

**AMENDMENT NO. 2 OF
NAPA COUNTY SPACE LICENSE AGREEMENT NO. 230301B**

THIS AMENDMENT NO. 2 TO SPACE LICENSE AGREEMENT 230301B ("Amendment") is made and entered into as of this ____ day of _____, 2023, by and between Napa County, a political subdivision of the State of California, hereinafter referred to as "County", and Napa Jet Center, Inc. DBA Atlantic Aviation, a California corporation, hereinafter referred to as "Licensee".

RECITALS

WHEREAS, County owns and operates the Napa County Airport, a general aviation airport located in Napa County, California, hereinafter referred to as "Airport"; and

WHEREAS, Licensee is a successor in interest to a continual commercial presence at the Napa County Airport since 1993; and has entered into the separate Agreement No. 230232B (the "Agreement") with the County, which requires Licensee, *inter alia*, to continue to provide flight training services; and

WHEREAS, Licensee entered into Amendment No.1 to the Space License Agreement 230301B (the "License") to utilize premises in the County's building at 2000 Airport Road for a flight training operation as well as space within in the 1950 Airport Rd hangar for aircraft maintenance during a pioneering period while their permanent facility is developed; and

WHEREAS, Licensee now wishes to continue to occupy Hangar 55 for their flight training aircraft use, rather than move to space at 1950 Airport Rd, with full understanding of operational challenges expected during near-term construction; and

WHEREAS, County desires to work with Licensee to provide space within County facilities and continue providing Hangar 55 through the pioneering period; and

WHEREAS, Amendment No. 2 to Space License Agreement 230301B (the "License") supersedes and replaces Amendment No.1 in its entirety; and

TERMS

NOW THEREFORE, Space License Agreement No. 230301B is amended as follows:

1. As of the above effective date, this Amendment No. 2 supersedes and replaces Amendment No. 1 to the License, dated June 6, 2023, in its entirety. The Parties agree

and understand that Amendment No. 1 shall have no force or effect as of the effective date of this Amendment No. 2.

2. Section 2. Demised Premises is amended by adding subparagraphs c, d, and e as follows:

c. From July 1, 2023 until June 30, 2025: approximately 4,200 square feet at 2030 Airport Road (Hangar 55) as depicted in Exhibit C (the "Hangar 55 Premises"), attached hereto and incorporated by reference herein.

d. Licensee accepts the Demised Premises in their present "as is" condition. Licensee acknowledges and agrees that County makes no representation or warranty as to the condition of the Demised Premises, whether as to patent, latent or other defects and general condition. County has no obligation to repair or replace the Demised Premises or any component or part thereof, whether or not affixed to the building. Licensee releases County and holds it and its officers, directors, employees, and agents harmless for any claims arising out of any condition of the Demised Premises. Licensee agrees that the Demised Premises are now in a tenantable and good condition. Licensee shall take good care of the Demised Premises, which shall not be altered, repaired, or changed without the written consent of County. All damage or injury done to the Demised Premises by Licensee, shall be paid for by Licensee. Licensee shall, at the expiration or termination of this License, surrender the Demised Premises to County in tenantable repair and condition (fair wear and tear and acts beyond the control of Licensee excepted).

e. Licensee understands significant construction activities are expected inside, and in the vicinity of Hangar 55 during the pioneering period. From time to time, delays in access, operations, and utility use may occur. Licensee acknowledges and agrees that County makes no obligation to provide additional Premises during construction activities. County will make every effort to provide notice of closures and utility shut off in a timely manner. Licensee expressly understands and agrees that operational impacts due to construction activities may occur with less than 24-hour notice to Licensee.

3. Section 3. Permitted Uses is amended by replacing the paragraph in entirety with the following:

The Demised Premises are to be utilized in conjunction with Licensee's commitment for flight instruction and training operations either directly or indirectly through contracted subtenants. The Demised Premises shall be subject to the federal requirements set forth in Exhibit D, attached hereto and incorporated by reference herein. The use of the Hangar 55 Premises shall be subject to special conditions set forth in Exhibit E, attached hereto and incorporated by reference herein.

