RESOLUTION - ACTION REQUESTED 2017-106

MEETING: February 28, 2017

TO: The Board of Supervisors

FROM: Tony Stobbe, Public Works Director

RE: Approve Airport Operator Agreement

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Airborrn Aviation Services to Operate the Mariposa-
Yosemite Airport; and Authorize the Board of Supervisors Chair to Sign the
Agreement.

Airborrn Aviation Services (AAS) has been actively involved at the Mariposa-Yosemite
Airport since October 2015, when the County and AAS first entered into an agreement
that provided positive mutual benefit. Staff, the Airport Advisory Committee, and the
general aviation public unanimously feel the presence of AAS at the airport has been a
significant step forward towards a vibrant airport and has resulted in an increasingly
valuable asset to the region. The original agreement knowingly excluded the
administration and revenue of the hangar leases at the airport, with the intent to
amend the agreement to add this provision by October 2016. During discussion in
Fall 2016, with the benefit of twelve months of operation in regards to the overall
agreement, it became apparent that other aspects of the original agreement merited
evaluation. Staff has been working diligently with a variety of sources, including the
County’s Airport Consultant and AAS, and through additional assembly of other best
practices in place at other similar facilities, and a new agreement is recommended.

The main externally visible change to the new agreement involves a correction in the
lexicon used to describe the roles at the airport, with AAS assuming the role of
“Operator” and the term “Airport Manager” being applied to the Director of Public
Works as this is aligned with the expectations of regulatory agencies including the FAA
and Caltrans.

Internally, the main change to the agreement is a collection of payments between AAS
and the County that capture the value of the components of the agreement. A basic
overview of the terms is as follows: AAS will pay rent for the lease of the business
counter section of the terminal, the residence, two hangars, and the use of three
aircraft tie downs. AAS will also pay a per-gallon flowage fee for the operation of the
County owned aviation fuel system. AAS will assume the administration of the hangar
leases and will be entitled to retain a portion of the revenue collected, with the
remainder flowing to the Airport Fund for use by the County for various airport operating expenses. The County will pay AAS to serve as Operator, a role which includes maintaining an "attended" status at the airport terminal, conducting maintenance and inspection activities, and representing the airport with customers and potential airport partners.

For the current budget year, it is anticipated that an available fund balance and lower than anticipated expenses will result in a balanced budget glideslope. In future fiscal years, it is likely that the Airport Fund will require additional "lift" from other funding sources to support this agreement, but this should be considered short term turbulence as the large principal and interest payments on a loan used to construct hangars will end after FY18-19.

In conclusion, the proposed agreement provides for a continuation of the excellent results already realized by the County and AAS. To use aviation terminology, the relationship has completed a successful takeoff, is climbing, requires some minor trim adjustment, and shows tremendous potential for a great flight.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On October 6, 2015 the Board approved an Airport Manager Agreement with Airbornn Aviation Services.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
The Board could choose to leave the existing agreement in place, which would leave known deficiencies in place. The Board could also choose to direct the existing agreement to be amended, but this would be problematic due to the somewhat different basis of the terms of the agreement. The Board could also choose to give alternative direction to the Director of Public Works.

FINANCIAL IMPACT:
It is anticipated that a combination of an existing fund balance and lower than anticipated expenses will fully support this agreement through the end of this fiscal year. The FY17-18 submitted budget will be constructed to include the financial impacts of this agreement.

ATTACHMENTS:
Airport Operator Agreement (DOCX)

CAO RECOMMENDATION
Requested Action Recommended

Dallin Kimble
Dallin Kimble, Interim CAO 2/23/2017
RESULT: ADOPTED [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Miles Menetrey, Rosemarie Smallcombe, Merlin Jones, Marshall Long
EXCUSED: Kevin Cann
AIRPORT OPERATOR AGREEMENT AND LEASE

This AIRPORT OPERATOR AGREEMENT AND LEASE (hereinafter called "this Agreement"), is made and entered into in the County of Mariposa, State of California, as of February 28, 2017, by and between the COUNTY OF MARIPOSA, hereinafter called COUNTY, and AIRBORRN AVIATION SERVICES, hereinafter called OPERATOR.

