

RESOLUTION NO. R2022-55

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS APPROVING AN INTERIM CONTRACT FOR FIXED BASE OPERATION SERVICES FOR THE BURNET MUNICIPAL AIRPORT.

WHEREAS, the former Airport FBO has tendered its resignation; and

WHEREAS, City Council after a request for proposal selection process authorized the City Manager to negotiate a contract with Crosby Flying Services LLC, to be the Fixed Base Operator at the municipal airport; and

WHEREAS, the Parties desire to enter into this Contract, as an interim agreement until a longer term contract can be negotiated.

NOW, THEREFORE, BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:

Section one. Findings. That the recitals to this Resolution are incorporated herein for all purposes.

Section two. Approval. The Interim Fixed Base Operator Contract- Crosby Flying Services LLC is attached hereto as Exhibit "A" is hereby approved.

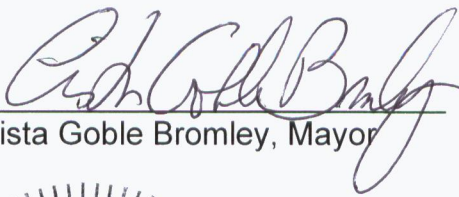
Section three. Delegation of Authority. The City Manager is hereby authorized and directed to execute, on behalf of the City, an agreement in substantial form as the attachment hereto, and take such further actions and execute such ancillary documents as may reasonably be necessary to facilitate the purpose of this resolution. Further, the City Manager is authorized, without further action by City Council, to terminate the agreement pursuant to Article I Section (c) therein upon his determination that such termination is in the best interest of the City.

Section four. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act,

Section five. Effective Date. That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.

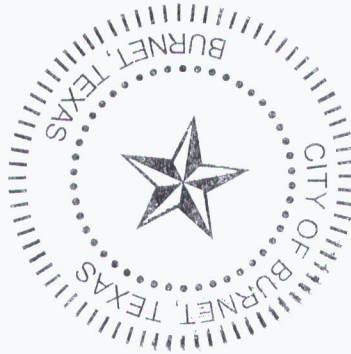
PASSED AND APPROVED this the 14th day of June, 2022.

CITY OF BURNET, TEXAS


Crista Goble Bromley, Mayor

ATTEST:


Kelly Dix, City Secretary



FIXED BASE OPERATOR CONTRACT

STATE OF TEXAS §

§ KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF BURNET §

This contract ("Contract") is entered into by and between City of Burnet, a Texas home rule municipality ("City"), and Crosby Flying Services LLC, a Texas limited liability company, ("FBO"), who may be individually referred to herein as "Party" or collectively as "Parties".

WITNESSETH

WHEREAS, the former Airport FBO has tendered its resignation;

WHEREAS, City Council after a request for proposal selection process authorized the City Manager to negotiate a contract with Crosby Flying Services LLC, to be the Fixed Base Operator at the municipal airport;

WHEREAS, the Parties desire to enter into this Contract, as an interim agreement until a longer term contract can be negotiated.

NOW THEREFORE for and in consideration of the monthly cash consideration payments by and between the Parties and further consideration of the mutual covenants, benefits, agreements and obligations between the Parties, City and the FBO agree as follows:

CONSIDERATION

City shall pay a fixed based operator's fee to the FBO, the cash sum of eighteen thousand AND NO/100 DOLLARS (\$18,000) per month, the first such monthly payment to be paid on the first day of JULY, 2022 and a like payment on the 1st day of each month thereafter during the term of this Contract, for services as a fixed based operator at Burnet Municipal Airport ("Airport").

The FBO shall pay as a hangar rental fee to City, the cash sum of ONE DOLLAR (\$1.00) per month; the first such monthly payment to be paid on the first day of JULY, 2022 and a like payment on the 1st day of each month thereafter during the term of this Contract. Said hangar is an eighty-foot by eighty-foot (80' x 80') metal building for use as a hangar-shop-office-terminal building ("Premises"), as shown in **Exhibit "A"**. The City reserves the right to relocate the FBO at any time during the term of the Contract to similar or better facilities as deemed necessary by the City.

The FBO shall track and report all fuel dispensed and shall note all gallons pumped, both self-service and full-service. The FBO shall pay to City the entire proceeds of the sale of all fuel sales collected by the FBO.

