

**CENTRAL WEST VIRGINIA REGIONAL AIRPORT AUTHORITY
EMPLOYMENT AGREEMENT
AIRPORT DIRECTOR**

This Employment Agreement is made and entered into on the date set forth opposite the signatories' signatures, by and between the Central West Virginia Regional Airport Authority (hereafter "CWVRAA"), acting through its Board of Members (hereafter, "Board"), and Nicholas Keller, Airport Director and Chief Executive Officer (hereafter referred to as "Director").

RECITALS

WHEREAS, the Board, as the governing body of the CWVRAA, desires to employ the services of Nicholas Keller, as Airport Director and Chief Executive Officer; and

WHEREAS, Nicholas Keller desires to accept employment as Airport Director and Chief Executive Officer for the CWVRAA; and

WHEREAS, the Board and Nicholas Keller wish to provide for the terms and conditions of employment as Airport Director and Chief Executive Officer, as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

AGREEMENT

1. Employment

The CWVRAA hereby agrees to employ Nicholas Keller as the Airport Director and Chief Executive Officer of the CWVRAA, and Nicholas Keller hereby accepts that employment.

2. Duties

Director shall perform those duties and have those responsibilities that are authorized and assigned to the Airport Director and Chief Executive Officer of Yeager Airport and as may be further set forth in the CWVRAA's Bylaws, CWVRAA's Policy Manual, Yeager Airport's Employee Manual and/or the Director's Job Description, as may be amended by a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year. Director shall perform such other legally permissible and proper duties and functions consistent with the office of the Director, as the Board shall assign by a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year.

3. Term

A. The effective term of employment of Director as Airport Director and Chief Executive Officer pursuant to this Employment Agreement shall be for a term of five years beginning on September 23, 2020 and expiring on September 23, 2025, unless sooner terminated as provided for in this Employment Agreement.

B. CWVRAA, acting through the Board on the affirmative vote of a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year, may terminate Director's employment at any time and with or without cause or reason by giving Director written notice of that termination.

In the event Director is terminated without cause, CWVRAA shall provide Director with severance pay equal to the lesser of eight (8) months base compensation or the amount of time remaining pursuant to this Employment Agreement. In addition, Director shall be compensated to a sum that equals the sum of money the former Director will be charged by CWVRAA's insurer for continuing with medical insurance benefits under COBRA for the lesser of eight (8) months or the amount of time remaining pursuant to this Employment Agreement.

All severance pay and the monetary sum provided for medical insurance benefits provided to Director pursuant to this section of the Employment Agreement may be paid out in an one-time lump-sum payment by the CWVRAA to Director or in equal monthly payments until the gross amount of severance pay and the monetary sum provided for medical insurance benefits are satisfied.

Through acceptance of any portion of the severance pay provided for herein, Director agrees to waive and forgo any claim of unemployment compensation against the CWVRAA.

All severance pay and the monetary sum provided for medical insurance benefits provided to Director pursuant to this section of the Employment Agreement shall cease immediately after the lesser of eight (8) months or the amount of time remaining pursuant to this Employment Agreement or immediately upon Director obtaining new comparable employment with medical insurance benefits or the option to obtain medical insurance benefits. As used herein, new comparable employment shall mean employment in which Director has the opportunity to earn 80% of the annual salary in which Director could have earned for the year in which Director's employment ended with CWVRAA.

C. In the event this Employment Agreement is not renewed under the same or similar provisions by a majority of the votes of the voting members of the Board

who are entitled to exercise voting rights for that specific fiscal year, this Employment Agreement shall automatically be renewed under the same terms and conditions of this Agreement, as it may have been previously revised or amended, on a month-to-month basis. Any termination or non-renewal of this Employment Agreement by CWVRAA, after the expiration date defined in subsection 3. A., hereinabove, other than for cause, shall require at least ninety (90) days advance written notice to Director. Any termination of this Employment Agreement for cause shall not require any advance written notice to Director.

D. Director may resign from employment as Airport Director and Chief Executive Officer at any time upon giving ninety (90) days written notice to the Board. In such a case, Director shall not be entitled to any severance pay, any monetary sum provided for medical insurance benefits, or any other compensation other than his or her regular pay and vacation pay through his or her final date of employment.

