



CITY OF SAN MARCOS
PROVIDER CONTRACT

225-XXX

SECTION 1. **Parties to Contract:** This Contract is entered into between the City of San Marcos ("City") and Wings and Warriors ("Nonprofit"). The parties agree to be bound by the mutual obligations, performances, duties and accomplishments in this Agreement.

SECTION 2. **Contract Period:** This Contract shall be in effect from the execution date of this Contract through January 3, 2026.

SECTION 3. **Obligation of The City and Nonprofit:**

A. City agrees to provide the Nonprofit an amount not to exceed \$100,000 of hotel occupancy tax in accordance with the approved City of San Marcos Fiscal 2025 budget ("Budget") subject to the terms and conditions outlined below, respectively, in return for its faithful, diligent, expeditious and satisfactory performance of the activities required to produce an in-person impactful event.

B. The Nonprofit agrees to provide the City of San Marcos the sponsorship benefits set forth in Appendix A.

C. The Nonprofit agrees to include the statement "Funding provided by the City of San Marcos" or something similar and/or include the San Marcos logo with any advertising, promotional materials, and event announcements; and tag "@visitsanmarcos or @visitsmtx" in social media posts. INITIALS _____

D. The Nonprofit agrees to produce an impactful event that will directly enhance and promote tourism and the convention and hotel industry.

E. The Nonprofit agrees to abide by all applicable City permitting requirements for the event, including but not limited to having a completed Event Determination Form at least 60 days prior to the event. INITIALS _____

F. The public purpose of this Contract is to support the promotion and production of a two-day air show bringing heart-pounding, family-friendly fun, and excitement to the San Marcos. The air show will feature a variety of aerial demonstrations, including those from military and civilian pilots, as well as ground displays. The funds provided under this Contract may not be used for any other purpose than the herein stated

public purpose of the production of this in-person event. The failure of the Nonprofit to use the funds provided under this Contract for this sole public purpose shall be considered a breach of this Contract and will result in the automatic termination of this Contract.

SECTION 4. **Use of Funds:** Funds provided under this Contract are generated by the City's Hotel Occupancy Tax to be used only in furtherance of the activities identified in Section 3.

The City's Hotel Occupancy Tax must be used to produce an impactful event that will directly enhance and promote tourism and the convention and hotel industry. At least 15 percent of the total grant awarded must be used to purchase advertising to attract overnight stays to San Marcos hotel; proof of paid marketing is required. INITIALS_____

The City of San Marcos requires that no more than 50% of the annual budget of the event budget shall be derived from City funds. In the event that such funds do exceed 50% of the annual budget of the Nonprofit event at any time during which this Contract is in effect, the Nonprofit agrees to notify the City immediately so that appropriate monetary adjustments to this Contract can be made to assure compliance with this section. Under no circumstances shall any of the funds be used to pay Board of Director salaries or benefits.

SECTION 5. **Accounting:** The Nonprofit shall maintain complete and accurate financial records and at the request of the City Manager or his designee, shall make the records available for inspection and review during normal business hours.

SECTION 6. **Unspent Funds:** Any funds allocated to the Nonprofit by the City, which are unencumbered or unexpended at the end of the Contract Period, or other date of the termination of this Agreement, shall be remitted to the City within 30 days from the date thereof.

SECTION 7. **Hours of Operation:** Events dates are Saturday, November 1 and Sunday, November 2, 2025. Gates open at 9:30am; close at 4:30pm

SECTION 8. **Reports:** The Nonprofit agrees to provide an event evaluation report as required by the City relating to its performance and expenditures of funds under the terms of this Contract. Report is due on or before January 3, 2026, which is 60 days from the day following the event. The City of San Marcos requires that detailed records be kept related to production and operation along with attendance data. The evaluation report will be submitted online through the City's grant management software.

Documents required:

1. List of activities with schedule, summary of how this event directly enhanced and promoted tourism and the convention and hotel industry, and attendance data
2. Proof and samples of paid advertising (as identified in Section 4)
3. Income statement (profit-and-loss statement) – event's revenue, expenses and profitability – budget vs actual

SECTION 9. **Periodic Payments:** Funds to be paid by the City as provided in Section 3 above shall be released to the Nonprofit in two payments. The first payment of 85%, shall be released following the execution of this contract. The second payment of 15% shall be released following the City's analysis of the event evaluation report received as set out in Section 8 above, except that following a notice to Nonprofit by City of an insufficiency in the report or a default under this Contract, funds shall not be released unless and until such time as the insufficiency or default is remedied, as determined by the City in its discretion. First payment shall be in the amount of \$85,000.00. The second payment shall be in the amount of \$15,000 which will be reduced such that they do not exceed 50% of the Nonprofit's reported qualifying expenditures and/or did not spend 15% of the grant for paid advertising as set out in Section 4.