TERM

This Contract shall be effective as of the first day of July 2022 (the "Effective Date") and shall end on the last day of October 2022. Such term may be renewed with the mutual consent of the Parties.

Initials: City  FBO: am2

TERMINATION

1. The City shall have the right to terminate this Contract, in whole or in part, on the occurrence of any of the following events:
 - a. Failure on the part of the FBO (1) to pay rent when due unless such failure is corrected within a ten (10) day period of the date due, or (2) failure of the FBO to pay the City any monies that become due and owing to the City by the FBO under any other lease or agreement that is at that time in effect between FBO and City.
 - b. Filing by or the final adjudication of the FBO of any petition in bankruptcy or the making of any transfer of general assignment for the benefit of creditors which has not been previously authorized by City.
 - c. Should the Premises cease to be used for aviation purposes, be used for unauthorized purposes, be abandoned by the FBO, FBO files bankruptcy, dissolves or forfeits its corporate charter, or FBO fails to adhere to the terms of this Contract, City shall have the authority to suspend or terminate this Contract except that FBO shall have the opportunity to cure as defined herein. In the event of the abandonment of the Premises or any portion thereof, or discontinuance of the FBO's business operations, or any portion thereof, City shall not be responsible for the custodial protection of merchandise, fixtures, or equipment abandoned even though it is necessary for the City to remove same from the Premises for storage or disposal.
 - d. Loss by the FBO due to expiration or revocation of any special licenses, permit or certificate necessary for conducting activities as defined herein at the level of service required by terms contained herein.
 - e. The failure of the FBO to perform substantially or keep or observe any of the terms, covenants, and conditions which FBO is obligated to perform, keep, or observe under this Contract after the expiration of the thirty (30) day period after written warning or ultimatum given by the City to the FBO to correct any such deficiency or default. Should the remedy of any breach reasonably require more than thirty (30) days in execution, FBO shall be given such additional time as may be deemed necessary by City.

Provided, however, that as to those actions or circumstances which FBO should do or discontinue doing or correct which create a danger or are derogatory to aviation activities, the delinquency shall be cured by FBO immediately, without notice by City. Conditions or circumstances creating a dangerous situation or which are or may be derogatory to aviation activities shall be conclusive if such determination is made by the Federal Aviation Administration,

Texas Department of Transportation, or City. The term derogatory as herein used, shall mean those things which do or reasonably appear to hinder aviation activities.

2. The Contract may be terminated for convenience by either the FBO or the City upon written notice of either Party of its intent to terminate at least thirty days (30) prior to the ending date of the current term.
3. This Contract may be terminated for convenience at any time without cause and without notice upon mutual agreement between City and FBO.
4. It is understood and agreed, by and between the Parties hereto, that the continuing use of the Airport as an airport for general aviation is essential to the operation of FBO, and that failure to continue the use of the Airport for airport and aviation purposes shall constitute a default in the Contract by City; and upon giving notice to City by FBO of such default and failure to cure such default within thirty (30) days after the giving of such notice, the Contract shall terminate and end as of the date ninety (90) days after such notice shall have been given. FBO's remedy shall be limited to such cancellation and removal, or relocation of personal property owned by FBO. The City shall not be responsible or liable for any actual or consequential damages that may arise from such cancellation.

PURPOSE

The purpose of the Contract is for an FBO to provide twenty-four (24) hour services to pilots and aircraft which use the Airport including but not limited to the dispensing of fuel and the operation of an aircraft repair facility in compliance with Federal Aviation Administration (FAA) regulations and approved practices.

The FBO shall have the exclusive use of the Premises located on Airport except that City shall have access and use of the meeting room, pilot's lounge, restrooms and lobby for use as a terminal building and for City related events.

The FBO shall not exclude the general public or any persons desiring to avail themselves of the services of the FBO and of the use of the Airport facilities, except that the FBO shall have the authority to refuse service when, in his or her opinion, such service could result in a danger to employees, visitors, the City, state or United States government or to the general public, or FBO believes such service is an illegal act. The FBO shall not give preferential treatment to its customers but any and all persons shall be given impartial access to and use of the Airport facilities and services, subject to the rights of the FBO as provided herein.

SERVICES BY FBO

1. The FBO shall service customers and their airplanes with aviation grade fuels provided by the City. The FBO shall report fuel dispensed on a monthly basis and shall pay to City, within ten (10) business days, the entire proceeds of the sale of all fuel sales during the reporting period.
2. The FBO shall provide the general services of an FBO as that term and said services are usually agreed to and understood in the management

and operation of an Airport within the Central Texas area and in addition, the FBO shall service aircraft needing fuel and supplies on a twenty-four (24) hour a day basis.

