

## FIXED BASED OPERATOR SERVICES AGREEMENT

This Fixed Based Operator Services Agreement (this "Agreement") is dated effective for all purposes as of July 1, 2024 (the "Effective Date") and is entered into between City of Madras ("City"), an Oregon municipal corporation, whose address is 125 SW E Street, Madras, Oregon 97741, and \_\_\_\_\_ ("Contractor"), an Oregon \_\_\_\_\_, whose address is \_\_\_\_\_.

### RECITALS:

A. City is the owner, sponsor, and operator of the Madras Municipal Airport, a public municipal airport located in Madras, Oregon (the "Airport"). City desires to contract with Contractor to provide certain fixed based operator ("FBO") services on and at the Airport. Subject to the terms and conditions contained in this Agreement, Contractor will perform the FBO services at the Airport.

B. Pursuant to the terms of a certain Airport Ground Lease for Aeronautical Use Improvements (Fixed Based Operator Lease – Office and Fuel Farm) dated as of the Effective Date between City and Contractor (the "FBO Lease"), City has leased certain real property to Contractor to facilitate Contractor's provision of the FBO services subject to this Agreement. The real property subject to the FBO Lease includes, without limitation, the following: (i) a City-owned general aviation building of which Contractor leased approximately 420 square feet of Contractor-dedicated space and approximately 2,800 square feet of Contractor/City shared space, and (ii) a fuel farm area consisting of approximately \_\_\_\_\_ square feet (all as described and depicted in the FBO Lease).

C. Pursuant to the terms of a certain Airport Ground Lease for Aeronautical Use Improvements (Fixed Based Operator Ancillary Lease – Hangars North and South) dated as of the Effective Date between City and Contractor (the "Ancillary Lease"), City has leased certain real property to Contractor to facilitate Contractor's provision of the FBO services subject to this Agreement. The real property subject to the Ancillary Lease includes, without limitation, the following (i) approximately 10,000 square feet of an airplane hangar (commonly known as the North Aircraft Storage Hangar), and (ii) approximately 11,000 square feet of Contractor-dedicated space and approximately 500 square feet of Contractor/City shared space of an airplane hangar (commonly known as the South Aircraft Maintenance/Storage Hangar).

D. Pursuant to the terms of a certain Airport Ground Lease for Aeronautical Use Improvements (Fixed Based Operator Aircraft Parking and Storage Lease) dated as of the Effective Date between City and Contractor (the "Tie-Down and Parking"), City has leased certain real property to Contractor to facilitate Contractor's provisions of the FBO services subject to this Agreement. The real property subject to the Parking and Storage Lease includes, without limitation, certain City real property upon which Contractor will perform aircraft tie-down and parking.

### AGREEMENT:

NOW, THEREFORE, in consideration of the parties' mutual obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### 1. Fixed Based Operator Services.

1.1 Services; Standards. Subject to the terms and conditions contained in this Agreement, Contractor will perform the following FBO services concerning the Airport for and on behalf of City (collectively, the "Services"): (a) those FBO services described on the attached Schedule 1.1; (b) all other necessary or appropriate services customarily provided by Contractor in connection with its performance of those services identified in Schedule 1.1; and (c) such other FBO services requested by City's airport manager from time to time. Contractor will (w) consult with and advise City on all matters concerning the Services reasonably requested by City, (x) communicate all matters and information concerning the Services to the airport manager and perform the Services under the general direction of the airport

manager, (y) devote such time and attention to performance of the Services as City deems necessary or appropriate, and (z) perform the Services to the best of Contractor's ability. Contractor will not participate in and/or perform any aeronautical and/or nonaeronautical services on or at the Airport except for the Services. Contractor will not store (or permit the storage of) any personal vehicles, recreational equipment, and/or other personal property unrelated to Contractor's performance of the Services on or at the Airport. For purposes of this Agreement, the term "airport manager" means City's then-designated airport manager and his or her designee.

