

**FIRST AMENDMENT TO FIXED BASE OPERATOR (FBO) AGREEMENT
AND HANGAR LEASE**

This First Amendment to the Fixed Based Operator (FBO) Agreement and Hangar Lease is entered into as of the Effective Date, as defined below, by and among the BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO, (the “Board”), and AVJET CORPORATION (the “Operator”) as follows:

WHEREAS, the Board and the Operator entered into a Fixed Based Operator (FBO) Agreement and Hangar Lease (the “Agreement”), effective April 1, 2010; and,

WHEREAS, the Board and the Operator have agreed to amend the Agreement to clarify and address issues not set forth in the original Agreement, memorializing their intentions through the execution of this First Amendment to the Lease Agreement, effective as set forth herein; and,

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

I. Amendments of **SECTION 2. RIGHTS AND OBLIGATIONS OF OPERATOR**

Section 2.03 e., first paragraph, shall be replaced in its entirety as follows:

e. Aviation Fuel – Handling and Storage: The Fuel Farm has been built out, repaired and inspected. The Operator shall be solely responsible for all maintenance and liability touching upon, concerning or arising out of the “Fuel Farm.” As used herein, the term “Fuel Farm” means all existing facilities (fuel tank area and self-serve station), including the necessary ground area used in the provision of Aviation fuel and is to be interpreted as broadly as reasonable.

Section 2.03 e., fifth paragraph, shall be replaced in its entirety as follows:

Operator shall be responsible for all maintenance and upkeep of any part of the Fuel Farm owned by Operator, or under its control, including the containment areas (to the extent it is controlling such containment areas), and shall, at its sole cost and expense, make any and all modifications, additions and/or alterations necessary to Operator’s property, including the containment areas (to the extent owned or controlled by it), to meet the applicable requirements or regulations of any government agency having jurisdiction over it. Prior to making any such modifications, additions and/or alterations, Operator shall present its plan to the Board for any such changes and obtain its written approval. In addition, Operator shall be responsible for routine maintenance and upkeep of Fuel Farm areas, including but not limited to the area around both the fuel tanks and the self-serve avgas station, providing mowing, weeding and gravel replacement in the summer as well as snow removal in winter.

II. Amendments to **SECTION 2B. LEASE COVENANTS**

Section 2B. a., shall be replaced in its entirety as follows:

a. Maintenance. Board shall maintain and repair the exterior of the Leased Premises, including, but not limited to, walls, roof, aircraft door, exterior doors, gutters, canopies, windows, exterior utilities, hangar insulation, structural components and utility infrastructure, i.e. electrical, plumbing, heating / cooling systems. To the extent the Board does not make any repair within ten (10) days of receiving written notice of the need for repair by Operator, then Operator may make the repair and offset the reasonable cost thereof against any amounts due the Board hereunder. Operator shall be responsible for repair of any damage caused by it. Operator shall maintain and repair the interior and limited outside elements of the Leased Premises including, but not limited to, interior walls and partitions, interior electrical, lighting, plumbing, and heating-cooling systems, interior / exterior bulb replacement, and fire extinguisher certification.

Section 2B. b. 4., 5. and 6., shall be replaced in their entirety as follows:

4. Upon approval of the Board, which may not be unreasonably withheld or delayed, may sublet to persons and/or companies in the facility. Such subleases must contain a notification to and agreement by sub operators that should this lease be terminated for any reason whatsoever, the sublease may be terminated simultaneously and that the sub operators will promptly vacate the premises.

5. Upon approval by the Board, which approval shall not be unreasonably withheld or delayed, for such approval, to modify the interior of the facility as required to maintain and promote Operator's business. No modification may block access to restrooms, common hallways or emergency exits.

6. Subleased Space Restrictions. Other than Airport Management, subleased space can only be accessed during normal business hours; tenants will receive no keys to external doors nor the code to the security system in order to maintain FBO and Airport security with the exception of businesses that provide emergency medical transport services and such services require 24-hour, 7 days a week access.

III. Amendments to **Section 3. Board's Obligations and Reserved Rights of Board.**

Section 3.04 shall be replaced in their entirety as follows:

3.04 Snow Removal. Board shall provide snow removal for the Aircraft Operation Areas, Apron (ramp) areas and other Airport Areas in the manner and priority as specified in Airport's Snow Removal Plan. Board shall use its best efforts to provide snow removal in a timely manner; however, it shall not be responsible to Operator or to any other party for loss of business or flights due to snow accumulation or its failure to remove snow from any area, for whatever reason, including decisions as to the priority for snow removal from different areas.

