is seeking to construct improvements to its existing facilities to provide temporary space to accommodate Avelo's operations until permanent facilities are constructed. Avelo is also seeking to incorporate the Airport into its commercial air service network as a base of operations in the future. Accordingly, Avelo would require additional exclusive support space for employees and material storage to support its future needs.

The initial temporary space Avelo will be leasing will require the City to construct improvements to accommodate Avelo's operations until permanent facilities are constructed. Once permanent facilities are constructed, Avelo will relocate to the permanent facilities at the same rental rate charged for the temporary leased space. The temporary leased premises pursuant to this Agreement will include a 3,500 square foot Maintenance Storage Facility (Temporary Metal Building), a 500 square foot Maintenance Office (Temporary Prefabricated Space) and an 850 square foot Operations Office (Temporary Prefabricated Space). Subject to City Commission approval, the term of the Agreement shall commence on May 1, 2024, or upon the issuance of a Certificate of Occupancy for the facilities (the "Lease Commencement Date"), whichever occurs later. The term of the Lease shall continue until the earlier of the expiration or termination of Avelo's Airline Operating Agreement with Avelo or not less than ninety (90) days from the City's written notice that permanent facilities constructed by the City are ready for Avelo's occupancy.

In accordance with the Agreement, Avelo will have the right to occupy the facilities thirty (30) days prior to the Lease Commencement Date in the event the Certificate of Occupancy is issued, subject to the terms and conditions set forth in the Agreement at no cost. In accordance with the Lease Agreement, the City is responsible for payment of utilities.

Avelo will have the right to terminate this Agreement for any reason by providing 180 days prior written notice to the City. If Avelo terminates the Agreement within twelve (12) months of the Lease Commencement Date, Avelo shall not be required to reimburse the City for any construction costs associated with the new facilities. If Avelo terminates this

Agreement between thirteen (13) and twenty-four (24) months of the Lease Commencement Date, then Avelo shall be required to reimburse the City for all construction costs in an amount not to exceed \$250,000 prorated in accordance with the table set forth below. In the event construction costs incurred by the City are less than \$250,000, then Avelo shall be charged the lower amount and the prorated table of payments will be adjusted accordingly.

TERMINATION MONTH	AMOUNT DUE
13	\$125,000.00
14	\$114,583.30
15	\$104,166.70
16	\$93,750.00
17	\$83,333.33
18	\$72,916.67
19	\$62,500.00
20	\$52,083.33
21	\$41,666.67
22	\$31,250.00
23	\$20,833.33
24	\$10,416.67
25	\$0.00

The Rent for the facilities shall be adjusted in accordance with the average number of monthly enplanements for the calendar quarter in the amount indicated in the table below. Sales tax, pass through expenses and all other applicable taxes and charges shall be paid by Avelo. The Airport reserves the right to increase the monthly installments of Rent every five (5) years by a percentage not exceeding the percentile change in the Consumer Price Index.

Monthly Lease Rate	Square Footage Rate	Monthly Enplanement Quarterly Average (CY)
\$ 4,259.92	\$ 10.54	0 to 8,819
\$ 3,451.58	\$ 8.54	8,820 to 13,229
\$ 2,643.25	\$ 6.54	13,230 to 17,639
\$ 1,834.92	\$ 4.54	17,640 to 22,049
\$ 0.00	\$ 0.00	22,050 +

It is recommended that the City Commission approve the Airline Facilities Construction and Lease Agreement with Avelo Airlines, Inc. and authorize the appropriate City officials to finalize and execute all corresponding documents consistent with the above-specified terms.

Attachment

AIRLINE FACILITIES CONSTRUCTION AND LEASE AGREEMENT

THIS AIRLINE FACILITIES CONSTRUCTION AND LEASE AGREEMENT (this “**Agreement or Lease**”) is made this 18th day of December, 2023 (the “**Execution Date**”), by and between the **City of Lakeland**, a Florida municipal corporation (hereinafter referred to as the “**City**”), whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801 on behalf of its municipal airport, Lakeland Linder International Airport, and **Avelo Airlines, Inc.** (hereinafter referred to as “**Lessee**”, or, collectively with the City, the “**Parties**” and each, a “**Party**”), whose address is 12 Greenway Plaza, Suite 400, Houston, Texas 77027.

