

MARIPOSA COUNTY

Public Works • (209) 966-5356



RESOLUTION - ACTION REQUESTED 2015-477

MEETING: October 6, 2015

TO: The Board of Supervisors

FROM: Tony Stobbe, Public Works Director

RE: Approve an Airport Manager Agreement with Airborn Aviation Services

RECOMMENDATION AND JUSTIFICATION:

Approve a Five-Year Agreement with Airborn Aviation Services to Operate at the Mariposa/Yosemite Airport as the Airport Manager, and Authorize the Board of Supervisors Chair to Sign the Agreement.

Entering into an Agreement with Airborn Aviation Services (AAS) will enable a mutual goal of having a safe and well maintained airport facility that serves the public and general aviation community.

The proposed agreement is divided into two phases. In the first year, AAS will occupy the terminal building and residence, assuming maintenance and utilities responsibilities for those facilities, and will begin to engage in commercial activities that may include flight training, flight seeing, and offering services to aviators. While no specific additional responsibilities are prescribed, there is no doubt that the active and regular presence of AAS at the airport will be of substantial benefit. During this period, Public Works will continue to administer long term leases, fuel sales, and inspections/testing. During this period the County should see reduced utility and routine maintenance expenses in the Airport Fund, but may see increased expenses as the increase in activity at the Airport could expose unanticipated underlying issues. After one year, the agreement stipulates that AAS will assume fuel sales, inspections, testing, making rental cars available, and staffing the terminal at a level needed to shift the airport to "Attended" status. Administration of longer term hangar leases will remain with Public Works, as will the revenue derived from that activity, but may be the topic a future modification to this Agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board approved the original agreement with KMPI and has met several times to discuss the status of the Airport and the proposals for a Fixed Base Operator. Public Works brought forward a draft agreement on August 11, 2015, which stimulated a healthy dialogue with the Board, staff, and the prospective Airport Manager. The

Board issued direction to pursue a short term agreement to enable near term occupation of the facilities while finalizing a longer term agreement. After meeting with AAS and reviewing boilerplate short term agreements, it was mutually concluded that by modifying the long term agreement the intent of that direction could be satisfied just as expediently.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board could elect to leave the Mariposa/Yosemite Airport in the status quo, resulting in the airport remaining unattended, and in the opinion of staff, underutilized. The Board could also direct another Request for Proposal period, but risk losing a local interested potential operator. The Board could find that parts of the agreement are unsatisfactory and provide direction to Public Works to seek modifications to the proposed agreement.

FINANCIAL IMPACT:

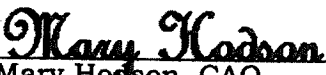
Adjustments to the Airport Budget will be done at a later date to if necessary to support the FBO Agreement. It is not anticipated that these adjustments will have a negative impact on the General Fund. Currently this budget has no net county cost.

ATTACHMENTS:

Airport Manager Lease October 2015 (PDF)

CAO RECOMMENDATION

Requested Action Recommended



Mary Hoatson, CAO 9/30/2015

RESULT: ADOPTED [UNANIMOUS]

MOVER: Marshall Long, District III Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Jones, Long, Cann, Carrier

AIRPORT MANAGEMENT AGREEMENT AND LEASE

This **AIRPORT MANAGEMENT AGREEMENT AND LEASE** (hereinafter called "this Agreement"), is made and entered into in the County of Mariposa, State of California, as of October 7, 2015, by and between the **COUNTY OF MARIPOSA**, hereinafter called **COUNTY**, and **AIRBORRN AVIATION SERVICES**, hereinafter called **MANAGER**.

WITNESSETH

WHEREAS, pursuant to the provisions of Section 26020 et seq. of the Government Code of the State of California, **COUNTY** owns and operates an airport in the County of Mariposa, State of California, commonly known as the Mariposa/Yosemite Airport (hereinafter called "Airport"); and

WHEREAS, the Mariposa County Board of Supervisors requested proposals from interested parties to manage the Airport and provide certain commercial services; and

WHEREAS, the proposal submitted by **MANAGER** was selected by the Board of Supervisors; and

WHEREAS, **MANAGER** is willing and desires to manage the Airport and provide certain commercial services pursuant to the terms herein; and

WHEREAS, the parties wish to provide for the leasing of property by the **COUNTY** to the **MANAGER** at the Airport for the purpose of providing certain commercial services and airport management functions;

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS AGREED AS FOLLOWS:

1. **LEASED PREMISES**: For and in consideration of the mutual covenants contained herein, **COUNTY** hereby grants to **MANAGER** the exclusive right to occupy the real property located at the Airport, as more particularly described in Exhibit "A", attached hereto and incorporated herein by reference, hereinafter the **LEASED PREMISES**, subject to the **COUNTY's** right of entry for inspection and similar purposes.
2. **TERM**: This Agreement shall commence on the 7th day of October 2015, and shall terminate on the 31st day of October, 2020. This Agreement shall be renewable thereafter as mutually agreed by the **COUNTY** and **MANAGER**.

