



AGENDA REPORT
February 12, 2019

Valkaria Airport - Brevard County Mosquito Control New Lease Agreement

SUBJECT:

Renewal of Lease Agreement between Valkaria Airport and Brevard County Mosquito Control (BCMC)

FISCAL IMPACT:

Lease agreement remains consistent with prior lease agreement. Lease base as of October 2018 is \$46,904.28

DEPT/OFFICE:

Valkaria Airport

REQUESTED ACTION:

It is requested the Board of County Commissioners approve the attached new five-year lease agreement between Valkaria Airport and BCMC.

SUMMARY EXPLANATION and BACKGROUND:

The original twenty (20) year lease agreement plus ten (10) year extension between the County and the District has expired. The same 4.97 acre complex to be leased shall be used by the District as a District southern area operations site to include mosquito control operations, an office, shop, support structures and aviation facility to operate and maintain aircraft and motor vehicles owned or under the exclusive control of the District. The new lease term is five (5) years and retains the provision to increase (or decrease) rent annually based on CPI adjustments.

Contact : Steve Borowski, Airport Manager
(321) 952-4590
steve.borowski@brevardfl.gov

ATTACHMENTS:

Description

- ▣ **BCMC New Lease Agreement**
- ▣ **Sign off sheet**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

February 13, 2019

MEMORANDUM

TO: Steve Borowski, Valkaria Airport Manager

RE: Item F.7., Valkaria Airport – Brevard County Mosquito Control New Lease Agreement

The Board of County Commissioners, in regular session on February 12, 2019, approved and authorized the Chair to execute new five-year Lease Agreement between Brevard County and Brevard County Mosquito Control for Valkaria Airport. Enclosed is a fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

A handwritten signature in black ink that reads "Tammy Rowe". The signature is written in a cursive style.

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: Contracts Administration
Finance
Budget

LEASE AGREEMENT

THIS AGREEMENT, made this 1st day of March, 2019, between the Board of County Commissioners of Brevard County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and the BREVARD MOSQUITO CONTROL DISTRICT, a special taxing district in Brevard County, Florida, hereafter referred to as "DISTRICT".

WITNESSETH:

WHEREAS, the DISTRICT has, since 1988, leased certain real property owned by the COUNTY and located at Valkaria Airport, hereinafter referred to as the "Premises", for a public purpose and to promote the public health, safety and welfare in Brevard County, Florida; and

WHEREAS, the COUNTY wishes to lease the Premises to the DISTRICT; and

WHEREAS, the objectives of the DISTRICT and the lease of the Premises would serve the public interests and a public purpose, is in the best interest of the COUNTY, is consistent with the COUNTY'S purposes and the Premises is not required for other COUNTY purposes at this time.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

1. Premises Leased: That the COUNTY, in consideration of the covenants herein contained, does hereby lease to the DISTRICT the Premises described in Exhibit "A" attached hereto and incorporated by reference.

2. Term: The term of this Lease is for a period of five (5) years commencing on March 1, 2019 and terminating on February 28, 2024.

3. Fair Market Value and Rental Payments: The DISTRICT agrees to pay to the COUNTY, for deposit to the credit of Valkaria Airport, rent for use and occupancy of the Premises base annual rental of (\$46,904.28) in equal quarterly installments due and payable upon invoice on the first day of each quarter commencing on the effective date of this Lease. Additionally, the DISTRICT shall be required to pay their pro-rata share of the non-ad valorem tax assessments (solid waste disposal).