WITNESSETH:

WHEREAS, the City is the owner, operator, and legal sponsor of a municipal airport designated as Lakeland Linder International Airport (hereinafter referred to as the “**Airport**”); and

WHEREAS, the City has the right to lease or otherwise provide for the use of land, property and facilities of the Airport; and

WHEREAS, Lessee seeks to lease certain Airport facilities in connection with engaging in the business of Airline Passenger Operations (“**Operations**”); and

WHEREAS, the City desires to construct improvements to the existing Airport facilities, including the terminal building, and provide such temporary space to accommodate Lessee’s Operations until such time that Permanent Facilities are constructed, and to thereafter terminate the use of such temporary space and enter into a new agreement with Lessee for such Permanent Facilities; and

WHEREAS, Lessee has entered into that “**Airline Operating Agreement**” with the City dated December 18, 2023, which authorizes Lessee to conduct Airline Passenger Service, as defined therein, using certain terminal and related Airport facilities owned by the City;

NOW, THEREFORE, the Parties hereto do hereby mutually covenant, agree, and promise as follows:

SECTION 1

1.1 Leased Premises. The City, for and in consideration of the mutual promises, agreements, and covenants herein contained, does hereby lease, let, and rent unto the Lessee for the Lease Period (as defined hereafter) the “**Exclusive Use Premises**,” which shall consist of that portion of the Airport designated on the Preliminary Site Plan (attached hereto as **Exhibit “A”**) for Lessee’s exclusive use for its Operations, and the improvements to be constructed thereon by the City in accordance with the terms of this Agreement (the “**Exclusive Use Facilities**”).

1.2 Lease Term. The term of the Lease shall commence on May 1, 2024 or at the issuance of a Certificate of Occupancy for the Exclusive Use Facilities (the “**Lease Commencement Date**”), whichever occurs later. Lessee shall have the right to occupy the Leased Premises at least thirty (30) days prior to the Lease Commencement Date in the event the Certificate of Occupancy is issued, subject to the terms and conditions set forth in this Lease and Lessee has provided evidence of insurance to the City as required pursuant to **Exhibit “B”** of this Lease. Lessee shall not be charged Rent for occupying the Leased Premises during the aforementioned thirty (30) day period. The Lease Term shall continue until the earlier occurrence of (i) the expiration or earlier termination of the

Airline Operating Agreement or (ii) that date which is not less than ninety (90) days from the City's written notice that the Permanent Facilities, which shall be of equal or greater square footage and quality as the Exclusive Use Facilities constructed hereunder, are ready for occupancy by Lessee. The lease of such Permanent Facilities shall be governed by a separate lease agreement between the Parties, provided the term, rates and charges set forth in this Agreement shall be maintained in any new lease agreement for the Permanent Facilities.

1.3 Lessee Right of Cancellation. Lessee shall have the right to terminate this Agreement, for any reason and without cause, on not less than one hundred eighty (180) days written notice to the City. If Lessee elects to terminate this Agreement pursuant to this Section 1.3 within two (2) years of the Lease Commencement Date, or this is Agreement is terminated by Lessee's exercise of similar rights under the Airline Operating Agreement within such period, then Lessee shall be liable to the City for construction costs as more specifically defined in Section 2.3 and as set forth in Section 1.4 below, which shall be paid by Lessee within sixty (60) days of the termination of this Agreement.

1.4 If Lessee terminates this Agreement within twelve (12) months of the Lease Commencement Date, Lessee shall not be required to reimburse the City for any construction costs of the Exclusive Use Facilities. If Lessee terminates this Agreement between thirteen (13) months and twenty-four (24) months of the Lease Commencement Date, Lessee shall reimburse the City for all construction costs of the Exclusive Use Facilities incurred in an amount as defined by the prorated table of payments below:

TERMINATION MONTH	AMOUNT DUE
13	\$125,000.00
14	\$114,583.30
15	\$104,166.70
16	\$93,750.00
17	\$83,333.33
18	\$72,916.67
19	\$62,500.00
20	\$52,083.33
21	\$41,666.67
22	\$31,250.00
23	\$20,833.33
24	\$10,416.67
25	\$0.00

In the event that the construction costs of the Exclusive Use Facilities incurred are lower than the amount set forth in Section 2.3, then Lessee shall be charged the lower amount and the prorated table of payments shall be adjusted accordingly.

1.5 Holdover. In the event Lessee remains in possession of the Exclusive Use Premises after the expiration or earlier termination of this Agreement, and without the execution of a renewal term or new lease, Lessee shall be deemed to be occupying the Exclusive Use Premises on a month-to-month basis at the monthly rent that would have been due the last month of the Lease if Lessee had reported zero enplaned passengers. For purposes of this Agreement, “enplaned passenger(s)” shall mean all ticketed originating and on-line passengers of Airline enplaned at the Airport.

SECTION 2

2.1 The City’s Construction Obligations. Subject to and in accordance with the provisions of this Section, the City will at the City’s sole cost and expense, except as provided in Section 1.4, design, construct, and install the Exclusive Use Facilities in a

good and workmanlike manner in accordance with all applicable laws. The City will be solely responsible for obtaining all necessary permits and approvals from applicable governmental authorities. The City shall consult with Lessee at reasonable intervals regarding the design, construction, and installation of the Exclusive Use Facilities, and shall consider Lessee's comments; provided, however, that Lessee shall have no further right to approve the design and construction of the Exclusive Use Facilities.

