

RESOLUTION 24-63 - LEASE AMENDMENT TO THE GROUND LEASE AND MANAGEMENT FEE AGREEMENT BETWEEN THE DELAWARE RIVER AND BAY AUTHORITY AND NEW CASTLE COUNTY

WHEREAS, on June 30, 1995 New Castle County (“NCC”) and the Delaware River and Bay Authority (the “Authority”), entered into a Ground Lease pursuant to which NCC leased certain parcels of land and improvements commonly known as the Wilmington Airport (f/k/a New Castle County Airport) (the “Airport”); and

WHEREAS, on June 24, 2020, NCC delivered to Authority a Notice of Non-Renewal stating its intention to not renew the Ground Lease for an additional term; and

WHEREAS, pursuant to the NCC’s Rescission Letter and the Authority’s Rescission Acceptance, dated December 19, 2023, the parties agreed that the Notice of Non-Renewal was void and of no force or effect; and

WHEREAS, because the Notice of Non-Renewal was rescinded, NCC and the Authority agree that the First Renewal Term has been validly exercised and the Ground Lease that was set to expire on June 30, 2025 has been renewed for a renewal term of thirty (30) years; and

WHEREAS, NCC and the Authority also desire to modify certain terms of the Ground Lease, including requiring a deposit of \$1,000,000 with any future notice of non-renewal by NCC; reducing the time between non-renewal and termination; adding a requirement to immediately begin transferring FAA sponsorship following non-renewal; clarification on time periods used for amortization of various classes of capital assets in calculating the termination payment; and clarification of how capital projects will be completed in the period between notice of non-renewal and termination; and

WHEREAS, NCC and the Authority have also reached an agreement on payment of a management fee to the Authority out of airport revenues and reimbursement to NCC for services provided by its Economic Development Director from that management fee. The FAA has approved this agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to finalize the terms and conditions of an amendment to the Ground Lease, and a memorandum of such amendment, along with conforming changes to the Acquisition Agreement and with the advice and consent of counsel, to have such agreements executed by the Chairperson, Vice Chairperson, and the Executive Director; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Executive Director, with the advice and consent of counsel, is hereby authorized to finalize the terms and conditions of an agreement between NCC and the Authority that memorializes the payment of a management fee to the Authority and reimbursement to NCC for services provided by its Economic Development Director from such management fee, and to have such agreement executed by the Chairperson, Vice Chairperson and Executive Director.

## **Resolution 24-63 -Executive Summary**

**Resolution:** Authorizing (i) the Execution of a Ground Lease Amendment and memorandum of such amendment and a conforming amendment to the Acquisition Agreement between the Delaware River and Bay Authority (“Authority”) and New Castle County (“NCC”), regarding the Wilmington Airport, New Castle, DE and (ii) the Execution of an Agreement between the DRBA and NCC memorializing the payment of a management fee to the Authority and reimbursement to NCC for services provided by its Economic Development Director from that management fee.

**Committee:** Economic Development

**Committee/Board Date:** December 17, 2024

**Purpose of Resolution:** To permit the Executive Director, Chairperson and Vice Chairperson to execute and deliver a Ground Lease Amendment, and memorandum of such amendment, along with conforming changes to the Acquisition Agreement at the Wilmington Airport along with an Agreement between the DRBA and NCC memorializes the payment of a management fee to the Authority and reimbursement to NCC for services provided by its Economic Development Director from that management fee.

**Background of Resolution:** The Delaware River and Bay Authority operates the Wilmington Airport pursuant to a lease agreement with New Castle County. The lease has been renewed until 2055. In order to modernize the lease terms, the parties wish to amend the following language:

1. Earnest Money Deposit of \$1,000,000 will accompany any future notice of non-renewal;
2. Time between notice of non-renewal and termination reduced from 5 to no more than 3 years with requirement to immediately begin FAA process to transfer sponsorship;
3. Clarification on time periods used for amortization of various classes of capital assets; and
4. Clarification on how capital projects will get completed in the period between notice of non-renewal and termination.
5. The Authority and the County may also enter into an agreement regarding management fees paid to DRBA and reimbursement to NCC for Economic Development services rendered.