

**PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN
COUNTY OF HUMBOLDT AND VOLAIRE AVIATION, INC.
REGARDING AIR SERVICE DEVELOPMENT CONSULTING AND
SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM**

This "Professional Services Agreement" (the "Agreement") is entered into, by and between the County of Humboldt, a political subdivision of the State of California ("COUNTY"), and Volaire Aviation, Inc., an Indiana corporation authorized to do business in California ("CONSULTANT"), and is made on the last date signed below to be effective December 21, 2021, for the following considerations:

WHEREAS, COUNTY prepares and submits grant applications to secure Small Community Air Service Development Program ("SCASDP") federal funding to the U.S. Department of Transportation ("DOT"); and

WHEREAS, COUNTY, by and through its Department of Aviation, regularly meets with airline representatives who are considering starting or expanding airline service to/from the County of Humboldt at the California Redwood Coast-Humboldt County Airport (ACV) in McKinleyville, CA; and

WHEREAS, such work requires expertise in strategic air service planning, airline data analytics, airline schedule analysis, airport cost and pricing analysis, and air service marketing analysis; and

WHEREAS, Federal Aviation Administration ("FAA") funding requires knowledge and ability to prepare grant applications, presentations and presentations; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, COUNTY, by and through its Department of Aviation, desires to retain the services of CONSULTANT to provide air service development consultation, develop presentations, and assist with preparing grant applications and supporting analyses; and

WHEREAS, COUNTY and CONTRACTOR (collectively, the "Parties") desire to enter into and document their agreement for CONTRACTOR to provide these services to COUNTY and COUNTY to compensate CONTRACTOR.

NOW THEREFORE, in consideration of the covenants and promises contained herein, the Parties agree as follows:

1. **DESCRIPTION OF SERVICES:**

CONSULTANT agrees to provide the services described in Exhibit A - Scope of Work, which is attached hereto and incorporated herein by reference as if fully set forth herein. In providing such services,CONSULTANT agrees to fully cooperate with the COUNTY's Director of Aviation, or a designee thereof, hereinafter referred to as "Director".

2. **TERM:**

This Agreement shall commence on December 1, 2021 and shall remain in full force and effect until December 31, 2023, unless sooner terminated as provided herein. Any acts the Parties may have taken prior to the execution of this Agreement but in furtherance of its purpose are hereby ratified.

3. **TERMINATION:**

A. **Termination for Cause.** COUNTY may, in its sole discretion, immediately terminate this Agreement, if CONSULTANT fails to adequately perform the services required hereunder, fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder, and fails to timely cure such event of default.

B. **Termination Without Cause.** COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice which states the effective date of the termination.

C. **Termination due to Insufficient Funding.** COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide CONSULTANT seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.

D. **Compensation Upon Termination.** In the event this Agreement is terminated, CONSULTANT shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by CONSULTANT.

4. **COMPENSATION:**

A. **Maximum Amount Payable.** The maximum amount payable by COUNTY to CONTRACTOR for services rendered, including costs and expenses incurred, pursuant to the terms and conditions of this Agreement is Twenty-Five Thousand dollars (\$25,000.00). In no event shall the maximum amount paid under this Agreement exceed Twenty-Five Thousand dollars (\$25,000.00). CONSULTANT agrees to perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, COUNTY may, by amendment, reduce the maximum amount payable hereunder or terminate this Agreement as provided herein.

B. **Schedule of Rates.** The cost applicable to this Agreement is set forth in Exhibit A – Scope of Work, including elements of the project and descriptions, which is attached hereto and incorporated herein by reference as if set forth in full.

C. **Additional Services.** Any additional services not otherwise provided for herein shall not be provided by CONSULTANT, nor compensated by COUNTY, without COUNTY's prior written authorization. Any and all unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of CONSULTANT. CONSULTANT shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which CONSULTANT estimates that the maximum payable amount will be reached.

5. **PAYMENT:**

A. CONSULTANT shall submit to COUNTY monthly invoices identifying services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement by the tenth (10th) day of each month.

B. Invoices may be shown as a percentage complete of each element listed in the Exhibit A – Scope of Work.

C. CONSULTANT shall submit a final invoice for payment within thirty (30) days following the expiration or termination date of this Agreement. Invoices shall be in a format approved by the COUNTY and shall include a date range that the service was provided, total cost for the month, and percentage of each element complete.

