

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, APPROVING A DEVELOPER PARTICIPATION AGREEMENT WITH SCARBOROUGH I AIRPORT, L.P. FOR THE CONSTRUCTION OF CERTAIN PUBLIC IMPROVEMENTS WITHIN ADDISON AIRPORT TO A PORTION OF THE TAXIWAY UNIFORM SHOLDER AND APRON; PROVIDING FOR THE CITY'S PARTICIPATION IN THE COSTS OF THE IMPROVEMENTS IN CONFORMANCE WITH CHAPTER 212 OF THE TEXAS LOCAL GOVERNMENT CODE IN AN ANTICIPATED AMOUNT NOT-TO-EXCEED \$236,192.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City (as Landlord) and Scarborough I Airport, L.P. ("Scarborough") (as Tenant) intend to execute a ground lease (the "Ground Lease") for certain improved land at the Addison Airport consisting of approximately .55 acres along Taxiway Uniform (the "Ground Lease Property"); and

WHEREAS, in connection with the Ground Lease, Scarborough (as tenant) intends to reconstruct the existing aircraft apron within the Ground Lease Property; and

WHEREAS, the existing aircraft apron within the Ground Lease Property abuts the common area of Taxilane Uniform, which serves as a public aeronautical access easement for the general aviation public in addition to the Ground Lease Property; and

WHEREAS, City has determined that it would serve the best interest of the public to have Scarborough reconstruct the aircraft apron within the common area of Taxilane Uniform in conjunction with Scarborough's reconstruction of the aircraft apron within the Ground Lease Property (collectively, the "Improvements"); and

WHEREAS, City is authorized pursuant to Section 212.071 of the Texas Local Government Code to participate in the costs of construction related to the development of public facilities within the City; and

WHEREAS, City and Scarborough desire to enter into a Developer Participation Agreement to set forth the parties rights and obligations with respect to the Improvements described herein above, including City's reimbursement of the City's share of the costs in conformance with Subchapter C, Chapter 212, Tex. Loc. Gov. Code.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The City Council hereby approves the Developer Participation Agreement (the "Agreement") between the Town of Addison, Texas and Scarborough I Airport, L.P. attached hereto as **Exhibit A**. In conformance with Subchapter C, Chapter 212, Tex. Loc. Gov. Code and the Agreement, the City's share of the costs for the Improvements shall be in an amount not-to-exceed thirty percent (30%) of the total costs for the Improvements (not including City upgrades),

which is anticipated to be \$236,192.00 in conformance with the statement of probable costs attached as Exhibit 3 to the Agreement. The City Manager is hereby authorized to execute the Agreement.

SECTION 2. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas, on this the **28th** day of **JUNE** 2022.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

Exhibit A

DEVELOPER PARTICIPATION AGREEMENT

This Developer Participation Agreement (the "Agreement") is entered into as of the Effective Date by and between the **Town of Addison, Texas**, a Texas home-rule municipality (the "City") and **Scarborough I Airport, LP**, a Texas limited partnership (the "Company") (each a "party" and collectively the "parties").

RECITALS:

WHEREAS, City is the owner of the Addison Airport located within the City; and

WHEREAS, the Company desires to enter into (or has entered into) a ground lease for the Ground Lease Property (defined herein) with City as landlord and Company as tenant (the "Ground Lease"); and

WHEREAS, in connection with the Ground Lease, Company (as tenant) intends to re-construct and/or repair the existing aircraft apron within the Ground Lease Property (the "Site Improvements"); and

WHEREAS, the existing aircraft apron on the Ground Lease Property abuts the Airport's Taxilane Uniform Common Area, which is owned by the City and serves as a public aeronautical access easement for the Ground Lease Property and the general aviation public; and

WHEREAS, City is authorized pursuant to Section 212.071 of the Texas Local Government Code to participate in the costs of construction of improvements related to the development of public facilities within the City; and

WHEREAS, City has determined that it would serve the best interest of the general aviation public to have the aircraft apron within the Taxilane Uniform Common Area reconstructed by Company's Contractor in conjunction with Site Improvements to the Ground Lease Property (the "Taxiway Improvements"); and

WHEREAS, City and Company desire to enter into this Agreement to set forth the parties rights and obligations with respect to the foregoing Improvements, including City's participation in the Project costs in conformance with Section 212.071 of the Texas Local Government.