4. Section 5. Rent is amended by replacing paragraphs (a), (b), and (c) in their entirety and

adding new paragraph (d) as follows:

(a) Base Rent. Licensee agrees to and shall pay the following monthly sums from July 1, 2023 until June 30, 2025:

i. Two Thousand Eight Hundred and Four Dollars and Eighty-four Cents (\$2,804.84) per month as rent for the office space at 2000 Airport Road and the terminal space at 2030 Airport Road; and

ii. One Thousand Six Hundred and Sixty-Seven Dollars and Fifteen Cents (\$1,667.15) per month for the Hangar 55 Premises.

(together the "Base Rent"). Any partial month of the tenancy of the Demised Premises shall be prorated. Rent may be adjusted by the Airport Manager for any period of holdover, but in no case will the rent be more than 150% of the current rent.

(b) Procedure for Payment. It is understood and agreed that Licensee's Rent is due and payable in advance for the following month on the 1st of each calendar month. Payment shall be by check mailed to Napa County Airport, Payment Processing – Airport, 1195 Third Street, Suite 108, Napa, CA 94559 (or at such other place as County shall from time to time in writing designate). Any such payments which are not paid by the 15th of the calendar month shall be deemed delinquent and subject to a late charge of 12 percent (12%) per annum until paid.

(c) Security Deposit. County will recognize the security deposit collected for Agreement 230232B for the duration of the term of this License as applying to this License concurrently. If Licensee fails to pay rent, or otherwise defaults under this License, County may use, apply, or retain all or any portion of the Security Deposit for the payment of any amount already due County, for fees which will be due in the future, and/or to reimburse or compensate County for any liability, expense, loss, or damage which County may suffer or incur by reason thereof. Licensee shall replenish any funds charged against the deposit within thirty (30) days of receiving notice from County. County's option to pull funds from the deposit for past due Rent or other sums due shall not alter Licensee's obligations to pay any fees or interest otherwise required by this License.

(d) Adjustment to Base Rent. Licensee agrees to and shall pay monthly rent adjusted as follows during the Pioneering Period:

i. Base Rent shall be adjusted annually effective July 1st of each year based on the Consumer Price Index ("CPI") for All Urban Consumers, All Items, for the San Francisco-Oakland-San Jose Metropolitan Area (1982-82=100), as published by the Bureau of Labor Statistics of the U.S Department of Labor for the month one year

prior to the Percentage Increase Adjustment Date. In the event that the CPI is not published for the applicable month, the Base Figure shall be the next succeeding CPI published. In no event, shall base rent be adjusted down.

5. Section 6. Utilities Furnished by County is amended by replacing subparagraphs (b) and (c) with the following language:

(b) . Licensors shall pay water, sewer, and refuse services. Licensee shall pay Licensors One-Hundred Forty-Five Dollars (\$145.00) per month for electricity use for the Hangar 55 Premises.

(c) Common Area Maintenance. County shall be responsible for common area maintenance charges or work, if any. Licensee shall maintain landscaping up to 10 feet from the exterior walls of the Hangar 55 building on all four sides. The area must be clear of debris and non-functioning equipment.

6. Section 15. Alterations and Modifications is amended by adding the following language:

Licensee acknowledges and agrees that County makes no representation or warranty regarding the existing services to the Demised Premises, nor as to patent, latent or other defects. It is understood and agreed that County will provide ventilation, temperature control, and electrical receptacles in general. County agrees to maintain such facilities in reasonably good working order, repair, and operation during the term of this License. Additional tenant improvements may only be completed with advanced written approval of County and after Licensee obtains appropriate permits, if necessary. Licensee shall be responsible for furnishing, installing, and replacing all light bulbs for the Demised Premises.

7. This Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Amendment may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature shall constitute an original for all purposes.
8. Except as provided in herein, the terms and conditions of the Space License Agreement No. 230301B shall remain in full force and effect as originally approved.

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IN WITNESS WHEREOF, this Amendment No. 2 of Napa County Space License Agreement No. 230301B was executed by the parties hereto as of the date first above written.

