



Date of Council Meeting: September 9, 2014

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Authorizing a Memorandum of Agreement with SAAB Sensis and VSATS.

Staff Contact: Scott Coffman, Airport Manager

Recommendation: The Airport Commission recommends entering into a Memorandum of Agreement with SAAB and VSATS to conduct a test of a Remote Air Traffic Control Tower at the Leesburg Executive Airport.

Fiscal Impact: The Town will supply electrical and two phone lines during the 3 month test period estimated to cost \$2,000. No additional funds are needed.

Issue: Should Town Council authorize Town Manager to execute a Memorandum of Agreement with SAAB and VSATS to conduct a test of a Remote Air Traffic Control Tower?

Background: The State of Virginia Department of Aviation's research arm VSATS and SAAB Sensis have partnered to perform a test of a Remote Air Traffic Control Tower for purposes of seeking FAA safety certification. The Leesburg Executive Airport was selected as an ideal location due its significant air traffic, complex airspace, and proximity to FAA evaluators.

The airport will provide space for equipment and a controller workstation in the airport terminal. Once the remote tower equipment is installed, a 3-month live test will provide data for FAA safety evaluations and certification. Certified air traffic controllers will provide air traffic control services at the airport for 12 hours daily during the test period.

The Airport Commission supports the test program as it is a step toward establishing a permanent FAA air traffic control tower at Leesburg. As the airport has grown in traffic volume, an air traffic control would provide safety and efficiency benefits to the existing airport users and is often a requirement of business jet operators.

**MEMORANDUM OF AGREEMENT
BETWEEN
SAAB SENSIS CORPORATION
AND
VIRGINIA SATSLAB, INC.
AND
TOWN OF LEESBURG, VIRGINIA**

REGARDING REMOTE CONTROL TOWER TEST PROGRAM

THIS MEMORANDUM OF AGREEMENT, (“MOA”), made this _____ day of _____, 2014, by and between **SAAB SENSIS CORPORATION**, a Delaware corporation, with a principal place of business at 85 Collamer Crossings, E. Syracuse, NY 13057, (hereinafter referred to as “**SAAB**”) and **VIRGINIA SATSLAB, INC.**, a Virginia corporation with a principal place of business at 5702 Gulfstream Road, Richmond, VA 23250, (hereinafter referred to as “**VSATS**”) and the **TOWN OF LEESBURG, VIRGINIA**, a municipal corporation, with a principal place of business at 25 W. Market St., Leesburg, Virginia, (hereinafter “**TOWN**” and "Town"). (The TOWN, SAAB and VSATS are collectively referred to as the “Parties” and "parties.")

WITNESSETH:

WHEREAS, the TOWN owns, controls and operates the Leesburg Executive Airport (hereinafter referred to as “**JYO**” and "Airport"), located at 1001 Sycolin Rd., S.E., Leesburg, Va., 20175; and

WHEREAS, SAAB is the subsidiary of a public company and is licensed to sell the Saab Remote Tower System, enabling air traffic management of an airport from a remote location; and, SAAB has a corporate interest in demonstrating the safe and effective operation of the Saab Remote Tower System within the continental United States of America; and

WHEREAS, VSATS is a nonstock corporation whose mission is to research, develop, and implement aviation technologies that promote economic development in Virginia communities through a safe and secure air transportation system; and

WHEREAS, VSATS has determined that the successful operation of a remote air traffic management system at JYO would be beneficial to airport operations at JYO; and

WHEREAS, VSATS and SAAB entered into an Agreement dated August 19, 2014, for the execution and delivery of the Saab Remote Tower System at JYO; and

WHEREAS, the Town desires to allow SAAB and VSATS to use certain areas at JYO for the Saab Remote Tower System as described on “Exhibit A” hereto for the purposes set forth herein; and

WHEREAS, the Parties agree that the successful operation of a remote air traffic management system by the utilization of the SAAB Remote Tower System at JYO, would be beneficial to the TOWN’S airport operations.

