

**AGREEMENT  
FOR AIRPORT STORMWATER DRAINAGE IMPROVEMENTS**

**PARTIES**

This AGREEMENT FOR AIRPORT STORMWATER DRAINAGE IMPROVEMENTS ("Agreement"), is made by and between MARTIN COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners ("County"), and STUART JET CENTER, L.L.C., a Florida limited liability company, having offices located at 2501 S.E. Aviation Way, Stuart, Florida 34996 ("Stuart Jet"). Collectively County and Stuart Jet shall be referred to as "the Parties".

**RECITALS**

WHEREAS, County owns and has jurisdiction over the development, operation and maintenance of Martin County/Witham Field Airport ("Airport") located in Martin County, Florida; and

WHEREAS, Stuart Jet, as a Fixed Based Operator, leases certain land from County at the Airport pursuant to the Fourth Amendment, Consolidation and Complete Restatement of Agreement of Lease entered into on November 14, 2017 (the "Lease"); and

WHEREAS, County and Stuart Jet wish to improve stormwater drainage to fill the two airside wet ponds on the leased premises and convert them to open space/turf and fill in the dry-retention area between Runway 12/30 and taxiway Alpha in order to comply with FAA Advisory Circular 150/5200-33B (the "Project"); and

WHEREAS, the Project will include site grading and construction of drainage pipes, inlets and other structures to facilitate proper drainage of the leased premises; and

WHEREAS, County has obtained certain design and engineering plans and specifications for the Project with a cost estimate of \$600,000; and

WHEREAS, subject to the approval of Board of County Commissioners, County may apply for a grant from the Florida Department of Transportation's ("FDOT") Aviation Grant Program in the amount of \$480,000.00 toward the Project (the "Grant Application"); and

WHEREAS, Stuart Jet desires to contribute to County the balance of the Project cost in the amount of \$120,000.00 (the "Project Balance"); and

WHEREAS, County intends to put the Project out to bid contingent upon FDOT's approval of the Grant Application;

NOW, THEREFORE, in consideration of the mutual terms, conditions, and promises hereinafter set forth, County and Stuart Jet hereby agree as follows:

1. The Parties agree the foregoing recitals are true and correct and are incorporated herein.

2. **Payment of the Project Balance.** Stuart Jet agrees to submit a certified check in the amount of one hundred and twenty thousand dollars (\$120,000.00) to County's Airport Manager or designee on or before March 22, 2021, which will be held by County in a separate account. Submission of such check is a **condition precedent** to County submitting this Agreement and the Grant Application to its Board of County Commissioners for approval. Failure to submit such certified check will result in County withdrawing this Agreement and the Grant Application from the Board's agenda. The parties acknowledge and agree this Agreement is expressly contingent upon the Board of County Commissioners authorization to submit the subject Grant Application as well as approval of such grant application by FDOT. If either of such approvals do not occur, County agrees to promptly return such funds to Stuart Jet. County acknowledges and agrees that Stuart Jet's one hundred and twenty thousand dollar (\$120,000.00) contribution to the project will not be increased.

3. The Parties agree Stuart Jet's payment of the Project Balance does not confer upon Stuart Jet any right of control, oversight, or supervision over the Project, nor does such payment obligate Stuart Jet to do the same. Stuart Jet agrees not to interfere or obstruct the Project in any way. If Stuart Jet believes County or its contractor for the Project is interfering with or obstructing the normal operations Stuart Jet's business, County agrees to confer with Stuart Jet in a good faith effort to resolve the matter after being duly notified by Stuart Jet.

4. County and Stuart Jet agree to hold project meetings on a weekly basis with the Contractor. Disputes under this Agreement may be resolved by the County's Authorized Representatives and Stuart Jet's Authorized Representatives. If such Authorized Representatives are unable to reach a resolution and the parties agree that the issue is of sufficient merit, the parties may select a mediator mutually acceptable to both parties to conduct a mediation of the issues involved and make a recommendation to both parties. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that the mediator's fees and costs shall be paid in equal amounts by each party.

5. Nothing herein shall amend, change, or modify the Lease.

6. Time is expressed to be of the essence of this Agreement.



7. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties hereto.


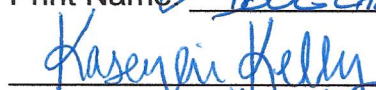
8. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.


9. **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Nineteenth Judicial Circuit in and for Martin County, Florida. If any claim arising from, related to or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, COUNTY AND LESSEE HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have made and executed this Agreement of Lease on the respective dates under each signature: MARTIN COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, and STUART JET CENTER, L.L.C., signing by and through its \_\_\_\_\_, duly authorized to execute same.

WITNESS:

STUART JET CENTER, L.L.C.

  
Print Name: DAN E. CAPEN  
  
Print Name: Kaseylin Kelly  
17 day of March, 2021

By:   
Print Name: DAN E. CAPEN  
Title: PRESIDENT

MARTIN COUNTY

BOARD OF COUNTY COMISSIONERS MARTIN COUNTY, FLORIDA

ATTEST:

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Carolyn Timmann  
Clerk of the Circuit Court  
and Comptroller

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Stacey Hetherington  
Chair

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

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Sarah W. Woods  
County Attorney