2.2 Exclusive Use Facilities. Lessee has reviewed and accepted the City's preliminary design of the Exclusive Use Facilities attached hereto as **Exhibit "A"**. The City will consult with Lessee to the extent the design of the Exclusive Use Facilities is materially modified throughout the design and construction process. The City shall deliver the Exclusive Use Facilities in shell condition with utility service and with all customary mechanical, heating, air conditioning lighting, plumbing, electrical services and outlets, safety systems, Lessee shall be responsible for providing all furniture, fixtures, and equipment needed and used for specific airline operations.

The Exclusive Use Facilities identified for construction include the following: (a) a 3,500 square foot Maintenance Storage Facility (Temporary Metal Building); (b) a 500 square foot Maintenance Office (Temporary Prefabricated Space); and (c) a 850 square foot Operations Office (Temporary Prefabricated Space). Lessee shall provide the City with at least 286 days' prior written notice of its need for the Exclusive Use Facilities. The City shall not engage in any design, permitting or construction of the Exclusive Use Facilities until prior written confirmation from Lessee is received by City.

2.3 Construction Cost. The City shall provide written documentation of all costs and expenses associated with the design, construction, and installation of the Exclusive

Use Facilities incurred from the Execution Date of this Agreement until the substantial completion thereof (the “**Construction Costs**”). The total amount of reimbursable Construction Costs to the City by the Lessee shall not exceed Two Hundred Fifty Thousand and 00/100 (\$250,000.00).

SECTION 3

3.1 Rent Calculation. Beginning on the Lease Commencement Date and throughout the Lease Period, the Lessee shall pay Rent (except as otherwise set forth in Section 1.2) in addition to sales taxes, pass through expenses, and all other applicable taxes and charges, to the City for the Exclusive Use Premises no later than fifteen (15) days after the end of each calendar quarter. The Rent due shall be as set forth below. adjusted in accordance with the average number of monthly enplanements for the calendar quarter in the amount indicated in the table below.

Monthly Lease Rate	Square Footage Rate	Monthly Enplanement Quarterly Average (CY)
\$ 4,259.92	\$ 10.54	0 to 8,819
\$ 3,451.58	\$ 8.54	8,820 to 13,229
\$ 2,643.25	\$ 6.54	13,230 to 17,639
\$ 1,834.92	\$ 4.54	17,640 to 22,049
\$ 0.00	\$ 0.00	22,050 to +

Late installments of Rent, which shall be any installment received more than thirty (30) days after the due date, shall bear a late payment charge of five percent (5%) per month of the late installment for any calendar quarter or any portion of any calendar quarter until paid.

3.2 Inflationary Adjustments. The City reserves the right to increase the monthly installments of Rent specified above no more frequently than once every five (5) years by a percentage not exceeding the percentile change in the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, as published by the Bureau of Labor Statistics, United States Department of Labor (the "CPI-U"), using August 2023 as the "Base Index" for such determination. In the event the CPI-U, or an equivalent or successor thereof, is not published at the time such adjustments are made, the City may use any other nationally recognized standard cost-of-living index issued and published by the United States Government; provided that if the CPI-U subsequently becomes available, any increase to monthly installments of Rent shall be adjusted, if necessary, so as not to exceed the percent change in the CPI-U.

3.3 The City's Payment Responsibilities. The City is responsible for payment of utilities for the Exclusive Use Premises, which shall include electric, water, wastewater services, storm water, refuse collection, and heating/air conditioning for the Exclusive Use Premises.

3.4 Ad Valorem Taxes. The Exclusive Use Premises are not assessed ad valorem property tax on the Effective Date of this Lease. In the event the Exclusive Use Premises become subject to taxation by legislative or judicial action, or a change in policy of the Polk County Tax Assessor's Office, then the Lessee shall pay to the City any ad valorem taxes thereafter assessed. The City shall provide proof of the assessment as soon as is practical following receipt of the tax bill which shall then be payable by the Lessee on the date the next rental payment would be due. Subsequent to any such initial assessment, the City reserves the right to provide for periodic payments of the tax. The

City reserves the right to pass through to the Lessee a pro rata portion of ad valorem or other taxes or any other governmental charges or special assessments levied after the Lease Commencement Date.

SECTION 4

No structure, sign, appurtenance, projection, or modification shall be installed or kept in place by Lessee on the Exclusive Use Premises without the prior written approval of the City and any applicable federal, state, county, or other governmental agency.

SECTION 5

5.1 The Exclusive Use Premises, and any improvements thereon, whether in existence or constructed in the future pursuant to the terms and conditions contained herein, shall be used for aeronautical use and operations, including aviation maintenance and storage, for purposes of this Lease Agreement, and directly related uses, provided such use is permitted by and in accordance with the Airport Minimum Standards, the Airport Layout Plan and Master Plan, and the Airport Rules and Regulations, each as may be amended from time to time. The Exclusive Use Premises shall not be used for purposes which may interfere with the operation of aircraft at, from or to the Airport, including without limitation uses that create excessive light, glare, noise, dust, fumes or electromagnetic interference; uses that interfere with air traffic control line-of-sight visibility; uses that create wildlife attractants; uses that otherwise are detrimental to aviation, the Airport facility, other tenants, or the City of Lakeland. Any change in use shall require written approval by the Airport Director.