WITNESSETH:

NOW THEREFORE, the recitals set forth above being incorporated herein by reference and in consideration of the mutual promises and conditions contained herein, the Parties agree as follows:

SECTION 1 - PREMISES

- 1.01 Use of Premises.** Town hereby allows SAAB and VSATS to temporarily occupy those premises which are shown on “Exhibit A” for the Saab Remote Tower System (hereinafter “Remote Tower System”).
- 1.02 Condition of Premises.** The Parties acknowledge, understand and agree that: (i) SAAB and VSATS are occupying the premises depicted on “Exhibit A”, "AS IS" and based on their own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of TOWN except as may be expressly set forth elsewhere in this MOA, (ii) SAAB and VSATS shall take possession of the premises in an “AS IS” condition, and (iii) This MOA confers no rights either with regard to the subsurface of the land below the ground level of the premises or with regard to the air space above the top of the roof of the building that is part of the premises (also referred to hereafter as "Premises"), except to the extent necessary for construction or installation of the Remote Tower System, including fixtures and appurtenances, as approved by the TOWN.
- 1.03 Obligation to Maintain.** SAAB and VSATS shall repair and maintain the Premises and Improvements as described herein in good order and repair and keep the Premises in a neat, safe, clean and orderly condition, and appearance, as reasonably determined by the Town. Such obligation shall include without limitation the prevention of the accumulation of any refuse or waste materials that might be or constitute a fire hazard or a public or private nuisance.
- 1.04 Cost.** The Parties agree that SAAB and VSATS shall occupy the Premises at no cost to SAAB or VSATS.

1.05 Utilities. The Parties agree that the TOWN will provide and pay the cost of the utilities for the Premises which include: natural gas, electricity, telephone and high-speed internet service. The Town reserves the right and will retain full access and control of the thermostat for the Premises, which shall be maintained at a reasonable temperature, to ensure maximum cooling and heating efficiencies. Any other utilities required by the SAAB and VSATS will be at the expense of SAAB and VSATS.

1.06 Generator. The Parties agree that the TOWN will provide a generator to the Premises to be used in the event of a power outage.

SECTION 2 – TERM

2.01 Term. The term of this MOA shall be for a period of twenty (20) months, commencing on the _____, 2014, (the "Commencement Date") and ending on _____, 2016 ("Term").

2.02 Termination of Lease. Nothing set forth herein waives TOWN's right to terminate this MOA for default under this MOA.

SECTION 3 - USE OF THE PREMISES

3.01 Use of Premises. SAAB and VSATS shall use and operate the Premises for any lawful purpose provided however, that such purpose is in accordance with the terms and conditions of this MOA.

3.02 Compliance with Laws. SAAB and VSATS shall observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having jurisdiction over the Premises or any part thereof and of all insurance companies writing policies covering the Premises or any part thereof. SAAB and VSATS shall also obtain each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Premises or required in connection with any building or improvement now or hereafter erected thereon. Without limiting the generality of the foregoing, SAAB and VSATS shall comply with all provisions of the Leesburg Town Code, Federal Grant Programs, Airport Master Plan, Environmental Regulations, Regulations of the Federal Aviation Administration and such Rules and Regulations, including Airport Minimum Standards, governing Airport operations that exist as of the date of this MOA, as well as such modifications and additions thereto as the Town, in its reasonable discretion, may hereafter make for the Airport. Any

violation of the provisions of this Subsection 3.02 shall constitute a default under this MOA following an applicable notice and cure period of thirty (30) days. Provided, however, if the nature of SAAB and VSATS's cure is such that more than thirty (30) days are reasonably required to cure a violation, then SAAB and VSATS shall not be deemed to be in default if SAAB or VSATS commences such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.