D. Payment for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement shall be made within thirty (30) days after the receipt of approved invoices.

E. Any and all invoices submitted pursuant to the terms and conditions of this Agreement shall be sent to COUNTY at the following address:

County of Humboldt – Department of Aviation
3561 Boeing Avenue
McKinleyville, CA 95519

F. CONSULTANT shall e-mail invoices to COUNTY at the following email address:
aviation@co.humboldt.ca.us.

G. Disputed Costs. COUNTY shall have the right to reasonably and in good faith dispute any portion of any amount billed by CONSULTANT. If COUNTY believes that CONSULTANT has billed COUNTY incorrectly, COUNTY must contact CONSULTANT’s customer support department no later than thirty (30) days after the date on the invoice in which the error or problem appeared, in order to receive an adjustment or credit. Such notification shall include written documentation which identifies and substantiates the disputed amount. Notwithstanding the foregoing, COUNTY shall submit to CONTRACTOR, prior to the invoice due date, full payment of the undisputed portion of any fees billed by CONSULTANT.

6. **NOTICES:**

Any and all notices required to be given pursuant to the terms and conditions of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing

COUNTY Humboldt County-Department of Aviation
Attention: Cody Roggatz, Director of Aviation
3561 Boeing Avenue
McKinleyville, CA 95519

CONSULTANT Volaire Aviation, Inc.
Attention: Jack Penning, Managing Partner
8500 East 116th Street, Suite 728
Fishers, IN 46038

7. **REPORTS:**

CONSULTANT agrees to provide COUNTY with any and all reports that may be required by any local, state and or federal agencies for compliance with this Agreement CONSULTANT shall submit one (1) hard copy and one (1) electronic copy of any and all reports required hereunder in a format that complies with the Americans with Disabilities Act and any other applicable local, state, and federal accessibility laws, regulations and standards Any and all reports required hereunder shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate.

8. **RECORD RETENTION AND INSPECTION:**

A. **Maintenance and Preservation of Records.** CONSULTANT agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided pursuant to the terms and conditions of this Agreement, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. Such records shall be original entry books with a general ledger itemizing all debits and credits for the services provided pursuant to the terms and conditions of this Agreement.

B. **Inspection of Records.** Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONSULTANT, and its subcontractors, related to the services provided pursuant to the terms and conditions of this Agreement, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after the date of final payment hereunder CONSULTANT agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any other duly authorized local, state and or federal agencies. CONSULTANT further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any other duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, without limitation, the costs of administering this Agreement.

C. **Audit Costs.** In the event of an audit exception or exceptions related to the services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONSULTANT's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

9. **MONITORING:**

CONSULTANT agrees that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor CONSULTANT's records, programs, procedures and overall business operations, at any time, in order to ensure compliance with the terms and conditions of this Agreement CONSULTANT will cooperate with a corrective action plan, if deficiencies in CONSULTANT's records, programs, procedures, or business operations are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of CONSULTANT's performance hereunder.

10. **CONFIDENTIAL INFORMATION:**

A. **Disclosure of Confidential Information.** In the performance of this Agreement, CONSULTANT may receive information that is confidential under local, state or federal law. CONSULTANT agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards.

B. **Continuing Compliance with Confidentiality Requirements.** The Parties acknowledge that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the requirements of any applicable local, state and federal laws, regulations or standards.

11. **NON-DISCRIMINATION COMPLIANCE:**

A. **Professional Services and Employment.** In connection with the execution of this Agreement, CONSULTANT, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by local, state, or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.

B. **Compliance with Anti-Discrimination Laws.** CONSULTANT further assures that it, and its subcontractors, will abide by the applicable provisions of Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq*; California Government Code Sections 4450, *et seq*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local state or federal laws, regulations, or standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq* of Title 2, of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

12. **NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:**

By executing this Agreement, CONSULTANT certifies that it is not a Nuclear Weapons Contractor, in that CONSULTANT is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. CONSULTANT agrees to

notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONSULTANT subsequently becomes a Nuclear Weapons Contractor.

