

**SECOND EXTENSION AND RESTATEMENT OF OPERATION AND  
MANAGEMENT SERVICE AGREEMENT  
FOR  
THE SAN MARCOS REGIONAL AIRPORT**

This, the Second Extension and Restatement of the Operation and Management Service Agreement for the San Marcos Regional Airport is effective this day of October 1, 2020 by and between the City of San Marcos, Texas, (the “City”), 630 East Hopkins, San Marcos, Texas 78666 and Texas Aviation Partners, LLC (the “Operator”), 1807 Airport Drive, Suite 200, San Marcos, Texas 78666, for the operation, maintenance, management and development of the San Marcos Regional Airport (the “Agreement”).

**RECITALS**

The City owns the San Marcos Airport (“Airport”), the planning, acquisition, establishment, construction, improvement equipping, maintenance, operation, regulation, protection and policing of which is a public and governmental function, exercised for a public purpose and a matter of public necessity. The City has determined that it is in the City’s best interest to contract with an independent contractor as authorized by Section 22.020, Tex. Transp. Code.

The Airport currently hosts thirteen (13) aviation businesses that provide a full range of services that include, but are not limited to, aircraft refueling, maintenance and repairs, aircraft charter and rentals, and pilot training. The Airport is home to approximately 200 based aircraft with the majority housed in approximately 50 aircraft hangars and shelters.

The City issued a Request for Proposals (“RFP”) on May 27, 2010 and received a RFP from Texas Aviation Partners, LLC. The City has selected the Operator to operate and manage the Airport, and is relying on the expertise of the Operator to provide efficient management, operation, development and maintenance of the Airport.

The City and Operator previously entered into an Operation and Management Service Agreement for the San Marcos Regional Airport on October 1, 2010. The City and Operator subsequently entered into Amendment No. 1 to the original agreement on June 19, 2012 and Amendment No. 2 with an effective date of March 1, 2014. The City and Operator exercised the first extension term on February 3, 2015.

The City and Operator wish to further amend the agreement and extend its term for an additional five (5) years until October 1, 2025 subject to the earlier termination provisions herein provided.

The City and Operator intend to operate and maintain the Airport in a first-class manner. “First-class” and “First rate” as used in this Agreement shall mean the operation and maintenance of the Airport in accordance with the Airport Operating Plan, Chapter 10 of the San Marcos Code, the airport maintenance standards established by the City, FAA Regulations and any other applicable federal, state or local standards for public airports and the aviation industry.

**NOW, THEREFORE**, in consideration of the mutual covenant contained herein, the City and Operator, do hereby contract and agree as follows:

## **ARTICLE 1 DEFINITIONS**

- 1.0.1 **Airport** means the San Marcos Airport depicted generally in a boundary map attached hereto as Exhibit A.
- 1.0.2 **Airport Master Plan** is the Plan adopted by the City that is on file with the City Manager and as amended from time to time and is incorporated by reference hereto.
- 1.0.3 **Airport Property** means all of the real property of the Airport (including without limitation, all improvements, appurtenances, buildings, facilities and fixtures) but excluding real property that is leased to third parties (during the term of any applicable lease). Airport Property shall include, without limitation, all runways, ramps, taxiways, lights, city-owned navigation or navigation aids and/or devices, markings, stripings, fences, boundaries, gates, hangars, buildings, improvements, landscaping, roadways, drainage systems, utility systems, and grounds.
- 1.0.4 **Base Year Revenues** means the Gross Revenues of the Airport for the Fiscal Year ending September 30, 2010. Base Year Revenues must increase by 4% each year (compounded) for purposes of calculating the Airport Revenue Incentive in Section 6.1.5(a)(2).
- 1.0.5 **Capital Improvements** means all permanent improvements that are \$100,000 or greater in value or have a useful life of five (5) or more years.
- 1.0.6 **City Manager** means the City Manager of the City or designee.
- 1.0.7 **Federal Aviation Administration or FAA** means the U.S. Federal Aviation Administration existing pursuant to Title 49 of the United States Code, as amended, or any successor agency thereto.
- 1.0.8 **Fiscal year** means the consecutive twelve-month period from October 1st through September 30th of the following year.
- 1.0.9 **General Administrative Costs** means those costs and expenses incurred in the general administration of the Airport. Such costs include but are not limited to accounting costs and costs of handling and processing payroll, bills, accounts receivable and accounts payable as more specifically set forth in this Agreement.

1.0.10 **Gross Revenue** means all moneys actually collected by or on behalf of the City from the operation of the Airport during each Fiscal Year, including but not limited to all rents, through-the-fence payments, fuel flowage fees, gross receipts taxes, any other fees or revenues as may be collected (including access fees, customs fees, sign lease fees, and landing fees), and any rent credits under leases approved by the City. Gross revenues shall not include:

- a. Security deposits unless and not until such deposits are applied as rental income upon termination of a lease;
- b. Grants, including, without limitation, federal and state capital grants and local government grants;
- c. Income earned from the investment of cash (provided, however, that income from the investment of funds in the Operating Account and security deposits, unless otherwise required to be paid to a tenant, shall be included as a part of Gross Revenue);
- d. Property taxes, sales taxes, excise taxes, admissions taxes, occupancy taxes, use taxes and any other taxes now or later imposed upon any property (whether real or personal) at the Airport including but not limited to property leased to third parties;
- e. Payments in the nature of indemnification or compensation for loss, damage, or liability sustained;
- f. The actual uncollectible amount of any check or bank draft received by the City or Operator as payment for rent, goods or services and returned to the City or Operator from a customer's bank as being uncollectible (commonly "non-sufficient funds" checks);
- g. The actual uncollectible amount of any rent or sale of services for which the City or Operator accepted a credit card;
- h. Amounts received from the sale or trade-in of machinery, vehicles, trade fixture or personal property used in connection with the operation of the Airport;
- i. Receipts from the sale of waste, scrap, or salvage materials resulting from the sale or disposal of Airport assets, unless specifically approved in writing by the City Manager;
- j. Revenue received from any contract, lease, license or other agreement in which TAP, its members, successors-in-interest, assigns, employees, any person who is related to a member of TAP within the first degree by consanguinity (blood) or affinity (marriage), or any business entity has any interest. For purposes of this contract, the term "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

1.0.11 **Minor Repairs** means those repairs not defined as Major Repairs and that are \$5,000 or less per repair or replacement needed.

1.0.12 **Major Repairs and Replacements** means those repairs and replacements to the Airport Property or equipment that significantly extends the equipment useful life

or the service life of the Airport Property and that exceed \$5,000 per repair or replacement needed.

- 1.0.13 **Marketing Costs** means any and all costs, expenses, charges or fees incurred by Operator in connection with or related to the marketing or promotion of the Airport in accordance with the Marketing Plan, including without limitation, costs of marketing personnel, advertising costs, travel costs related to Airport marketing and promotion, and costs incurred in coordinating Airport marketing and promotion efforts with the City.
- 1.0.14 **Operating Costs** means any and all costs, expenses, charges or fees actually incurred by Operator in the administration, management, operation and development of the Airport. Operating Costs include, without limitation, costs to provide Upkeep at the Airport.
- 1.0.15 **Operator** means Texas Aviation Partners, LLC which is a Texas Limited Liability Corporation presently comprised of two shareholders: Stephen Alexander and James Wimberly.
- 1.0.16 **Operator's Representative or Airport Manager** means the representative assigned by the Operator to be the primary point of contact with regard to the services provided under this Agreement. The Operator's representative will supervise the day-to-day activities at the Airport.
- 1.0.17 **Real Estate Costs** means any and all costs, expenses, charges or fees incurred by Operator in connection with the administration, management, enforcement, negotiation, or drafting of any ground leases, hangar leases, building leases, rental agreements, through-the fence-agreements, license agreements, or any other agreement between the City and any third party relating to an interest in the real property of the Airport, including, without limitation, costs of personnel to handle any such matters and the costs of billing and collecting any rents or other payments, but specifically excluding (i) any collection or enforcement costs relating to out-of-pocket costs incurred at the request of the City, which shall be paid by the City, and (ii) legal expenses incurred in connection with the above, provided such legal expenses have been approved by the City prior to Operator incurring such expenses.
- 1.0.18 **Texas Department of Transportation or TxDOT** the Texas Department of Transportation existing pursuant to the Texas Transportation Code as amended, or any successor agency.
- 1.0.19 **Through-the-Fence Agreement** means any agreement or license which allows access to or use of Airport Property or facilities by persons having an interest in property located adjacent to the Airport or adjacent to a connecting taxiway as authorized by the San Marcos Code.