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 supervise operations at the Airport and provide certain commercial services; and

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

WHEREAS, OPERATOR is willing and desires to operate at 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 COUNTY to OPERATOR at the Airport for the purpose of providing certain commercial services and airport operations and supervision functions;

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

1. PRIOR AGREEMENT: Upon approval and execution of this Agreement, the previous agreement between COUNTY and OPERATOR dated October 7, 2015 is hereby terminated.

2. LEASED PREMISES: For and in consideration of the mutual covenants contained herein, COUNTY hereby grants to OPERATOR the exclusive right to occupy real property located at the Airport as follows: that portion of the Terminal Building enclosed by the business counter (approximately 300 square feet), the Airport Fuel System, Hangars #39 and #50, the
airport residence, and use 3 aircraft tie-downs, hereinafter described as the **LEASED PREMISES**, subject to **COUNTY'S** right of entry for inspection and similar purposes.

3. **TERM:** This Agreement shall commence on the 1st day of March 2017, and shall terminate on the 31st day of August, 2020. This Agreement shall be renewable thereafter as mutually agreed by the **COUNTY** and **OPERATOR**.

4. **OPERATOR RESPONSIBILITIES:** **OPERATOR** will be responsible for operating the Airport for the use and benefit of the public, and for providing certain commercial services, subject to **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. **OPERATOR'S** specific obligations shall include the following:

   a) **OPERATOR** will designate an individual to serve as Operations Manager, who shall have primary responsibility for the airport management functions enumerated in this agreement. **OPERATOR** shall promptly notify **COUNTY** of any change in the designated Operations Manager. The Operations Manager shall be stationed at the Airport throughout the term of this Agreement. The term "Airport Manager" is reserved for use by **COUNTY**, specifically to describe role of the Director of Public Works, or his/her designee, in relationships with other local, state, and federal agency stakeholders.

   b) **OPERATOR** shall pay **COUNTY** rent in the sum of one thousand dollars ($1,000.00) per month for use of the **LEASED PREMISES**. Rent is due and payable on the first day of each calendar month and delinquent on the 10th day of the month. Effective July 1, 2018 and each succeeding July 1st during the term of this Agreement, **OPERATOR** agrees to an increase of the monthly rent based on the cumulative December to December increase for the period in the Consumer Price Index (CPI), All Urban Customers, West Index, with a ceiling of 2% per year. Cost for utilities including electrical service, water, wireless internet, alarm system, and propane are considered to be included in rent and will be paid by **COUNTY**. Should such costs be determined by the Airport Manager / Director of Public Works to become excessive, rent shall be adjust based on historical rates by further amendment to this Agreement. Phone service and any other utilities shall be the responsibility of **OPERATOR**, who shall operate at least one publicly published number for the Airport and monitor
said line.

c) **OPERATOR** is authorized non-exclusive usage of the remaining portion of the Terminal Building to include the common areas and restroom. Usage may include placement of bookcases, display cases, offering of coffee and refreshments (for free or for sale), hosting of aviation seminars, meetings of aviation and community groups, and other similar activities as would be typical usage of a terminal building common space, with final authority on appropriate use being the Airport Manager / Director of Public Works. **COUNTY** reserves right to engage in short or long term agreements with other parties for use of the Terminal Building, excluding the **LEASED PREMISES**.

d) **OPERATOR** shall perform operational activities at the Airport on behalf of **COUNTY** which will include: staffing of the Terminal Building to maintain "attended" status, daily runway inspections, inspection of airfield and runway lighting systems to include bulb replacement, performance of maintenance and janitorial work in the Terminal Building, serving as initial point-of-contact for airport customers and public relations including fielding calls, complaints, contacts by potential operators, maintaining a presence and expanding exposure of the Airport in online, social media, and local media. **OPERATOR** shall staff the Terminal Building 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 **OPERATOR**. **COUNTY** shall pay **OPERATOR** two thousand five hundred dollars ($2,500.00) per month for this function. For purposes of this Agreement, maintenance is defined as those distinct activities and repairs that can be accomplished for less than two hundred fifty dollars ($250.00) total value of time and materials, as estimated by **COUNTY**. Any distinct activity exceeding this amount may be accomplished by **OPERATOR** with approval from the Director of Public Works and will be paid by separate purchase order. **COUNTY** reserves right to have such activity performed by a vendor of **COUNTY''s choosing.