SECTION 10. **Monitoring of Performance:** The Nonprofit agrees to allow the City or their designee, to inspect, at City's request, and with advance notice to the Nonprofit, all pertinent records, files, information or other written material maintained by the Nonprofit or its subcontractors and related to the subject matter of this Contract. Any failure by the Nonprofit 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 by the City. Notwithstanding the foregoing requirements of this Section, the City acknowledges that the Nonprofit 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 Nonprofit under this Contract.

SECTION 11. **Sub-Contracts:** No part of this Contract may be subcontracted to any other person, corporation, entity, organization or association without the prior written consent of the City to such sub-contractor and to the terms and conditions of any such sub-contract.

SECTION 12. **Political Activity:** The Nonprofit agrees not to use any of the funds under this contract for any political activity, including any activity to further the election or defeat of any candidate for public office or any activity undertaken to influence the passage, defeat or final content of legislation.

SECTION 13. **Compliance With Laws:** The Nonprofit agrees to comply with all applicable laws, ordinances, codes and regulations of the local, state and federal governments including but not limited to those laws, ordinances, codes and regulations pertaining to equal employment opportunity and those pertaining to discrimination against participants.

SECTION 14. **Breach of Contract:**

A. If the City Manager of the City determines that the activities as described in this agreement are not being carried out as approved by the City or that the Nonprofit is in breach of any of the terms of this Contract, the City Manager shall notify the Nonprofit in writing of the deficiency. The Nonprofit shall have ten (10) working days from the date of the notice to correct or satisfy the deficiency.

B. If the deficiency is not appropriately corrected or satisfied in the opinion of the City Manager within the prescribed time, notice may be given to Nonprofit that its funding will

be terminated.

C. A decision of the City Manager to terminate funding may be appealed to the City Council within 10 days of the date of the notice to terminate funding. During the appeal process, funding to the Nonprofit shall be put on hold.

D. The City Council shall conduct a hearing on the matter within thirty (30) days of receipt of an appeal and render a decision on the appeal as soon as practicable thereafter.

E. Upon termination of this Contract under this Section 14, the Nonprofit shall remit all funds allocated to it by the City within 30 days from the date of termination unless an appeal is filed, in which event the Nonprofit shall remit such funds within 30 days after any final ruling upholding the decision of the City Manager to terminate the Contract. Nothing herein shall preclude either party from seeking any other remedy for breach of this Contract that is available in law or in equity.

In the event of a termination due to a default by Nonprofit, if the City Manager determines any payments already made by the City hereunder were used in a manner allowed by this Contract, the City Manager may determine, in his discretion, to allow Nonprofit to keep the previously disbursed funds, but no further payments will be made.

F. Notwithstanding the foregoing provisions of this section, either party to this Contract shall have the right to terminate this Contract by providing written notification to the other party at least 30 days prior to the effective date of such termination; however, the City agrees that it will not terminate this Contract under this subsection except for good and sufficient cause as determined by the City in its discretion. In the event of termination under this subsection, no further payments will be made to Nonprofit.

SECTION 15. **Miscellaneous:**

A. This Contract contains the entire agreement between the parties. Any oral understandings or agreements in conflict with the written provisions of this Contract shall be of no force or effect.

B. Any alterations, additions, deletions or amendments to the terms of this Contract must be made in writing and executed by both parties hereto.

C. The Nonprofit warrants that it possesses the legal authority to enter into this Contract and to perform the services and comply with the terms provided for herein.

D. City may, in its sole discretion provide for or conduct an independent audit of the funds received under this Contract at any time during the effective term of this Contract and for twelve months after its termination.

E. The Nonprofit agrees to maintain all program records related to the activities under this Contract for at least twelve months after the termination of this Contract.

SECTION 16. **Supplemental Conditions. (Check One)**

- A. None: _____
B. As stated in Appendix A: X

For: The City of San Marcos

By: _____
Stephanie Reyes, City Manager

Date: _____

For: Wings and Warriors (Nonprofit)

By: _____
Tim Scherer, Chairman and Founder

Date: _____