NOW, THEREFORE, for and in consideration of the above and foregoing recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Company do hereby agree as follows:

Article I Term

The term of this Agreement shall commence as of the Effective Date and shall continue until the parties have fully satisfied all terms and conditions of this Agreement, unless sooner terminated as provided herein.

Article II Definitions

Wherever used in this Agreement, the following terms shall be defined as follows:

"*Airport*" shall mean the Addison Airport.

“*Applicable Laws*” shall mean all laws, ordinances, standards, codes, statutes, rules and regulations of the United States, the State of Texas (including without limitation the Federal Aviation Administration and Texas Department of Transportation and any and all grant agreements or assurances with same), the City (including the Airport’s adopted Rules and Regulations), and any other governmental entity having jurisdiction over the subject matter of this Agreement, including all work or services to be performed in connection with the Project (including, without limitation, the standards of the Americans with Disabilities Act of 1990).

“*Commencement of Construction*” shall mean that (i) the Design Plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction of the Improvements pursuant to the Design Plans have been issued by all applicable governmental authorities, and (iii) site preparation necessary for the construction of Improvements, as applicable, has commenced.

“*Completion of Construction*” shall mean: (i) the Project has been substantially completed in accordance with the Design Plans; and (ii) the Improvements have been accepted by the City in writing.

“*Design Plans*” shall mean the plans and specifications for the construction of the Improvements, inclusive of any change orders thereto, prepared in compliance with this Agreement by a professional architect or engineer authorized to practice in the State of Texas, which have been approved by the City.

“*Effective Date*” shall mean the date this Agreement has been signed by authorized representatives of City and Company.

“*Force Majeure*” shall have the meaning ascribed to it in Article V of this Agreement.

“*Ground Lease Property*” shall mean that certain tract of land located within the Airport consisting of approximately .508 acres (22,124 gross square feet) adjacent to 16445 Addison Road that Company has leased, or intends to lease from City, as further described and depicted in Exhibit 1.

“*Improvements*” shall mean the Site Improvements and Taxiway Improvements, collectively.

“*Payment Request*” shall mean Company’s written request(s) to City for payment of the City’s share of the Project costs prepared in conformance with Article III of this Agreement.

“*Project*” shall mean the construction the Improvements in conformance with this Agreement and the Construction Contract, including, without limitation, all design, administration, and construction work related thereto.

“*Site Improvements*” shall mean the pavement repair and reconstruction work on the aircraft apron to be performed on the Ground Lease Property, as depicted in Exhibit 1 and more particularly described in Exhibits 2 and 3.

“*Taxiway Improvements*” shall mean the pavement repair and reconstruction work to be performed within the Taxiway Uniform Common Area, as depicted in Exhibit 1 and more particularly described in Exhibits 2 and 3.

“*Taxiway Uniform Common Area*” shall mean the paved land area abutting the Ground Lease Property, being approximately forty-five feet wide by one-hundred and eighty feet in length fifty-five feet within the eastern Object Free Area to Taxiway Uniform, as further described and depicted in Exhibit 1.

Article III
The Project

3.1 The Project. Subject to the terms and conditions set forth herein, Company agrees to cause the Commencement and the Completion of the Construction of the Project as set forth herein in accordance with the Design Plans. Company shall ensure that the Project is performed in a proper, efficient, timely, and professional manner in accordance with this Agreement.

3.2 Project Construction.

(a) *Construction Contract*. Company shall promptly enter into a contract with one or more contractors (the "Contractor") to construct the Project (the "Construction Contract").

(b) *Rights of Access; Utilities*. City shall grant to Company and its Contractor such rights-of-access to the Project site as may be necessary for the Project, including a revocable, non-exclusive license to access and enter upon the Taxiway Improvements site for the sole purpose of constructing the same. Company's right of access is subject to the City's safety requirements within any portion of the Airport's Common Area as defined in the Rules and Regulations. Company shall be responsible for coordinating with City and utility providers to minimize the possibility of damage to utilities and any disruption to users and tenants of the Airport within proximity of the Project site.