3. The FBO shall operate an aircraft repair facility in compliance with FAA regulations and approved practices.
4. The FBO shall maintain the Premises in a neat, orderly and attractive condition and shall maintain the area immediately adjacent to and surrounding the Premises building.
5. The FBO shall set such reasonable fees and rates for services consistent with standard practices for similarly positioned providers except that such fees and rates shall not be detrimental to the operation of the Airport. The FBO will provide the City with a list of charges upon request.
6. The FBO shall purchase and maintain in force the following insurance coverage:
 - a. Comprehensive General (Public) Liability Insurance policy covering its operation as FBO, in the minimum amount of \$1,000,000 combined single limit coverage, on a per occurrence or claims made basis and \$1,000,000 aggregate limit.
 - b. Aircraft Liability Insurance policy to cover all flight operations of FBO in the minimum amount of \$1,000,000 combined single limit coverage, on a per occurrence or claims made basis and \$1,000,000 aggregate limit.
 - c. All policies shall name City as an additional named insured and provide for a minimum of thirty (30) days written notice to the City prior to the effective date of any cancellation, material change, or lapse of such policies. The City shall be named as an additionally insured to protect against losses the City may suffer. Should the City have sustained damages, the City shall be paid first for its loss against all other claimants. FBO shall provide Certificates of Insurance and enforcement to the City for approval before work commences. Notwithstanding other provisions herein contained, City may cancel this Contract with or without notice to FBO should FBO's insurance lapse for a period of thirty (30) days or more. City may elect to reinstate and revive such Contract after such insurance obligation is cured by FBO. City shall be listed as a Certificate Holder on FBO's insurance and shall receive notification of any lapse.
 - d. A copy of said policies shall be provided to City by the FBO at the beginning of the term of this Contract, together with a paid receipt showing said policy premium paid for one (1) year in advance, and a paid receipt showing one (1) year paid in advance annually thereafter. City shall be named as an additionally insured in the FBO's policy.

7. **The FBO shall indemnify City against loss and hold City harmless from any loss or damages occurring as a result of the negligence of the FBO in the operation of this Contract.**
8. The FBO shall submit to the City all daily inspection records and other records that shall be required by City including but not limited to all records required by the fuel supplier, State of Texas and the Federal Government.
9. The FBO shall pay to City the applicable rate for utilities used in the operation of the Premises and the operation of the business of the FBO, with said payments to be made to City as required by City ordinance.

SERVICES BY CITY

City shall provide services as included herein subject to appropriations as noted herein, except that City shall no longer provide such services in the event that City ceases to operate the Airport.

1. City shall provide fuel storage tanks and shall purchase sufficient aviation grade fuel for re-sale, provided that such fuel is available or allotted to City.
2. City shall provide, at no cost to the FBO, the utilities needed to operate the lighting and other systems operated and maintained by the City.

ENFORCEMENT OF CONTRACT PROVISIONS

In the event City or the FBO shall waive the enforcement of any of the terms or conditions of the Contract, said waiver shall not prevent City or the FBO from any subsequent enforcement of any term or condition thereafter and such waiver shall not be considered a course of conduct on which the other Party may rely.

ASSIGNMENT OR SUBLETTING

FBO may not assign this Contract or sublease any part of Premises without the consent of the City. Any attempt to assign or sublease without City consent shall be null and void. Neither the acceptance of rent from any assignee or sublessee, nor the passage of time after any such assignment or sublease, shall constitute a waiver of this prohibition. City's written approval to any particular such assignment or sublease shall not constitute City's approval of any subsequent assignment or sublease and shall not relieve FBO from the performance of its obligations hereunder, including, but not limited to, the payment of lease payments. Sale, assignment or change in the principals of the FBO's corporation shall be considered as an assignment for purposes of this section. Any assignment or sublease approved by the City must remain in compliance with the terms and provisions of this Contract.

TAXES

FBO shall pay, before delinquency, any and all taxes, license fees, occupational taxes or assessments lawfully levied on account of FBO's occupancy and all taxes upon FBO's fixtures, equipment and personal property in and on the Premises, whether or not

Initials: City: gd FBO: ccr2

affixed to the real property. In addition, FBO agrees to pay any ad valorem taxes assessed on the Premises.