E. The CWVRAA, acting through the Board on the affirmative vote of a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year, may terminate Director's employment at any time for cause by giving Director written notice of that termination. In such a case, Director shall not be entitled to any severance pay, any monetary sum provided for medical insurance benefits, or any other compensation other than his or her regular pay and vacation pay through his or her final date of employment, which shall be the date specifically identified in the written notice of termination. Cause shall be defined as any of the following:

- (1) Gross negligence;
- (2) Malfeasance;
- (3) Failure or refusal to follow lawful, written instructions issued by the CWVRAA's Board by a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year;
- (4) Failure to remedy performance problems within Director's reasonable control as identified in writing by the Board by a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year and not corrected to the satisfaction of a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year within the greater of ninety (90) days thereafter or as otherwise specified by a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year. Performance problems may include but not limited to: failure to adhere to the CWVRAA's Bylaws, CWVRAA's Policy Manuals, Yeager Airport Employee Handbook or other written rules and regulations that are adopted by the Board;

- (5) Material breach of this Agreement, including but not limited to material breaches of the CWVRAA's Bylaws, CWVRAA's Policy Manual, Yeager Airport Employee Handbook, or other written rules and regulations that are adopted by the Board;
- (6) Moral turpitude;
- (7) Conviction of a felony; and/or
- (8) Death or permanent disability rendering him or her unable to discharge his or her duties with reasonable accommodation.

As used herein, a material breach is defined as an aspect of employment that goes to the essence of the Director's duties and responsibilities to the Board as opposed to a non-material breach that is tangential to the Director's job functions but that does not reflect on the overall ability of the Director to fulfill the essential job functions.

4. Devotion to CWVRAA Business

A. Director shall devote his or her productive time, ability and attention to the business of the CWVRAA during the term of this agreement. Director may serve on boards and participate in community or trade groups representing the CWVRAA.

B. Director shall not engage in any other business activities that would conflict or materially interfere with performance of Director's duties.

C. This Agreement shall not be interpreted to prohibit Director from making personal investments or conducting other private business affairs, if those activities do not create a conflict of interest under State law or materially interfere with the services required under this Employment Agreement.

D. Upon written approval by the Board by a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year, Director may engage in other forms of employment completely separate from and that do not conflict with this Employment Agreement.

5. Non-Compete

Director agrees to not accept employment whether full time or as a consultant with any other airport in the State of West Virginia during the term of this Agreement and for a period of one year after its expiration or termination.

6. Compensation

A. CWVRAA shall pay Director for services rendered, an annual base salary

of One Hundred Eighty-One Thousand Dollars and Zero Cents (\$181,000.00). Said amount shall be payable in bi-weekly installments at the same time and in the same manner as other employees of the CWVRAA are paid.

B. The Board shall evaluate Director's compensation at least every twelve (12) months and shall carry out the evaluation at the September board meeting. Any salary modification from the current annual base salary amount granted Director for that year shall be set forth in a compensation resolution and/or motion approved by a majority of the votes of the voting members of the Board who are entitled to exercise voting rights for that specific fiscal year, and shall not require an amendment to this Employment Agreement to be effective.

7. Pension

CWVRAA shall enroll Director as a member of the West Virginia Public Employees Retirement System (PERS), or equivalent, in the PERS or equivalent plan provided to other CWVRAA management employees. CWVRAA and Director shall each be responsible for paying its/his or her portion of the contribution into the plan.

8. Medical Insurance

If requested by Director, CWVRAA shall provide Director with the same medical benefits plan or plans that are provided to other CWVRAA management employees.

9. Automobile Allowance

Since Director's duties require the use at all times during the duration of this Agreement of an automobile, CWVRAA shall provide a CWVRAA owned or leased vehicle to Director.

10. Professional Training/Conferences

CWVRAA shall budget for developmental expenses for Director to attend official meetings, training, and occasions reasonably adequate to continue the professional development of Director and to reasonably pursue necessary official and other functions for the CWVRAA.

11. Vacation, Administrative, Sick Leave and General Benefits

Annually, beginning with the commencement of his or her employment, Director shall accrue paid vacation, sick leave and be entitled to recognized CWVRAA holidays consistent with CWVRAA policy as well as any other benefits provided to other CWVRAA management employees unless otherwise specified in this Agreement.

12. Indemnification

Consistent with the CWVRAA's Bylaws and Policy Manual, CWVRAA shall indemnify the Director against all costs and expenses incurred or sustained by the Director in connection with any action, suit or proceeding to which Director may be made a party by reason of being Director.

13. Notices

Any notices to be given hereunder by either party to the other in writing may be effective either by personal delivery or by mail. Mailed notices shall be addressed to the address of the parties to be notified which appears below, but each party may change its address by written notice given in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of five (5) calendar days following the date of mailing of the notice.

CWVRAA: 100 Airport Road
 Suite 175
 Charleston, WV 25311

Director: 100 Airport Road
 Suite 175
 Charleston, WV 25311
 Attn: Director Nicholas Keller

14. Entire Agreement

This Employment Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to that employment of Director and Chief Executive Officer by CWVRAA and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein and that no other agreement, statement or promise not contained in this Employment Agreement shall be valid or binding upon either party.

15. Effect of Waiver

The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Employment Agreement by the other party shall not be deemed a waiver of that term, covenant or condition, nor shall any

waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

16. Partial Invalidity

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

17. Governing Law

This Employment Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia and shall be in full force and effect as of the date of execution. In the event of a dispute over its terms no presumption shall arise from the identity of the drafter.