1.2 Schedule; Condition Precedent. The Services will be completed expeditiously and in a timely manner. Notwithstanding anything contained in this Agreement to the contrary, City's performance of its obligations under this Agreement is conditioned on Contractor's performance of its obligations under this Agreement, including, without limitation, those Contractor obligations identified under Section 5.4. Contractor will immediately notify City in writing of the occurrence of any of the following events: (a) any enforcement, clean-up, removal, and/or other governmental or regulatory action is instituted, completed, and/or threatened concerning any Environmental Laws (as defined below); and/or (b) any claim is made or threatened by any person against or concerning Contractor, Contractor's activities, and/or the condition of the Airport. Contractor will provide City copies of any written documentation related to the foregoing immediately upon City's demand.

1.3 Non-Exclusive Services. Contractor acknowledges and agrees that this Agreement does not grant and/or convey an exclusive right or license to provide the Services. Notwithstanding anything contained in this Agreement to the contrary, City reserves the right to grant franchises, licenses, permits, and/or other similar rights to other persons to provide the same or similar FBO services at any time and from time to time as City determines necessary or appropriate. Contractor has entered into this Agreement on the basis of its own examination and personal knowledge of the Airport and Services. Contractor has not relied on any representations or warranties made by City concerning the Airport and/or Services. City makes no representations or warranties of any kind, whether express or implied, with respect to all or any part of the Airport and/or Services.

1.4 City Delegation. If Contractor fails or refuses to provide or perform any "Mandatory Services" identified in Schedule 1.1 within 10 days after City's written notice (the "Failed Services"), in addition to all other rights and remedies available to City under this Agreement, City may assign or delegate the Failed Services to another contractor or consultant to provide or perform the Failed Services (or City may perform the Failed Services with its own forces). City may charge all costs, expenses, and charges City incurs to provide or perform the Failed Services to Contractor. Contractor will reimburse City for the costs, expenses, and charges City incurs to provide or perform the Failed Services immediately on demand, together with interest at the rate of 12% per annum from the date of expenditure until paid by Contractor in full.

2. Airshow of the Cascades. Contractor will coordinate, cooperate, and assist City's city administrator, public works director, and airport director with the annual Airshow of the Cascades (the "Airshow"), which assistance and cooperation will include, without limitation, attending Airshow related meetings and providing prompt communications concerning scheduling and Airshow operations. Contractor will modify or alter its use and operations on and from the Airport during the Airshow Days (as defined below) to accommodate Airshow activities and/or operations. Contractor will maintain adequate levels of communication with the Airshow organizer and City's city administrator, public works director, and airport director to ensure maximum cooperation and coordination between Contractor, the organizer, and City concerning Contractor's activities and operations from the Airport during the Airshow Days. Contractor will provide the Airshow operator free and unfettered access to the Airport's north hangar for Airshow related purposes. For purposes of this Agreement, the term "Airshow Days" means

3. Federal Aviation Administration; Relationship.

3.1 Aviation Easement; Aeronautical Uses. Contractor will protect the Airport and Airport property for aeronautical and related uses. Contractor will not interfere and/or impede Airport operations. Any Contractor activities that City determines interfere and/or impede Airport operations are prohibited. Contractor's operations at and/or from the Airport may be disrupted by certain expansion, improvement, construction, development,

remodeling, and/or other activities on or at the Airport, including, without limitation, runway maintenance and repairs. City will not be in default under this Agreement (and Contractor will not be entitled to any concessions) if Contractor is disrupted (temporarily or otherwise) in its operations at and/or from the Airport due to the aforementioned activities.