SECTION 4 – CONSTRUCTION

- 4.01 Construction of Additional Improvements.** Except as expressly authorized herein, SAAB and VSATS shall make no additions, alterations, changes, fixtures, or other improvements to the Premises (“Improvements”) without the express written consent of the TOWN. SAAB and VSATS, at their own expense, shall keep and maintain the Premises and Improvements neat and orderly at all times and shall perform all repairs to the same to keep them in proper condition.
- 4.02 No Interference with Airport Operations.** SAAB and VSATS shall conduct all work on the Premises, including repair or maintenance work so that such work will in no way materially interfere with the operation and use of the Airport by the Town and other persons and organizations entitled to use of the same, unless coordinated with and authorized by the airport.
- 4.03 Approval of Improvement Plans.** Any and all proposed improvement plans must be submitted and approved by the Town, which approval shall not be unreasonably delayed or withheld.
- 4.04 Compliance with Town and County Codes.** SAAB and VSATS agree that all work on the Premises, including construction, repair, and maintenance work, shall comply with the Zoning, Building, Fire, Plumbing, Landscaping, Electrical and Mechanical Codes of the Town or in the event the Town is governed by County Codes, the County Codes shall govern. SAAB and VSATS shall pay all required fees for all necessary permits.

SECTION 5 - INSURANCE

5.01 Insurance Requirements

- A. Comprehensive General Liability Insurance.** SAAB and VSATS, at their cost, shall maintain comprehensive liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence, insuring against all liability of SAAB and VSATS

and their authorized representatives and subcontractors arising out of and in connection with SAAB and VSATS's use or occupancy of the Premises. Said insurance shall insure performance by SAAB and VSATS of the indemnity provisions of Sections 6.

- B. Property Insurance.** SAAB and VSATS shall be responsible for any Improvements and/or betterments made to the Premises by SAAB and VSATS. SAAB and VSATS shall also be responsible for their belongings, furniture, computers, and any all other personal items which SAAB and VSATS may use and/or store within the Premises. The Town shall neither be responsible for any Improvements nor personal items within the Premises and SAAB and VSATS may maintain insurance, at their own cost, for improvements, betterments and personal belongings. The Town does not and will not maintain insurance for improvements and betterments made to the Premises by SAAB and VSATS. The Town does not and will not maintain insurance for SAAB and VSATS's personal belongings within the Premises.
- C. Workers' Compensation Insurance.** If SAAB and VSATS have employees, SAAB and VSATS shall procure and maintain, at their sole expense, Workers' Compensation Insurance in such amounts as will fully comply with the laws of the Commonwealth of Virginia. This insurance requirement shall flow down to any subcontracted entity of SAAB or VSATS.
- D. Employers' Liability Insurance.** If SAAB and VSATS have employees, SAAB and VSATS shall procure and maintain, at their sole expense, Employers' Liability Insurance, with the following minimum coverage: Bodily Injury by Accident \$1,000,000 each accident; Bodily Injury by Disease \$1,000,000 policy limit. This insurance requirement shall flow down to any subcontracted entity of SAAB or VSATS.

5.02 General Requirements.

- A. Additional Insured.** The comprehensive general liability policy shall name the Town as an additional insured to the extent of any indemnities contained in this MOA.
- B. Special Items.** Each insurance policy shall provide the following: (i) the policies cannot be cancelled, or substantially modified until and unless thirty (30) days written notice is received by the Town for payment of any premium or for assessments under any form of policy; (ii) the insurance company shall have no recourse against the Town for payment of any premium or for assessments under any form of policy; and (iii) as to the Premises

only the policies are intended as primary coverage for the Town and that any insurance or self-insurance maintained by the Town shall apply in excess of and not contributory with the insurance provided by these policies. SAAB and VSATS shall continually maintain evidence of insurance for the Town.

C. Certificates of Insurance. SAAB and VSATS shall deliver Certificates of Insurance, for the policies of insurance required hereunder, to the Airport Manager of the Town. SAAB and VSATS shall continually maintain evidence of such insurance for the Town, and provide such evidence upon the Town's request.

D. All Insurance companies must be licensed to conduct business in the Commonwealth of Virginia. All insurance companies must have an A.M. Best financial rating of A- or better.

5.03 No Limitation of Liability. The procuring of any policy of insurance shall not be construed to be a limitation upon SAAB and VSATS's liability or as a full performance on its part of the indemnification provisions of this MOA; SAAB and VSATS's obligations being, notwithstanding any said policy of insurance, for the full and total amount of any damage, injury, or loss caused by the negligence or neglect connected with the operation under this MOA.