(c) *Inspections*. Company shall routinely and thoroughly inspect or cause the construction work to be inspected by the engineer that prepared the Design Plans, or other qualified licensed engineer familiar with the Design Plans, to ensure the materials and workmanship on the Project are performed in conformance with the Design Plans and to guard against defects and/or deficiencies in the Project without assuming responsibility for the means and methods used by the Contractor. Additionally, City shall have the right to inspect, test, measure, or verify the work on the Project at any time; provided that the City shall not assume any responsibility for inspection of the work or the means and methods used by the Contractor in connection with the same.

(d) *Progress Reports*. Company shall keep the City regularly informed regarding the progress of the construction work on the Project. In particular, Company shall provide City written notification (including supporting documentation as may be reasonably requested by City) for the following events: (i) award of the Construction Contract (including copies of bonds and insurance), (ii) notice to proceed to Contractor, (iii) any alleged or actual default of the Contractor (including Company's notice to Contractor re the same), and (iv) substantial completion of the work on the Project (or any portion thereof) such that it is ready for final inspection by the City.

(e) *Change Orders*. All change orders with respect to the design or construction of the Project must be approved in writing by the City. No change order shall result in the total Project costs identified in the approved Construction Contract exceeding one-hundred and ten percent (110%) of the anticipated Project costs, as more particularly described in the opinion of probable costs attached hereto as Exhibit 3.

(f) *Construction Schedule*. Company shall cause Completion of Construction of the Project to occur not later than the 356th calendar day following the Effective Date, subject only to extension in the event of Force Majeure.

(g) *Compliance with Plans; Applicable Laws.* All work on the Project shall be performed in a good and workmanlike manner and constructed in accordance with the Plans and all Applicable Laws.

(h) *Inspection of Records.* Company and Contractor shall grant City the right to examine or inspect, at City's election, all records relating to the Project during the Term of this Agreement and any retention period herein. City's examination or inspection of such records may be performed by a City designee, which may include an outside representative engaged by City. Company and Contractor shall retain all records relating to the Project for a minimum of four (4) years following the expiration or earlier termination of this Agreement, unless there is an ongoing dispute under this Agreement or the Construction Contract; then, such retention period shall extend until final resolution of the dispute.

(i) *Certification of No Conflicts.* Company shall require Contractor to warrant that Contractor has made full disclosure to City in writing of any existing or potential conflicts of interest related to Contractor's performance of the work under the Construction Contract. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Contractor shall be required to immediately make full disclosure to the City in writing.

(j) *Additional Obligations of Company.* Company shall timely pay the Contractor in accordance with the terms and conditions of the Construction Contract. Upon Completion of Construction of the Project, Company shall ensure that the real property upon which the Project was constructed is free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests, to the extent arising by, through or under Company, any Contractor, or any subcontractor or material suppliers.

(k) *No Waiver of City's Rights.* Neither City's review, approval or acceptance of, nor payment for any of the construction work performed by Contractor shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

3.3 Project costs. The total Project costs, including all change orders thereto, is anticipated to be \$787,307.67, as more particularly described in the statement of probable costs attached hereto as Exhibit 3. Although the parties anticipate the final amount of the Construction Contract may differ from the anticipated Project costs, in no event shall the total amount of the Construction Contract exceed one-hundred and ten percent (110%) of the anticipated Project costs without prior written approval of City, which may be withheld at City's sole discretion. Notwithstanding the foregoing, if the Project costs proposed by the Contractor exceeds one-hundred and ten percent (110%) of the anticipated Project costs, City and Company may agree to (i) work together to modify the Project scope to cause the Project costs not to exceed one-hundred and ten percent (110%) of the Project costs as determined above, or (ii) terminate this Agreement with each party paying their respective share of the costs (as set forth in Exhibit 3) incurred through the date of termination.

3.4 City Cost Participation. City has requested, and Company agrees, to construct the Taxiway Improvements for the benefit of the Airport and the public in accordance with the Design Plans in conjunction with the Site Improvements. Accordingly, City agrees to reimburse Company the City's share of the actual Project costs which Company pays its Contractor to construct the Project in conformance with the cost allocation schedule provided in Exhibit 3 (the "City Cost Participation"). Notwithstanding the foregoing, in no event shall the City's reimbursement amount not exceed thirty percent (30%) of the total Project costs (excluding City requested upgrades for which the City shall be responsible for one hundred percent (100%) of the total costs).

