

**COMMUNITY MITIGATION AGREEMENT BY AND BETWEEN THE WINTHROP
FOUNDATION AND THE MASSACHUSETTS PORT AUTHORITY**

WHEREAS, the Winthrop Foundation (the "Foundation") and the Massachusetts Port Authority ("Massport") (collectively, the "Parties") agree that the anticipated growth in air passengers at Logan Airport and the projects that Massport is planning to undertake at Logan Airport will have an effect on the living environment for the people who reside in the Town of Winthrop;

WHEREAS, the Parties to this agreement (the "Agreement") desire to work cooperatively with each other to identify and carry out appropriate mitigation measures to adequately address the environmental effects of growth and change at Logan Airport; and

WHEREAS, in this Agreement the Parties have identified mitigation measures (the "Mitigation Measures") that are to be associated with designated milestones at Logan Airport and that will adequately mitigate the environmental effects of growth and change at Logan Airport;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree to enter into this Agreement on the following terms and conditions:

I. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

1. "AIP" shall mean the Airport Improvement Program, as authorized by the Airport and Airway Improvements Act, 49 U.S.C. §47101 et seq.
2. "Effective Date" shall mean July 25, 2019.
3. "FAA" shall mean the Federal Aviation Administration,
4. "Foundation" or "Winthrop Foundation" shall mean the charitable trust known as the Winthrop Foundation, which was established by Massport pursuant to a Declaration of Trust approved and accepted by the Town Council of the Town of Winthrop.
5. "Improvement and Extension Fund" shall mean the fund so designated in the Trust Agreement dated as of August 1, 1978, between Massport and U.S. Bank National Association (as successor-in-interest to State Street Bank and Trust Company), as trustee, as the same may be supplemented or amended from time to time.
6. "Logan Airport" shall mean the General Edward Lawrence Logan International Airport that is owned and operated by Massport.

7. "Massport" or the "Authority" shall mean the Massachusetts Port Authority, a body politic and corporate and public instrumentality of the Commonwealth of Massachusetts organized and existing pursuant to Chapter 465 of the Massachusetts Acts of 1956, as amended.

8. "Mitigation Purposes" shall mean those purposes set forth in Section III of this Agreement.

9. "Noise Rules" shall mean the Logan Airport Noise Abatement Rules and Regulations, 740 CMR 24.00 et seq., as most recently amended.

10. "PFC" shall mean a passenger facility charge collected or to be collected at Logan Airport by Massport in accordance with 49 U.S.C. §40117 and 14 C.F.R Part 158, as amended, or any successor provisions.

11. "PILOT" shall mean a payment-in-lieu-of-taxes made in accordance with any agreement between Massport and the Town in accordance with Chapter 497 of the Massachusetts Acts of 1980.

II. THE MILESTONES AND COMMUNITY PAYMENTS

A. Establishment of Foundation. The Winthrop Foundation was established on May 14, 2019, with the powers and obligations set forth therein, for the purposes of carrying out this Agreement.

B. Logan Airport Milestones and Corresponding Community Payments under PILOT. The schedule of community payments for Mitigation Purposes set forth below is intended to relate those payments to milestones associated with the modernization of Terminal E and the amending of the Parking Freeze and the construction of Parking Facilities at Logan Airport, all consistent with the requirements and objectives of MEPA, NEPA, Massport's enabling legislation, and federal aviation law. The Town of Winthrop and Massport have entered into an agreement to allow for payments by Massport to the Town of Winthrop, under and subject to the terms of the PILOT Agreement for the benefit of the Winthrop Foundation, in connection with the milestones set forth below (the "Milestones"); provided, that, should any of the Milestones set forth below not occur during the term of this Agreement for any reason, including Massport's decision not to commence or continue a project, Massport shall have no obligation to make the payment tied to the Milestone. If Massport files a Notice of Project Change under MEPA with respect to any Milestone, the project as changed will become the substitute Milestone for purposes of this Agreement if it is of equivalent scope, function and capital cost).

Schedule of Payments

Payment Number	Payment	Fiscal Year	Project Milestones
1	\$500,000	2018	Parking Freeze Amendment
2	\$500,000	2019	Terminal E – Phase I – Foundation
3	\$500,000	2020	Parking Facility
4	\$500,000	2021	Parking Facility
5	\$500,000	2022	Terminal E – Phase I Certificate of Occupancy
TOTAL:	\$2,500,000		

The community payments described above (the “Community Payments”) shall be used only for Mitigation Purposes described in and subject to the limitations and restrictions set forth in Section III of this Agreement; provided, that in no event shall the aggregate of all Community Payments made by Massport to the Town of Winthrop for the benefit of the Foundation pursuant to this Agreement exceed \$2,500,000.00.