13. **DRUG-FREE WORKPLACE CERTIFICATION:**

By executing this Agreement, CONSULTANT certifies that it will provide a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, *et seq.*), by doing all of the following:

A. **Drug-Free Policy Statement.** Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.

B. **Drug-Free Awareness Program.** Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about:

1. The dangers of drug abuse in the workplace;
2. CONSULTANT's policy of maintaining a drug-free workplace;
3. Any available counseling, rehabilitation and employee assistance programs;

and

4. Penalties that may be imposed upon employees for drug abuse violations.

C. **Drug Free Employment Agreement.** Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services pursuant to the terms and conditions of this Agreement will:

1. Receive a copy of CONSULTANT's Drug Free Policy Statement; and
2. Agree to abide by CONSULTANT's Drug Free Policy as a condition of

employment.

D. **Effect of Non-Compliance.** Failure to comply with the requirements set forth herein may result in termination of this Agreement and/or ineligibility for award of future contracts.

14. **INDEMNIFICATION:**

A. **HOLD HARMLESS, DEFENSE AND INDEMNIFICATION.** CONTRACTOR SHALL HOLD HARMLESS, DEFEND AND INDEMNIFY COUNTY AND ITS AGENTS, OFFICERS, OFFICIALS, EMPLOYEES AND VOLUNTEERS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, LIABILITIES, EXPENSES AND COSTS OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND OTHER COSTS OF LITIGATION, ARISING OUT OF, OR IN CONNECTION WITH, CONTRACTOR'S NEGLIGENT PERFORMANCE OF, OR FAILURE TO COMPLY WITH, ANY OF THE DUTIES AND/OR OBLIGATIONS CONTAINED HEREIN, EXCEPT SUCH LOSS OR DAMAGE WHICH WAS CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF COUNTY.

B. **Effect of Insurance.** Acceptance of the insurance required by this Agreement shall not relieve CONTRACTOR from liability under this provision. This provision shall apply to all claims for damages related to CONTRACTOR's performance hereunder regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

15. **INSURANCE REQUIREMENTS:**

This Agreement shall not be executed by COUNTY, and CONSULTANT is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

A. **General Insurance Requirements** Without limiting CONSULTANT's indemnification obligations set forth herein, CONSULTANT, and its subcontractors, shall take out and maintain, throughout the term of this Agreement, and any extensions thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CONSULTANT or its agents, officers, directors, employees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, without limitation, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.

2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).

3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers.

4. Professional Liability Insurance - Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which CONSULTANT may be exposed to liability CONSULTANT shall require that such coverage be incorporated into its professional services agreements with any other entities.

B. **Special Insurance Requirements.** Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:

- a. Includes contractual liability.
- b. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground damage, commonly referred to as "XCU Hazards."
- c. Is the primary insurance with regard to COUNTY.
- d. Does not contain a pro-rata, excess only and or escape clause.
- e. Contains a cross liability, severability of interest or separation of insureds clause.

2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice requirements set forth herein. It is further understood that CONSULTANT shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.

3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer's liability.

4. For claims related to this Agreement, CONSULTANT's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained there are excess to CONSULTANT's insurance and will not be used to contribute therewith.

5. Any failure to comply with the provisions of this Agreement shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.

6. CONSULTANT shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONSULTANT does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to CONSULTANT under this Agreement.

7. COUNTY is to be notified immediately if twenty five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONSULTANT shall be required to purchase additional coverage to meet the above-referenced aggregate limits.

C Insurance Notices. Any and all insurance notices required to be given pursuant to the terms and conditions of this Agreement shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

CONSULTANT: Volaire Aviation, Inc.
Attention: John A. Penning, Managing Partner
8500 East 116th Street, Suite 728
Fishers, IN 46038

16. **RELATIONSHIP OF PARTIES:**

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture or any other similar collaborative association or legal entity. Both Parties further agree that CONSULTANT shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. At no time shall CONSULTANT's employees and representatives hold themselves out to be COUNTY employees or representatives.

17. **COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:**

A. **General Legal Requirements.** CONSULTANT agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to the services provided pursuant to the terms and conditions of this Agreement.

B. **Licensure Requirements.** CONSULTANT agrees to comply with any and all local, state and federal licensure, certification and accreditation requirements and standards applicable to the services provided pursuant to the terms and conditions of this Agreement.

C. **Accessibility Requirements.** CONSULTANT agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.

D. **Conflict of Interest Requirements.** CONSULTANT agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

18. **PROVISIONS REQUIRED BY LAW:**

This Agreement may be subject to additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is incorrectly stated, the Parties agree to amend the pertinent section to make such insertion or correction.

