LICENSE

This License is made between the City of Stuart, a municipality of the State of Florida, as licensor (the "City"), and Martin County, a political subdivision of the State of Florida, as licensee (the "County") pursuant to Section 125.0101(2) Fla. Stat.

W I T N E S S E T H:

WHEREAS, the City maintains the cul-de-sac road labeled as 18th Street that intersects SE Palm Beach Road on the east side of the former subdivision known as Lawler Gardens that is now vacant land within the City of Stuart;

WHEREAS, the east side of the former Lawler Gardens is adjacent to County's General Aviation Airport known as Martin County Airport/Witham Field (the "Airport"); and

WHEREAS, 18th Street and the former Lawler Gardens is depicted and described in Exhibit A attached hereto; and

WHEREAS, on or about November 1, 2005, the County, pursuant to its Airport Noise Mitigation Program and a grant from the Federal Aviation Administration ("FAA"), passed its resolution No. 05-11.6 (the "Resolution") authorizing the purchase of all 23 parcels of Lawler Gardens located around 18th Street (the "Parcels"); and

WHEREAS, the Resolution is attached hereto as Exhibit B;

WHEREAS, pursuant to the Resolution, from about 2006 to 2008, the County purchased all the Parcels from the individual owners using funds from the FAA's grant for that purpose; and

WHEREAS, the County had all structures on the Parcels removed, including the mobile homes, such that the area became and remains vacant, and County intends to keep the Parcels vacant to comply with applicable FAA requirements and Airport Minimum Standards; and

WHEREAS, the County, as the owner of the Parcels, desires to install fencing around the perimeter of the former Lawler Gardens subdivision for the purpose of protecting the adjacent Airport Operations Area, and take over maintenance of 18th Street from the City; and

WHEREAS, the City and the County have agreed to a design of the portion of the fence that will be in front of and adjacent to SE Palm Beach Road; and

WHEREAS, a depiction of the fence design that will be in front of and adjacent to SE Palm Beach Road is attached hereto as Exhibit C; and

WHEREAS, the County will install a chain-link fence for the remainder of the perimeter of the former Lawler Gardens;

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and the covenants, promises, representations, guarantees and the Licenses herein contained;

IT IS MUTUALLY AGREED, by and between the City and the County as follows:

1. Recitals. The City and the County acknowledge and agree that the foregoing recitals are true, correct, accurate, in proper form and fully binding upon them in all respects, which recitals in their entirety are hereby incorporated in this License.

2. License. Upon the full execution of this License, the City transfers maintenance responsibility of 18th Street to the County.

3. Termination. To terminate this License, the City or the County must give the other at least 30 days prior notice in writing of its intent to terminate. If this License is terminated, the City shall resume maintenance responsibility of 18th Street as of the date of the termination of this License, and County shall be relieved of any responsibility for maintenance of 18th Street as of the date of the termination of this License.

4. Fence. County agrees to fence off the perimeter of the former Lawler Gardens subdivision; for the portion of the fence in front of SE Palm Beach Road, County agrees to use the fence design depicted in Exhibit C attached. City agrees to cooperate with County in obtaining any necessary permits and approvals for the installation of the perimeter fencing. The County will pay for the installation of the fencing at its own cost or with noise-abatement grant funds as applicable.

5. Indemnification; Sovereign Immunity. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the County shall indemnify, defend and hold harmless the City against any actions, claims for damages arising out of County's negligence in connection with this License, and the City shall indemnify, defend and hold harmless County against any actions, claims, or damages arising out of the City's negligence in connection with this License. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions, or a consent to be sued by third parties.

6. Right to Exclude. The City and County agree that upon the full execution of this License, the County will have the right to exclude anyone from entering the former Lawler Gardens and 18th Street in the County's sole discretion. The City agrees if the City desires to use 18th Street and Lawler Gardens to train the City's law enforcement or fire rescue personnel (or for any other purpose), the City will request the County in writing for such access, which the County may grant or deny in the County's sole discretion.