e) **OPERATOR** will operate and maintain the fuel system at the Airport on behalf of **COUNTY**, including testing, maintenance, ordering of fuel, and setting fuel
prices, and shall pay a flowage fee of $0.10 per gallon to COUNTY on a quarterly basis for all fuel dispensed. This fee will increase at a rate of $0.02 per gallon on an annual basis with the first increase occurring March 1, 2018. OPERATOR will not be exclusively entitled to purchase discounted fuel for OPERATOR activities, but may take advantage of bulk fuel purchase pricing so long as identical pricing is made available to all users of fuel system. Specific to the fuel system, maintenance is defined as those distinct activities and repairs that can be accomplished for less than one thousand dollars ($1,000.00) as estimated by COUNTY. Any distinct activity exceeding this amount may be accomplished by OPERATOR with approval from the Director of Public Works and will be paid by separate purchase order. COUNTY reserves the right to have such activity performed by a vendor of COUNTY'S choosing. OPERATOR may make short term (i.e. less than 12 months) arrangements with other operators, including temporary and/or emergency users, to permit them to provide their own fuel to operations but each shall be assessed a $0.10 per gallon flowage fee which shall then be paid to COUNTY. This flowage fee will be subject to an annual increase of $0.02 as described above. This does not preclude OPERATOR from collecting additional flowage fees to be retained by OPERATOR.

f) OPERATOR shall ensure aircraft fuel remains available for sale by means of a commercial self-service system. OPERATOR 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. OPERATOR shall ensure that fuel tanks are full upon termination of this Agreement for any reason.

g) Within 60 days of the date of this Agreement OPERATOR shall assume responsibility for administration of hangar leases, and may retain 50% of the revenue derived therefrom, with the remaining amount being transmitted to COUNTY in a frequency not less than quarterly. Administration of leases will include, but is not limited to: billing, collections, processing new applications, verification of insurance requirements, termination of existing agreements for non-payment or non-compliance with lease provisions, implementation of cost indexed rate increases, and making requests to the Board of Supervisors to adjust lease rates.

h) OPERATOR will be responsible for billing and collecting rental fees for short
term (less than twelve months) use of hangars, tie-downs, and any other Airport agreements, including land use agreements with outside agencies, and may retain 50% of the revenue derived therefrom.

i) OPERATOR may request that the Mariposa County Board of Supervisors take formal action to adjust the rental rates on tie-downs, hangar leases, and user fees at the Airport.

j) OPERATOR 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.

k) OPERATOR 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. The COUNTY'S decision to terminate will not be unreasonably withheld or delayed.

l) OPERATOR 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 Operations 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 OPERATOR to comply with potential requirements for Transient Occupancy Tax permits and inspections associated with any use of the residence.

m) OPERATOR may request that COUNTY amend this Agreement or enter into a separate agreement for the purpose of constructing additional aircraft storage hangars, with such an activity being accomplished through a competitive process where applicable.

n) OPERATOR is authorized to permit aircraft owners and operators to store aircraft at the Airport, in available hangars owned by COUNTY and available tie-downs, so long as the term does not exceed twelve months. OPERATOR shall use a standard form aircraft storage permit or hangar lease approved by COUNTY. COUNTY reserves the right to deny use of the Airport; OPERATOR is not authorized by this Agreement to deny use of the Airport under any circumstances unless required by law to do so.
o) **OPERATOR** will facilitate the long-term lease of Airport property by coordinating with prospective tenants and presenting draft agreements to **COUNTY** for negotiation and execution.

p) **OPERATOR** will pay to advertise the Airport in appropriate publications, including a webpage and other aviation oriented online media, and to market Airport property for lease.

q) **OPERATOR** 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.

r) **OPERATOR** 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.

s) **OPERATOR** shall provide basic pilot and aircraft support services by offering aircraft and aviation related supplies, lubricants, software, services, etc. for sale, as the **OPERATOR** determines necessary.

t) **OPERATOR** shall have the right to maintain a rental car business at the Airport and shall ensure that ground vehicles are available for rent at the Airport within twelve months of the date of this Agreement and throughout the term of this Agreement.

u) **OPERATOR** will conduct meetings to solicit input from Airport tenants and users and other interested parties. At **OPERATOR’s** option, attendance and participation in the Airport Advisory Committee shall satisfy this requirement.

v) In addition to services required by this Agreement, **OPERATOR** 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; and

vi) Aircraft charter operations, conducted by OPERATOR or subcontractor of OPERATOR in accordance with applicable Federal Aviation Administration regulations.

w) OPERATOR must notify COUNTY prior to initiating additional commercial aeronautical and/or commercial non-aeronautical services beyond the services enumerated in this Section 4.

x) OPERATOR will ensure that all activities undertaken or allowed by OPERATOR 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.

y) OPERATOR 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.

z) OPERATOR shall make annual public reports to the Mariposa County Board of Supervisors summarizing all activities undertaken or allowed by OPERATOR at the Airport.