NON-DISCRIMINATION

The FBO, for himself and his personal representatives, as a part of the consideration hereof, does hereby covenant and agree as a covenant that:

1. No person on the grounds of race, color, sex, religion, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and,
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, sex, religion or nation origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and,
3. That the FBO shall use the Premises in compliance with all other requirements imposed by or pursuant to Code of Federal Regulations, Title 49, Transportation Subtitle A, Office of the Secretary of Transportation, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964, Section 21.5 Discrimination prohibited; and,
4. That the FBO shall at all times use the Premises in compliance with all Non-Discrimination laws, either in effect at the present time or those promulgated in the future, of the United States of America, the State of Texas, the City of Burnet, and the Federal Aviation Administration, or their successors.

ABIDE BY ALL LAWS

FBO agrees to abide by all laws, statutes, ordinances, rules and regulations of the Federal Aviation Administration, Texas Department of Transportation, Division of Aviation, State of Texas, Texas Commission on Environmental Quality, the Environmental Protection Agency, City of Burnet and of all other duly constituted public authorities having jurisdiction. No provision in this Contract shall be construed as being in conflict with Federal Aviation Administration Rules or other laws; and this Contract shall be construed as being in harmony with such laws in the case of any conflict. FBO agrees to conduct all activities on the Premises in accordance with the standards now established or that may be established later by any competent and lawful authority.

Further, FBO agrees to abide by the manufacturer's direction in regards to the use, storage and disposal of pesticides, herbicides, hazardous chemicals, fuel, oil and other chemicals; including their containers except for a conflict with a superior law which shall be adhered to strictly.

Notwithstanding anything herein contained that may be or appear to the contrary, it is expressly understood and agreed that the rights granted under this Contract are non-exclusive, and City herein reserves the right to grant similar privileges to other fixed based operators on other parts of the Airport.

STORM WATER COMPLIANCE

1. Notwithstanding any other provisions or terms of the Contract, FBO acknowledges that the Airport is subject to federal storm water regulations, 40 C.F.R. Part 122, for "vehicle maintenance shops" (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations and/or deicing operations that occur at the Airport, as defined in these regulations, and state law concerning the prohibition against water pollution, as provided for in TEX. WATER CODE ANN. 26.121, as amended. FBO further acknowledges that it is familiar with these storm water regulations, that it conducts or operates "vehicle maintenance" (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations and/or deicing activities as defined in the federal storm water regulations; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations. For purposes of this section "vehicle" shall include but not be limited to aircraft.
2. Notwithstanding any other provisions or terms of this Contract, including the FBO's right to quiet enjoyment, City and FBO both acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. FBO acknowledges that, as discussed more fully below, it may be required to undertake steps to minimize the exposure of storm water (and snow melt) to "significant materials" generated, stored, handled or otherwise used by the FBO, as defined in the federal storm water regulations, by implementing and maintaining "Best Management Practices."
3. FBO acknowledges that the Airport's storm water discharge permit is incorporated by reference into this Contract and any subsequent renewals.

PROTECTION OF AIRPORT

City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent FBO from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of City, would limit the usefulness of the Airport or constitute a hazard to aircraft. Height locations shall be specifically identified based upon location of the demised premises and safety requirements of Federal and State Governments and Aviation Administrators.

City reserves the right to further develop the Airport as approved by the City Council. City expressly reserves the right to grant to others additional leases or contracts and privileges with respect to said Airport facility even though the purposes for which such additional leases or contracts are given are the same and duplicates of those contained in this Contract.