7. No third-party beneficiaries. City and County agree there are no third-party beneficiaries to this License.

8. Assignment. This License shall not be assignable.

9. Notices. Whenever either party desires to give notice to the other, such notice must be in writing in at least one of the following methods:

(a) Certified United States Mail, postage prepaid, return receipt requested; or

(b) Overnight courier, such as by FedEx or UPS, with a request for receipt acknowledgment; or

(c) Hand-delivery to a person authorized to accept delivery of notice with a request for a receipt acknowledgment; or

(d) Email if and only if agreed to in advance by the City and the County in writing specifying the email addresses, and if so agreed, the email shall a request receipt acknowledgement.

The place for giving notice shall remain the same as set forth herein until changed by giving the other party notice in writing in the manner provided in this section. For the present, the parties designate the following:

County:	Martin County Administrative Offices Attn: Real Property Manager 2401 SE Monterey Road Stuart, FL 34996
	Martin County Airport Attn: Airport Manager 2011 SE Airport Road Stuart, FL 34996
With a copy to:	Martin County Attorney 2401 SE Monterey Road Stuart, FL 34996
City:	City of Stuart, Florida Attn: City Manager 121 SW Flagler Avenue Stuart, FL 34996
With a copy to:	City of Stuart, Florida Attn: City Attorney 121 SW Flagler Avenue Stuart, FL 34996

All notices sent in accordance with this section shall be deemed to be effective upon receipt or refusal of same.

10. Headings. The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provisions of this License.

11. Invalidity. The invalidity or unenforceability of any particular provision or part of a provision hereof, shall not affect the other provisions or parts hereof, and the License shall be construed in all respects as if such invalid or unenforceable provisions or part thereof were omitted.

12. Entire License. This is the entire License between the Parties covering everything agreed upon or understood in the transaction. There are no promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution in effect between the Parties other than as herein set forth.

13. Governing Law; Dispute Resolution; Venue; Jury Trial Waiver. This License shall be construed and interpreted pursuant to the laws of the State of Florida. Venue of any action arising out of this License shall be in the Circuit Court in and for Martin County, Florida. As a condition precedent to filing a lawsuit, the City and the County agree to attempt to resolve any dispute first informally, and if that is not successful, by mediation before a mediator who is mutually agreeable to both the City and the County and certified as a mediator by the Florida Supreme Court. The City and the County waive trial by jury in the event of litigation, with each party bearing its own attorneys' fees and court costs. The parties agree to waive invoking the Florida Governmental Conflict Resolution Act pursuant to Section 164.1041(1) Fla. Stat., which provides the provisions of the Act shall not apply where the governmental entities agree by contract or other written instrument to mediate prior to litigating.

14. Counterpart Execution; Copies. This License may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Copies of this License fully executed, whether photostatic, electronic, or by facsimile transmission, shall be as authentic and effective as the originals and may be used for any purpose, including in any legal proceeding.

15. Construction of License. Each party has reviewed and participated in the formation of this License and, accordingly, any rule or construction to the effect that ambiguities be resolved against the drafting party shall not be employed in the interpretation of this License.

16. Authority. Each individual executing this License on behalf of each party represents and warrants that he is duly authorized to execute and deliver this License on behalf of said party, and that this License is binding upon said party in accordance with its terms.

[This area is left blank intentionally.]

IN WITNESS WHEREOF, MARTIN COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair, authorized to execute same by Board action on the ____ day of _____, 2020.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

_____
CAROLYN TIMMANN, CLERK OF THE
CIRCUIT COURT AND COMPTROLLER

_____
HAROLD E. JENKINS, II, CHAIRMAN

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

_____
SARAH W. WOODS
COUNTY ATTORNEY

IN WITNESS WHEREOF, on this date, The CITY OF STUART, FLORIDA has executed this License Agreement by the duly authorized undersigned officer on the ____ day of _____, 2020.

THE CIYT OF STUART
A Florida Municipal Corporation

ATTEST:

_____
MARY R. KINDEL
CITY CLERK

_____
MICHAEL J. MEIER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL J. MORTELL
CITY ATTORNEY