5.2 No boats, trailers or recreational vehicles may be stored on the Exclusive Use Premises. The Airport Director may grant a temporary waiver from this prohibition upon

determining that a waiver serves the best interest of the Airport and the public, and upon determining that the proposed temporary storage will not interfere with the aeronautical use of the Exclusive Use Premises. In the event such a temporary waiver is granted, the Airport Director shall prescribe the areas of the Exclusive Use Premises that may be used for storage, which areas shall be identified so as to maintain an attractive and orderly appearance.

5.3 Automobile parking shall be authorized only in those areas designed for the parking of automobiles and shall not be on ramps, taxiways or other areas where aircraft may travel except vehicles used in the direct support of airline operations.

5.4 Lessee shall not use the Exclusive Use Premises for any other non-aeronautical use, including without limitation any residential use.

5.5 Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures and objects of natural growth determined by the Federal Aviation Administration to constitute an obstruction or hazard pursuant to 14 C.F.R. Part 77, as the same may be amended from time to time.

5.6 Environmental Matters. It is the intention of the Parties that the City shall be responsible for reporting, containing and cleaning up the release or spill of any hazardous substance or material, including any petroleum product, discovered on or emanating from the Exclusive Use Premises prior to Lessee occupying said space. Lessee shall be responsible for reporting, containing and cleaning up the release or spill of any hazardous substance or material, including any petroleum product, discovered on or emanating from the Exclusive Use Premises on or after the Execution Date of this Lease if due to activities occurring on the Exclusive Use Premises after Lessee takes possession.

5.7 To the extent permitted by law and subject to the monetary limitations contained in § 768.28 Florida Statute, the City shall pay, defend, indemnify and save harmless the Lessee, its agents, guests, invitees and employees from all suits, actions, claims, demands, damages, including attorneys' fees and costs arising out of any government action or environmental claim brought by a Federal, State or Local agency requiring the remediation of environmental contamination to the extent that any such claims, fines and/or penalties imposed are proven by Lessee to have existed prior to the Execution Date of this Lease, caused by a third party or originated from causes otherwise not attributed to Lessee's activities.

SECTION 6

The Lessee may not sublet or assign, including corporate mergers and acquisitions, all or any portion of the Exclusive Use Premises without the prior written approval of the City which will not be unreasonably withheld. In reviewing a request by the Lessee to sublet or assign all or any portion of the Exclusive Use Premises, the City will consider, *inter alia*, the permitted and intended uses of the Exclusive Use Premises and the factors used to establish the rent and other fees under Section 3 of this Lease. If the City approves the sublease or assignment of any portion of the Exclusive Use Premises, the Lessee shall remain liable for any and all obligations under this Lease, unless the City determines in writing on the basis of evidence presented that the sub-lessee or assignee has the requisite financial capacity, resources and business plan to satisfy any and all obligations hereunder. The requirement to obtain the City's approval applies, without limitation, to any assignment or sublease to or by a trustee or receiver in federal or state bankruptcy, receivership or other insolvency proceeding; and the sale, assignment or transfer of all or substantially all of the

Lessee's assets. Use of the Exclusive Use Premises by any sub-lessee shall be restricted as set forth in Section 5 of this Lease.

SECTION 7

7.1 Lessee shall pay, defend, indemnify and hold harmless the City, its agents, guests, invitees and employees from all suits, actions, claims, demands, damages, losses and other reasonable expenses, including attorney's fees, and costs of every kind and description to which the City, its agents, guests, invitees or employees may be subjected to by reason of injury to persons or death or property damage, resulting from the negligence or willful misconduct of the Lessee, its agents, guests, invitees or employees, arising from and/or in connection with this Agreement or any operations necessary relating to the occupancy, maintenance, repair or improvement by the Lessee of the Exclusive Use Premises.

7.2 The Lessee shall defend, indemnify and hold harmless the City, its agents, guests, invitees or employees, against any claim or liability, including attorney's fees, arising from or based upon the violation of any federal, state, county or city law, by-law, ordinance, or regulation by such Lessee, its agents, guests, invitees, servants or employees.

7.3 To the extent permitted by law, the City shall defend, indemnify and hold harmless the Lessee, its agents, guests, invitees and employees from all suits, actions, claims, demands, damages, losses and other reasonable expenses, including attorney's fees, and costs of every kind and description to which the Lessee, its agents, invitees or employees may be subjected to by reason of injury to persons or death or property damage, resulting from the negligence or willful misconduct of City, its agents, guests, invitees or employees, arising from and/or in connection with this Agreement or any operations

necessary relating to the occupancy, maintenance, repair or improvement by the City of the Exclusive Use Premises. Notwithstanding the above, the City's indemnification hereunder is subject to the extent and limitations provided in Florida Statute §768.28. Nothing herein shall be construed to waive the City's sovereign immunity.