3. **MANAGER RESPONSIBILITIES:** **MANAGER** will be responsible for managing the Airport for the use and benefit of the public, and for providing certain commercial services, subject to the **COUNTY's** authority as owner of the Airport and further subject to **COUNTY's** obligations pursuant to federal and state law and contractual commitments to the federal government as more particularly described in Section 6 of this Agreement. **MANAGER'S** specific obligations shall include the following responsibilities, divided by those responsibilities that will take effect upon approval of this agreement, and those responsibilities that will come into effect twelve (12) months from approval of this agreement unless mutually agreed to be brought into effect earlier by **COUNTY** (represented by the Director of Public Works) and **MANAGER**.

The following responsibilities will come in to effect upon initial approval of this agreement:

- a) **MANAGER** will designate an individual to serve as the Airport Manager, who shall have primary responsibility for the airport management functions enumerated in this Section 3. **MANAGER** shall promptly notify **COUNTY** of any change in the designated Airport Manager. An Airport Manager shall be stationed at the Airport throughout the term of this Agreement.
- b) **MANAGER** will be responsible for billing and collecting rental fees for short term (less than twelve months) use of hangars, tie-downs, and any other leased space at the Airport, including land use agreements with outside agencies, and may retain the revenue derived therefrom.
- c) **MANAGER** may request of **COUNTY** that the Mariposa County Board of Supervisors take formal action to adjust the rental rate on tie-downs at the Airport.
- d) **MANAGER** will conduct meetings to solicit input from Airport tenants and users and other interested parties. At **MANAGER's** option, attendance and participation in the Airport Advisory Committee shall satisfy this requirement.
- e) **MANAGER** will participate in inspecting hangars to ensure that activities conducted therein are consistent with applicable agreements and do not present any risk to aeronautical activities at the Airport.
- f) **MANAGER** may recommend to **COUNTY** that **COUNTY** terminate a hangar or ground lease or tie-down permit for non-compliance with terms of the applicable lease or permit; provided however that **COUNTY** reserves the right, in its sole

discretion, to terminate any lease or permit but whose decision to terminate will not be unreasonably withheld or delayed.

- g) **MANAGER** may request of **COUNTY** that **COUNTY** amend this Agreement or enter into a separate agreement for the purpose of constructing additional aircraft storage hangars or maintenance hangars.
- h) **MANAGER** is authorized to permit aircraft owners and operators to store aircraft at the Airport, in available hangars owned by the **COUNTY** and available tie-downs, so long as the term does not exceed twelve months. **MANAGER** shall use a standard form aircraft storage permit or hangar lease approved by the **COUNTY**. **COUNTY** reserves the right to deny use of the Airport; **MANAGER** is not authorized by this **AGREEMENT** to deny use of the Airport under any circumstances unless required by law to do so.
- i) **MANAGER** will facilitate the long-term lease of Airport property by coordinating with prospective tenants and presenting draft agreements to **COUNTY** for negotiation and execution.
- j) **MANAGER** will advertise the Airport in appropriate publications including a webpage and other aviation oriented media.
- k) **MANAGER** will host seminars and promote airport assets, activities, and opportunities to local schools and the general public.
- l) **MANAGER** shall immediately notify the **COUNTY** of any event or condition at the Airport which is known or which should reasonably be known that may present a risk to human health or the environment, including without limitation, any aircraft incident or accident, any fuel spill or release of any hazardous substance, or any weather or climatic condition presenting a risk to the operation of aircraft or the Airport.
- m) In addition to services required by this agreement, **MANAGER** is authorized, but not required, to provide the following services and to engage in the following activities:
 - i) Apron services including loading and unloading of passengers, baggage, mail, and freight; provision of ramp equipment and ramp services such as repositioning of aircraft, aircraft cleaning, and other services for commercial

operators or other persons or firms.