5. 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 except as otherwise described in this Agreement.
b) **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 **OPERATOR** 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 **COUNTY's** request, and providing information and documents as may be requested by a state or federal agency at **COUNTY's** express direction.

c) **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.

d) **COUNTY** shall be responsible for providing emergency police and firefighting services at the Airport.

e) **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.

f) **COUNTY** reserves the right to authorize the lease of Airport property for terms exceeding twelve months.

g) **COUNTY** reserves the right to authorize any individual or business to conduct commercial aeronautical activities at the Airport.

h) **COUNTY** reserves the right to authorize or deny the use of the Airport for any non-aeronautical activity.

6. **FINANCIAL OBLIGATIONS OF COUNTY AND OPERATOR:**

   a) **COUNTY** shall make all required payments to the California Department of Transportation per the long-term hangar financing agreement.

   b) **OPERATOR** shall be responsible for the costs to maintain the Terminal Building, aircraft fuel storage tanks and self-service fuel dispensing system under provisions described in Section 4.
c) COUNTY shall maintain adequate insurance on the hangars, terminal and fuel tank farm.

d) COUNTY shall be responsible for the utility costs associated with the Airport airfield and runway lighting system.

7. 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) OPERATOR, 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 OPERATOR 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 OPERATOR and without interference or hindrance.

c) COUNTY reserves the right, but shall not be obligated to OPERATOR, 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 OPERATOR in this regard.

d) This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between COUNTY and the United States, relative to the development, operation, or maintenance of the Airport. Failure of OPERATOR or any occupant to comply with the requirements of any existing or future agreement between COUNTY and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of OPERATOR’S rights hereunder.
e) There is reserved to 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) OPERATOR 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) OPERATOR, 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 LEASED PREMISES 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 OPERATOR.

h) OPERATOR, 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 OPERATOR.

i) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right in violation of 49 U.S.C. § 40101(e) or 49 U.S.C. § 47107(a)(4), which permit such rights to be granted to a single operator due it being “unreasonably costly, burdensome, or impractical for more than one fixed base operator to provide the services.” COUNTY reserves the right to amend and/or remove and any all explicit or implied exclusive use or exclusive right as described in this Agreement, at COUNTY’S
sole discretion, due to changed conditions at the Airport, mandates from regulatory agencies, or any other reason deemed sufficient by COUNTY.

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) OPERATOR 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 OPERATOR may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

8. VOLUNTARY ASSIGNMENT: Except as expressly provided herein, OPERATOR 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 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 OPERATOR from allowing other parties to utilize the LEASED PREMISES for permitted functions and events.

9. INVOLUNTARY ASSIGNMENT: OPERATOR 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.

10. IMPROVEMENTS, CONSTRUCTION, ALTERATION: OPERATOR 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, OPERATOR shall furnish to COUNTY evidence that sufficient monies will be available to complete OPERATOR’s proposal. COUNTY and OPERATOR 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 OPERATOR'S contractor or contractors and issued jointly to OPERATOR and COUNTY as obligees. OPERATOR'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 OPERATOR. 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.

11. **RIGHT OF RE-ENTRY OF COUNTY:** It is expressly agreed that in the event OPERATOR 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.

12. **SURRENDER OF POSSESSION:** At the expiration of this Agreement, OPERATOR 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.

13. **POSSESSORY INTEREST:** OPERATOR recognizes and understands that to the extent this Agreement may or may not create a possessory interest subject to property taxation that the OPERATOR 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.