1.0.20 **Upkeep** means:

- a. Keeping and preserving Airport Property in sound, safe, serviceable, and first-rate condition; and
- b. Restoring, replacing, or adding to Airport Property so that any relevant portion of the Airport is brought to and remains in sound, safe, serviceable, and first-rate condition.

**ARTICLE 2  
STANDARDS OF PERFORMANCE**

2.0.1 The performance of all services by the Operator in connection with this Agreement will be by persons appropriately licensed or registered under state, local and federal laws governing the services specified under this Agreement. The Operator represents that it is qualified to provide the services specified under this Agreement and that it possesses a high degree of skill, knowledge and expertise in the aviation business, including, but not limited to, airport management and operation, property management, and real estate development. In performing all services under this Agreement, the Operator will use the highest degree of care and skill that is exercised by Operators in the airport management and aviation industry.

2.0.2 The Operator is responsible for the performance of all management and other services provided under this Agreement regardless of whether the services are subcontracted or not; provided however that the Operator agrees and represents that it will not subcontract any of the management services. The Operator will provide copies of any subcontracts entered into for work or services at the Airport to the City not later than thirty (30) days after execution.

2.0.3 Any provisions in this Agreement pertaining to the City's review, approval and/or acceptance of written materials prepared by the Operator and/or its sub-consultants, contractors, and subcontractors in connection with this Agreement will not diminish or relieve the Operator's responsibility for the materials.

2.0.4 The Operator's team includes:

- a. Stephen Alexander; and
- b. James Wimberly.

The Operator will not substitute another representative unless approved in writing by the City in advance of such proposed substitution. The Operator will notify the City of any changes in the membership of its team within 30 days of a final decision to implement the change. In the event the City and the Operator cannot agree to the substitution of the Operator's representative or any team member, the City may terminate this agreement in accordance with Article 8.

- 2.0.5 The Operator will not operate another Airport or own, lease or operate a business that competes with the San Marcos Airport located within the “I-35 Airport Corridor.” For purposes of this Agreement the “I-35 Airport Corridor” shall be defined as: an area located within a 35 nautical mile circular radius of the San Marcos Regional Airport but also including Burnett Municipal Airport and Smithville Crawford Municipal Airport. A copy of the I-35 Airport Corridor is depicted in Exhibit B and attached hereto and incorporated herein by reference. Where a conflict exists between the description and the description in this section, the description in this Section shall control.
- 2.0.6 Operator may not own, operate, furnish services to or have any financial interest in any current or future business, lease, contract or agreement related to the Airport, Airport Property or adjacent property unless approved by the City. Further, Operator may not enter into any business transaction or contract with any business entity for services, labor or materials in which it has a financial interest in the performance of this Agreement unless approved by the City.
- 2.0.7 In addition, the Operator will not provide services or perform functions for third parties at the Airport that would normally be provided by a fixed based operator or any other party, unless the provision for such services are approved in writing in advance by the City, at its sole discretion.
- 2.0.8 The Operator shall maintain its management office on the Airport Property at a location within the Airport that is approved by the City.
- 2.0.9 The Operator will not, without the prior written consent of the City:
- a. Change the nature of the business of the Airport as currently conducted;
  - b. Enter into any contract, commitment or transaction on behalf of the City;
  - c. Utilize the assets of the Airport for any purpose other than the continued operation of the Airport;
  - d. Distribute, dispose of, transfer, convey, pledge, mortgage or encumber any of the assets of the Airport;
- 2.0.10 Unless in accordance with a plan approved by the City, Operator shall not act or fail to act in or on the Airport in a manner which is the reasonable judgment of the City:
- a. Interferes with the reasonable use of the Airport by the public;
  - b. Hinders police, firefighting or other emergency personnel in the discharge of their duties at the Airport;
  - c. Would constitute a hazardous condition;
  - d. Would constitute an illegal purpose or violate any applicable laws, rules or regulations;
  - e. Is not in accordance with this Agreement;
  - f. Degrades the value or appearance of the Airport.

## **ARTICLE 3 SCOPE OF SERVICES**

The Operator's Basic Services consist of the services described in Sections 3.0 through 3.4 and generally includes administration, operation, management, maintenance, marketing and development of the Airport as a public airport on the City's behalf, the use and benefit of the general public, all tenants, users and stakeholders of the Airport.

The Operator has inspected the Airport Property including its buildings, structures, improvements, equipment, vehicles, machinery and tools and is aware of the condition of these items and has taken this condition into account in submitting its proposal. The Operator accepts for its use in providing the services under this Agreement all of the Airport Property and equipment in its existing "as-is" condition as of the Effective Date.

### **3.0 AIRPORT ADMINISTRATION**

#### **General Administration and Management**

Operator shall:

- 3.0.1 Pursuant to and in accordance with this Agreement, manage and operate the Airport for the use and benefit of the City and the general public seven (7) days a week, twenty-four (24) hours a day, (or such other hours as may be reasonably prescribed by the City) through the term of this Agreement excluding the staffing and operation of the Airport Traffic Control Tower which is staffed and operated by an FAA contractor. However, Operator is responsible for the maintenance of the Airport Traffic Control Tower.
- 3.0.2 Manage the operations of the Airport in a safe and efficient manner and use its best efforts to maintain it in a clean, orderly, operationally safe, and first-class condition in conformity with all applicable federal, state and local laws, rules and regulations and other legal requirements including the San Marcos Code.
- 3.0.3 Provide the City with all of the management services within its expertise, ability and control which are usual, customary and customarily incident to the management, operation, maintenance and development of an airport in a safe, efficient, professional and first-class manner as well as such other services and expertise incidental to the performance of these services and those specified in this Agreement.
- 3.0.4 Perform general management and administrative duties associated with the operation, maintenance and management of the Airport, including monitoring, reporting, scheduling, purchasing, general correspondence, office administration and invoicing.

- 3.0.5 Provide and/or utilize information technology related to its operation of the Airport that is approved by the City and fully compatible with City information technology. The Operator will ensure that both the City and the Operator are licensed users of any information technology proposed for use by the Operator.
- 3.0.6 Assist the City in developing plans and initiatives to balance Airport user and community needs.
- 3.0.7 **Services for Board and other meetings.** Operator will perform the following services in connection with meetings and activities related to the management of the airport:
- a. Provide facilities and staffing for meetings of the Airport Board. Operator will ensure that the facilities for Airport Board meetings allow for attendance by members of the public.
  - b. Keep minutes of the public portion of meetings of the Airport Board and provide a copy of each set of minutes to the City Council and City Manager.
  - c. Prepare agendas for meetings of the Airport Board, City Council and other Boards and Commissions and provide them to the City Clerk in a timely manner so that notice of meetings of the Airport Board can be given in accordance with the Texas Open Meetings Act.
  - d. Ensure that an appropriate record is made of each closed meeting of the Airport Board and deliver the record to the City Clerk promptly after each such meeting.
  - e. Accept conflict of interest disclosure forms from members of the Airport Board.
  - f. Attend City meetings and conferences as requested by the City Manager or designee including but not limited to, meetings of the City Council, Zoning Commission, etc. The City will assist Operator with public posting requirements for Airport Board, City Council and other City meetings.
- 3.0.8 Confer with the City Manager or designee and attend meetings with State and local officials or other persons as requested in order to discuss matters related to the Airport.
- 3.0.9 Meet and confer with stakeholder groups located on the Airport as well as those stakeholder groups in the vicinity of whether they are on or off the Airport Property who have an interest in the management and operation of the Airport.
- 3.0.10 Provide other miscellaneous administrative services in support of the Airport as directed by the City.