- ii) Special flight services, including aerial sightseeing, aerial advertising, towing aircraft, and aerial photography.
 - iii) Sales of new and used aircraft.
 - iv) Flight training.
 - v) Aircraft rental
 - vi) Aircraft charter operations, conducted by **MANAGER** or subcontractor or **MANAGER** in accordance with applicable Federal Aviation Administration regulations.
- n) **MANAGER** is granted exclusive use and occupancy of the terminal included in the **LEASED PREMESIS** as a storefront for commercial operations including all manner of activities authorized by this agreement and other such activities approved by the Director of Public Works. **MANAGER** will assume responsibility for routine maintenance, security, cleanliness, and appearance of terminal building, including maintaining rest rooms in a clean and fully stocked status. **MANAGER** may allow use of terminal building for other purposes including meetings of community groups, Experimental Aircraft Association, and firefighting response personnel, and may charge fees for such use.
- o) **MANAGER** may use the residence included in the **LEASED PREMISES** as a pilot resting facility, as short-term flight crew quarters for temporary use, as living quarters for the designated Airport Manager or another employee assigned as part of his/her official duties, or for any other purpose pre-approved by the Director of Public Works. It is the responsibility of **MANAGER** to comply with potential requirements for Transient Occupancy Tax permits and inspections associated with any use of residence.
- p) Prior to taking possession of keys and alarm codes for the terminal building and residence, **COUNTY** and **MANAGER** shall conduct a walkthrough of the terminal building and residence to document presence and condition of property, materials, electronics, furniture, and determine disposition for removal and storage of items, to the satisfaction of both parties.

- q) **MANAGER** must notify Director of Public Works prior to initiating additional commercial aeronautical and/or commercial non-aeronautical services beyond the services enumerated in this Section 3.
- r) **MANAGER** will ensure that all activities undertaken or allowed by **MANAGER** will be in accordance with the Mariposa/Yosemite Airport Master Plan. Any exceptions to this provision will require the approval of the County Board of Supervisors.
- s) **MANAGER** shall comply with the Airport Rules and Regulations, as may exist as of the effective date or promulgated or amended thereafter, and all applicable requirements under federal, state and local law and Federal Aviation Administration regulation in carrying out its obligations hereunder.
- t) **MANAGER** shall make annual public reports to the Mariposa County Board of Supervisors summarizing all activities undertaken or allowed by **MANAGER** at the Airport.

The following responsibilities will come in to effect, collectively, twelve (12) months from the initial approval of this agreement:

- u) **MANAGER** shall inspect the Airport runway at least once each day of operation, including weekends, to ensure that the runway is free of foreign objects and debris.
- v) **MANAGER** shall assume operation and maintenance of the aircraft fuel dispensing system and tank located at the Airport and shall ensure 100 low-lead aircraft fuel remains available for sale by means of a commercial self-service system. **MANAGER** shall ensure that a sufficient volume of aircraft fuel remains available at the Airport at all times to serve the needs of Airport tenants and users, and shall not allow fuel tank levels to drop below 50% without prior approval from Director of Public Works. Upon assumption of fuel operation responsibilities, **MANAGER** shall set the price of fuel, will retain any revenue derived from fuel sales, and shall complete required fuel testing and record keeping, including any testing required on weekends. **MANAGER** shall ensure that 12,000 gallons of 100 low-lead aircraft fuel is available at the Airport upon termination of this Agreement for any reason.
- w) **MANAGER** shall, in order to achieve "attended" status as an airport, staff the

Airport Terminal from 10 AM to 4 PM, Monday through Friday, with the exception of the following holidays: New Year's Day, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving, and Christmas. Exceptions to this provision shall be approved in advance by the Director of Public Works. This provision does not preclude additional operating hours and days at the discretion of **MANAGER**.

- x) **MANAGER** shall provide basic pilot and aircraft support services by offering aircraft and aviation related supplies, software, services, etc. for sale, as the **MANAGER** determines necessary.
- y) **MANAGER** shall have the exclusive right to maintain a rental car business at the airport and shall ensure that ground vehicles are available for rent at the Airport throughout the term of this Agreement.
- z) Subject to mutual agreement of terms between **MANAGER** and **COUNTY** by future modification to this agreement, but no sooner than twelve (12) months from the effective date of this agreement, **MANAGER** may assume responsibility for administration of long term hangar leases, including billing and collecting of fees, and will retain revenue derived therefrom in that is excess of revenue required by **COUNTY** to offset expenses.