Napa Jet Center, Inc. DBA Atlantic Aviation, a California corporation

By


Timothy Bannon, Chief Operating Officer

“LICENSEE”

NAPA COUNTY, a political subdivision of the State of California

By

Joelle Gallagher, Chair

“COUNTY”

APPROVED AS TO FORM Office of County Counsel By: <u>/s/ Wendy M. Dau</u> Deputy County Counsel Date: <u>Oct. 18, 2023</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____
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EXHIBIT C
Hangar 55 Premises



Exhibit D
Federal Requirements

During the performance of this contract, the Licensee, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
9. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title

VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
13. The Licensee and its transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Licensee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or Improvements thereon, this provision obligates the party or any transferee for the longer of the following periods: (i) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the airport sponsor or any transferee retains ownership or possession of the property.
14. In the event of breach of any of the above Nondiscrimination covenants, County will have the right to terminate the License and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the License had never been made or issued.
15. This License incorporates by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Licensee has full responsibility to monitor compliance to the referenced statute or regulation. The Licensee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.
16. This License incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Licensee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Licensee retains full responsibility to monitor its compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Licensee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.
17. Licensee agrees that it shall insert the above eight provisions (Section 9.16(A) through Section 9.16(H)) in any agreement by which said Licensee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Leased Premises herein leased or owned.
18. Licensee agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided that Licensee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (Grant Assurance 22)

19. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by the Grant Assurances, and County reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. (Grant Assurance 23)
20. County reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Licensee, and without interference or hindrance. (FAA Order 5190.6B)
21. County reserves the right, but shall not be obligated to Licensee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Licensee in this regard. (FAA Order 5190.6B)
22. This Licenses shall be subordinate to the provisions of and requirements of any existing or future agreement between County and the United States, relative to the development, operation, or maintenance of the Airport. (FAA Order 5190.6B)
23. Licensee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises. (FAA Order 5190.6B)
24. It is clearly understood by Licensee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including but not limited to, maintenance and repair) that it may choose to perform. (Grant Assurance 22(f)).

Exhibit E

Special Conditions –Hangar 55 Premises

1. Hangar Use Provisions: The Hangar 55 Premises shall be used only for storage and maintenance of the flight training aircraft. No other commercial activity of any kind whatsoever shall be conducted by Licensee in, from or around the Hangar 55 Premises without prior written consent of County. No student, customer, public, or employee assembly or events (BBQs, meetings, open houses) may be conducted in the Hangar 55 Premises space.
2. Aircraft maintenance may be conducted only on flight training aircraft. Licensee shall take all necessary steps as to ensure that the performance of such maintenance work will not damage the Hangar 55 Premises. Licensee shall control the conduct and demeanor of its employees or invitees, and of those doing business with it, in or around the Hangar 55 Premises and shall take all steps necessary to remove persons whom Licensor may, for good and sufficient cause, deem objectionable.
3. Licensee shall keep Hangar 55 Premises clean and free of debris at all times. Non-functioning equipment must be removed from the premises.
4. In utilizing the Hangar 55 Premises during the term of this License, Licensee agrees to and shall comply with all applicable ordinances, rules and regulations established by any federal, state, or local government agency, or by the County of Napa. Painting is expressly prohibited. Upon termination of this License, Licensee shall immediately surrender possession of the Hangar 55 Premises, all keys, and shall remove any aircraft, aircraft parts, and all other property therefrom, leaving the Hangar in the same condition as when received, ordinary wear and tear excepted.
5. Licensee shall require sub-tenants to establish their own Spill Prevention, Control, and Countermeasure (SPCC) plan or to otherwise include their Hangar 55 Premises operations in their existing SPCC plan. Such plan shall be delivered to the County within 60 days of Hangar 55 possession.
6. Aircraft parking outside the Hangar 55 Premises or on adjacent ramps is limited to two piston-propeller aircraft and must maintain proper distances from taxilanes to ensure other hangar tenant operations are not impacted. This location does not include in-pavement tie-downs and will not be provided by Licensor. Licensee shall park at their own risk. Licensee may request and contract for tie-down parking separately, including a separate monthly fee.
7. There is no right of vehicle parking on adjacent ramps to Hangar 55. Parking for maintenance staff is depicted in Exhibit C. Parking for flight training staff and student vehicles is provided in the common parking lot at the 2000 Airport Road office building.