The parties acknowledge that the Improvements will be owned by the City. City agrees to provide to Company and Contractor within five (5) days after the Effective Date: (a) a W-9 for the City; and (b) a copy of the City's tax exemption certificate.

3.5 Reimbursement Procedures. Subject to the terms and conditions of this Agreement, the City shall reimburse Company for the Project costs in conformance with the cost allocation schedule provided in Exhibit 3 as follows:

(a) *Payment Requests*. City agrees to pay the City Cost Participation in installments as construction progresses based on completed Payment Requests delivered by Company to City for review and approval. All Payment Requests shall include the following (which shall be conditions precedent to payment):

- (i) a true and correct copy of the applicable invoice(s) submitted by the Contractor to Company (together with all attachments, documents, and materials applicable thereto);
- (ii) certification from Company's design/project engineer that the Contractor's invoice is fair and reasonable for the work completed and materials delivered to the Project;
- (iii) certification from Company that the work for which reimbursement has been requested has been completed by Contractor and paid by Company in compliance with the Construction Contract and this Agreement;
- (iv) duly executed partial lien waivers from Contractor (and subcontractors and material suppliers) establishing payment or satisfaction of payment to the same with respect to the work completed; and
- (v) a certificate from the Design Professional that the applicable work has been completed in accordance with the Design Plans.

(b) *Approval of Payment Request*. City shall review and approve, approve in part and deny in part, or deny in its entirety each Payment Request not later than ten (10) days after receipt of the Payment Request. In the event the City denies all or a portion of a Payment Request, the City will provide a written description of the reason for the denial. Company may submit an amended Payment Request, which shall be reviewed and considered for payment in the same manner as the original. Payment Requests shall not be submitted to City more than once per calendar month and not earlier than thirty (30) days after the immediately previous Payment Request was delivered to City.

(c) *Payment*. Provided that Company is not then in default of this Agreement beyond any applicable cure period City agrees to pay Company all undisputed amounts set forth in the Payment Request (less the Retainage) not later than twenty (20) days after approval of the Payment Request by the City. Payment of City's Retainage (defined below) shall constitute the last and final payment to be made by the City to Company pursuant to this Agreement, and completion of all of the City's obligations hereunder.

(d) *Retainage*. Notwithstanding paragraph (c), above, City shall withhold an amount equal to ten percent (10.0%) of the City Cost Participation set forth in the Payment Request (the

“Retainage”). City shall not be required to pay the Retainage to Company until after Completion of Construction of the Project and Company’s delivery and City’s acceptance of the following:

- (i) Certification by the Design Professional (sealed by the Design Professional) that the Project has been fully and finally completed in accordance with the Construction Contract and Design Plan;
- (ii) certification from Company that the Project has been finally completed in accordance with the Construction Contract, this Agreement, and all Applicable Laws;
- (iii) the City's receipt of a written certification from Company that the final payment for the construction of the Project has been made and accepted by the Contractor, and receipt of duly executed lien waivers from the Contractor (and subcontractors and material suppliers) establishing full and final payment or satisfaction of full and final payment to the same; and
- (iv) all guarantees and warranties from the Contractor, subcontractors, vendors, suppliers, or manufacturers, in connection with or relating to all or any portion of the work on the Project.

Article IV

Surety, Insurance and Indemnification

4.1 Construction Sureties. Company shall provide to the City evidence of the following guaranteeing the faithful performance of the Project and the payment of all obligations arising under the Construction Contract:

(a) *Payment and Performance Bonds*. Prior to Commencement of Construction Company shall provide to the City surety bonds guaranteeing the performance of the work and the payment of all obligations arising under the Contract (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Contract), each in the penal sum of one hundred percent (100%) of the Project costs.

(b) *Maintenance Bond*. Company warrants and represents that it will repair or cause to be repaired any defects in the work herein contracted to be done and performed for a period of one (1) year from the date of the City's acceptance of the Project. Upon Completion of Construction of the Project, Company shall submit a surety bond guaranteeing workmanship and materials for a period of one (1) year from the Completion of Construction.

(c) *Surety Requirements*. Company shall pay or cause the Contractor to pay the premiums for all bonds required to be provided under this Section 4.1. All bonds shall be issued by a surety company satisfactory to the City, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All bonds shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to the City and shall list Company and City as joint beneficiaries.