4. **COUNTY RESPONSIBILITIES:**

- a) **COUNTY** shall be responsible for maintaining and repairing the Airport airfield, including runways, lighting, AWOS, taxiways, tie-down areas, and common-use ramp; and for maintaining the Airport grounds.
- b) **COUNTY** shall be responsible for Notice to Airmen (NOTAM).
- c) **COUNTY** shall be responsible for operation and maintenance of terminal and fuel dispensing system until **MANAGER** assumes operations of these facilities.
- d) **COUNTY** shall be responsible for administering long term hangar leases including billing and collecting rental fees, and will retain the revenue derived therefrom, until such time as **MANAGER** assumes responsibility.
- e) **COUNTY** shall be responsible for ensuring that the Airport complies with all applicable requirements and standards imposed by the State of California and

the United States Government concerning the operation of the Airport and the environmental conditions thereon; provided however, that **MANAGER** shall assist in satisfying applicable requirements including, without limitation, accompanying any representative of the state or federal government in a tour or inspection of the Airport at the **COUNTY's** request, and providing information and documents as may be requested by a state or federal agency at the **COUNTY's** express direction.

- f) **COUNTY** reserves the right to improve the Airport, including without limitation, making improvements to the Airport runways or taxiways and constructing new facilities at the Airport.
- g) **COUNTY** shall be responsible for providing emergency police and firefighting services at the Airport, including but not limited to, both structure and aircraft firefighting.
- h) **COUNTY** reserves the right to close the Airport in emergencies and further reserves the right to seek and obtain FAA approval to close the Airport on a temporary basis for special events. **MANAGER** reserves the right to suspend operations during Airport closure.
- i) **COUNTY** reserves the right to authorize the lease of Airport property for terms exceeding twelve months.
- j) **COUNTY** reserves the right to authorize any individual or business to conduct commercial aeronautical activities at the Airport.
- k) **COUNTY** reserves the right to authorize or deny the use of the Airport for any non-aeronautical activity.
- l) **COUNTY** shall ensure that 12,000 gallons of 100 low-lead aircraft fuel is available at the Airport prior to **MANAGER** assuming responsibility for fuel operations.

5. **FINANCIAL OBLIGATIONS OF COUNTY AND MANAGER:**

- a) **COUNTY** shall retain hangar rent proceeds and make all required payments to the California Department of Transportation, per the long-term hangar financing agreement, until such time as this Airport Manager agreement is modified per

Paragraph 3(z).

- b) **MANAGER** shall be authorized to retain the rent proceeds associated with any other parcels or structures owned by **COUNTY**, and revenues from commercial services provided by **MANAGER**.
- c) **COUNTY** shall be responsible for the costs to maintain the aircraft fuel storage tanks and self-service fuel dispensing system, and will retain any proceeds from fuel sales, until such time as **MANAGER** assumes operation of these facilities.
- d) **COUNTY** shall maintain adequate insurance on the hangars, terminal and fuel tank farm.
- e) **COUNTY** shall be responsible for the utility costs associated with the Airport airfield and runway lighting system.
- f) **MANAGER** shall be responsible for utility costs in connection with the **LEASED PREMISES** operated by **MANAGER**. **MANAGER** will assume account service for telephone, internet, alarm service, and propane to terminal and residence. **COUNTY** will continue to receive billing for electrical service, and will invoice **MANAGER** monthly for usage according to formula prepared by the Director of Public Works to reasonably split charges falling under meters that serve leased as well as public functions.

6. **TERMS REQUIRED BY FAA:** The following terms are required to be included in this Agreement in satisfaction of **COUNTY**'s obligations to the Federal Aviation Administration:

- a) **MANAGER**, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color or national origin be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the **MANAGER** shall use the premises in compliance with all other requirements imposed by or pursuant to

49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

- b) **COUNTY** reserves the right to further develop or improve the land area of the Airport as it sees fit, regardless of the desires or views of the **MANAGER** and without interference or hindrance.
- c) **COUNTY** reserves the right, but shall not be obligated to the **MANAGER**, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the **MANAGER** in this regard.
- d) This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the **COUNTY** and the United States, relative to the development, operation, or maintenance of the Airport. Failure of the **MANAGER** or any occupant to comply with the requirements of any existing or future agreement between the **COUNTY** and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of **MANAGER'S** rights hereunder.
- e) There is reserved to the **COUNTY**, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the **LEASED PREMISES**. This public right of flight shall include the right to cause in said airspace any noise and emissions inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on the Airport premises.
- f) **MANAGER** agrees to comply with the notification and review requirements covered in Title 14 CFR Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the **LEASED PREMISES** or in the event of any planned modification or alteration of any present or future building or structure situated on the **LEASED PREMISES**.
- g) **MANAGER**, by accepting this Agreement, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit any natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the

requirements of Title 14 CFR Part 77 to constitute an obstruction or hazard. In the event the aforesaid covenants are breached, **COUNTY** reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of the **MANAGER**.