7.4 Without in any way limiting any other provision on the subject matter contained elsewhere in this Agreement, Airline and the City agrees that all Airline's each party's obligations of indemnity specified in Sections 5.7, 7.1, 7.2 and 7.3 hereof shall survive the expiration or termination of this Agreement.

7.5 The Lessee covenants and agrees to comply with all provisions of the Insurance Requirements, attached hereto as **Exhibit "B"** and incorporated by reference herein. The amounts of insurance coverage set forth in **Exhibit "B"** are set in accordance with the Lessee's use of the Exclusive Use Premises as defined in Section 5 herein. In the event of any change, alteration or expansion of the use of the Exclusive Use Premises, the minimum limits of such coverage shall be subject to reasonable adjustments as determined by the City so as to reflect any increase in risk or exposure.

7.6 Each policy required under this Lease shall name the City as an additional insured and carry a provision that it will not be canceled without thirty (30) days prior written notice to the City. Lessee shall provide a certificate evidencing such insurance.

7.7 If at any time during the Lease Period the Exclusive Use Premises and its related facilities (including the parking area, or any portion thereof) should be damaged or destroyed by any casualty, then the City shall forthwith remove resulting debris, and repair or rebuild the damaged or destroyed structures or other improvements to the condition in which such structures and improvements existed prior to such casualty and return such

structures and improvements to working order, whether or not any insurance proceeds shall be awarded to the City as a result of such damage or destruction.

7.8 Lessee shall cause to be inserted in any policy or policies of insurance acquired by them with regard to this Agreement a so-called "waiver of subrogation" clause. Lessee hereby waives, releases and discharges the City, its agents and employees from all claims whatsoever arising out of loss, claim, expense or damage to or destruction covered by insurance arising out of this Agreement notwithstanding that such loss, claim, expense or damage may have been caused by the City, its agents or employees, and Lessee agrees to look to the insurance coverage only in the event of such loss.

SECTION 8

The City reserves the right for the Airport Director, or the Airport Director's duly authorized representative, to enter the Exclusive Use Premises during normal business hours for the purpose of performing such inspections considered necessary by the Director, including without limitation compliance with the terms of this Lease, the Airport Minimum Standards and the Airport Rules and Regulations, and Lessee does hereby consent to such entry and waive any right to require a warranty for such inspection, provided that such entry and inspections shall not interfere with the Lessee's Operations or the conduct of its business. The Lessee, after written notice, shall promptly correct any condition which is a hazard to life or property. The Lessee agrees not to have explosives, gasoline or other highly flammable materials except as required to support the Airline's operations, in, on or about the Exclusive Use Premises that do not meet the Airport Minimum Standards, Rules and Regulations or other standards/compliance requirements required by any governmental agency with jurisdiction or for reasons of safety.

SECTION 9

9.1 The City shall, at its expense, maintain the Exclusive Use Premises, including any structures thereon, in a neat and orderly condition at all times. The City shall be responsible for the removal of trash and garbage arising out of the Lessee's occupancy and provide customary janitorial services on the Exclusive Use Premises.

9.2 Lessee shall not have authority to make any modifications or alterations to the Exclusive Use Premises without prior written consent of the Airport Director, which will not be unreasonably withheld. The primary consideration in the approval process shall be the best interest of the Airport and the public.

SECTION 10

Should the Lessee default in the payment of the Rent or the performance of any of the promises, covenants or agreements herein made, the City shall have the option, if such default continues after giving the Lessee thirty (30) days' prior written notice and a minimum cure period of sixty (60) days, to declare all future payments hereunder immediately due and payable. The City shall have a lien upon any and all property of the Lessee (except for Lessee's aircraft and aircraft supplies, parts, and components) located upon the Exclusive Use Premises at the time of default for any amount due the City by the Lessee. If Lessee's default requires for its cure a period longer than that allocated in this Section, Lessee shall not be in default if, in the City's sole opinion, the Lessee proceeds diligently to effectuate the cure and same is accomplished within a reasonable period of time.

SECTION 11

Upon the occurrence of an event of default, as set forth in Section 10, the City may at its option exercise any one or more of the following remedies:

(a) The City and Lessee agree that this Agreement is contingent on Lessee maintaining Airline Passenger Operations pursuant to the Airline Operating Agreement dated December 18, 2023. Accordingly, the parties endeavor to work together to resolve any defaults pursuant to this Agreement. In the event of Lessee's default and failure to cure such default within the applicable cure period for any such default, the City may terminate this Lease by giving the Lessee written notice of the City's intention to do so, in which event the term of this Lease shall end and all right, title and interest of the Lessee hereunder shall expire on the date stated in such notice, which shall not be less than five (5) days after the date of the notice by the City of its intention to so terminate; or

(b) The City may terminate the right of the Lessee to possession of the Exclusive Use Premises or any portion thereof by giving written notice to the Lessee that the Lessee's right of possession shall end on the date stated in such notice, which shall not be less than five (5) days after the date of the notice by the City of its intention to so terminate the right of possession; or

(c) The City may enforce the provisions of this Lease and may enforce and protect the right of the City hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy.