4.2 Insurance. Company shall maintain minimum insurance policies and coverages described in this section at all times during the Term of this Agreement. Company may satisfy this requirement through insurance provided by its Contractor.

- (a) Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/ completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.
- (b) Workers Compensation insurance at statutory limits, including Employers Liability coverage with minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (c) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (d) Builders Risk coverage as follows:
 - (i) "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.
 - (i) The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.
- (e) Umbrella Liability at minimum limits of \$5,000,000.00 aggregate with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies.
- (f) The following additional requirements shall apply to the foregoing insurance policies:
 - (i) The City shall be named as an additional insured with respect to General Liability, Automobile Liability, and Umbrella Liability.
 - (ii) All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
 - (iii) A waiver of subrogation in favor of the City, its officers, employees, and agents shall be contained in the Workers Compensation, Builders Risk, and all liability policies.
 - (iv) All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
 - (v) All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
 - (vi) All insurance policies, which name the City as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
 - (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.

- (viii) Contractor may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
 - (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and written on forms filed with and approved by the Texas Department of Insurance.
 - (x) Certificates of Insurance delivered to Company and City prior to the Commencement of Construction (or within 15 days after the Effective Date if construction has already commenced)
- Company shall require the Contractor to require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements.
- (xi) City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

4.2 Indemnification

COMPANY COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE CITY, AND SUCH ELECTED OFFICIALS, AND OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY EACH BEING AN “ADDISON PERSON”), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE “CLAIMS”), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) WORK TO BE PROVIDED BY COMPANY AND THE CONTRACTOR IN CONNECTION THE PROJECT; (2) REPRESENTATIONS OR WARRANTIES BY COMPANY UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY COMPANY, THE CONTRACTOR, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, OR LICENSEE OF COMPANY, OR ANY OTHER PERSON OR ENTITY FOR WHOM COMPANY IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, MANAGERS, EMPLOYEES, DIRECTORS, AGENTS, AND REPRESENTATIVES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT NOT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY ADDISON PERSON.

Notice of Claim. Company shall promptly advise the City in writing of any claim or demand against any Addison Person or Company related to or arising out of Company's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Company's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Company of any of its obligations hereunder.

THE PROVISIONS OF THIS SECTION 4.2, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Article V

Default; Termination; Abandonment

5.1 Default by Contractor. Should Company fail to comply with any term or condition this Agreement applicable to Company, Company shall be deemed in default of this Agreement. Subject to an approved extension pursuant to Section 5.3, below, if Company's default is not corrected within twenty (20) days after written notice by City, City may, at its sole discretion and without prejudice to any other right or remedy:

- (a) terminate this Agreement and be relieved of any further payment or consideration to Company except for reimbursement, pursuant to an approved Payment Request, of the City's portion of the Improvements determined by City to be satisfactorily completed prior to such termination; or
- (b) City may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at Company's sole expense.

5.2 Default by City. Should City fail to comply with any term or condition this Agreement applicable to City, City shall be deemed in default of this Agreement. Subject to an approved extension pursuant to Section 5.3, below, if City's default is not corrected within twenty (20) days after written notice by Company, Company may terminate this Agreement.

5.3 Extension of Initial Cure Period. During the initial cure period, if the defaulting party provides the non-defaulting party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such default, and thereafter continuously and diligently prosecutes the curing of such default, the initial cure period shall be extended for such period as may be necessary to cure such default, provided, that in no event shall such extension exceed forty (40) days following the initial occurrence of the default without the written consent of the non-defaulting party, which may be withheld in the non-defaulting party's sole discretion.

5.4 Termination by City. The City may terminate this Agreement without notice or any opportunity upon the occurrence of any of the following:

- (a) Adjudicated insolvency of, the making of a transfer in fraud of creditors by, or the making of an assignment for the benefit of creditors by, Company;
- (b) Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by the Company, or adjudication as a bankrupt or insolvent in proceedings filed against the Company;
- (c) Appointment of a receiver or trustee for all or substantially all of the assets of the Company;
- (d) Abandonment of the Project pursuant to Section 5.5, below; or

(e) The Company is in default of any ground lease or other lease or arrangement with the City beyond the expiration of applicable notice and cure periods.