- h) **MANAGER**, by accepting this Agreement, agrees for itself, its successors and assigns that it will not make use of the **LEASED PREMISES** in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, **COUNTY** reserves the right to enter upon the **LEASED PREMISES** and cause the abatement of such interference at the reasonable expense of **MANAGER**.
- i) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40101(e) or 49 U.S.C. § 47107(a)(4).
- j) This Agreement and all of the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during a time of war or national emergency.
- k) **MANAGER** will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that **MANAGER** may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

7. **VOLUNTARY ASSIGNMENT**: Except as expressly provided herein, **MANAGER** shall not assign this Agreement nor any right hereunder, nor sublet the **LEASED PREMISES**, nor any part thereof, or suffer any other person to occupy the **LEASED PREMISES** or any portion thereof without prior written consent of the **COUNTY**, which consent shall not be unreasonably withheld. Any such assignment, subletting or occupation by any other person without such consent shall be void, and shall at the option of **COUNTY** terminate this Agreement. This provision does not prohibit the **MANAGER** from allowing other parties to utilize the **LEASED PREMISES** for permitted functions and events.

8. **INVOLUNTARY ASSIGNMENT:** **MANAGER** agrees that, except as expressly provided herein, neither this Agreement or any interest herein shall be assignable or transferable unless otherwise agreed in writing by the parties hereto, which consent shall not be unreasonably withheld.

9. **IMPROVEMENTS, CONSTRUCTION, ALTERATION:** **MANAGER** may maintain on the LEASED PREMISES improvements as necessary to facilitate the use of the LEASED PREMISES. Any structure and/or alteration, including new construction, must first be approved by the Mariposa County Board of Supervisors. Prior to any construction or work of improvement on the LEASED PREMISES, **MANAGER** shall furnish to **COUNTY** evidence that sufficient monies will be available to complete **MANAGER'S** proposal. **COUNTY** and **MANAGER** agree that such evidence shall represent at least the total estimated cost of construction and that said evidence may take one of the following forms:

A Performance Bond to be supplied by **MANAGER'S** contractor or contractors and issued jointly to **MANAGER** and **COUNTY** as Obligee. **MANAGER'S** contractor or contractors shall also submit to **COUNTY** a Certificate of Insurance as evidence of Workers' Compensation Insurance coverage.

Pledge of an escrow which will include funds received as proceeds of a financing contemplated by **MANAGER**. Such escrow shall be designated a "construction fund" and such fund shall be subject to periodic draw down in accordance with terms of the escrow.

10. **RIGHT OF RE-ENTRY OF COUNTY:** It is expressly agreed that in the event **MANAGER** creates or causes any material breach of this Agreement, **COUNTY** shall have the right and option to re-enter the LEASED PREMISES, take possession thereof, and remove all persons as provided by law.

11. **SURRENDER OF POSSESSION:** At the expiration of this Agreement, **MANAGER** promises and agrees to deliver unto **COUNTY** the LEASED PREMISES in as good condition as at the date of execution of this Agreement, reasonable wear and tear excepted.

12. **POSSESSORY INTEREST:** **MANAGER** recognizes and understands that to the extent this Agreement may or may not create a possessory interest subject to property taxation that the **MANAGER** is solely responsible for the payment of any taxes levied or assessed on the LEASED PREMESIS. **COUNTY** expresses no opinion on the taxable effect of this Agreement.

13. **INDEMNITY:** MANAGER shall and hereby covenants that it will indemnify and defend, upon request of COUNTY, COUNTY, its governing board, officers, agents, and employees and each of them, and save them free and harmless of, and from any and all reasonable and proper costs, expenses, claims, liabilities, attorney's fees, actions, or damages, including liability for injuries to person or persons, or damage to property arising out of or in any way connected with the acts or omissions of MANAGER, its employees, agents, independent contractors, or invitees. This shall include any acts or omissions which may occur during construction, modification or removal of the improvements on the LEASED PREMISES pursuant to Paragraph 9. MANAGER'S obligations under this Section shall survive the expiration or termination of this Agreement.