3.2 Airport Operations; Security. Notwithstanding anything contained in this Agreement to the contrary, City reserves the right to control and regulate all Airport property, facilities, and/or operations, including, without limitation, taxiways, ramps, runways, improvements, aprons, fuel areas, and parking facilities. City may impose certain taxi proceedings, requirements, and/or controls to promote efficient and orderly operation of other operators. Contractor acknowledges and agrees that City does not provide continuous security for the Airport. Contractor is responsible for securing and safeguarding all Contractor aircraft and other personal property located on the Airport. City will not be liable for any loss and/or damage to Contractor's property due to theft, vandalism, and/or any other causes, including forces of nature.

3.3 Non-Discrimination. Contractor covenants and agrees that, in connection with Contractor's performance of the Services, no person will, on the grounds of race, color, national origin, and/or other protected classification, be excluded from participation in, denied the benefits of, and/or otherwise subjected to discrimination in the use of any facilities located on or about the Airport.

3.4 Compliance with Tax Laws. Contractor represents and warrants that it has complied with the tax laws of the State of Oregon and the tax laws of any applicable political subdivision of the State of Oregon including, without limitation, any tax laws described in ORS 305.380(4). Contractor will continue to comply with the aforementioned tax laws during the term of this Agreement. Contractor's failure to comply with the aforementioned tax laws before Contractor executed this Agreement or during the term of this Agreement is a default for which City may terminate the Agreement and seek damages and other relief available under the terms of this Agreement and under applicable law. By signing this Agreement, Contractor certifies, under penalty of perjury, that the Contractor is, to the best of Contractor's knowledge, not in violation of any tax laws described in ORS 305.380(4).

3.5 Subordination – United States. Notwithstanding anything contained in this Agreement to the contrary, (a) this Agreement is subordinate to the terms of any agreement between City and the United States concerning Airport operations and/or maintenance (the terms of such agreement will supersede the terms of this Agreement), and (b) during times of war or national emergency, City may lease the Airport's landing area (or any part thereof) to the United States for military or naval use (and, in connection therewith, the provisions of this Agreement will be suspended to the extent inconsistent with City's lease with the United States).

3.6 Independent Contractor. Contractor is an independent contractor of City. Contractor is not an employee of City. Contractor will be free from direction and control over the means and manner of performing the Services, subject only to the right of City to specify the desired results. This Agreement does not create an agency relationship between City and Contractor and does not establish a joint venture or partnership between City and Contractor. Contractor does not have the authority to bind City or represent to any person that Contractor is an agent of City. Contractor has the authority to hire other persons to assist Contractor in performing the Services (and has the authority to fire such persons).

3.7 Taxes; Licenses. City will not withhold any taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes arising out of or resulting from Contractor's performance of the Services, including, without limitation, income, social security, workers' compensation, and employment insurance taxes. Contractor will be solely responsible for obtaining all licenses, approvals, and certificates necessary or appropriate to perform the Services.

4. Compensation.

4.1 Compensation. Subject to the terms and conditions contained in this Agreement, in consideration of Contractor's timely performance of the Services in accordance with this Agreement, City will pay (or Contractor will be entitled to receive) the following compensation:

4.1.1 Rental of the buildings and other real property subject to the FBO Lease, Ancillary Lease, and/or Tie-Down and Parking Lease (each subject to City's prior written consent in accordance with the applicable lease).

4.1.2 [REDACTED] of City's aircraft tie-down space and aircraft storage rental proceeds.

4.1.3 \_\_\_\_ percent (\_\_\_%) of City's net profits from the sale of aviation fuel at the Airport.

4.1.4 \_\_\_\_ percent (\_\_\_%) of the fuel flowage fee paid by fuel operators and collected by City under City Ordinance No. 859, as amended.

The aforementioned compensation is accepted by Contractor as full compensation for performing the Services.

4.2 No Benefits; No Reimbursement. City will not provide any benefits to Contractor, and Contractor will be solely responsible for obtaining Contractor's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Contractor will provide, at Contractor's cost and expense, all materials, equipment, and supplies necessary or appropriate to perform the Services. City will not reimburse Contractor for any expenses Contractor incurs to perform the Services.