5.5 Abandonment. Notwithstanding any other provision of this Agreement, If Company and/or the Contractor should abandon and fail or refuse to resume the Project within ten (20) days after written notification from City to Company, then, the surety on the performance bond(s) may be notified in writing by City of such abandonment and directed to complete the Project, with a copy of said notice delivered to Company and Contractor. After receiving said notice of abandonment, neither Company nor Contractor may remove from the Project site any machinery, equipment, tools, materials or supplies then on site, and the same, together with any materials and equipment under contract for the Project may be held for use on the Improvements by the City or the surety on the performance bond(s), or another contractor in completion of the Project. In such event neither Company nor Contractor shall receive any rental or credit therefor, having hereby acknowledged that the use of such equipment and materials will ultimately reduce the cost to complete the Project and be reflected in the final settlement of the City's Cost Participation under this Agreement. In the event a surety fails to comply with City's written notice provided for herein, then the City may provide for completion of the Project in either of the following elective manners:

- (1) the City may employ such labor and use such machinery, equipment, tools, materials and supplies as said City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to Company, which may be paid by City out of the City's allocated share of the Project costs and applied as a credit to City's Cost Participation, or any other amounts that may at any time become due to the Company under this Agreement. In case such expense is less than the sum which would have been payable under this Agreement if the same had been completed by the Contractor, then Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Agreement if the same had been completed by said Contractor, then the Contractor and/or its surety shall pay the amount of such excess to the City; or
- (2) the City may (under sealed bids when and in the manner required by law) let the contract to another contractor for the completion of the Project under substantially the same terms and conditions which are provided in this Agreement. In the case of any increase in cost to the City under the new contract as compared to what the City would have been obligated to pay under this Agreement, such increase shall be charged to the Company and Company's sureties shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this Agreement, the Contractor and/or its surety (ies) shall be credited therewith.

5.6 Remedies Cumulative. The remedies in this section are cumulative and nothing herein shall be deemed a waiver of any other remedy available to the City under this Agreement, including its remedies upon default provided in this Article.

5.7 Force Majeure. No party shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the party's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, labor strikes, acts of God, fire, flood, riot, a government restriction, quarantine, or mandatory closure order enacted in response to a pandemic or other public health crises, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control (each an event of "Force Majeure"). The party asserting Force Majeure shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention and has the burden of demonstrating (i) how and why their performance was so prevented, (ii)

the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (iii) that the party used reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

Article VI Miscellaneous

6.1 No Joint Venture. Company is an independent contractor, and Company shall accomplish all of its obligations under this Agreement in such capacity. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties (or between City and Contractor). The City shall have no control or supervisory powers as to the detailed manner or method of Company's performance of the subject matter of this Agreement nor the Contractor's means and methods of construction related to the Project.

6.2 Assignment. Neither party shall have the authority to or shall assign, convey, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other party. Any assignment, conveyance, pledge, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other party.

6.3 No Third Party Beneficiaries. This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

6.4 Survival. Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating responsibility or liability of or between the parties shall survive the completion or termination of this Agreement, and any rights and remedies either party may have with respect to the other arising out of the performance during the term of this Agreement shall survive the cancellation, expiration, or termination of this Agreement. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by a party shall not preclude or waive its right to use any or all other rights and remedies, and said rights and remedies are given in addition to any other rights and remedies the parties or either or them may have in law, in equity, or otherwise.

6.5 No Waiver. The failure of either party to enforce any provision or condition contained in this Agreement at any time will not be construed as a waiver of that condition or provision nor will it operate as a forfeiture of any right of future enforcement of the condition or provision.

6.6 Exhibits. All exhibits referenced in this Agreement are incorporated herein and made a part hereof for all purposes.

6.7 Governing Law. The laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in state courts located in Dallas County, Texas.

6.8 Entire Agreement. This Agreement supersedes all previous agreements regarding the matters set forth herein and constitutes the entire understanding of the parties. Company shall be entitled to

no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Except for the obligations of Company under this Agreement, neither Company nor any other owner of the Property shall have any further obligations under the Master Facilities Agreement.