In addition, **MANAGER** particularly agrees to indemnify, defend (upon request of **COUNTY**) and hold **COUNTY**, its governing board, commissions, agents, officers and employees harmless from any and all fines, suits, procedures, claims, losses, expenses and actions of every kind and all reasonable and proper costs associated therewith, including but not limited to all reasonable and proper attorney and consultant fees, arising out of or in any connected with any deposit, spill, discharge or other release of hazardous material that occurs at any time during **MANAGER'S** occupancy of the **LEASED PREMISES** as a result of any use(s) of the **LEASED PREMISES** and/or the occupancy of the **LEASED PREMISES** by **MANAGER** or as a result of **MANAGER'S** failure to provide any or all information, make any or all of its submissions, and take any or all steps required by any governmental authority or court which has jurisdiction or by any environmental requirements. **MANAGER'S** obligations under this Section shall survive the expiration or termination of this Agreement.

COUNTY shall and hereby covenants that it will indemnify and defend, upon request of **MANAGER, MANAGER**, its members, officers, agents, and employees and each of them, and save them free and harmless of, and from any and all reasonable and proper costs, expenses, claims, liabilities, attorney's fees, actions, or damages, including liability for injuries to person or persons, or damage to property arising out of or in any way connected with the acts or omissions of **COUNTY**, its employees, agents, independent contractors, or invitees **COUNTY'S** obligations under this Section shall survive the expiration or termination of this Agreement.

In addition, **COUNTY** particularly agrees to indemnify, defend (upon request of **MANAGER**) and hold **MANAGER**, its members, commissions, agents, officers and employees harmless from any and all fines, suits, procedures, claims, losses, expenses and actions of every kind and all reasonable and proper costs associated therewith, including but not limited to all reasonable and proper attorney and consultant fees, arising out of or in any connected with any deposit, spill,

discharge or other release of hazardous material that occurs as a result of any use(s) of the **LEASED PREMISES** or Airport and/or the occupancy of the **LEASED PREMISES** or Airport by **COUNTY** or as a result of **COUNTY'S** failure to provide any or all information, make any or all of its submissions, and take any or all steps required by any governmental authority or court which has jurisdiction or by any environmental requirements provided that **MANAGER** shall not settle or compromise any claim without prior written consent of **COUNTY**, not to be unreasonably withheld or delayed. **COUNTY'S** obligations under this Section shall survive the expiration or termination of this Agreement.

14. **INSURANCE:** During the term of this Agreement, **MANAGER** shall obtain and keep in full force and effect an airport general liability and automobile policy or policies of at least Three Million Dollars (\$3,000,000) combined limit for bodily injury and property damage; provided that the **COUNTY**, its officers, employees, volunteers, and agents are to be named additional insureds under the policies and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by **MANAGER** and its subcontractors, and that no other insurance effected by **COUNTY** or other named insureds will be called on to cover a loss covered thereunder. **MANAGER** will also obtain and keep Worker's Compensation insurance for employees as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **MANAGER'S** insurance shall be with insurers holding an AM Best rating of A, VII, or higher unless otherwise found acceptable by the **COUNTY**. **MANAGER** hereby grants to **COUNTY** a waiver of subrogation which any insurer of **MANAGER** may acquire against the **COUNTY** by virtue of the payment of any loss under such insurance. **MANAGER** agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the **COUNTY** has received a waiver of subrogation endorsement from the insurer. Where possible, all policies shall be endorsed so that insurer provides **COUNTY** with notice of cancellation.

MANAGER shall complete and file with the **COUNTY** prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth in this section and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to **COUNTY** prior to the effective date of such cancellation.

15. **PUBLIC EMPLOYEES RETIREMENT SYSTEM:** In the event that **MANAGER** or any employee, agent, or subcontractor of **MANAGER** providing services under this Agreement is

determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the **COUNTY**, **MANAGER** shall indemnify, defend, and hold harmless **COUNTY** for the payment of any employee and or employer contributions for CalPERS benefits on behalf of **MANAGER** or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the **COUNTY**.

16. **CHANGE OF ADDRESS:** It shall be **MANAGER'S** responsibility to inform **COUNTY** of any change of address.