4. Rental Adjustments: For purposes of this Lease, the COUNTY and the DISTRICT recognize and agree that the purchasing power of the United States dollar is evidenced by the Consumer Price Index (CPI) published by the Federal Government. The capitalized terms used herein are defined below. Effective on each Adjustment Date, Base Rent shall be increased (or decreased) in the same proportion as the CPI. The increases will be calculated as follows: (i) subtract one point zero (1.0) from a fraction, the numerator of which shall be the Variable Index, and the denominator of which shall be the Base Index; then (ii) multiply the result obtained in (i) above by the Base Rent immediately prior to the Adjustment Date. The result of the above equation shall be added to the current Base Rent immediately prior and shall become the new Base Rent. Notwithstanding the foregoing, in no event shall the increase in Base Rent on any Adjustment Date exceed THREE PERCENT (3%) per year (or the decrease in Base Rent exceed TWO PERCENT (2%) per year), and in no event shall the new Base Rent be less than the initial Base Rent established in paragraph 3 above. The new Base Rent shall be invoiced and payable in advance in consecutive quarterly installments on the first day of each quarter until the next Adjustment Date, or the expiration of the term, as the case may be. In applying the foregoing formula for Base Rent adjustments, the following terms shall have the following meaning:

“Adjustment Date” shall mean October 1, 2019, and the first day of each October thereafter so long as this Lease shall remain in effect.

“Base Index” for the first Adjustment Date shall mean the CPI for the month of June, 2018. Thereafter, the Base Index shall mean the CPI for the month of June prior to the previous Adjustment Date. By way of example, for the first Adjustment Date, the Base Index will be the CPI for the month of June, 2018; for the second Adjustment Date, the Base Index will be the CPI for the month of June, 2019; for the third Adjustment Date, the Base Index will be the CPI for the month of June, 2020.

“CPI” shall mean the Consumer Price Index for All Urban Consumers, All Items, U.S.A. Area, 1982-1984 = 100, as published by the Bureau of Labor Statistics, United States Department of Labor (U.S. City Average). If such index is discontinued, CPI shall then mean the most nearly comparable index published by the Bureau of Labor Statistics or other official agency of the United States Government as determined by the COUNTY.

“Variable Index” shall mean the CPI for the month of June in the current year prior to the then current Adjustment Date. By way of example, for the first Adjustment Date, the Variable Index will be the CPI for the month of June, 2019; for the second Adjustment Date, the Variable Index will be the CPI for the month of June, 2020; for the third Adjustment Date, the Variable Index will be the CPI for the month of June, 2021.

5. Use of Leased Premises: The DISTRICT agrees that the facility to be operated by it on the Premises will be operated in such a manner so not to constitute a nuisance or a hazard and that, in connection with the operation of the facility, the DISTRICT shall observe and comply with all applicable laws, ordinances, orders, rules and regulations prescribed by a lawful authority having jurisdiction over the facility operated on the Premises, including but not limited to

applicable FAA regulations and advisory circulars. The DISTRICT agrees that the Premises shall be used by the DISTRICT as a DISTRICT southern area operations site to include mosquito control operations, an office, shop, support structures and aviation facility to operate and maintain aircraft and motor vehicles owned or under the exclusive control of the DISTRICT.

The DISTRICT agrees that the Premises shall not be used to provide commercial aviation services to any non-governmental entity. The DISTRICT agrees to coordinate flight patterns with the Valkaria Airport Manager, and in compliance with all applicable airport rules and regulations and FAA regulations and advisory circulars, so as to insure safe flight operations and minimize potential impacts to the residential areas in the vicinity of the Valkaria Airport.

The DISTRICT shall have the right to erect and maintain such sign or signs on the Premises as may be permitted by applicable law, airport rules and regulations, and applicable FAA advisory circulars.

The DISTRICT may use any public portion of Valkaria Airport designated for aviation use and not under lease to another party, for such purposes as are suited to airport operations. Nothing herein shall be construed to grant or deny rights to use the airport facilities contrary to the requirements of law and applicable obligations to the United States government. Nothing herein shall be construed to grant or deny rights to use the airport facilities which negatively impact current or future aeronautical usage, or restrict the COUNTY's ability to meet obligations to the United States government (including fair market value requirements).