III. THE MITIGATION PURPOSES

The Community Payments shall be used in cooperation with the Town of Winthrop, Massport, and other governmental agencies or entities to fulfill the following purposes (the “Mitigation Purposes”) in each case consistent with Section 501(c)(3) of the Code:

- (i) Funding of programs or projects in or benefitting the Town of Winthrop to avoid, limit, or mitigate any environmental or socioeconomic impacts or effects of works, projects, or activities at Logan Airport, and/or funding of any projects for public or charitable purposes that benefit of the Town of Winthrop and offset or mitigate against such impacts or effects, including, without limitation, projects acquiring, creating, preserving and/or rehabilitating open space, active and passive recreation, and/or conservation; and
- (ii) Expenditure for research and education, including conferences and seminars, to promote local business initiatives in the Town of Winthrop that relate to airport functions and needs.

At least 90% of the expenditures of the Foundation shall be applied directly for Mitigation Purposes; no funds shall be used to impede the safe and efficient flow of traffic to and from Logan Airport or for the preparation, filing, or pursuit of litigation against or adverse to the Massport or any project proposed by Massport or located at Logan Airport; no funds shall be used for legal services except as necessary (x) to comply with legal requirements applicable to tax exempt organizations, (y) to draft or review contracts with the Winthrop Foundation, (z) or to defend the Winthrop Foundation against litigation brought against it; no more than 10% of the expenditures of the Foundation may be used for administrative overhead; no such funds shall be expended other than for a purpose for which the Town of Winthrop or other public agency or authority could expend funds; and no such funds shall be expended in a manner or for a purpose that would restrict or impair the ability of Massport to collect, use, or receive federal grants or

other federal funds or Massport's ability to impose or expend passenger facility charges under federal law. "Administrative overhead" for purposes of this Agreement shall include all legal costs as permitted hereunder, accounting costs, rent, salaries of a director or other staff (if any), clerical support costs, and other costs of operating the Winthrop Foundation.

IV. COMMUNITY SUPPORT OF MASSPORT'S WORKS, PROJECTS, AND ACTIVITIES

The Foundation agrees with Massport that, as a result of the Community Payments described in this Agreement, the environmental effects of works, projects, and activities of Massport at Logan Airport will be adequately mitigated. Accordingly, the Foundation, acting on behalf of the community of the Town of Winthrop, agrees not to oppose in any judicial or administrative forum, or to solicit, aid, or support in any way others who oppose, the works, projects, and activities of Massport at Logan Airport during the term of this Agreement as the same may be extended from time to time.

V. MISCELLANEOUS PROVISIONS

A. Force Majeure Clause. In the event that (a) Massport shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of Massport; or (b) as a result of execution of this Agreement or any act taken or proposed to be taken hereunder, any action or proceeding in a court or governmental agency of competent jurisdiction shall be commenced that seeks (i) to impair Massport's ability to utilize any revenues from any of its facilities or projects for the purpose of making payments hereunder, or (ii) as a result of Massport's obligations hereunder, to adversely affect Massport's ability to receive federal grants or other federal funds or its ability to impose or expend PFCs under federal law, or (iii) to impair Massport's ability to recover from users or tenants of any of its facilities, property or projects any portion of the payments made under this Agreement, then performance of such act shall be excused for the period of the actual delay directly attributable to such causes, and the period from the performance of any such act shall be extended for a period equivalent to the period of such delay.

B. Construction. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Captions in this Agreement are inserted solely for convenience, do not constitute a part of this Agreement, and shall not be admissible for the purposes of proving the intent of the parties. It is the intention of the parties that no provision of this Agreement shall (i) conflict in any way with the obligations of Massport under Chapter 465 of the Massachusetts Acts of 1956, as amended, or under the trust agreements referred to in Section 12 of said Chapter 465, or any other federal or state law applicable to Massport, or (ii) restrict or impair the ability of Massport to discharge its statutory responsibilities under said Chapter 465, or (iii) require an expenditure or action that violates federal or state law, or causes Massport to become ineligible for federal assistance, financial aid, grants, or funding otherwise available to Massport as owner and operator of its facilities from time to time, including, without limitation, AIP or PFC funding, or (iv) cause a Trigger Event under the PILOT Agreement. No expense or expenditure of Massport under this Agreement in any fiscal year of Massport shall

exceed the balance of revenues remaining for such fiscal year after provision for payment of all other current expenses of Massport (including, without limitation, all amounts of debt service of Massport paid or payable in such fiscal year), any payments due in such fiscal year to the City of Boston, the City of Chelsea, and the Town of Winthrop under any PILOT agreement, the deposits to the credit of any debt service reserve fund, interest and sinking fund, redemption fund, maintenance reserve fund or other like fund required under said trust agreements referred to in Section 12 of said Chapter 465 as from time to time in effect, and any payments necessary to satisfy any requirement of federal or state law or regulation or court or administrative order binding on Massport. To the extent that any trust agreement referred to in Section 12 of said Chapter 465 (as in effect from time to time) may allow, annual expenses or expenditures of Massport under this Agreement shall be paid from funds on deposit in the Improvement and Extension Fund established under said trust agreement and available under said trust agreement for such purposes, and shall be made only after Massport has set aside or paid all the current expenses of Massport as described in the preceding sentence.