5.04 Failure to Maintain Insurance. Failure to maintain the minimum insurance as stated in this Section 5 shall constitute a default under this MOA. Without waiving any remedies available to the Town for such default, the Town may, at its option, purchase the required insurance and charge the actual insurance expense thereof to SAAB and VSATS, which expense SAAB and VSATS shall assume and pay within thirty (30) days of receipt of an invoice by SAAB and VSATS from the Town.

5.05 SAAB and VSATS's Insurance Primary. SAAB and VSATS's insurance shall be primary for all purposes under this MOA.

SECTION 6 - HOLD HARMLESS

6.01 No Liability of the Town. Neither the Town, nor its departments, officers, or employees shall be liable for any loss, damage, death or injury of any kind whatsoever to the person or property of SAAB and VSATS or sub-lessees, agents or subcontractors or of any other person whomsoever, caused by SAAB and VSATS's use of the Premises, or by any defect in any Improvement erected thereon, or arising from any accident, fire, or from any other casualty on the Premises or

from other cause whatsoever, and SAAB and VSATS, their agents and subcontractors, hereby waive all claims against the Town.

6.02 SAAB and VSATS Indemnification. To the furthest extent permitted by law, SAAB and VSATS shall defend, indemnify, and hold the Town, its departments, boards, commissions, council members, officials, agents, and employees, individually and collectively, for, from, and against all losses, expenses (including attorney fees), damages, claims, charges, fines, suits, actions, demands, or other liabilities of any kind (“Liability”), including without limitation Liability for bodily injury, illness, death, or for property damage, to the extent resulting from or arising out of this MOA and/or the use or occupancy of the Premises by SAAB and VSATS.

SECTION 7 - INSPECTION

7.01 Inspection. The Town shall have the right upon reasonable notice and during business hours to inspect the Premises to determine if the provisions of this MOA are being complied with.

SECTION 8 - USE OF PUBLIC AIRPORT FACILITIES

8.01 Non-Exclusive Use of Public Airport Facilities. SAAB and VSATS are granted the non-exclusive use of all public airport facilities including, but not limited to, taxiways, runways, aprons, navigational aids and facilities. All such uses shall be in accordance with the laws of the United States of America, the Commonwealth of Virginia, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations and ordinances of the Town now in force or hereafter prescribed or promulgated by ordinance or by law.

8.02 Reservation of Rights. Nothing contained herein shall be construed to prevent the Town from closing the runways, taxiways or aprons of the Airport on special occasions from time to time at the reasonable discretion of the Town.

SECTION 9 - NONDISCRIMINATION

9.01 Nondiscrimination. SAAB and VSATS assure that they will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. SAAB and VSATS assure that no

person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this MOA. SAAB and VSATS assure that they will require that their covered sub organizations provide assurances to the Town that they similarly will undertake affirmative action programs and that they will require assurances from the sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

9.02 Compliance with Laws. SAAB and VSATS agree to comply with all provisions of applicable federal, state, and local laws related to nondiscrimination, equal employment opportunity, and the Americans with Disabilities Act.

9.03 Material Default, Compliance with Laws. Noncompliance with provisions stated above shall constitute a material default thereof and, in the event of such noncompliance, the Town shall have the right to terminate this MOA, following any applicable notice and cure period, without liability there from; or at the election of the Town or the United States, either or both said Governments shall have the right to judicially enforce these provisions.

SECTION 10 - LITIGATION, ATTORNEY'S FEES

10.01 Litigation. In the event the TOWN shall be made a party to any litigation commenced against SAAB and VSATS by a third party, SAAB and VSATS shall pay the TOWN's costs of defense, including, but not limited to, court costs and reasonable attorney's fees.

10.02 Attorney's Fees. If any dispute arising under the terms of this MOA shall result in litigation, the prevailing party shall, in addition to any other relief granted or awarded by the court, be entitled to an award of a reasonable attorney's fee to be determined by the court.