17. **INSPECTION:** **COUNTY** shall have the right to enter upon the **LEASED PREMISES** at all reasonable times to inspect the **LEASED PREMISES** and **MANAGER'S** operation thereon. **COUNTY** reserves the right to enter upon the **LEASED PREMISES** for the purpose of installing, using, maintaining, renewing, and replacing such underground oil, gas, water, sewer, and other pipelines, and such underground or aboveground telephone, telegraph, and electric power conduits or lines as **COUNTY** may reasonably deem desirable in connection with the development of the Airport after giving reasonable notice to **MANAGER**. **COUNTY** shall indemnify **MANAGER** against all damage (including but not limited to damage to the improvements and personal property of **MANAGER**) and loss caused to **MANAGER** and/or its agents or customers by the exercise of the rights reserved in this Section.

18. **TERMINATION PRIOR TO EXPIRATION:**

- a) **COUNTY** shall have the right to terminate this Agreement, in whole or in part, on the occurrence of any of the following events:
 - i) Upon one hundred eighty (180) days written notice.
 - ii) **MANAGER'S** insolvency/bankruptcy.
 - ii) **MANAGER'S** material breach of any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Agreement.
 - iii) The abandonment of the **LEASED PREMISES**. Should this occur, **COUNTY** shall not be responsible for the custodial protection of **MANAGER'S** abandoned property, fixtures or equipment.
- b) **MANAGER** shall have the right to terminate this Agreement on the occurrence of any of the following events:

- i) Upon material breach by **COUNTY** of any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Agreement.
- ii) **MANAGER** shall have the right to terminate this Agreement upon one hundred eighty (180) days written notice.
- iii) Damage to or destruction of all or a material part of the premises or airport facilities necessary to the operation of **MANAGER's** business.
- iv) The lawful assumption by the United States, or any authorized agency thereof, of the operation, control, or use of the airport, or any substantial parts thereof, in such a manner to restrict **MANAGER** from conducting business operations for a period in excess of ninety (90) days.

19. **BREACH:** In the event of breach of this Agreement by either party, the COUNTY and MANAGER shall be entitled to all rights and remedies provided by law in addition to the specific remedies mentioned herein.

20. **PARTNERSHIP DISCLAIMER:** It is mutually understood and agreed that nothing in this Agreement is intended to or shall be construed as in any way creating or establishing the relationship of partners between the parties hereto, or as constituting the **MANAGER** as an agent or representative of the **COUNTY** for any purpose or in any manner whatsoever.

21. **NOTICES:** Any notice to the **MANAGER** shall be sufficient if sent by certified mail, postage prepaid, addressed to Airborn Aviation Services, 5020 Macready Way, Mariposa CA 95338. Any notice to the **COUNTY** shall be sufficient if sent by certified mail, postage prepaid, addressed to **COUNTY** at Mariposa County, Director of Public Works, 4639 Ben Hur Road, Mariposa, CA 95338. The address to which the notices shall be mailed, as aforesaid, to either party may be changed by written notice given by such party to the other, as hereinbefore provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

22. **NON-WAIVER:** Any waiver of breach of any covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or

other condition or covenant.

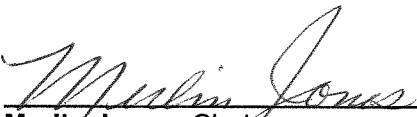
23. **SUCCESSORS AND THIRD-PARTY BENEFICIARIES:** This Agreement shall be binding upon and inure to the benefit of all the heirs, successors and assigns of the parties. This Agreement shall not confer any rights or remedies upon any third-party not a party to this Agreement.

24. **ENTIRE AGREEMENT:** This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreement and understandings with respect thereto. This Agreement may only be amended by a written document duly approved and executed by the parties hereto.

25. **AUTHORIZED AGENT:** The Director of Public Works is the duly authorized agent of COUNTY for purposes of this Agreement, and as to any obligations assumed herein by MANAGER, they shall be performed only to the reasonable satisfaction of the Director of Public Works and to no other person.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

COUNTY:



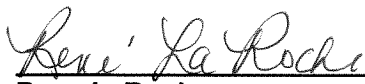
Merlin Jones, Chairman
Mariposa County Board of Supervisors

MANAGER:



Anthony Borreson
Airborn Aviation Services

ATTEST:



Rene LaRoche
Clerk of the Board

APPROVED AS TO FORM:



Steven W. Dahlem
County Counsel