(d) If the City exercises either of the remedies provided for in subparagraphs (a) or (b), the City may then or at any time re-enter the Exclusive Use Premises in accordance with Florida law.

(e) If the City terminates the Lessee's right of possession pursuant to subparagraph (b), the City may re-enter the Exclusive Use Premises or any portion thereof and

take possession of all or any portion of the real property, may move any portion of the Lessee's property thereon which the City elects so to do, and may sub-let or re-let the Exclusive Use Premises or any part thereof from time to time for all or any part of the unexpired part of the then term hereof, or for a longer period, and the City may collect the rents from re-letting or sub-letting and apply same, first to the payment of the rents payable hereunder and in the event that the proceeds from such re-letting or sub-letting are not sufficient to pay in full the foregoing, the Lessee shall remain and be liable therefore. The Lessee promises and agrees to pay the amount of any such deficiency and the City may at any time sue and recover judgment for any such deficiency or deficiencies.

SECTION 12

No remedy herein conferred upon or reserved by the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and so often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 13

13.1 This Lease, and all provisions hereof, shall be subordinate to all the covenants and restrictions of the deeds under which the City acquired the property known as the

Lakeland Linder International Airport from the United States of America, insofar as such covenants and restrictions remain in effect, such deeds being identified as follows:

(a) Quitclaim Deed and Surrender of Lease dated September 26, 1947, between the United States of America and City of Lakeland, recorded in Deed Book 816, page 571, Public Records of Polk County, Florida; and

(b) Supplemental Quitclaim Deed dated April 20, 1948, between the United States of America and the City of Lakeland, recorded in Deed Book 832, page 311, Public Records of Polk County, Florida;

except however, any such covenants and restrictions may hereafter become ineffective or as shall have been or may hereafter be extinguished or released, whether by statute, rule or regulations, interpretation, judicial decision, or deed or other instrument, including but not limited to the release of the "National Emergency Use Provisions" by the Deed of Release dated December 17, 1959, recorded in Official Records Book 389, page 338, current public records of Polk County, Florida, and the extinguishment of the restrictions on use for industrial or manufacturing purposes by the Act of Congress on July 30, 1947 (61 Stat. 678).

13.2 This Lease shall be subordinate to the provisions of any existing or future agreement, including any grant assurances restricting the use and/or sale of Airport property, entered into between the City and the United States of America for the improvement or operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

13.3 Should the Federal Aviation Administration issue an order determining that any provision herein is inconsistent with any covenant or restriction of the deeds under which

the City acquired the Airport, or the provisions of any existing or future agreement entered into between the City and United States of America, the Parties shall amend this Lease as necessary to resolve the inconsistency.

13.4 This Lease and all the provisions hereof shall be subject to whatever right the Government of the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and reacquisition of the Airport or the exclusive or nonexclusive use of the Airport by the United States of America during the time of war or national emergency.

SECTION 14

Notwithstanding anything herein contained that may be or appear to the contrary, it is expressly understood and agreed that nothing herein shall be understood to confer an exclusive right upon the Lessee to conduct any aeronautical activity at the Airport in violation of 49 U.S.C. Section 40103(e) or 49 U.S.C. Section 47107(a)(4).

SECTION 15

15.1 The Lessee, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

(a) no person on the grounds of race, color, creed, sex or national original shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the facilities;

(b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of

race, color, creed, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(c) that the Lessee shall use the Exclusive Use Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, entitled *Nondiscrimination in Federally-Assisted Programs of the Department of Transportation* - Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.

15.2 In the event of an uncured breach of any of the above nondiscrimination covenants, the City shall have the right to terminate the Lease and to re-enter and repossess the leased land and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision shall be subject to the procedures of Title 49, Code of Federal Regulations, Part 21, including exercise or expiration of appeal rights.

15.3 Lessee shall furnish the aeronautical services permitted hereunder on a reasonable, and not unjustly discriminatory, basis to all users of the Airport. Lessee shall charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Lessee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

SECTION 16

The City reserves the right to take whatever actions necessary for the operation, safety, maintenance, and improvement of the Airport and its appurtenances, without interference or hindrance, with appropriate consideration for the continuity and profitability of the Lessee's operations and the payment of the obligations to the City herein.

SECTION 17

The City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased land, together with the right to cause in the airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the airspace for landing on, taking off from or operating on the Airport.

SECTION 18

The Lessee, its officers, employees, guests, invitees and suppliers of materials and services, shall have the right of ingress and egress over public right-of-way to the Exclusive Use Premises for the purpose of permitting Lessee to enjoy the rights, uses, and privileges granted by the City.