14. **INSURANCE:** OPERATOR shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the OPERATOR, its agents, representatives, or employees.

   a) **MINIMUM SCOPE AND LIMIT OF INSURANCE:** Coverage shall be at least as broad as:

   i) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general
aggregate limit shall be twice the required occurrence limit.

ii) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if OPERATOR has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

iii) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $2,000,000 per accident for bodily injury or disease.

b) OTHER INSURANCE PROVISIONS: The insurance policies are to contain, or be endorsed to contain, the following provision:

i) Additional Insured Status: The COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the OPERATOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the OPERATOR’S insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

ii) Primary Coverage: For any claims related to this Agreement, the OPERATOR’S insurance coverage shall be primary insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, or volunteers shall be excess of the OPERATOR’S insurance and shall not contribute with it.

iii) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the COUNTY.

iv) Waiver of Subrogation: OPERATOR hereby grants to County a waiver of any right to subrogation which any insurer of said OPERATOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. OPERATOR 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.

v) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. COUNTY may require OPERATOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

vi) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the County.

vii) Verification of Coverage: OPERATOR shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive OPERATOR'S obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

viii) Subcontractors: OPERATOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and OPERATOR shall ensure that County is an additional insured on insurance required from subcontractors.

ix) Special Risks or Circumstances: COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

15. INDEMNITY: OPERATOR shall and hereby covenants that it will indemnify and defend, upon request of 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 OPERATOR, 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 10. OPERATOR'S obligations under this Section shall survive the expiration or termination of this Agreement.

In addition, OPERATOR 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 OPERATOR'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 OPERATOR or as a result of OPERATOR'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. OPERATOR'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 OPERATOR, OPERATOR, 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, provided that OPERATOR shall not settle or compromise any claim without the 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.

In addition, COUNTY particularly agrees to indemnify, defend (upon request of OPERATOR) and hold OPERATOR, 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 OPERATOR 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.

16.  **DISPUTES**

   a) Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

   b) It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

17.  **PUBLIC EMPLOYEES RETIREMENT SYSTEM:** In the event that OPERATOR or any employee, agent, or subcontractor of OPERATOR 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, OPERATOR shall indemnify, defend, and hold harmless COUNTY for the payment of any employee and or employer contributions for CalPERS benefits on behalf of OPERATOR 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.

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

19.  **INSPECTION:** COUNTY shall have the right to enter upon the LEASED PREMISES at all reasonable times to inspect the LEASED PREMISES and OPERATOR'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 OPERATOR. COUNTY shall indemnify OPERATOR against all damage (including but not limited to damage to the
improvements and personal property of OPERATOR) and loss caused to OPERATOR and/or its agents or customers by the exercise of the rights reserved in this Section. Notwithstanding the foregoing, COUNTY shall not be responsible for any claim of lost profits.

20. **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) Insolvency/bankruptcy of OPERATOR.

   iii) OPERATOR'S material breach of any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Agreement.

   iv) The abandonment of the LEASED PREMISES. Should this occur, COUNTY shall not be responsible for the custodial protection of OPERATOR'S abandoned property, fixtures or equipment.

   b) OPERATOR 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) OPERATOR shall have the right to terminate this Agreement upon one hundred eighty (180) days written notice.

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

22. **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 OPERATOR as an agent or representative of COUNTY for any purpose or in any manner whatsoever.

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

24. **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.

25. **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 respective parties. This Agreement shall not confer any rights or remedies upon any third-party not a party to this Agreement.

26. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes 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.

27. **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 OPERATOR, they shall be performed only to the reasonable satisfaction of the Director of Public Works and to no other person.

28. **INTENT:** The parties recognize that the Airport is a currently underutilized asset, that a period of dormancy has occurred, and that many of the functions and aspects of a fully operational and vibrant airport are not in place. This is not the desired state of affairs, as it is detrimental to COUNTY, the region, and to the General Aviation community the Airport exists to support. The parties further recognize that they share a mutual desire to energize the Airport, and to establish as quickly as possible the components necessary to generate and sustain positive momentum towards a vibrant and fully utilized asset. As such, the terms of this Agreement are made with this specific intent, and shall not be construed to imply that any future amendment to this Agreement or any future agreement will be obligated to contain the same or similar terms. Instead, any such amendment or agreement will be established in the context of
what will likely be a different set of circumstances, and a correspondingly different intent.

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

**COUNTY:**

[Signature]

Marshall Long, Chairman
Mariposa County Board of Supervisors

**OPERATOR:**

[Signature] 3/20/2017

Anthony Borreson
Airborn Aviation Services

**ATTEST:**

[Signature]

Rene LaRoche
Clerk of the Board

**APPROVED AS TO FORM:**

[Signature]

Steven W. Dahlem
County Counsel