### 3.1 AIRPORT OPERATION

**General Operations.** The Operator will:

- 3.1.1 Operate the Airport in a manner consistent with best practices for Airports of a similar character and perform all operational duties including controlling and monitoring operational, regulatory and safety compliance, in coordination with the City, of all regulatory agencies, all lessees and all FBOs involved in the operation of the Airport or who have regulatory jurisdiction over the Airport.
- 3.1.2 The Operator will be responsible for the following Operating Costs associated with these services:
  - a. all utilities (electric, water, natural gas, heating fuels)
  - b. communications;
  - c. gasoline and diesel fuel;
  - d. vehicle supplies and accessories;
  - e. office, duplicating and photo supplies;
  - f. medical and cleaning supplies;
  - g. clothing and uniforms and other materials and supplies;
  - h. outside services such as equipment rentals, temporary and/or part-time help, legal services fees, registrations, telephone, courier service, dues, subscriptions, postage and freight charges, advertising, printing and binding, insurance and other professional services;
  - i. airport runway sweeping; and
  - j. any and all expenses not identified in any other specific category.
- 3.1.3 Enforce all City ordinances, requirements and policies with regard to the use of the Airport and diligently monitor and take every reasonable action necessary to prevent smoking and animals (except for service dogs) on any part of the Airport accessible to the generable public.
- 3.1.4 Develop and recommend operational policies, procedures and practices to the City Manager for approval by the City Council to ensure the efficient and effective operation of the runways, taxiways, aprons, other aircraft operating areas, lighting systems, navigational systems (not maintained by the FAA), roadways and fuel storage systems, Airport minimum commercial aeronautical standards (in accordance with FAA recommended standards and related policies for the operation of flight schools, aircraft maintenance and repair facilities, charter operations, fueling and other aviation specialty commercial uses). Such policies shall be non-discriminatory and in conformity with Chapter 10 of the San Marcos City Code.
- 3.1.5 Develop and recommend to City Manager:

- a. Access and Security Plans for both airside and landside areas of the Airport including perimeter security, facilities security, parking lot security and disaster security on the Airport, exclusive however, of law enforcement responsibilities. The Operator will report breaches in security and threats of such breaches to the City Manager and the San Marcos Police Department immediately upon discovery. The Operator will conduct a review of the Airport's security with the City to identify areas of risk and measures for improving security as needed. In addition, the Operator will work with City emergency services to assist in developing and maintaining Airport emergency plans in cooperation with the City's Police and Fire Departments for all Airport related emergencies. The Operator may change the locks and/or security codes on any or all of the maintenance facilities and equipment; provided a duplicate key and/or security codes for all changed locks will be promptly provided to the City. All keys and/or security codes will be identified by tag or location.
- b. Operating Plan. As part of the City's budget process the Operator will work with appropriate City staff to identify: (i) upkeep reasonably needed at the Airport for the next fiscal year, based upon the Operator's prudent assessment and analysis, which will be used for budget policy issues, capital outlay requests and projects for the City's Capital Improvements Plan ("CIP"); (ii) projected changes in revenues or expenses which will affect the assumptions used for in the Airport budget preparation; and (iii) proposed staffing levels changes of full, part-time, and seasonal employees. The Operating Plan will be used to develop the Annual Operating Budget and City's Capital Improvements Plan ("CIP") as adopted or amended.
- c. Other Plans. Operator shall prepare such other plans or reports referenced throughout this Agreement for review and consideration of approval by the City related to the operation, maintenance or development of the Airport as may from time to time be requested by the City at no additional cost.

- 3.1.6 Coordinate regular inspections of Airport and provide maintenance services.
- 3.1.7 Coordinate with the City and individuals and other interested entities regarding special events/functions to be held at or near the Airport.
- 3.1.8 Obtain and maintain all required licenses, certificates, registrations, etc. for the Airport.
- 3.1.9 Report to the City Manager, the Airport Board and other parties as requested by the City Manager regarding Airport operating statistics, incidents and issues.

## **Budget**

- 3.1.10 The Airport operates as an Enterprise Fund of the City and budgets are prepared with the goal of maintaining a self-supporting structure of generating revenues that are sufficient to fully fund operating expenses, matching grant fund requirements, and capital improvements. During the entire term of the Agreement (including extensions), Operator will submit, per the schedule detailed in the annual budget calendar, budget information for the City's review and consideration. This information will include a schedule of projected Airport revenues for the fiscal year along with proposed budget items in excess of the annual amount budgeted for the operations contract for non-capital items including but not limited to repair, upkeep, marketing and development of the Airport for that fiscal year. The City will review the submitted budget items and will make a recommendation to City Council for items to be included in the City's Annual Budget. The City's Annual Operating Budget will be prepared according to the guidelines set forth during the Budget Policy Meeting and submitted to the City Council for approval during the City's normal budget process. The Operator will exercise diligence and employ best efforts to ensure that projections of revenue are met or exceeded. Amendments to the Annual Operating Budget will be made in accordance with City procedures only and may not be made without the City's prior approval.
- 3.1.11 The Annual Operating Budget will include recommendations for the necessary maintenance and repair of Airport Property.
- 3.1.12 For each fiscal year, per the Capital Improvements Plan ("CIP") calendar, and for the duration of the Agreement, submit CIP for the following fiscal year. This proposed CIP will include the Operator's recommendations for capital improvement projects and expenses for the upcoming fiscal year as well as a ten-year CIP projection, along with potential funding sources for such improvements, including the identification of possible federal or state grants. The Operator may suggest additional capital improvement projects, which may become necessary or desirable and the City will review these proposals and approve, reject or modify such proposals or will implement the projects contingent upon the approval of funding and financing.
- 3.1.13 Regularly review the terms of all Airport concession agreements and other contracts and recommend for the City's review and consideration proposed terms on which these agreements might be extended, amended, renewed or rebid. As circumstances arise, the Operator may make additional recommendations for the City's review and consideration regarding potential concession agreements and revenue-producing contracts involving the Airport.

## Personnel

- 3.1.14 Operator will provide a sufficient number of qualified employees to adequately staff, support, and maintain the Airport operation and facilities. The Airport Manager will not work as an Airport Manager for any other Airport. The Airport Manager normally will be on duty from 9:00 a.m. until 5:00 p.m. Monday through Friday in accordance with local, state and federal rules and regulations. When the Airport Manager or staff is not at the Airport premises, Operator and its staff shall be reasonably available. The Operator will designate a staff contact for 24-hour per day emergency services and provide the contact information to the City Manager. Operator shall use emergency procedures established in Chapter 10 of the San Marcos Code for emergencies as well as any other emergency procedures established by City.
- 3.1.15 Airport Manager. Operator shall at all times employ a person designated as the Airport Manager who shall, among his list of his or her other duties, serve as Operator's liaison with the City and who shall be Operator's representative primarily responsible for dealing with the City Manager, City Airport Commission, City Council, City employees, and any governmental entities.
- a. The Airport Manager shall supervise Airport activity and assure the availability and continuity of public services at the Airport. The Airport Manager shall provide direction and support to all airport lessees and tenants on a fair and reasonable basis.
  - b. The Airport Manager shall meet and communicate with the City Manager on a regular basis. The Airport Manager or his designee shall attend the regularly scheduled meetings of the City Council (when airport issues will be discussed at the meeting) and City Airport Board as may be requested by the City. The Airport Manager shall inform the City Manager of all emergencies and the occurrence of any unforeseen circumstances relating to the Airport which an independent operator would be expected to report to an owner under customary and prudent business practices.
  - c. The City Manager shall have the right to approve the Airport Manager designated by Operator. If the Airport Manager's performance is unsatisfactory to the City Manager, City Manager will notify the Airport Manager in writing. If the Airport Manager has not cured the unsatisfactory performance as set for in the notice promptly following such notice, the Airport Operator shall remove the Airport Manager and appoint a replacement satisfactory to the City within 45 days.
- 3.1.16 Other Personnel. Operator shall employ an Airport staff comprised of qualified persons who shall perform their duties at the Airport in accordance with this Agreement. Sufficient staff shall be available and present to carry out Operator's obligations under this Agreement. Operator may employ, on a full, part-time or