6. Improvements: The COUNTY hereby acknowledges that the DISTRICT is leasing the Premises for the purpose of maintaining and operating on said Premises the DISTRICT's southern operations site to include general mosquito control operations, an office, shop, and aviation facility, including an aircraft hangar, apron area, aircraft parking facilities, fuel and chemical tanks, and

any and all related and approved DISTRICT improvements, and that in order to utilize the Premises for this purpose, the DISTRICT has erected thereon improvements and other equipment at the DISTRICT's sole cost, expense and dictated use. All plans and specifications for any new construction, or other proposed development of the Premises, outside of routine repairs and maintenance as otherwise addressed herein, shall be reviewed and approved by the COUNTY prior to any construction by the DISTRICT. Unless this Lease is renewed, the DISTRICT shall remove said improvements and other equipment on or before ninety (90) days after termination of this Lease. In the event the DISTRICT shall be unable to remove said improvements and other equipment within ninety (90) days, the COUNTY may, by and through the County Manager acting on its behalf, extend the time for the DISTRICT to remove said improvements and other equipment upon terms mutually agreeable to the COUNTY and the DISTRICT, and the DISTRICT shall reimburse the COUNTY for storage.

The DISTRICT shall ensure that no contractor, which the DISTRICT may hire to perform any portion of construction, renovation, or repairs to the Premises, shall be entitled to file any liens, mechanics or otherwise, against the facilities involved or any COUNTY property to secure the contractor's interests or payments due. Any contract which the DISTRICT signs or executes with a contractor shall contain a provision which waives any right to file any such liens and a provision which requires the contractor to include the same waiver by any subcontractors which the contractor may hire in any agreement/contract the contractors executes with the subcontractor. The DISTRICT shall be solely responsible to parties with whom it shall deal in constructing improvements or installing equipment, and shall indemnify and hold the County harmless against all claims of whatever nature by third parties arising out of the construction of improvements or installation of equipment pursuant to this provision.

Prior to any construction associated with this Lease, a Notice of Proposed Construction, FAA Form 7460-1, shall be submitted by the County Manager or designated representative, on behalf of the COUNTY to and approved by the FAA if said construction falls within the requirements of Federal Aviation Regulations. Any development must be consistent with the current Airport Layout Plan, and compatible with Airport Layout Plan land uses.

7. Repairs and Alterations: The DISTRICT shall be obligated to maintain the Premises and any improvements located thereon during the term of this Lease. The DISTRICT agrees, at its sole cost and expense, to maintain all of the improvements located on the Premises, including the parking and service areas, in a good state of repair and to keep the Premises in a clean, neat and orderly condition. The DISTRICT is hereby granted the right to make reasonable alterations and repairs to the Premises as from time to time shall become necessary or desirable, provided however that all such alterations or repairs shall be at the sole cost and expense of the DISTRICT, and all such alterations or repairs, other than routine maintenance, shall be made only after written approval has been obtained from the COUNTY, by the County Manager designated representative, on behalf of the COUNTY. The DISTRICT shall be solely responsible to parties, with whom it shall deal in performing alterations or repairs, and shall indemnify and hold the County harmless against all claims of whatever nature by third parties arising out of alterations or repairs performed pursuant to this provision.

8. Utilities: The DISTRICT shall be responsible for electricity, lights, water, sewer, heat, janitorial services or any other utility or service consumed or required in connection with the use and occupancy of the Premises by the DISTRICT.

9. Indemnification: The COUNTY and the DISTRICT agree that each party shall be solely responsible for the negligent or wrongful acts of its employees

and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

10. Insurance: The COUNTY shall carry General Aviation Airport Liability Insurance in an amount not less than \$1,000,000.00 to cover bodily injury and property damage. Such policy shall include Hangar Keeper's liability coverage.

The DISTRICT shall carry Aircraft Hull and Liability Insurance in an amount not less than \$1,000,000.00 to cover bodily injury and property damage, including premises liability and aircraft liability coverage.

11. Right of Entry by COUNTY: COUNTY or its agents may at a reasonable time enter in and on the Premises for the purpose of inspecting the Premises or performing other duties as required by the terms of this Lease and rules, regulations, ordinances or laws of the appropriate governmental units. To the extent that the DISTRICT maintains certain restricted use chemicals on the Premises, inspection of certain locations and equipment located and maintained on the Premises shall require the COUNTY or its agents to notify the DISTRICT in advance to request entry and/or inspections hereunder, as may be required by law.