SECTION 19

19.1 The Lessee specifically covenants and agrees to observe and obey all lawful rules and regulations which have been or may be adopted and promulgated by the City for operation at the Airport, including without limitation the Airport Rules and Regulations, as the same may be amended from time to time. The Lessee shall conduct and operate its activities in accordance with any applicable federal, state and local laws, ordinances, regulations, directives, orders, and judicial decisions. The Lessee specifically shall comply with all applicable federal, state and local statutes, regulations and ordinances on the subject of environmental protection, including without limitation all Environmental Protection Agency regulations, guidelines and permitting requirements associated with Lessee's business operations performed on the Exclusive Use Premises.

19.2 Lessee specifically covenants and agrees to observe and obey all applicable federal laws on the subject of airport and aviation security, all applicable regulations and directives issued by the Transportation Security Administration, and all ordinances and rules issued by the City related to security, including without limitation rules issues in furtherance of the City's security program. Notwithstanding the foregoing, the City covenants and agrees to alter and improve the Exclusive Use Premises as required to comply with any such law, regulation, directive, ordinance or rule.

SECTION 20

20.1 The City hereby designates the Director of the Lakeland Linder International Airport as its official representative with the full power to represent the City in all dealings with the Lessee in connection with the Lease or the leased land, subject to approval by the Lakeland City Commission. The City may designate by written notice, addressed to the Lessee, other representatives from time to time, and such representatives may exercise those rights and duties of the City as may be necessary to effectuate the purposes of this Lease.

20.2 Notice to the City shall be sufficient if either mailed by first class mail, postage prepaid, addressed to Airport Director, Lakeland Linder International Airport, City of Lakeland, 3900 Don Emerson Drive, Suite 210, Lakeland, Florida 33811, with copy to lakelandairport@lakelandgov.net or delivered at such address, and notice to the Lessee named herein shall be sufficient if mailed by first-class mail to Lessee at 12 Greenway Plaza, Suite 400, Houston, Texas 77027 with copy to notices@aveloair.com. Either Party may change its address at which notice is to be mailed or delivered, by giving written notice of such change of address to the other Party in the manner provided in this Section.

SECTION 21

This Lease shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns to the extent assignment and subletting are permitted.

SECTION 22

Should it become necessary for either Party to bring an action at law or equity to enforce or interpret this Agreement or for the City to bring an action to remove the Lessee from the Exclusive Use Premises, the prevailing Party shall be entitled to all costs, including reasonable attorney's fees at both trial and appellate levels.

SECTION 23

This Lease shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action brought to enforce or interpret this Agreement or to remove Lessee from the Exclusive Use Premises shall be Polk County, Florida or the U.S. District Court in and for the Middle District of Florida, Tampa Division.

SECTION 24

The terms and provisions of this Agreement, and each sentence and paragraph hereof, are severable, and if any such term or provision shall be held invalid or unenforceable, all other terms and provisions hereof shall continue in force and effect.

SECTION 25

This Agreement and the Exhibits attached hereto contain the entire agreement of the Parties with respect to the subject matter of this Lease, and supersede all prior negotiations, agreements and understandings with respect thereto. This Lease may only be amended by a written document duly approved and executed by the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed and their respective seals to be hereunto affixed, the day and year first above written.

ATTEST:

City of Lakeland, Florida
a municipal corporation

BY: _____
Kelly S. Koos
City Clerk

BY: _____
H. William Mutz
Mayor

(Seal)

APPROVED AS TO FORM AND
CORRECTNESS:

BY: _____
Palmer C. Davis
City Attorney

ATTEST:

Avelo Airlines, Inc.

By: _____
Printed Name: _____
Witness

By: _____
Printed Name: _____
Title: _____

EXHIBIT "A"