seasonal basis, such other additional personnel as may be reasonably necessary to carry out its obligations hereunder; provided, however, that in the event the costs of such additional personnel has not been provided in the applicable Annual Operating Budget, employment of such additional personnel is subject to the limitation that expenditures for this category in excess of the amount shown in the Annual Operating Budget shall not be reimbursable to Operator. Operator shall set policies commensurate with the objectives of the City (and use best efforts to enforce such policies) regarding the conduct, demeanor, and appearance of its employees (including policies which prohibit such employees or agents of the Operator from soliciting or conducting business in a loud, noisy, boisterous, offensive, or objectionable manner), who shall be trained and possess the qualifications as may be required by all governmental authorities in carrying out assigned duties. Operator shall perform background checks or require background checks to be performed on all personnel assigned to the Airport by the Operator, and the City shall have the right to review such background checks.

3.1.17 Supervise and manage its employees. The Operator will:

- a. Be solely responsible for the performance of its employees. In addition, the Operator will ensure that its employees provide airport customers with the highest level of courtesy, efficiency, operational performance and responsiveness.
- b. Provide adequate training for its personnel in areas of operation, maintenance, safety, supervisory skills, energy management, etc.
- c. Be responsible for all costs associated with its employees including, but not limited to, salaries, wages, overtime, pay differential, longevity, unemployment compensation, holiday pay, meal allowance, education assistance, hospital, medical, dental plans, life insurance, retirement contributions, sick leave and other costs directly attributable to the Operator's employees. In addition, the Operator will be fully responsible for processing payroll for its employees.

**Financial Services.** The Operator will:

- 3.1.18 Promptly collect all funds due in connection with the management and operation of the Airport (including but not limited to, lease payments, through the fence agreement payments, tie down fees, license fees, concession fees, access fees, landing fees, customs fees, signage fees, gross receipts taxes, and fuel flowage fees) and deposit into the Operating Account, and remit on a monthly basis by the 25th of the month, all such funds with the Finance Department during regular business hours. Each remittance should provide an accurate and true accounting of all revenue codes related to the collection of funds.

Operator shall maintain a joint operating account ("Operating Account") with this City. The purpose of this account is to deposit all funds collected by Operator prior

to remittance to the City. Operator may apply to the City Manager or designee for a payment in excess of the monthly contract payment when the Operator receives an invoice for an annual or bulk payment that exceeds the monthly amount (including the payment for the month in which the Operator applies for the advance payment). Operator shall submit the invoice for consideration together with such other documentation or information as City may reasonably require, to determine the necessity and appropriateness of the advance payment.

- 3.1.19 In coordination with the City:
- a. Maintain proper accounting of Airport assets;
  - b. Perform general accounting services;
  - c. Assist the City in establishing rates (including lease rates), fees and charges for Airport airfield and facilities use in an effort to maintain financial self-sufficiency; and
  - d. Ensure that Airport financial records and supporting documentation are properly maintained and available for review by the City and its auditors at its request.
- 3.1.20 Prepare and submit written financial reports, financial plans and supporting statistical data to the City Manager as well as any other reports on an “as requested” basis.
- 3.1.21 Prepare and submit as needed an annual financial reconciliation of the contract revenues at the end of each Fiscal Year.
- 3.1.22 Accounting and Financial Controls and Policies. Operator shall comply with any accounting, purchasing and financial controls or policies approved by the City for the management of all Airport funds.
- 3.1.23 Invoices. Operator shall bill, on behalf of the City, for all monies due to the City in connection with the Airport, including but not limited to monies due pursuant to leases, through-the-fence agreements, contracts, fueling, and any arrangements with other persons conducting operations at the Airport.
- 3.1.24 Delinquent Accounts. In the event any money due and owing to the City is not paid within sixty (60) days following the date on which the same is due, Operator shall notify the City of such delinquency. Operator shall thereafter, at the City’s request, use its reasonable efforts to collect the delinquency in accordance with law; provided however, that Operator shall use the collection firm under contract with the City. Operator shall not be authorized to institute a delinquency lawsuit but shall submit its recommendation to institute such proceedings to the City Manager.
- 3.1.25 Maintenance of Accounts. Operator shall keep and maintain all records and accounts in accordance with generally accepted accounting principles, consistently applied. The Operator shall prepare all periodic and annual reports, make all

information submittals and provide notices to all governmental bodies required by all governmental approvals and under applicable law. The Operator shall maintain at the facilities and make available to the City upon request for review, accurate, complete and current financial books, records and accounts.

- 3.1.26 **Monitoring of Performance:** The Operator agrees to allow the City, either directly or through a subcontractor, to inspect, at City's request, and with fourteen (14) days advance notice to the Operator, all pertinent records, files, information or other written material maintained by the Operator or its subcontractors and related to the subject matter of this contract. Any failure by the Operator to provide such records as requested by the City in a timely manner may be deemed by the City to be in breach of this contract. Notwithstanding the foregoing requirements of this Section, the City acknowledges that the Operator may redact or withhold such information that is deemed confidential by law unless any such confidentiality laws permit disclosure to the City and such records are pertinent to the City's evaluation of the performance of the Operator under this contract.

### **Leases/Agreements**

- 3.1.27 Operator shall solicit and negotiate leases and other agreements for existing Airport facilities (including all ground leases, hangar leases, building leases and through-the-fence agreements) for all leasable areas of the Airport (including all renewals, expansions, relocations and extensions thereof collectively referred to as "Lease(s)") and to cause the Airport to be properly occupied with aviation related tenants and tenants which support aviation activities.
- 3.1.28 Develop with City staff and recommend to City Manager minimum standards for the physical appearance and operating condition of third-party premises in accordance with the terms and provisions of ground leases and airport use agreements. In addition, the Operator will enforce compliance with physical appearance, operating and environmental standards by all Airport tenants, permit holders, lessees, and licensees (including EPA and TCEQ regulations). The Operator will provide the City with prompt notification of third-party premises, facilities, and infrastructure to ensure proper maintenance (e.g., crack sealing, hole patching and seal coating).
- 3.1.29 Develop and recommend to the City Manager specific plans and programs to fully develop (and increase revenues from) Airport facilities and properties through leases or other agreements.
- 3.1.30 Operator shall prepare and keep current a rent roll for each property at the Airport which is subject to a Lease showing with respect to each Lease the name of each tenant, the business status of each tenant (e.g. individual, corporation, limited partnership, etc.) the space occupied, the rent payable, the date rent is paid through, the commencement date, the amount of security deposit held, renewal options, and any other information reasonably requested by the City related to the same.

- 3.1.31 With regard to leasing of Airport Property the Operator shall also:
- a. Diligently investigate and develop all inquiries and offers to lease space in the Airport;
  - b. Comply with all federal, state, and local laws, regulations and rules and orders governing or applicable to the leasing of Airport Property;
  - c. Submit leases to City for approval;
  - d. Solicit and develop offers to prospective tenants with approval from City;
  - e. Perform other leasing activities upon City's request.