12. Illegal, Unlawful or Improper Use: The DISTRICT shall make no unlawful, improper or offensive use of the Premises, nor will the DISTRICT use the Premises, or allow the use of the Premises, for any purpose other than as stated in paragraph 5 above. Failure of the DISTRICT to comply with this provision shall be considered a material default under the lease.

13. Termination: This Lease may be terminated by either party upon ninety (90) days written notice to the other party. When it is determined to be in the best interest of the COUNTY, the County Manager may terminate the Lease upon written notice thereof being delivered by the County Manager, on behalf of

the COUNTY, to the DISTRICT. The DISTRICT shall not be entitled to any monies, damages, or other relief should the COUNTY decide to terminate this Lease as provided under this paragraph.

When it is determined to be in the best interest of the DISTRICT, the DISTRICT's governing board, or its duly appointed designee, may terminate the Lease upon written notice thereof being delivered by the DISTRICT to the COUNTY. The COUNTY shall not be entitled to any monies, damages, or other relief should the DISTRICT decide to terminate this Lease as provided under this paragraph.

Upon termination of this Lease, and provided all monies due to the COUNTY have been paid, the DISTRICT shall have the right to remove all temporary buildings, machinery and equipment which it has installed or placed upon the Premises, with the exception of fixed utilities, on or before ninety (90) days after termination of this Lease. In the event the DISTRICT shall be unable to remove said improvements and other equipment within ninety (90) days, the COUNTY may, by and through the County Manager acting on its behalf, extend the time for the DISTRICT to remove said improvements and other equipment upon terms mutually agreeable to the COUNTY and the DISTRICT, and the DISTRICT shall reimburse the COUNTY for storage. The DISTRICT agrees to repair any damage occasioned by reason of such removal or due to the DISTRICT's use and occupancy of the Premises.

14. Nondiscrimination: The DISTRICT for itself, its representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (ii) that in the construction of any improvements on, over or under the Premises and the

furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and (iii) that the DISTRICT shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to re-enter and possess the Premises as if said Lease had never been made or issued. This provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

15. Airport Protection: It shall be a condition of this Lease, that the COUNTY reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises described herein, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on Valkaria Airport.

That the DISTRICT expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Premises described herein to such a height so as to comply with Federal Aviation Regulations, Part 77.

That the DISTRICT expressly agrees for itself, its successors and assigns, to prevent any use of the Premises described herein which would interfere with or

adversely effect the operation or maintenance of Valkaria Airport, or otherwise constitute an airport hazard.

16. Property Rights Reserved: This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the COUNTY acquired the Premises from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the Lease of said Premises from the COUNTY, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the COUNTY pertaining to the Valkaria Airport.

17. Exclusive Rights: Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this Lease are non-exclusive and the COUNTY herein reserves the right to grant similar privileges to another lessee or other lessees on other parts of Valkaria Airport.

18. Audit of Books: In the performance of this Lease, the DISTRICT shall keep books, records, and accounts of all activities, related to the Lease, in compliance with generally accepted accounting procedures. Books, records, and accounts related to the performance of this Lease shall be open to inspection during regular business hours by an authorized representative of the COUNTY and shall be retained by the DISTRICT for a period of three years after termination of this Lease. All records, books, and accounts related to the performance of this Lease shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

19. Attorney's Fees: In the event of any legal action to enforce the terms of this Lease each party shall bear its own attorney's fees and costs.

20. Governing Law: This Lease shall be deemed to have been executed and entered into within the State of Florida and this Lease, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

21. Venue: Venue for any action to construe or enforce this Lease shall be in a court of competent jurisdiction in and for Brevard County, Florida.

22. Modification: No modification of this Lease shall be binding on the COUNTY or the DISTRICT unless reduced to writing and signed by a duly authorized representative of the COUNTY and the DISTRICT.