5. Representations; Warranties; Covenants.

In addition to any other Contractor representation, warranty, and/or covenant made in this Agreement, Contractor represents, warrants, and covenants to City as follows:

5.1 Authority; Binding Obligation; Conflicts. Contractor is duly organized under Oregon law and validly existing and in good standing under applicable Oregon law. Contractor has full power and authority to sign and deliver this Agreement and to perform all Contractor's obligations under this Agreement. This Agreement is the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms. The signing and delivery of this Agreement by Contractor and the performance by Contractor of all Contractor's obligations under this Agreement will not (a) breach any agreement to which Contractor is a party, or give any person the right to accelerate any obligation of Contractor, (b) violate any law, judgment, or order to which Contractor is subject, and/or (c) require the consent, authorization, or approval of any person, including, without limitation, any governmental body.

5.2 Minimum Standards. Contractor will perform the Services to the best of Contractor's ability, diligently, in good faith, in a professional manner, free from errors and omissions, and consistent with the terms and conditions contained in this Agreement. The Services will be performed subject to and in accordance with the Laws (as defined below). Contractor will be solely responsible for the Services. Contractor will make all decisions called for promptly and without unreasonable delay. Contractor has sufficient assets and net worth to ensure Contractor's timely and complete payment and performance of its obligations under this Agreement.

5.3 Insurance. During the term of this Agreement, Contractor will obtain and maintain, in addition to any other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Contractor's performance of its obligations under this Agreement (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property) with limits of no less than \$2,000,000 per occurrence, \$4,000,000 in the aggregate; (b) comprehensive automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Contractor in connection with Contractor's performance of the Services with limits of no less than \$1,000,000 combined single limit; (c) employer liability insurance with limits of no less than \$1,000,000 per

occurrence, \$2,000,000 in the aggregate; (d) workers' compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law; (e) pollution liability insurance with limits of no less than \$1,000,000 combined single limit; and (f) hangar keepers liability insurance with limits of no less than \$5,000,000 combined single limit. Each liability insurance policy required under this Agreement will be in form and content satisfactory to City, will list City and each City Representative (as defined below) as an additional insured, and will contain a severability of interest clause; the workers' compensation insurance will contain a waiver of subrogation in favor of City. The insurance Contractor is required to obtain under this Agreement may not be cancelled without 10 days' prior written notice to City. Contractor's insurance will be primary and any insurance carried by City will be excess and noncontributing. Contractor will furnish City with appropriate documentation evidencing the insurance coverage (and provisions) and endorsements Contractor is required to obtain under this Agreement upon Contractor's execution of this Agreement and at any other time requested by City. If Contractor fails to maintain insurance as required under this Agreement, City will have the option, but not the obligation, to obtain such coverage with costs to be reimbursed by Contractor immediately upon City's demand.

5.4 Laws. Contractor will comply and perform the Services in accordance with the Laws. Without otherwise limiting the generality of the immediately preceding sentence, Contractor will comply with each obligation applicable to Contractor and/or this Agreement under ORS 279B.220, 279B.225, 279B.230, and 279B.235, which statutes are incorporated herein by reference. Prior to the Effective Date, Contractor obtained all licenses, approvals, and/or certificates necessary or appropriate to perform the Services, including, without limitation, an unexpired certificate issued by the Oregon Department of Administrative Services under ORS 279A.167. For purposes of this Agreement, the term "Law(s)" means all policies, rules, leases, covenants, conditions, restrictions, easements, declarations, laws (federal, state, and local), statutes, liens, ordinances, orders, codes, and regulations directly or indirectly affecting the Airport and/or Services, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder), Environmental Laws, any rules or regulations promulgated by the Federal Aviation Administration ("FAA") and/or any other federal airport authority (including, without limitation, City's Grant Assurances and requirements under 14 CFR Part 77), City's municipal code, and/or City's policies governing FBO services, all as now in force and/or which may hereafter be amended, modified, enacted, and/or promulgated.