## **3.2 FACILITY AND EQUIPMENT MAINTENANCE**

### **Facility Maintenance**

The Operator will:

- 3.2.1 Make regular inspections of the Airport grounds, facilities and premises to determine the need for maintenance and repairs, to ensure that safe and acceptable conditions exist at all times, and notify the City of the need for any major repairs or maintenance. The Operator will perform all maintenance and minor repairs in a timely and workmanlike manner.
- 3.2.2 Maintain City owned or leased Airport property (buildings, land and improvements) where the City is responsible for maintenance, in accordance with the City of San Marcos Code of Ordinances, Chapter 10, Aviation, and ensure that all such property is in good order. In addition, the Operator will maintain all airport buildings under the control of the Operator in a neat, clean condition and perform all custodial functions such as cleaning windows on a regular basis, constant maintenance of restroom facilities so that they are safe and pleasant to use and provide a safe, structurally sound, welcoming and professional atmosphere. The Operator will respond to complaints regarding the maintenance and appearance of the Airport immediately.
- 3.2.3 Maintain all non-agriculture property in a neat and commercial type appearance appropriate to an Airport of this character. The Operator will mow and trim turf extending out 30 feet from all paved surfaces to a maximum of 2-3 inches:
  - a. Twice a month from March through October;
  - b. Once a once a month from November through February; and
  - c. 20 cycles per year for runways, taxiways, entrance roads and grounds.
- 3.2.4 Inspect runways, taxiways, ramp areas, and all lighting (including runway), signage, and navigational aids on a daily basis and make repairs immediately or report as "out of service" and repair or replace as soon as practical thereafter. In

addition, the Operator agrees to maintain and operate all FAA required obstruction, taxiway, runway, and approach path lights.

- 3.2.5 The Operator will provide the City with a list of any recommended capital improvements the Operator believes are necessary at the Airport in the proposed CIP. However, the Operator is not relieved of its responsibility to perform minor repairs up to the capabilities of the existing facilities if the recommendations are not implemented by the City. In addition, the Operator may provide recommendations for capital improvement projects in accordance with Subsection 3.1.11.

### **Maintenance and Repair Services.**

- 3.2.6 Operator shall maintain and repair (structurally and otherwise) in a good, workmanlike manner and to the City's satisfaction all:
- a. Runway, taxiway, and aircraft parking/holding area lights, markings, signage, and striping;
  - b. Navigation aids and aeronautic communications which are not maintained by the Federal Aviation Administration (hereinafter "FAA ");
  - c. Vehicles, equipment, machinery and tools used by the Operator in connection with the Airport; and all Airport grounds (including, without limitation, fences, grass cutting and maintenance of trees, shrubs and other landscaping where and when necessary and in accordance with the landscaping requirements of the City).
  - d. Pavement maintenance in accordance with the pavement maintenance management program for any pavement at the airport which has been constructed, reconstructed, or repaired, with federal assistance
  - e. Security related equipment, tools, fences, etc.;
  - f. Aircraft parking areas;
  - g. Landscaping and fencing of the Airport property, including grass mowing;
  - h. Any other items on the Airport requiring maintenance or repair during any given fiscal year;
  - i. Provide all supplies and materials for facility and equipment maintenance.
- 3.2.7 Use its best efforts to remove or cause to be removed snow and ice from all Airport Property runways, taxiways, ramps, access roads, sidewalks, walkways, and other common areas, and apply such melting and/or friction agents as may be required and/or appropriate;
- 3.2.8 On a regular basis, visually check for and clean and remove all foreign objects from all Airport runways, taxiways, ramps and other airfield operating areas; and
- 3.2.9 Operate and maintain Airport Property's mechanical, plumbing, sprinkler, power, heating, steam, electrical, fuel, boiler, water, toilet, burglar alarm, communications

(other than those communications controlled by the FAA), gas, and other systems necessary and appropriate for the efficient operation of the Airport.

### **Equipment Use and Maintenance**

- 3.2.10 Maintain on all Airport facility equipment and vehicles in accordance with manufacturers' recommended maintenance schedules and manuals and prudent industry practices. For all equipment and vehicles other than those maintained by the City pursuant to section 5.0.14, the Operator will provide the City with full documentation that maintenance is being performed, at intervals and in sufficient detail as may be determined by the City.
- 3.2.11 City will provide equipment to Operator for its use in the operation and maintenance of the airport. Any equipment replacement must be budgeted and paid for by Operator.

### **Equipment and Facility Maintenance Costs**

- 3.2.12 The Operator will be responsible for the following costs associated with maintenance of equipment and facilities:
- a. Office equipment (including office computers and printers);
  - b. Safety equipment,
  - c. Tools,
  - d. Communication and media equipment.
  - e. Maintenance equipment and supplies,
  - f. Mechanical and manually operated equipment,
  - g. Repair parts,
  - h. Outside maintenance services,
  - i. Oil, grease, and fuel; and
  - j. All equipment on equipment inventory list;
  - k. TAP shall pay City for vehicle and fleet maintenance services performed by the City within 30 days of receipt of any invoice.

### **Equipment Warranties**

- 3.2.13 Operator will be responsible for filing timely claims on and pursuing city's rights under all manufacturer's warranties or guarantees on city-owned equipment in its possession or use under this Agreement.

## **3.3 REGULATORY AGENCY INTERFACE**

The Operator will:

- 3.3.1 Be fully responsible for and will comply with all applicable laws and regulations regarding the operation, maintenance and management of the Airport, including reporting requirements. The Operator will implement and maintain a process control system, which furnishes complete and accurate records, and is capable of readily providing reports showing historical data and trends. Except to the extent excused by uncontrollable circumstances, the Operator will comply with all contract standards continuously. If the Operator fails to comply with any of the contract standards, it will at its own cost and expense:
- a. Promptly notify the City of such non-compliance within eight hours of the discovery that a non-compliant condition exists;
  - b. Promptly provide the City with any notice received from any government regulatory body within 12 hours of its receipt of the notice;
  - c. Pay any related damages or fines and hold harmless, indemnify and defend the City and its officers, agents and employees from all related liabilities and damages in accordance;
  - d. Pay any costs related to public notification required by the non-compliance; and
  - e. Take all action necessary to restore compliance with the contract standards and prevent a recurrence of non-compliance.
- 3.3.2 Supervise compliance with FAA, TCEQ and TxDOT regulations and perform all needed regulatory interface including assisting City with obtaining, modifying or renewing permits, and reporting, notifying, inspections and related activities as required by Federal, State or Local agencies having jurisdiction over the Airport.
- 3.3.3 Cooperate with and assist the City in dealing with all Federal, State and local agencies in matters related to the operation and management of the Airport. In addition, the Operator will prepare and submit financial and other reports to the appropriate entities as related to Federal and State grants and obligations.
- 3.3.4 Operator agrees to conform to existing grant agreements between City and FAA, including related FAA assurances.

#### **3.4 AIRPORT DEVELOPMENT AND MARKETING PLAN**

The Operator will:

- 3.4.1 Actively market the Airport to potential users, including aircraft owners and operators, as well as operators of support services. In addition, the Operator will actively promote high quality development of the Airport, including commercial operations for lawful purposes, provided such uses comply with all applicable laws, regulations, ordinance and rules. The Operator will use its best efforts to promote such development with the twin goals of optimizing the Airport's financial

performance, to maintain self-sustaining operations and promote economic development of the Airport. All costs associated with the marketing of the Airport as stipulated in this subsection will be borne by the Operator.

3.4.2 Periodically prepare and keep current a comprehensive information brochure regarding the Airport, subject to review and approval by the City, and make sufficient copies available for all reasonable public information purposes. The Operator will also conduct educational tours of the Airport for the public as reasonably requested by the City.

3.4.3 Additional Marketing Services. Operator will update the Marketing Plan for the Airport on a regular basis. The existing Marketing Plan is found in the current Airport Business Development Plan and Airport Master Plan. The Comprehensive Marketing Plan shall:

- a. Define the goals and objectives of the City for the Airport;
- b. Assess the Airport's strengths, weaknesses, opportunities, threats (SWOT analysis);
- c. Assess Airport resources;
- d. Identify the Airport's target audience, and identify and develop the message and marketing actions required;
- e. Identify marketing tools to deliver the message;
- f. Identify the resources needed to support the creation and implementation of the plan;
- g. Develop methods to measure the success of the Marketing Plan.