PRELIMINARY SITE PLAN

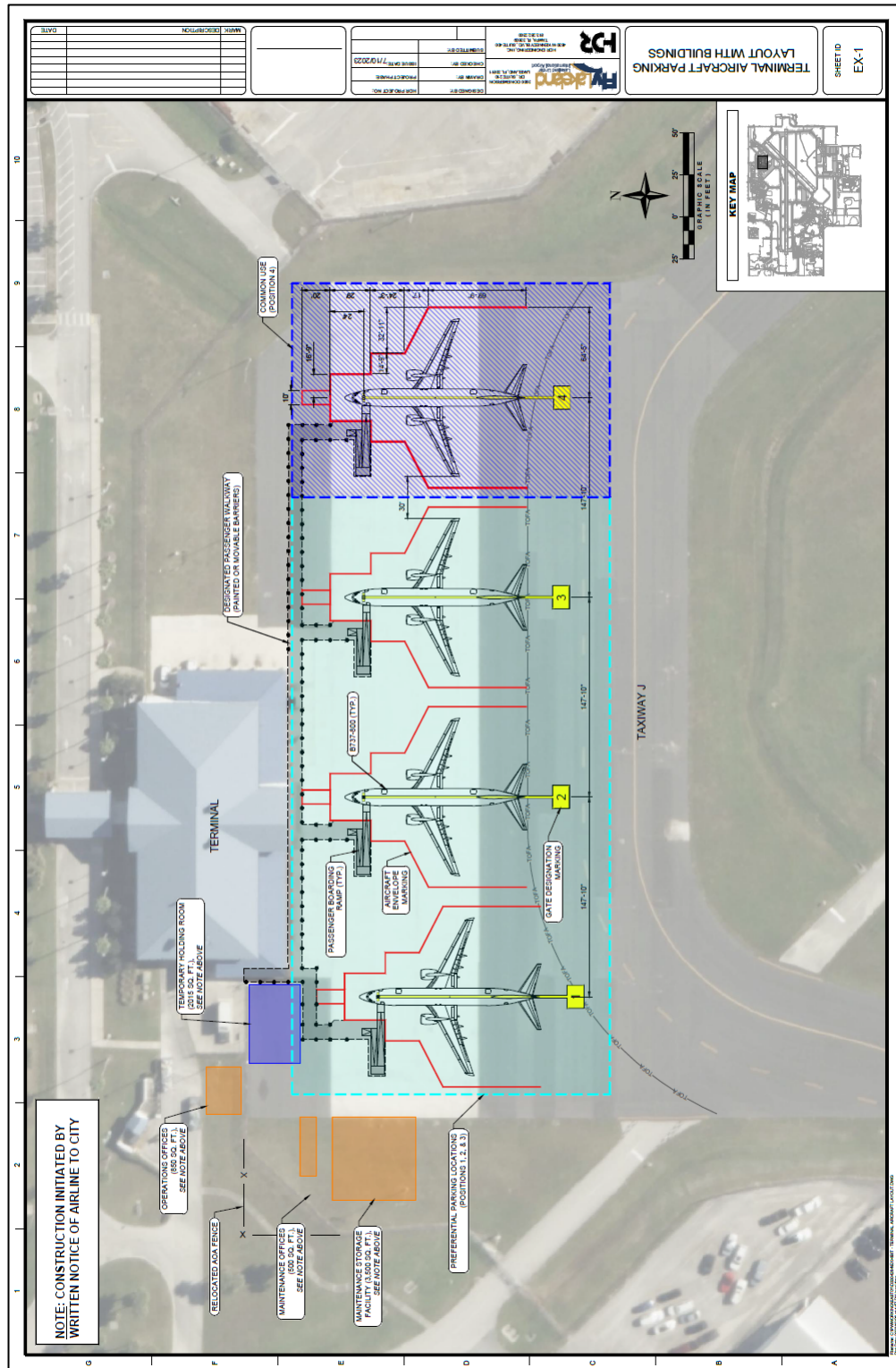


Exhibit "B"

INSURANCE REQUIREMENTS

STATEMENT OF PURPOSE

The City of Lakeland (the "City") from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined).

Such Agreements shall contain at a minimum risk management/insurance terms to protect the City's interests and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

CITY DEFINED

The term City (wherever it may appear) is defined to mean the City of Lakeland itself, its Commission, employees, volunteers, representatives and agents.

OTHER PARTY DEFINED

The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the City and any of such Other Party's subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

LOSS CONTROL/SAFETY

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the City.

INSURANCE - BASIC COVERAGES REQUIRED

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party's interests or liabilities, but are merely minimums.

"Except for workers' compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the City of Lakeland as additional insured. It is agreed that the Other Party's insurance shall be deemed primary and non-contributory with respect to any insurance or

self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

INSURANCE – BASIC COVERAGES REQUIRED (cont'd)

Except for worker's compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

Commercial General Liability: This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Other Party's employees or damage to property of the City or others arising out of any act or omission of the Other Party or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the Other Party under the article entitled **INDEMNIFICATION**, and **"Products and Completed Operations" coverage**.

The Other Party is required to continue to purchase products and completed operations coverage for a minimum of three years beyond the City's acceptance of renovation or construction properties.

The liability limits shall not be less than:

**Bodily Injury and
Property Damage**

**\$1,000,000
Single limit each occurrence**

Business Automobile Liability: Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

The liability limits shall not be less than:

**Bodily Injury and
Property Damage**

**\$500,000
Single limit each occurrence**

Workers' Compensation: Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident,

\$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Worker's Compensation coverage, as defined in Florida Statue 440, the Other Party will provide a copy of State Workers' Compensation exemption.

All subcontractors shall be required to maintain Worker's Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

EVIDENCE/CERTIFICATES OF INSURANCE

Required insurance shall be documented in Certificates of Insurance which provide that the City shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the City at least 15 days prior to coverage renewals.

If requested by the City, the Other Party shall furnish complete copies of the Other Party's insurance policies, forms and endorsements.

For Commercial General Liability coverage, the Other Party shall, at the option of the City, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.