GENERAL PROVISIONS

Initials: City: SA FBO: ccr

1. Appropriations. Notwithstanding any provision contained herein, the financial obligations of City contained herein are subject to and contingent upon appropriations by the governing body of City of such funds or other revenues being available, received and appropriated by City in amounts sufficient to satisfy said obligations. In no event shall this instrument be construed to be a debt of City.
2. Attorney's Fees. In the event there should be a default under any of the provisions of this Contract and the City should retain attorney's or incur other expenses for the collection of rent for the enforcement of performance of observance of any obligation or agreement on the part of the FBO herein contained, FBO agrees that it shall, upon demand therefore, pay to the City the reasonable fees of such attorneys and such other reasonable expenses incurred.
3. Right of Flight. City reserves unto itself, its patrons, visitors, and other fixed based operators and their patrons, visitors, and employees, the right of flight for the passage of aircraft above the surface of the Premises, together with the right to cause in such air space such noise, dust, interference as may be inherent in the operation of aircraft now known or hereafter in use, including the right of using said air space for landing at, taking off from, or operating at or near the Airport.
4. Access. City shall allow access to and from the Premises to the existing taxiway at no cost to FBO.
5. Changes or Additions to Premises. FBO may not make any changes or additions to the Premises without the written consent of the City. Prior to any changes or additions to the Premises or any other part of the Airport under FBO's control, FBO shall be obligated to secure, in writing, the consent of City as to location, type and method of construction or improvement securing the proper building permits and providing an adequate site plan.
6. No Joint Venture, Agency, Joint Enterprise. This Contract shall not be construed to establish a partnership, joint venture, agency, or joint enterprise, express or implied, nor any employer-employee or borrowed servant relationship by and among the Parties hereto. Nor shall this Contract be construed to create or grant rights, contractual or otherwise, to any other person or entity not a party to this Contract. Each Party shall remain solely responsible for the proper direction of its employees and an employee of one shall not be deemed an employee or borrowed servant of the other for any reason.
7. No Third-Party Beneficiaries. Nothing herein shall ever be construed to confer upon any third person any rights, benefits, or remedies, contractual or otherwise, as a third-party beneficiary by reason of this Contract.
8. Governmental Immunity. Nothing in this Contract shall be deemed to waive, modify, or amend any legal defense available at law or in equity to

either City or its officers and employees. Neither City, nor its officers and employees waive, modify or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

9. Force Majeure. Neither the City nor FBO shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reasons of strikes, boycotts, labor disputes, embargoes, shortages of material, force majeure, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellions, acts of sabotage, or any other circumstances for which it is not responsible or which are not in its control; provided, however, that this section shall not apply to failures by FBO to pay rental, fees and charges specified herein.
10. Parking. City reserves the right to restrict and designate parking areas for all surface vehicles on all areas of the Airport. Automotive vehicles shall park only in parking areas designated for that purpose by the City.
11. Venue. This Contract shall be interpreted pursuant to the laws of the State of Texas and venue shall lie exclusively in Burnet County, Texas.
12. Entire Agreement. This Contract constitutes the entire understanding between the Parties and as of its Effective Date supersedes all prior or independent contracts or agreements between the Parties covering the subject matter hereof. Any change or modification hereof shall be in writing signed by both Parties.
13. Severability. If any part, provision, term, condition, obligation or portion of this Contract is found to be illegal or void by a court of final jurisdiction, the entire Contract shall not be void, but the voided provision shall be struck and the remainder of the Contract shall continue in full force and effect as nearly as possible in accordance with the original intent of the Parties.
14. Timeliness of Execution. FBO shall execute Contract within thirty (30) days of approval by the City Council or the offer shall be rescinded.
15. Sovereign Immunity. Nothing in this Contract shall be determined to waive the City's sovereign immunity.
16. Multiple Copies. It is agreed that this Contract may be executed in multiple copies each having the force and effect of an original.

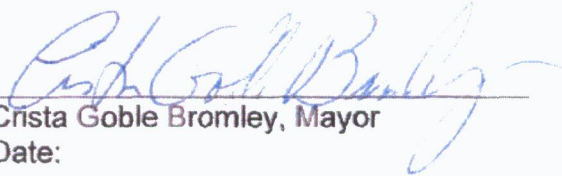
[Signatures On Next Page]

Interim Fixed Base Operator Contract - Crosby Flying Services LLC

To be effective as of the latter date signed below:


CITY OF BURNET, TEXAS

CROSBY FLYING SERVICES LLC


Crista Goble Bromley, Mayor
Date:


Coley Means, Manager
Date: June 22, 2022

ATTEST


Kelly Dix, City Secretary

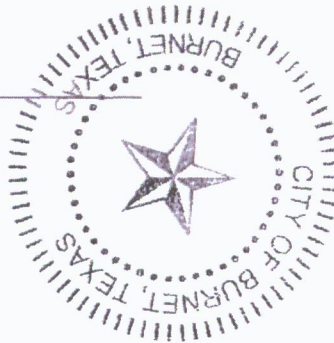


Exhibit "A"