3.4.4 In maintaining the Marketing Plan and selecting the marketing tools the Operator shall take into account the funds available within the Approved Operating Budget and City's preferences and consult with the City during the process to obtain City input.

3.4.5 The cost for the additional marketing services may be appropriated as an addition to the Management Contract and shall be processed pursuant to City's change in services process or may be appropriated as separate funding in the Airport Operating Budget.

#### **ARTICLE 4**

**[THIS SECTION INTENTIONALLY LEFT BLANK]**

#### **ARTICLE 5**

#### **CITY RIGHTS AND RESPONSIBILITIES**

The City will:

- 5.0.1 Provide full information to the Operator regarding the City's requirements for the Operator's services under this Agreement. The City will furnish the Operator with copies of data and information needed by the Operator at the Operator's request in the City's possession.
- 5.0.2 The City Manager or designee is the City's point of contact for all communications and the City's authorized representative to act on the City's behalf with respect to this Agreement. The City will examine the documents and information submitted by the Operator and promptly render responses to the Operator on issues requiring a decision by the City.
- 5.0.3 Appropriate and make available funding sufficient to cover the operating expenses authorized in the Approved Operating Budget.
- 5.0.4 Retain control of the Airport, including the responsibility for developing and maintaining policy guidance for the Airport.
- 5.0.5 Retain authority for review and approval of the capital improvements recommended by the Operator, including location, size, design, and nature of use. The City is responsible for any capital improvements management, where City, State, or federal funds will be expended.
- 5.0.6 In its sole discretion, set rates and schedules, including but not limited to gross receipts, lease rates, fuel flowage, and any future rates currently not assessed as may be recommended by the Operator.
- 5.0.7 Retain all authority to arrange for the issuance of indebtedness payable from the revenues of the Airport.
- 5.0.8 Have the exclusive authority to initiate, review and approve the exercise of all powers of eminent domain regarding the Airport.
- 5.0.9 Provide access to and make all necessary provisions for the Operator to enter public and private property as reasonably required for the Operator to perform its services under this Agreement.
- 5.0.10 Bear all other costs incidental to this Article.
- 5.0.11 Be responsible for major repairs and maintenance. In the event of damage by fire or other casualty, the City will either repair or replace building(s) or remove the damage and restore building(s) to original condition at the sole option of the City.

- 5.0.12 Provide rent-free office space as reasonably determined by the City and subject to space availability.
- 5.0.13 City will provide vehicle and fleet maintenance services provided that TAP pays for the services at the City's recovery rate for these services.

## **ARTICLE 6 COMPENSATION TO THE OPERATOR**

- 6.1.1 The City will pay the Operator an amount specified per the annual contracted amount plus any amount appropriated for a specific purpose in the Annual Operating Budget. The annual contracted amount will increase by 2% annually with the base contract amount totaling \$469,850 in Fiscal Year 2020. No expenditure for any one line item or accounting category which is in excess of the amount shown in the Approved Operating Budget ("Excess Operating Costs") shall be paid or reimbursed to Operator, except expenditures that have been approved in writing by the City prior to the expenditure. Except in the event of an emergency (where immediate action is deemed necessary to protect the safety of the general public or protect physical assets of the Airport), any Operating Costs in excess of the Approved Operating Budget which have not been approved by the City prior to incurring such Costs shall be paid for by the Operator.
- 6.1.2 Incentive Compensation. Operator shall have the ability to earn incentive compensation annually based upon Financial Performance for each fiscal year provided however, that in no circumstance shall Operator earn any incentive compensation (either Profit Incentive or Revenue Incentive) from any contract, lease, license, or other agreement in which TAP, its members, successors-in-interest, assigns, employees, any person who is related to a member of TAP within the first degree by consanguinity (blood) or affinity (marriage), or any business entity has any interest. For the purposes of this contract, the term "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. The purpose of the incentive compensation is to encourage the creative and aggressive marketing and promotion of the Airport with the goal of maintaining the Airport as a self-sustaining operation.
- 6.1.3 Disincentive. The City's issuance of two or more documented written notices of default that the Operator fails to satisfactorily correct according to Articles 8 or 10 during any contract year shall result in a financial disincentive in the amount of 10% reduction of the incentive compensation for the year in which the uncured default occurs. The City's right to impose the disincentive shall neither limit its other remedies or rights under this Agreement nor its right to terminate as provided herein.

6.1.4 Base Year Revenue related to Airport Leases has been calculated based under the current contractual leases currently negotiated at the City of San Marcos and is comprised of T-hangar rents, shelter rents, agricultural land leases, storage area rents, private hangar land rents and commercial and non-commercial facility rents. Base Year Revenue is based off of 2010 actual Gross Revenues of \$195,367.70 adjusted by 4% annually

a. For each Fiscal Year this Agreement remains in effect, the Operator will be eligible to receive two types of incentives as follows:

1. Profit Incentive

- i. The Gross Revenues of the Airport as defined in Section 1 herein shall be calculated annually at the end of each Fiscal Year.
- ii. For any Fiscal Year in which actual Airport Gross Revenues exceed the sum of actual Airport Operating Expenses established in the Approved Operating Budget, the city’s expenditures for capital improvements at the Airport, the city’s matching funds for any state or federal grants, and any Revenue Incentive paid for that Fiscal Year, the Operator will receive an Airport Profit Incentive equal to twenty five percent (25%) of the excess of revenues.

2. Revenue Incentive

- i. For each Fiscal Year of the contract in which actual Airport Gross Revenues exceed Base Year Revenues for that Fiscal Year, Operator shall be eligible to receive an “Airport Revenue Incentive” calculated annually at the end of each Fiscal Year equal to 25% of the excess of Fiscal Year actual revenues for the contract year over Base Year Revenues. A hypothetical example of how to calculate the Revenue Incentive is used for illustrative purposes only:

<b>Fiscal Year</b>	<b>Base Revenue Adjusted by 4% Annually</b>
FY 20	\$289,191.92
FY 21	\$300,759.60
FY 22	\$312,789.98
FY 23	\$325,301.58
FY 24	\$338,313.64
FY 25	\$351,846.19

- ii. The total of all compensation (including but not limited to the Airport Revenue Incentive) shall never exceed the fair and reasonable value of the services, or impair the City’s ability to issue bonded indebtedness for the Airport under FAA regulations. In such event, the Operator’s compensation shall be reduced to comply with FAA regulations.

- iii. The City will calculate the incentive payment on or before December 31st of the Fiscal Year following the Fiscal Year in which the incentive was earned and will pay the Operator the incentive payment, if any, on or before January 5th.

## **ARTICLE 7 OPERATOR'S RECORDS AND DOCUMENTS**

- 7.0.1 The Operator will keep all of its expense records in a recognized accounting format acceptable to the City and these records will be kept at the Airport and be made available to the City or its auditors upon request during regular business hours 9-5 Monday – Friday.
- 7.0.2 Access to Records; Audit. The City, its auditors, federal auditors, and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to any books, documents, papers, and records of the Operator which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions. The City shall have the right to audit Operator's operations at the Airport.
- 7.0.3 Correction. Should weaknesses in internal control or errors in record keeping be discovered, Operator shall promptly correct such discrepancies upon discovery, or within a reasonable time after discovery (which shall not exceed thirty (30) days from discovery). Operator shall inform the City in writing of the action taken to correct any audit discrepancies.
- 7.0.4 Time for Audits. Audits conducted by the City will be performed at times as determined by the City in its sole discretion without specific cause. All such inspections and audits shall be conducted during normal business hours.
- 7.0.5 Overcharges and Deficiencies. If any audit discloses an overcharge of any of Operator's fees or expenses in excess of five percent (5%) for the period covered by the audit, then the expense of such audit shall be a non-reimbursable expense of the Operation which the Operator shall pay to the City immediately upon City's demand. In addition, if any such audit discloses a deficiency in the amount of funds which should have been turned over by Operator to the city during the period covered by such audit, Operator shall immediately deliver such deficiency together with interest at the rate of six percent (6%) (such interest to accrue from the time the said deficiency amount should have been turned over), to the City. If Operator does not pay to the City any such overcharge or deficiency, together with all interest accrued thereon, or the cost of an audit required to be paid by Operator within (3) days after demand is made therefor by the City, such failure shall be a default under the terms of this Agreement entitling the City, at its election, to terminate this Agreement pursuant to Article 8.