6.9 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties shall seek to negotiate a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

6.10 Notice. Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day, or (iv) by email. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or document are as follows:

To City:

Town of Addison, Texas
c/o City Manager
P.O. Box 9010
Addison, Texas 75001
Email: wpierson@addisontx.gov

To Company:

Scarborough Airport I, LP
16380 Addison Road
Addison, Texas 75001
Attn: Mr. James R. Feagin
jfeagin@landmarkinterests.com

and

Town of Addison, Texas
c/o Assistant Director – Real Estate
4545 Jimmy Doolittle Drive, Suite 200
Addison, Texas 75001
Email: bill.dyer@addisonairport.net

6.11 Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY –
SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

For City:

For Company:

Town of Addison, Texas

Scarborough Airport I, LP
a Texas limited partnership

By: _____
Wes Pierson, City Manager

By: Scarborough I Airport GP, LLC, a Texas
limited liability company, its general
partner

Date: _____

By: 
James R. Feagin, Manager

Date: _____

EXHIBIT 1

PROJECT SITE DESCRIPTION

DEPCTION OF SCARBOROUGH SITE IMPROVEMENTS
AND CITY TAXIWAY CITY IMPROVEMENTS



Exhibit 1: Project Site Description
Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)

EXHIBIT 3
DESIGN PROFESSIONAL'S STATEMENT OF PROBABLE COST

ADDISON AIRPORT
SCARBOROUGH DEVELOPER PARTICIPATION
ALLOCATION OF PROJECT COST
REVISED 6/20/2022

SPEC. NO.	WORK/MATERIAL DESCRIPTION	City Upgrade	QUANTITY UNIT	ESTIMATED QUANTITY	UNIT PRICE	PROJECT COSTS	COMPANY SHARE	CITY SHARE	CITY UPGRADE ALLOWANCE	CITY TOTAL SHARE
1	Demolish 6" existing paving	No	S.F.	31,616.00	\$4.35	\$137,529.60	\$96,270.72	30%	100%	\$41,258.88
2	Excavate and hauloff 4" of cut	No	S.Y.	410.00	\$44.55	\$18,265.50	\$12,785.65	30%	100%	\$5,479.65
3	Lime stabilize 6" of subgrade as per report	No	S.F.	31,616.00	\$1.75	\$55,328.00	\$38,729.60	30%	100%	\$16,598.40
4	Place / finish 10" concrete with steel as per plans	No	S.F.	31,616.00	\$15.80	\$499,532.80	\$349,672.96	30%	100%	\$149,859.84
5	Saw cutting as per plans	No	S.F.	31,616.00	\$0.17	\$5,374.72	\$3,762.30	30%	100%	\$1,612.42
6	Sealant as per plans	No	S.F.	31,616.00	\$0.25	\$7,904.00	\$5,532.80	30%	100%	\$2,371.20
7	Construction staking and grades	No	EA.	1.00	\$4,167.50	\$4,167.50	\$2,917.25	30%	100%	\$1,250.25
8	Traffic control	No	EA.	1.00	\$4,165.00	\$4,165.00	\$2,915.50	30%	100%	\$1,249.50
9	Builder risk policy	No	EA.	1.00	\$5,950.00	\$5,950.00	\$4,165.00	30%	100%	\$1,785.00
10	\$ 5 mil - mbrella policy	No	EA.	1.00	\$21,338.55	\$21,338.55	\$14,936.99	30%	100%	\$6,401.57
11	Performance bond	No	EA.	1.00	\$24,182.00	\$24,182.00	\$16,927.40	30%	100%	\$7,254.60
12	General Conditions	No	EA.	1.00	\$0.00	\$0.00	\$0.00	30%	100%	\$0.00
13						\$0.00	\$0.00	30%	100%	\$0.00
14						\$0.00	\$0.00	30%	100%	\$0.00
15						\$0.00	\$0.00	30%	100%	\$0.00
16						\$0.00	\$0.00	30%	100%	\$0.00
						\$787,307.67	\$551,115.37			\$236,192.30

Abbreviation Key
 SY = Square Yards
 CY=Cubic Yards
 LF= Linear Feet

AREA CALCULATION:
 Scarborough area as per plan 70% 22,131.50 sf
 City of Addison area proposed area 30% 9,484.50 sf
 Total square feet 100% 31,616.00 sf

Exhibit 3: Statement of Probable Costs
 Chapter 212 Developer Participation Agreement (Scarborough Airport I, LP)