5.5 Indemnification. Contractor will defend, indemnify, and hold City, and each present and future City officer, employee, agent, and representative (individually and collectively, "City Representative(s)"), harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses, including, without limitation, attorney fees and costs, resulting from or arising out of the following: (a) damage, injury, and/or death to person or property caused by Contractor (and/or Contractor's directors, officers, shareholders, partners, managers, members, employees, agents, representatives, and/or contractors); (b) Contractor's failure to pay any tax arising out of or resulting from performance of the Services; and/or (c) Contractor's breach and/or failure to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement. Contractor's indemnification obligations provided in this Section 5.5 will survive the termination of this Agreement.

5.6 Hazardous Substances. Contractor will not cause and/or permit any Hazardous Substances (as defined below) to be spilled, leaked, disposed of, and/or otherwise released on, under, and/or about the Airport. Upon the earlier termination or expiration of this Agreement, Contractor will properly remove and dispose of all Hazardous Substances from the Airport. For purposes of this Agreement, the term "Environmental Law(s)" means any federal, state, and/or local statute, regulation, and/or ordinance, or any judicial or other governmental order, pertaining to the protection of health, safety, and/or environment; the term "Hazardous Substance(s)" means any hazardous, toxic, infectious, and/or radioactive substance, waste, and/or material as defined or listed by any Environmental Law, including, without limitation, pesticides, aviation fuel, paint, petroleum oil, and their fractions.

5.7 Records. Contractor will maintain complete and accurate records concerning all Services performed, the number of hours each person spent to perform the Services, and all documents produced under this Agreement for a period of three years after termination of this Agreement. Contractor's records will be maintained in accordance with sound accounting practices. Contractor will provide City access to any Contractor

books, documents, papers, and/or records which are pertinent to this Agreement and/or the Services. Contractor will maintain all books, documents, papers, and records generated under this Agreement for a period no less than three years commencing on the date of termination of this Agreement.

5.8 Confidential Information. During the term of this Agreement, and at all times thereafter, Contractor will maintain all Confidential Information (as defined below) in the strictest confidence and will not directly or indirectly use, communicate, or disclose any Confidential Information to any person, or remove or make reproductions of any Confidential Information, except that Contractor may (a) use Confidential Information to perform the Services to the extent necessary, and (b) communicate or disclose Confidential Information in accordance with a judicial or other governmental order or as required by applicable law, but only if Contractor promptly notifies the airport manager of the order and complies with any applicable protective or similar order. Contractor will promptly notify the airport manager of any unauthorized use, communication, and/or disclosure of any Confidential Information and will assist City in every way to retrieve any Confidential Information that was used, communicated, and/or disclosed by Contractor and will exert Contractor's best efforts to mitigate the harm caused by the unauthorized use, communication, and/or disclosure of any Confidential Information. Upon the earlier of City's request or termination of this Agreement, Contractor will immediately return to City all documents, instruments, and/or materials containing any Confidential Information accessed or received by Contractor, together with all copies and summaries of such Confidential Information. If requested by City, Contractor will execute a written certification satisfactory to City pursuant to which Contractor will represent and warrant that Contractor has returned all Confidential Information to City in accordance with the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the terms of this Agreement do not operate to transfer any ownership or other rights in or to the Confidential Information to Contractor or any other person. For purposes of this Agreement, the term "Confidential Information" means all documentation, information, and/or materials identified by City as confidential and/or any documentation, information, and/or materials relating to or concerning City's future plans, business affairs, employment, legal, and litigation matters that need to be protected from improper disclosure, in whatever form (e.g., hard and electronic copies, etc.), that is received or accessed by Contractor; provided, however, the term "Confidential Information" does not include City's public records which are non-exempt public records under applicable federal, state, and/or local laws.