23. Severability: If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

24. Conflict Waiver: The Office of the Brevard County Attorney represents the COUNTY and the DISTRICT. Although the interests of the COUNTY and the DISTRICT are generally consistent, it is recognized and understood that differences may exist or become evident during the course of this representation. Notwithstanding these possibilities, the COUNTY and the DISTRICT have determined that it is in their individual and mutual interests to have the Office of the Brevard County Attorney represent them jointly in connection with this Lease. Accordingly, the COUNTY and the DISTRICT agree that the Office of the Brevard County Attorney may represent them jointly in connection with this Lease. The COUNTY and the DISTRICT further agree to waive any potential conflict of interest arising out of, and will not object to, the Office of the Brevard County Attorney's representation of each other in connection with this Lease. It is further understood and agreed that the Office of the Brevard County Attorney may freely convey necessary information provided by one client

to the other, and that there will be no secrets between the COUNTY and the DISTRICT unless both parties expressly agree to the contrary.

IN WITNESS WHEREOF, the COUNTY and the DISTRICT have signed and sealed this Lease Agreement on this day and year first above-written.


ATTEST:



Scott Ellis, Clerk


BREVARD MOSQUITO CONTROL DISTRICT

BY:


Kristine Isnardi, Chair

As approved by the Board on 2/12/19.


ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY:


Kristine Isnardi, Chair

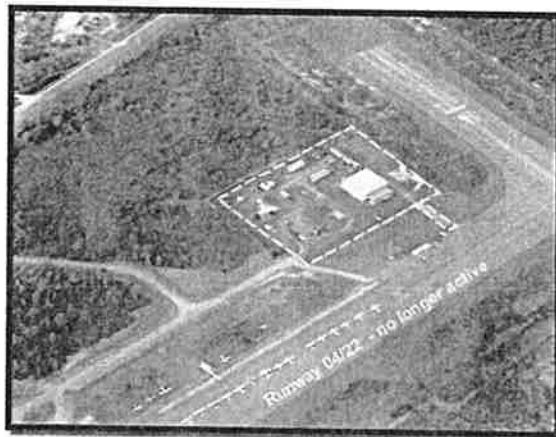
As approved by the Board on 2/12/19.

Reviewed for legal form and content:

Assistant County Attorney

Exhibit A

AERIAL PHOTOS OF VALKARIA AIRPORT (SUBJECT PROPERTY OUTLINED IN YELLOW)



- 4.97-acre parcel leased and occupied by BCMC at Valkaria Airport
- 3 Pilots' Place Malabar, FL 32950 unincorporated Brevard County, Florida
- Brevard County Government owned airport land, Tax Identification ID 2954516
- This site has been leased to Mosquito Control Division since 1988 for use as a regional operations center and vehicle park

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I - The following information must be completed on all new contracts submitted to the Board.

1. Contractor:		2. Fund/Account #: <u>00A0/219600</u>		Department Name: <u>VALKARIA AIRPORT</u>	
4. Contract Description: <u>VALKARIA AIRPORT LEASE WITH BREVARD COUNTY MOSQUITO CONTROL</u>					
5. Contract Monitor:			6. Mail Stop #:		
7. Dept./Office Director: <u>BCMC: JOE FAELLA</u> <u>VALKARIA AIRPORT: STEVE BOROWSKI</u>			8. Contract Type: <u>5 YR LEASE AGREEMENT</u>		
ACTION DATE: <u>30 days from entry</u>			ACTION REQUIREMENT: <u>Need complete data</u>		

SECTION II - The following departments must approve all contracts submitted to the Board:

	APPROVAL		INITIALS	DATE
	YES	NO		
<u>BCMC</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>JB</u>	<u>2/4/19</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>JB</u>	<u>01/25/19</u>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>CW</u>	<u>1/28/17</u>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>CW</u>	<u>1/28/17</u>

If any office denies approval, the package will be returned immediately to the User Agency.

SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST

DATABASE REQUIRED FIELDS	Complete <input checked="" type="checkbox"/>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
Note: Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal Bar Section</u>	<input type="checkbox"/>

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.