- 7.0.6 The Operator will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement.
- 7.0.7 All reports, plans, papers, data, studies, materials and any documents and records or any other work product of any kind whatsoever which has been collected or developed by Operator pursuant to this Agreement, including without limitation, all such documents and records created or stored electronically, shall be the property of the City. Operator shall keep such records available for inspection by City and all such records shall be kept and maintained in accordance with the City's records retention policy. In the event of termination or expiration of this Agreement, all finished and unfinished reports, plans, papers, data, studies, materials, and any other documents or records collected, assembled, or prepared by or for Operator pursuant to this Agreement shall be the property of the City and Operator shall promptly deliver such items in Operator's possession or control to the City; provided, however, Operator shall be entitled to retain copies of its internal work product solely for the purpose of and to the extent necessary to support its internal business records. Intellectual property developed pursuant to this Agreement shall be the property of the City. For purposes of this Agreement, "intellectual property" refers to property (such as patents, trademarks, designs and copyrights) which is the product of invention or creativity and does not exist in a tangible, physical form.
- 7.0.8 The Operator will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of three years except in the event that the Operator goes out of business during that period, it will turn over, to the City, all of its records relating to the Project for retention by the City.

## **ARTICLE 8**

### **TERM; TERMINATION OF AGREEMENT**

- 8.0.1 The extension term of this Agreement begins on the Effective Date established in the first paragraph of the Agreement and will continue through September 30, 2025 unless this Agreement is terminated under Articles 8 or 10.
- 8.0.2 The Agreement may be extended for 2 additional five-year terms under the same terms and conditions. This option, if exercised, is to be executed as a contract renewal, to be issued no sooner than three hundred and sixty-five (365) days prior to expiration of each term of the Agreement, nor later than six (6) months before the final day of the Agreement period. This option to extend requires the mutual agreement of both parties. Refusal by either party to exercise this option to extend will cause the Agreement to expire on the original or mutually agreed upon date. The total period of the Agreement, including all extensions as a result of exercising this option will not exceed a maximum combined term of twenty-five (25) years.

- 8.0.3 Termination. This Agreement may be terminated upon 180 calendar days with prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
- 8.0.4 Either party may terminate this Agreement for convenience without cause and without recourse upon at least three hundred sixty (360) calendar days prior written notice to the non-terminating party.
- 8.0.5 In the event of termination as provided in this Article 8 or Article 10, the City will compensate the Operator for all services performed up to the termination date, which are deemed by the City to be in accordance with this Agreement. The City will pay this amount upon the Operator's delivering to the City all information and materials developed or accumulated by the Operator in performing all services described in this Agreement, whether completed or in progress. The expense of reproduction of these items will be borne by the City.
- 8.0.6 Upon termination for convenience by either party under Section 8.0.4, all rights, powers and privileges of the Operator will cease, and the Operator will immediately vacate any and all space occupied by him under this Agreement, and neither party will make a claim of any kind whatsoever against the other, its agents or representatives, by reason of such termination, or any act incident thereto. The Operator will deliver to the City all information and materials developed or accumulated by the Operator in performing all services described in this Agreement whether completed or in progress.

## **ARTICLE 9 INDEMNITY; INSURANCE; BONDS**

- 9.0.1 The Operator agrees to and will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action, suits and regulatory actions of any kind or character arising out of or in connection with the Operator's performance, acts, omissions, or failure to act under this Agreement. This will include, but not be limited to, the amounts of judgments, penalties, investigations, settlements, fines, forfeitures, interest, court costs, reasonable legal fees and expert witness fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from or related to the Operator's activities or performance under this Agreement. This obligation extends to contamination of or adverse effects on the environment after the Effective Date of this Agreement, and any violation or alleged**

violation of applicable law. This obligation by Operator will not be limited because of the specification of any particular insurance coverage in this Agreement.

**9.0.2** To the extent permitted by law, the City agrees to and will indemnify, hold harmless and defend Operator its officers and employees from any and all lawsuits, claims, demands and causes of action, suits and regulatory actions of any kind or character arising out of or in connection with the City's performance, acts, omissions, or failure to act under this Agreement. This will include, but not be limited to, the amounts of judgments, penalties, investigations, settlements, fines, forfeitures, interest, court costs, reasonable legal fees and expert witness fees, and all other expenses incurred by the Operator arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from or related to the City's activities or performance under this Agreement. This obligation extends to contamination of or adverse effects on the environment after the Effective Date of this Agreement, and any violation or alleged violation of applicable law.

**9.0.3** The parties agree that the indemnity provided in Section 9.0.2 is provided by the City without waiving any immunity to which it may be entitled. The parties further agree that any and all indemnity provided for herein is subject to and shall not exceed the monetary limitations of damages as set forth in the Texas Tort Claims Act.

**9.0.4** The Operator will procure and maintain at Operator's expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Operator or Operator's agents, subcontractors or employees. Before commencing the work and for the duration of this Agreement, the Operator will furnish to the City a certificate or certificates in form satisfactory to the City, showing that Operator has complied with this paragraph. All certificates will provide that the policy will not be changed or canceled until at least thirty (30) calendar days written notice has been given to the City. Commercial general liability, airport premise, hangar keepers liability, non-owned aircraft and motor vehicle insurance will be written with the City of San Marcos, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

- a. Workers' Compensation Insurance: In accordance with the provisions of the Workers' Compensation Act of the State of Texas.
- b. Employer's liability insurance: with a limit of at least \$500,000;

- c. Commercial general liability insurance: including contractual liability, completed operations and independent operator's liability, with a combined single limit of at least \$1,000,000 for each occurrence;
- d. Motor vehicle liability insurance: including owned, hired, leased and non-owned vehicles, with a combined single limit of at least \$1,000,000 per occurrence.
- e. Errors and omissions: \$1,000,000 per occurrence.
- f. Airport Premises: \$1,000,000 for each occurrence; including damage from fire.
- g. Hanger Keepers' Liability: \$1,000,000 per occurrence. Limit per aircraft \$1,000,000
- h. Non-Owned Aircraft coverage: \$1,000,000 per occurrence
- i. Employee Dishonesty Insurance: \$300,000 limit. The policy must be endorsed to list the City as sole loss payee.

9.0.5 The stated limits of insurance required by this Paragraph are **minimums only** – they do not limit the Operator's indemnity obligation, and it will be the Operator's responsibility to determine what limits are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. The City may review the insurance coverages and limits annually and make adjustments thereto as determined by the City. The City's acceptance of Certificates of Insurance that do not comply with these requirements in any respect does not release the Operator from compliance with these requirements.

## ARTICLE 10 DEFAULT

- 10.0.1 The Operator will be deemed in default of the Agreement upon the occurrence of any of the following "Events of Default":
- a. Default in Covenants. The Operator is in default in the performance of any term, covenant, or agreement contained in this Agreement and any such default continues un-remedied by Operator for thirty (30) days after either (a) it becomes known to the Operator or (b) written notice has been given to the Operator by the City.
  - b. Voluntary Insolvency: If the Operator becomes insolvent or ceases to pay its debts as they mature or voluntarily files a petition seeking reorganization of, or the appointment of any receiver, trustee, or liquidation for it or a substantial portion of its assets, or effects a plan or other arrangement with creditors, or is adjudicated bankrupt, or makes a voluntary assignment for the benefit of its creditors.
  - c. Involuntary Insolvency. If an involuntary petition is filed against the Operator under any bankruptcy, insolvency, or similar law or seeks the reorganization of or the appointment of any receiver, trustee, or liquidator for the Operator, or of

a substantial part of the property of the Borrower, and such petition is not dismissed, or such writ or warrant of attachment or similar process is released or bonded within ninety (90) days after filing or levy.