6. Term; Termination.

6.1 Term of Agreement.

6.1.1 Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect until [REDACTED] (the "Initial Term"), unless sooner terminated or extended as provided in this Agreement. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated (a) at any time by the mutual written agreement of City and Contractor, (b) by City at any time for any reason or no reason by providing ninety (90) days' prior written notice of such termination to Contractor, (c) by City immediately upon notice to Contractor of Airport closure and/or any change in the Laws making continued operation of the Airport impractical, (d) by City immediately upon notice to Contractor if City determines that Contractor's acts or omissions cause or threaten loss of life, injury, significant damage, and/or destruction to person or property, human suffering, and/or significant financial loss, and/or (e) termination of the FBO Lease, Ancillary Lease, and/or Tie-Down and Parking Lease. Upon receipt of the notice of termination, except as explicitly directed by City, Contractor must immediately discontinue performing any Services.

6.1.2 If Contractor is not then in default under this Agreement, Contractor has the option (the "Extension Option") to extend the Initial Term for one consecutive additional term of [REDACTED] years (the "Extended Term"). Contractor will exercise the Extension Option by providing City written notice (the "Notice of Extension") no less than 120 days prior to the last day of the Initial Term. Subject to the terms and conditions contained in this Agreement, providing the Notice of Extension will be sufficient to make this Agreement binding for the Extended Term. The Extended Term will commence on the day immediately following the expiration of the

Initial Term. The terms and conditions for the Extended Term will be identical with the Initial Term except that Contractor will no longer have the Extension Option that has been exercised.

6.2 Termination For Cause. Notwithstanding anything contained in this Agreement to the contrary, City may terminate this Agreement immediately upon notice to Contractor upon the happening of any of the following events: (a) Contractor engages in any wrongful and/or negligent acts or omissions that reflect adversely on the reputation or operations of City; (b) Contractor fails to comply with any applicable law related to Contractor's independent contractor relationship with City; (c) problems occur in connection with Contractor's performance of the Services; and/or (d) Contractor breaches and/or otherwise fails to perform any Contractor representation, warranty, covenant, and/or obligation contained in this Agreement, the FBO Lease, Ancillary Lease, and/or Tie-Down and Parking Lease. City will make the determination as to whether any events identified in this Section 6.2 have occurred.

6.3 Consequences of Termination. Upon termination of this Agreement, City will not be obligated to reimburse or pay Contractor for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments. Notwithstanding anything contained in this Agreement to the contrary, termination of this Agreement by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against Contractor. Within a reasonable period of time after termination of this Agreement (but in no event later than five days after termination), Contractor will deliver to City all materials and documentation related to or concerning the Services.

## 7. Miscellaneous.

7.1 Severability; Assignment; Binding Effect. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Contractor will not assign this Agreement and/or the Services to any person without City's prior written consent. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party.

7.2 Attorney Fees; Dispute Resolution. If any arbitration or litigation is instituted to interpret, enforce, and/or rescind this Agreement, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. If any claim, dispute, or controversy arising out of or related to this Agreement occurs (a "Dispute"), City and Contractor will exert their good faith effort to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, either party may initiate a suit, action, arbitration, or other proceeding to interpret, enforce, and/or rescind this Agreement.

7.3 Governing Law; Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon.

7.4 Attachments; Further Assurances; Notices. Any exhibits, schedules, instruments, documents, and other attachments referenced in this Agreement are part of this Agreement; provided, however, if any exhibit, schedule, instrument, document, and/or other attachment conflicts with this Agreement, the terms contained in

this Agreement will control. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Time is of the essence with respect to Contractor's performance of its obligations under this Agreement. All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation of delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

7.5 Waiver; Entire Agreement. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Contractor. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Contractor has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

7.6 Person; Interpretation; Execution. For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. When a party is exercising any consent, approval, determination, and/or similar discretionary action under this Agreement, the standard will be the party's commercially reasonable discretion, which discretion will not be unreasonably withheld, conditioned, and/or delayed.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