SECTION 11 - NOTICES

11.01 Notices. All notices given, or to be given, by any party to the others, shall be given in writing, by certified mail return receipt requested, and shall be addressed to the parties at the addresses hereinafter set forth or at such other address as the parties may by written notice hereafter designate. Any such Notices shall also be sent electronically to the email addresses provided below.

Notices to the Town, and notices to SAAB and VSATS, shall be addressed as follows:

THE TOWN:
Airport Manager
Leesburg Executive Airport
1001 Sycolin Road SE
Leesburg, VA 20175

SAAB: Joshua H. Gaul
Contract Manager
85 Collamer Crossings
East Syracuse, NY 13057
Josh.Gaul@saabsensis.com

With a copy to:
The Town Attorney
Town of Leesburg
25 W. Market Street
Leesburg, VA 20176

VSATS: Keith McCrea
Executive Director
5702 Gulfstream Rd
Richmond, VA 23250
Keith.McCrea@doav.virginia.gov

With a copy to: Stefan Calos
Sands Anderson, PC
1111 E. Main St.
Ste. 2400
Richmond, VA 23219

SECTION 12 - REPRESENTATIONS AND AMENDMENTS TO BE IN WRITING

12.01 Representations and Amendments To Be In Writing. No oral promises, representations or agreements have been made by SAAB and VSATS or the TOWN. This MOA is the entire agreement between the parties (including employees and other personnel). All amendments or notices to terminate this MOA shall be in writing.

SECTION 13 – AUTHORITY TO EXECUTE

13.01 Authority to Execute. The persons executing this MOA on behalf of or as representative for SAAB and VSATS warrant that he or she is duly authorized to execute this MOA on behalf of SAAB or VSATS.

SECTION 14 – MISCELLANEOUS PROVISIONS

14.01 Governing Law. This MOA shall be governed by the laws of Virginia. The forum selected for any proceeding or suit in law or equity arising from or incident to this MOA shall be Loudoun County, Virginia.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first hereinabove written.

The TOWN:

Town of Leesburg, VA, a Municipal Corporation

By _____

Town Manager

Approved as to form:

Town Attorney

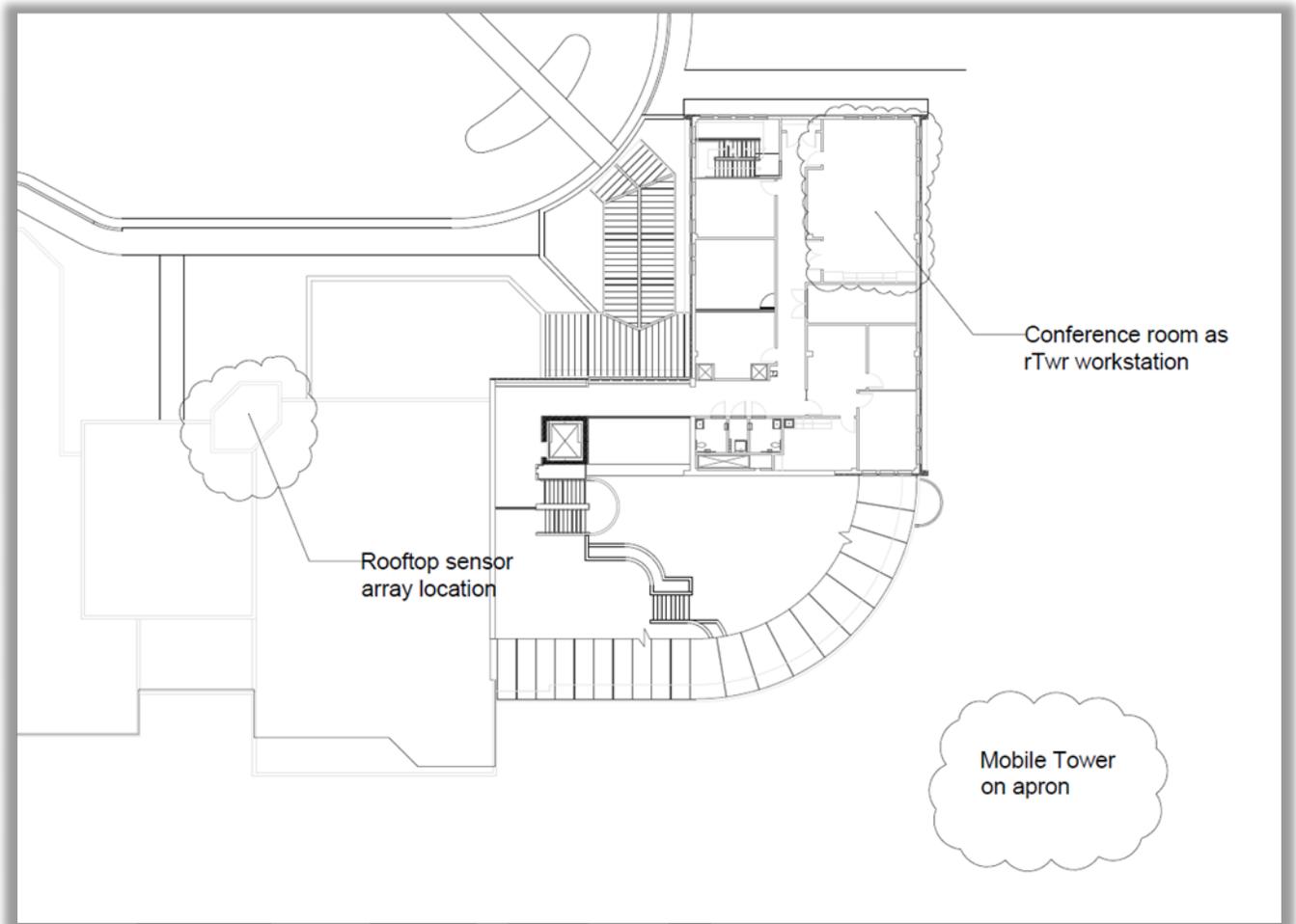
SAAB:

By: _____
Joshua H. Gaul
Contract Manager for SAAB

VSATS:

By _____
Keith McCrea
Executive Director of VSATS

Exhibit A: Map of Premises



PRESENTED September 9, 2014

RESOLUTION NO. _____

ADOPTED _____

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT WITH SAAB SENSIS AND VIRGINIA SATS LAB INC FOR THE PURPOSE OF ESTABLISHING A REMOTE AIR TRAFFIC CONTROL TOWER TEST AT THE LEESBURG EXECUTIVE AIRPORT

WHEREAS, the Town of Leesburg Council supports new innovations aimed at improving the safety and efficiency of the Leesburg Executive Airport; and

WHEREAS, SAAB Sensis Corporation is licensed to sell the Saab Remote Tower System, enabling air traffic management of an airport from a remote location; and,

WHEREAS, SAAB has a corporate interest in demonstrating the safe and effective operation of the Saab Remote Tower System within the continental United States of America; and

WHEREAS, Virginia SATS Lab Inc. is a nonstock corporation whose mission is to research, develop, and implement aviation technologies that promote economic development in Virginia communities through a safe and secure air transportation system; and

WHEREAS, VSATS and SAAB entered into an Agreement dated August 19, 2014, for the execution and delivery of the Saab Remote Tower System at Leesburg Executive Airport; and

WHEREAS, the Parties agree that the successful operation of a remote air traffic control system would be beneficial to the Town's airport operations; and

WHEREAS, the Town desires to allow SAAB and VSATS to use certain areas at the Airport for the Saab Remote Tower System.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia authorizing the Town Manager to execute a memorandum of agreement with SAAB Sensis and

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT WITH SAAB SENSIS AND VIRGINIA SATS LAB INC FOR THE PURPOSE OF ESTABLISHING A REMOTE AIR TRAFFIC CONTROL TOWER TEST AT THE LEESBURG EXECUTIVE AIRPORT

Virginia SATS Lab Inc. for the purpose of establishing a remote control tower test at the Leesburg Executive Airport

PASSED this _____ day of _____, 2014.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council