- d. Assignment for the Benefit of Creditors. The making of an assignment for the benefit of creditors;
- e. Appointment of a receiver or trustee for all or substantially all of the assets of Operator.

10.0.2 The occurrence of any of the following shall constitute a “Termination Default” by the Operator:

- a. The failure of Operator to perform any of its obligations under this Agreement;
- b. An act or omission of the Operator that causes or contributes to any lapse, cancelation, denial of coverage, or any other prejudice to the applicability of any insurance required under this Agreement;
- c. The operation and maintenance of or failure to operate and maintain the Airport in a manner that creates or results in a serious and immediate threat to the health welfare of the public;
- d. An act or omission by the Operator its officers, employees, or agents which results in a conviction of a felony under applicable law or which was committed in the performance of or relates to the obligation of responsibilities of the Operator under this Agreement.

10.0.3 Remedies

- a. In the event of a Termination Default under 10.1 and 10.2 (c) or (d) the City shall have the right, upon written notice to the Operator outlining the specific circumstances of the event of Termination Default to immediately enter upon the Airport Property and suspend or terminate this Agreement and assume responsibility for the maintenance and operation of the Airport;
- b. In the event of a Termination Default by Operation under 10.2(a) or (b), the City shall give written notice of such default to the Operator specifying the reasons therefore. In such event, the Operation shall have thirty (30) days from the date of such notice to cure the default. If the Operator fails to cure such default to the satisfaction of the City, the City may terminate this Agreement upon written notice of termination.
- c. The remedies specified in this Article 10.2 shall be in addition to and not in limitation or in lieu of all other remedies available to the City in Article 8, available at law or in equity.

**ARTICLE 11**  
**MISCELLANEOUS PROVISIONS**

- 11.0.1 This Agreement is governed by and will be construed under the laws of the State of Texas. Exclusive venue for any dispute arising under this Agreement is in Hays County, Texas.
- 11.0.2 As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.
- 11.0.3 The Operator will not use funds received by it directly or indirectly under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.
- 11.0.4 The Operator hereby affirms that Operator and Operator's firm have not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide consulting services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the San Marcos City Code is not considered a valuable gift for the purposes of this Agreement.
- 11.0.5 In performing all services required under this Agreement, the Operator will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry or in any way be subjected to discrimination in the use of Airport facilities. The Operator will furnish services on a fair, equal and non-discriminatory basis to all Airport users. A breach of this covenant by the Operator will be regarded as a default of the Agreement.
- 11.0.6 The Operator agrees not to engage in employment practices which have the purpose or effect of discriminating against employees because of race, color, sex, religion, national origin, age, disability or ancestry. A breach of this covenant by the Operator will be regarded as a default of the Agreement.
- 11.0.7 All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Agreement.
- 11.0.8 Should any provision in this Agreement be found or deemed invalid, the balance of the Agreement shall remain in full force and effect and if legally possible the parties will attempt to reform the invalid provision to best reflect the original intent of the parties.

- 11.0.9 All services provided pursuant to this Agreement are for the exclusive use and benefit of the City.
- 11.0.10 In performing all services under this Agreement, the Operator, its subcontractors, successors and assigns will comply with all local, state and federal laws.
- 11.0.11 The City's execution of and performance under this Agreement will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.
- 11.0.12 The City of San Marcos is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Operator will not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.
- 11.0.13 The captions or headings included in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, articles, or sections of this Agreement.
- 11.0.14 In the event that the performance by either the City or the Operator of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.
- 11.0.15 In the event of a default or breach of this Agreement by the Operator, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Operator will not waive the City's ability to enforce the Agreement after that time.
- 11.0.16 All services provided pursuant to this Agreement are for the exclusive use and benefit of the City and the Agreement will not give rise to any rights in third parties.
- 11.0.17 If applicable, the Operator will pay all license fees, royalties and other costs incident to the use of any invention, design, process, product or device subject to a patent right or copyright held by others in performing the work or in the completed Project.

- 11.0.18 It is expressly agreed that the Operator is an independent contractor and not an employee, agent partner or joint-venturer with the City. The Operator will not pledge or attempt to pledge the credit of the City.
- 11.0.19 It is the City's intent to be proactive with regard to the environment. The City encourages value purchasing of environmentally friendly products. The Operator is encouraged to utilize green solutions in performing any services under the Agreement, as appropriate.
- 11.0.20 The Operator will, prior to execution and any future extension of this Agreement, furnish evidence as may be reasonably requested by the City to show the Operator is financially capable of providing the services set forth in the Agreement.
- 11.0.21 This Agreement will be subordinate to the provisions of any existing or future agreement between the City and the Texas Department of Transportation and any agency or department of the United States of America relative to the ownership, operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the Airport. Furthermore, this Agreement may be amended to include provisions required by those agreements.
- 11.0.22 In addition to other remedies available to the City, if the Operator fails to comply with the contract standards for the Airport, the Operator will be liable to the City for all incidental and consequential damages resulting from the noncompliance.
- 11.0.23 Funds for the payment of the City's obligations under this Agreement have been provided through the City budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of items or services covered by this Agreement is considered a recurring requirement and is included as a standard and routine expense of the City to be included in each proposed budget within the foreseeable future. City Council expects this to be an integral part of future budgets to be approved during the period of this Agreement except for unanticipated needs or events which may prevent such payments against this Agreement. However, the City cannot guarantee the availability of funds, and enters into this Agreement only to the extent such funds are made available. In the event sufficient funds are not appropriated for the City's continued payment, this Agreement may be terminated by City or Operator without recourse by either party.

## **ARTICLE 12 SUCCESSORS AND ASSIGNS**

- 12.0.1 The City and the Operator, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with

respect to all covenants of this Agreement. The City and the Operator will not assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.

- 12.0.2 The Operator will notify the City, in writing, of any change in its partnership/ownership within thirty (30) calendar days of such change.

### **ARTICLE 13 EXTENT OF AGREEMENT**

- 13.0.1 This Agreement, including appendices and referenced attachments represents the entire and integrated Agreement between the City and the Operator and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the parties. In the event of a dispute between the City and Operator regarding the intent of this Agreement, both parties agree that they will construe this Agreement in a manner consistent with the City's Request for Proposals, the Operator's proposal response and the public record of the City Council's approval of this Agreement as applicable. This Agreement may be amended only by written instrument, which must be signed by both the City and the Operator. The San Marcos City Council must approve any such authorization of change in services or amendment if the compensation for which exceeds \$50,000.00.
- 13.0.2 Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.
- 13.0.3 In the event of any conflict between this Agreement and the provisions of any exhibit or attachment to this Agreement, this Agreement will govern and control.

### **ARTICLE 14 NOTICES**

- 14.0.1 Notices required under this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses or to such other address as the parties may designate in writing to which subsequent notices shall be sent:

**To the City:**  
City Manager  
City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666  
Fax: 512.396.4656

**To the Operator**  
Jim Wimberly  
Texas Aviation Partners, LLC.  
1807 Airport Drive, Suite 200  
San Marcos, Texas 78666  
Fax: 512.216.6043

Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the party that person represents. This Agreement will be effective as of the day and year established in the first paragraph of this Agreement.

CITY OF SAN MARCOS

TEXAS AVIATION PARTNERS, LLC

\_\_\_\_\_  
Bert Lumbreras, City Manager

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed or typed name)

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

Attest:

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed or typed name)

\_\_\_\_\_  
(Printed or typed name)

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(Title)

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(Title)