Board shall not be responsible for moving aircraft or vehicles to accomplish snow removal. Operator shall use its best efforts to cooperate in moving aircraft or vehicles to accommodate Board's snow removal efforts.

Operator shall be responsible for removing all accumulations of snow and ice from walkways and the building perimeter out to a minimum of ten (10) feet from the Leased Premises and structures located on the Leased Premises, around parked vehicles and aircraft which could not be moved (and can be reasonably moved) and any other areas on the Leased Premises which cannot be readily served by the Board's snow removal equipment, which includes, but is not limited to, parking areas, both public and long term, Fuel Farm including the Fuel Farm ingress and egress roads.

IV. Amendments to **SECTION 4. FEES, CHARGES and SPACE.**

Section 4.01, a., sixth sentence, is hereby amended to read as follows:

Provided, further, commencing with the sixth year of this Agreement, on the anniversary date of the execution of this Agreement, and every five (5) years thereafter, the Fuel Flowage Fees may be increased by an amount not to exceed one cent (\$0.01) to each of the pre one hundred fifty thousand (150,000) gallons and the in excess of one hundred fifty thousand and one gallons (150,001) fees, which increase shall be calculated by the County Administrator and the Airport Manager, with input from a representative of Operator, taking into consideration, including but not limited to, the on-going potential profitability of the FBO.

Section 4.01, c., third sentence, is hereby amended to read as follows:

Provided, further, commencing with the sixth year of this Agreement, on the anniversary date of the execution of this Agreement, and every five (5) years thereafter, the percentage the Operator is required to pay the Board under this subsection may be increased or decrease, which increase or decrease shall be reviewed and determined by the County Administrator and the Airport Manager, with input from a representative of Operator, taking into consideration, including but not limited to, the on-going potential profitability of the FBO.

Section 4.01, d., second sentence, is hereby amended to read as follows:

Provided, further, commencing with the sixth year of this Agreement, on the anniversary date of the execution of this Agreement, and every five (5) years thereafter, the percentage the Operator is required to pay the Board under this subsection may be increased or decrease, which increase or decrease shall be reviewed and determined by the County Administrator and the Airport Manager, with input from a representative of Operator, taking into consideration, including but not limited to, the on-going potential profitability of the FBO.

Section 4.01, e., second sentence, is hereby amended to read as follows:

Provided, further, commencing with the sixth year of this Agreement, on the anniversary date of the execution of this Agreement, and every five (5) years thereafter, the percentage the Operator is required to pay the Board under this subsection may be increased or decrease, which increase or decrease shall be reviewed and determined by the County Administrator and the Airport Manager, with input from a representative of Operator, taking into consideration, including but not limited to, the on-going potential profitability of the FBO.

Section 4.05, e., last sentence, is hereby amended to read as follows:

Provided, further, Operator shall not be required to share with Board any percentage of rental income it receives from leasing other office space at the premises and any prior restrictions on the types of business that may occupy such offices are removed except that Operator will not lease to any business whose presence might embarrass the Board (e.g. adult or marijuana businesses) or businesses that require public access thereby causing security issues for the Airport, or businesses that require access other than during standard operating hours of the FBO, with the exception of businesses that provide emergency medical transport services and such services require 24-hour, 7 days a week access.

V. Amendments to **SECTION 6. INSURANCE, NO LIABILITIES AND INDEMNIFICATION.**

Section 6.01, a., last sentence, is hereby amended to read as follows:

Only to the extent allowed by the Colorado Constitution and by Colorado Statute, the Board and Archuleta County shall indemnify and hold Operator harmless of any damages or claims which Operator may sustain as a result of an intentional act or negligence on the part of the Board only with respect to fuel spills on the Leased Premises. However, the Parties hereto understand and agree that the Board, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the Board.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Fixed Based Operator (FBO) Agreement and Hangar Lease the day and year set forth below.

(SEAL)

BOARD OF COUNTY COMMISSIONERS OF
ARCHULETA COUNTY, COLORADO

Clerk to the Board

By: Ronnie Maez, Chair

Date: _____, 2019

Blackhawk Aviation, Inc, DBA Avjet Pagosa



By: Patrick Ford

Title: General Manager

Date: June 10, 2019