19. **REFERENCE TO LAWS, REGULATIONS AND STANDARDS:**

In the event any law, regulation or standard referred to herein is amended during the term of this Agreement, the Parties agree to comply with the amended provision as of the effective date thereof, if possible.

20. **PROTOCOLS:**

Both Parties agree that the inclusion of additional protocols may be required to make this Agreement specific. All such protocols shall be reasonably negotiated, determined and agreed upon by both Parties hereto.

21. **SEVERABILITY:**

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

22. **ASSIGNMENT:**

Neither party shall delegate its duties or assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by CONSULTANT in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

23. **AGREEMENT SHALL BIND SUCCESSORS:**

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the Parties and to each of their heirs, executors, administrators, successors and permitted assigns.

24. **WAIVER OF DEFAULT:**

The waiver by COUNTY of any breach of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement which may then exist on the part of CONSULTANT. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand repayment of, and CONSULTANT shall promptly refund, any funds disbursed to CONSULTANT which COUNTY determines were not expended in accordance with the terms and conditions of this Agreement.

25. **NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:**

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

26. **AMENDMENT:**

This Agreement may be amended at any time during the term hereof by written consent of both Parties.

27. **STANDARD OF PRACTICE:**

CONSULTANT warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONSULTANT's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercised under like circumstances.

28. **TITLE TO INFORMATION AND DOCUMENTS:**

It is understood that any and all documents, information and reports concerning the subject matter of this Agreement prepared and or submitted by CONSULTANT shall become the property of COUNTY. However, CONSULTANT may retain copies of such documents, information and reports

for its records. In the event this Agreement is terminated, for any reason whatsoever, CONSULTANT shall promptly turn over all such documents, information and reports to COUNTY without exception or reservation.

29. **JURISDICTION AND VENUE:**

This Agreement shall be construed under the laws of the State of California. Any dispute arising hereunder or relating hereto, shall be litigated in and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

30. **ADVERTISING AND MEDIA RELEASE:**

Any and all informational material related to this Agreement shall receive written approval from COUNTY prior to being used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. CONSULTANT shall inform COUNTY in writing of all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to Director in accordance with the notice requirements set forth herein.

31. **SUBCONTRACTS:**

CONSULTANT shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided pursuant to the terms and conditions of this Agreement. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification, privacy, security and confidentiality requirements set forth herein. CONSULTANT shall remain legally responsible for the performance of all terms and conditions of this Agreement, including without limitation, any and all services provided by third parties under subcontracts, whether approved by COUNTY or not.

32. **ATTORNEYS FEES:**

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, the term "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

33. **SURVIVAL OF PROVISIONS:**

The duties and obligations of the Parties set forth in Section 3.D. - Compensation Upon Termination, Section 8 - Record Retention and Inspection, Section 10 - Confidential Information, and Section 14 -

Indemnification shall survive the expiration or termination of this Agreement.

34. **CONFLICTING TERMS OR CONDITIONS:**

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the Parties hereto and the terms and conditions set forth in this Agreement, the Parties agree the terms and conditions set forth in this Agreement shall have priority over any conflicting provisions.

35. **INTERPRETATION:**

This Agreement, as well as its individual provisions have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

36. **INDEPENDENT CONSTRUCTION:**

The titles of the sections and subsections set forth herein are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

37. **FORCE MAJEURE:**

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, third party labor strikes or lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, pandemics, or other disasters, whether or not similar to the foregoing.

38. **ENTIRE AGREEMENT:**

This Agreement contains all of the terms and conditions agreed upon by the Parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the Parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior agreements, promises, representations, understandings and negotiations between the Parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been performed pursuant to this Agreement are hereby ratified by the Parties.

39. **COUNTERPART EXECUTION:**

This Agreement, and any amendments may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This Agreement and any amendments may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal

laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this Agreement and any amendments transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

40. **AUTHORITY TO EXECUTE:**

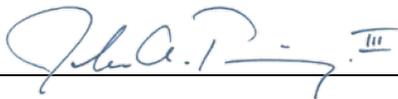
Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the last date written below to be effective December 1, 2021.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER

VOLAIRE AVIATION, INC.:

By: 

Date: July 14, 2022

Name: John A. Penning, III

Title: President

By: 

Date: July 14, 2022

Name: Robert Jeffrey Hayes

Title: Secretary

COUNTY OF HUMBOLDT:

By: _____

Date: _____

Virginia Bass
Chair, Board of Supervisors
County of Humboldt

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: _____ Risk Management

Date: ^{07/26/2022} _____

LIST OF EXHIBITS:

Exhibit A – Scope of Work

EXHIBIT A
Scope of Work

1. **Authorized Projects.** CONSULTANT agrees, pursuant to the terms and conditions of this Agreement, to perform the following for COUNTY:

- 1) **Airline headquarters meetings and presentations**

Consultant will prepare all materials for airline headquarters meetings, including a specific business case for targeted service. Presentations will include specific demographic analysis of the airport catchment area, economic analysis of the market region, overview of current airline market conditions, and a specific business case and analysis of proposed new service or expanded service.

Consultant will attend all airline headquarters meetings with Airport and present the full business case for current, new, and expanded service.

Consultant will provide all requested follow-up information requested by the airline following the meeting.

- 2) **Allegiant Air conference presentation**

Consultant will prepare all materials for Allegiant Air conference one-to-one meetings, including a specific business case for targeted service. Presentations will include specific demographic analysis of the airport catchment area, economic analysis of the market region, overview of current airline market conditions, and a specific business case and analysis of proposed new service or expanded service.

Consultant will attend Allegiant Air conference meetings with Airport and present the full business case for current, new, and expanded service.

Consultant will provide all requested follow-up information requested by the airline following the meeting.

- 3) **Air service development conference meetings**

Consultant will work with Airport to identify target airlines for meetings and to identify which conferences Airport should attend. Consultant will work with conference organizers to schedule meetings.

Consultant will prepare all materials for airline conference meetings, including a specific business case for targeted service. Presentations will include specific demographic analysis of the airport catchment area, economic analysis of the market region, overview of current airline market conditions, and a specific business case and analysis of proposed new service or expanded service.

Consultant will attend all airline conference meetings with Airport and present the full business case for current, new, and expanded service.

Consultant will provide all requested follow-up information requested by the airline following the meeting.

4) Community visits

Consultant will prepare state of the industry information, market detail, and other pertinent information for community meetings at Airport's request.

5) Small community air service development grant application

Consultant will write Airport's application for Small Community Air Service Development Grant funding. Consultant will advise Airport on matching funding requirements, application requirements, and all items to enhance Airport's opportunity to win funding.

Consultant will research and develop the business case for proposed service. Consultant will write the application for funding and assist Airport in its submission. Consultant will work to secure airline support for the initiative.

6) Drive diversion/passenger leakage study

At Airport's discretion, Consultant can develop a new drive diversion/passenger leakage study detailing airport use for catchment area passengers. The study will include zip code level detail including passengers, average fares, revenue, top markets, and carrier usage.

The analysis will include both filed passenger data and booking data by zip code. The study will use Consultant's proprietary methodology to determine the drive diversion of passengers to and from other airports and to develop an actual market size for the catchment area.

7) Community survey

Consultant will prepare an on-line survey for dissemination throughout the region, delving into travel patterns, demand for service, the quality of current service, and other pertinent market research. Consultant will prepare a report of results and present the results during a visit to the community.

8) Economic impact analysis

Consultant will detail the economic impact of the Airport and its scheduled air service. The analysis will include a survey of all airport-related business to determine the baseline of on-airport impact. It will also include indirect and induced impact, as developed through the IMPLAN software program. The written report will include detail on impact by source, tax impact, and employment impact throughout the region.

2. Consultancy Fee and Expenses

(a) Per Project Fee Schedule. Projects commissioned by Airport will be invoiced, upon completion, at the following rates:

- 1) Small community air service development grant application: \$7,500 upon submission
Plus a \$7,500 bonus upon award

(b) Hourly rates. All other projects, not included in the above list, will be invoiced on an hourly basis. The standard hourly rate is \$200 per hour.

(c) Expenses. Consultant shall be entitled to reimbursement for expenses reasonably incurred in the performance of the Services, upon submission and approval of written statements in accordance with the then regular procedures of the Company. Reasonable expenses include, but are not limited to, travel (airfare, hotel, rental car, and meals), printing of materials, and shipping of materials. Consultant will invoice all expenses at cost plus a 10% administrative fee.

In the case of air service development conferences, Consultant will allocate expenses based on the total expenses of the firm divided by the total number of meetings covered by the firm.