18. Arbitration

A. Scope

Board and Director agree to resolve through final and binding arbitration any and all claims, disputes, or controversies which could otherwise be raised in any legal forum or court that Board or Director have against each other, including, but not limited to, claims Board may have against Director and those Director may have against Board relating to or arising out of this Employment Agreement, Director's employment, or the termination of Director's employment regardless of the kind or type of dispute (hereinafter referred to as "claims").

Unless specifically stated herein, Board and Director agree and understand that arbitration and not trial before a legal forum, court, or jury is the exclusive forum for resolving claims. Board and Director agree to submit all such claims to be resolved by final and binding arbitration using the Revised Uniform Arbitration Act, *West Virginia Code* §55-10-1, *et. seq.*

Nothing in this Section prevents Director from filing a charge or complaint with a governmental or administrative agency; provided, however, that upon receipt of a right to sue letter or similar administrative determination, any claims shall become subject to arbitration.

This Section 18 does not cover claims for workers' compensation benefits or unemployment compensation benefits.

B. Authority to Determine Arbitrability & Severability

Board and Director may agree upon an arbitrator. If an arbitrator cannot be agreed upon by Board and Director, then each party shall propose an arbitrator to conduct the arbitration. If the parties cannot agree upon one of the proposed arbitrators, then the two proposed arbitrators shall agree upon and appoint an arbitrator to participate in and conduct the arbitration.

The arbitrators shall have the exclusive authority to resolve any claim between Board and Director, except those specifically excluded in Section 18 of this Employment Agreement. Enforcement of Arbitration may not be precluded on the grounds that (a) a party to this Employment Agreement also is a party to a pending court action or special proceeding with a third party, or (b) a party to this Employment Agreement asserts arbitrable and non-arbitrable claims.

If any provision, or portion thereof, is held to be invalid, void, or unenforceable, it shall be severed and/or this arbitration agreement shall be interpreted or modified to the extent necessary for it to be enforceable.

C. Arbitration Procedures

This arbitration agreement is governed by and shall be enforced pursuant to the Revised Uniform Arbitration Act, *West Virginia Code* §55-10-1, *et. seq.* and this arbitration agreement.

Any claims must be filed within the statute of limitations applicable to filing such claim in court, legal forum, or in an administrative proceeding. Any claim not brought within the time period established by the applicable statute of limitations shall be void and deemed waived.

A party wishing to initiate the arbitration process must file a written demand for arbitration in accordance with the Revised Uniform Arbitration Act, *West Virginia Code* §55-10-1, *et. seq.* and simultaneously serve a copy of such demand for arbitration on the other party in accordance with the notice requirements herein and within the time period established by the applicable statute of limitations. The demand for arbitration must identify and describe the nature of all claims asserted by the party, the facts and/or allegations upon which such claims are based, and the remedies sought.

All remedies available through a court or administrative action are available through arbitration. Either party to this arbitration agreement may be represented by counsel at any arbitration proceeding at the party's sole cost and expense, subject to the arbitrator's authority to award attorney's fees or costs to a prevailing party if such award is authorized by law. An arbitrator may award attorneys' fees or costs to a prevailing party only if such award is authorized by the applicable law and claim.

The arbitration will be conducted by a single arbitrator. Board and Director may agree upon an arbitrator. If an arbitrator cannot be agreed upon by Board and Director, then each party shall propose an arbitrator to conduct the arbitration. If the parties cannot agree upon one of the proposed arbitrators, then the two proposed arbitrators shall agree upon and appoint an arbitrator to participate in and conduct the arbitration.

Board shall pay the arbitrator's fees and expenses for each arbitration. The party initiating arbitration is responsible for the payment of filing fees. The arbitration shall be held in Kanawha County, West Virginia.

The arbitrator shall issue a reasoned written decision and award in accordance with the Revised Uniform Arbitration Act, *West Virginia Code §55-10-1, et. seq.*

Board and Director agree and understand that Board is subject to the Freedom of Information Act and the Open Governmental Proceedings Act. To the extent that Board deems certain information and/or documentation asserted confidential during the arbitration proceedings is required to be disclosed by law, Board and Director agree that Board has the authority to make such disclosure without any claims being asserted as a result of such disclosure and/or production.

IN WITNESS WHEREOF, the parties have executed this Agreement the _____ day of _____, 20__.

Central West Virginia Regional Airport Authority

By: R. Edison Hill, Chairman

Date: _ _ _ _ _

By: Nicholas Keller, Airport Director
and Chief Executive Officer

Date: _ _ _ _ _

as to Form:

Date: _ _ _ _ _

Charles R. Bailey, Attorney for the
Central West Virginia Regional
Airport Authority