C. Entire Agreement. This Agreement contains and constitutes the entire understanding and agreement between the parties hereto and supersedes all previous negotiations, agreements, commitments, and writings among the parties hereto.

D. Subcontracting and Funding. Any provision of this Agreement requiring Massport to perform or implement a program or activity means that Massport may do so itself or may contract with others equally qualified to do so, or may refrain from doing so if a third party is independently performing or implementing such program or activity in such a manner substantially as provided by this Agreement. Any provision of this Agreement requiring Massport to fund any program or activity means that Massport must either provide such funding itself or secure such funding from another source.

E. Amendments. This Agreement may not be released, discharged, abandoned, supplemented, amended, changed, or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date, signed by a duly-authorized representative of each Party.

F. Mediation of Disputes. If any Party believes that Massport has failed to fulfill its obligations under this Agreement, it may submit written notice to Massport's Chief Legal Counsel specifying such concerns (a "Notice Letter"). If the concerns specified by the Notice Letter are not being reasonably addressed by Massport within 20 days of such Notice Letter, any Party may request mediation of the issues raised in the Notice Letter by submitting a written request for such mediation to Massport's Chief Legal Counsel within 40 days of the Notice Letter. The State Office of Dispute Resolution will be used to facilitate the selection of the mediator, the mediation process, and the mechanics of payment of the mediator. Massport shall pay for the cost of a mediator through the State Office of Dispute Resolution. The Parties agree to engage in good faith mediation of the issues specified in the Notice Letter for a period of at least 20 days following selection of the mediator. If the Parties cannot agree on the selection of a mediator, the person selected by the Town of Winthrop and the person selected by Massport shall select a mediator, which all parties shall accept for purposes of the mediation. The results of the mediation shall be non-binding. After completion of the mediation process, any Party may initiate litigation to enforce the terms of this Agreement.

G. Enforceability. This Agreement is a binding agreement, enforceable as such, and shall be interpreted pursuant to the laws of the Commonwealth of Massachusetts.

H. Successors and Assigns. This Agreement shall be binding upon, and inure only to the benefit of each party hereto and their respective successors and assigns, and no right of action shall accrue, by reason of this Agreement, to or for the benefit of anyone other than the parties hereto. By entering into this Agreement, the parties do not intend to create any enforceable rights in any third party as a third party beneficiary of this Agreement.

I. Notices. Whenever written notice is required pursuant to this Agreement, it shall be sent to the parties at their respective addresses below, by first class mail, facsimile transmission, or overnight express mail or courier service. Any notice sent by facsimile shall also be sent by mail or overnight express mail or courier service. Notice will be achieved upon mailing or delivery to a courier service. If notice is to be sent to the Town, it will be sent, by first class mail, to the Town of Winthrop, Attn: Town Manager, Winthrop Town Hall, 1 Metcalf Square, Winthrop, MA 02152. If notice is to be sent to the Authority, it will be sent, by first class mail to the Chief Legal Counsel, Massachusetts Port Authority, One Harborside Drive, Suite 200S, East Boston, Massachusetts 02128. If notice is to be sent to the Winthrop Foundation, it will be sent, by first class mail, to the Winthrop Foundation, Attn: _____, -
_____. Notice shall be sent to the above-listed persons or to other persons at such other addresses as a party shall designate by like notice to the other party.

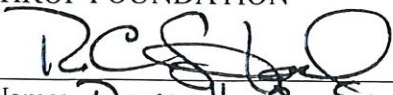
VI. TERM OF AGREEMENT.

This Agreement shall have a term commencing on the Effective Date and continuing through June 30, 2030.

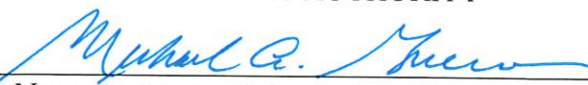
[Signature page follows]

IN WITNESS WHEREOF, duly authorized signatories of the Winthrop Foundation and the Authority, respectively, have each executed this Agreement on behalf of such party as of the Effective Date of this Agreement.

WINTHROP FOUNDATION

By: 
Print Name: Russell C. Soutarel
Title: Chair
Date: 2/25/19

MASSACHUSETTS PORT AUTHORITY

By: 
Print Name: Michael A. Grieco
Title: Assistant Secretary-Treasurer
Date: 9/24/19