**CITY:**  
City of Madras,  
an Oregon municipal corporation

**CONTRACTOR:**  
an

\_\_\_\_\_  
By: Mike Lepin, Mayor

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



Schedule 1.1  
Fixed Based Operator Services

A. Mandatory Services. In addition to all other Services identified under this Agreement, Contractor will perform the following fixed based operator services for and on behalf of City:

1. Operate the assigned Airport UNICOM (or CTAF) radio frequency in conformance with standards set forth in Federal law, FAA regulations (14 CFR et seq.), and the Aeronautical Information Manual.
2. Encourage pilots operating on the Airport or in the Airport traffic pattern to conduct their operations in conformance with the standards set forth in the FAA Regulations, Aeronautical Information Manual, and all applicable local rules or practices established at the Airport.
3. Perform janitorial service and maintenance concerning all areas from which the Services will be performed, including minor repairs as required.
4. Manage the Airport courtesy car(s) or rental car(s). Provide material and data on Airport operations in a timely manner, as related to the FBO services and duties described herein.
5. Provide material and data on Airport operations and the Services in a timely manner.
6. Aircraft ground handling services (including parking guidance, towing, and related activities);
7. Crew and passenger services (including baggage handling, ground transportation arrangements, etc.);
8. Tie-down and apron parking rental management;
9. Emergency service to disabled general aviation aircraft (i.e., towing/transporting disabled aircraft);
10. Sale of miscellaneous retail pilot supplies;
11. Coordinate U.S. Forest Service parking assignments, record daily shift tickets, and flowage fees;
12. Purchase and manage the Airport's fuel sales, including, without limitation, performing the following:
  - 12.1 Maintaining adequate and acceptable supplies and quality of avgas and jet fuel in fuel trucks and storage tanks. Maintain all fuel systems in good working order and repair. Daily determine appropriate competitive fuel pricing. Properly operate the computerized aircraft fueling system and fuel tanks (including the filter system). Contractor will test all fuels and will inspect all tanks and components of the fuel supply system as required by, and in accordance with, the Laws and fuel suppliers.
  - 12.2 Providing fuel service for aircraft during normal working hours and, for an extra service charge, provide on-call fuel service should the card lock system not be sufficient.
  - 12.3 Report promptly to the airport manager the need for maintenance or repairs concerning any FBO equipment, including, without limitation, fuel tanks, the card lock system, pumps, trucks, and/or related equipment.
13. During the off season/winter months (November – March), Contractor will generally provide the Services from 8:00 to 5:00, Monday – Friday. During the regular season/spring, summer, and fall (April – October),

Contractor will generally provide the Services from 8:00 – 6:00, Monday – Friday. Contractor may modify Contractor’s hours of operation from time to time when Contractor reasonably determines necessary; provided, however, Contractor will provide City written notice of any modification to Contractor’s hours. Contractor and/or its employee(s) will be present at the Airport or available on-call in case of emergency at all times. Contractor will maintain its cellular telephone in good, working order and condition. Contractor’s cellular phone number as of the Effective Date is \_\_\_\_\_. If Contractor changes its cellular phone number, Contractor will immediately provide the new phone number to City.

14. In accordance with the Laws, prepare, complete, update, and implement the Airport’s spill prevention, control, and countermeasure plan (the “Plan”). The Plan must be designed to prevent oil spills and identify adequate control measures should a spill occur.

15. [Services to be negotiated.]

B. Discretionary Services. In addition to all other Services identified under this Agreement, Contractor may perform the following fixed based operator services for and on behalf of City:

1. Line services for general aviation aircraft.
2. Air taxi and air charter services and operations. Scheduled or nonscheduled air carrier services and support services.
3. Pilot training.
4. Aircraft rental and sightseeing.
5. Aircraft sales, service, repair, and maintenance.
6. Aerial photography.