

TEXAS DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT

(State Assisted Airport Development Grant)

Amendment No. 01 to the Agreement

TxDOT CSJ No.: 1815STSON
TxDOT Project No.: AP SAN ANTONIO
Commission Approval: April 26, 2018

Part I - Identification of the Project

TO: City of San Antonio, Texas

FROM: The State of Texas, acting through the Texas Department of Transportation

City of San Antonio, referred to as the "Sponsor", and the Texas Department of Transportation, referred to as the "State," have entered into an Airport Project Participation Agreement TxDOT CSJ Number 1815STSON, executed by the Sponsor on October 18, 2018, and by the State on November 2, 2018, for the development of Stinson Municipal Airport; and

The project is described as follows: environmental and survey for land acquisition at Stinson Municipal Airport.

It is in the mutual interest of the Sponsor and the State to amend Airport Project Participation Agreement at this time to change the financial assistance from federal to state. All financial assistance references to the United States, Federal Aviation Administration are now to the State of Texas, Texas Department of Transportation. In addition, amending to remove TxDOT as contracting and payment agent. The City of San Antonio will administer all services independently.

Part II - Offer of Financial Assistance, estimates total project costs to be \$333,333.

Financial assistance is currently limited to \$300,000 in federal funds and \$33,333 in local sponsor funds.

The Airport Development Grant Agreement is amended as follows:

1. Delete Part II- IV of the original agreement and Replace with the following:

Part II - Offer of Financial Assistance

1. The allowable costs of the project shall not include any costs determined by the State to be ineligible under the V.T.C.A. Transportation Code, Title 3, Chapters 21-22, et seq., (Vernon and Vernon Supp).
2. It is estimated that project costs will be approximately \$333,333 (Amount A). It is further estimated that approximately \$333,333 (Amount B) of the project costs will be eligible for financial assistance, and that financial assistance will be for ninety percent (90%) of the eligible project costs. Project costs eligible for financial assistance shall be determined by the State. It is estimated that the Sponsor's share of the project costs will be approximately \$33,333 (Amount C) and the state's financial assistance share of eligible project costs will be approximately \$300,000 (Amount D). Financial assistance is subject to the availability of state funds.

This grant should not be construed as block grant funds for the Sponsor, but as a grant for funding of the scope items as listed on page one of this agreement. It is the intent of the Agent to provide funding to complete the approved work items of this grant and not to amend the scope of work to include items outside of the current determined needs of this project. Scope of work may be amended as necessary to fulfill the unforeseen needs of this specific development project within the spirit of the approved scope, subject to the availability of state and/or local funds.

3. If there is an overrun in the eligible project costs, the State may increase the grant to cover the amount of overrun not to exceed the statutory twenty-five (25%) percent limitation and will advise the Sponsor by letter of the increase. Upon receipt of the letter, the maximum obligation of the State is adjusted to the amount specified and the Sponsor will remit their share of the increased grant amount.

Participation in additional state eligible costs may require approval by the Texas Transportation Commission. The State will not authorize expenditures more than the dollar amounts identified in this Agreement and any amendments, without the consent of the Sponsor.

4. If state funds are unavailable, this Agreement shall automatically be voided and become of no force and effect, except that unexpended or unencumbered moneys actually deposited by the Sponsor and held with the State for project purposes shall be returned to the Sponsor.
5. Sponsor's share of project costs (Amount C) shall be paid in cash when requested by the

State. At project close-out, Sponsor will be reimbursed for any amounts that exceed Sponsor's share.

6. The Sponsor specifically agrees that it shall pay any project costs, which exceed the amount of financial participation agreed to by the State. It is further agreed that the Sponsor will reimburse the State for any payment or payments made by the State which are in excess of the percentage of financial assistance (Amount D) as stated in Paragraph II-2.
7. Sponsor, by executing this Agreement certifies and, upon request, shall furnish proof to the State that it has sufficient funds to meet its share of the costs. The Sponsor grants to the State the right, upon advance written request during reasonable and regular business hours, to audit any books and records of the Sponsor to verify the funds. In addition, the Sponsor shall disclose the source of all funds for the project and its ability to finance and operate the project.
8. Monthly grant agreement payments to the Sponsor may be authorized upon application to the State. Payments of the State's share of the allowable project costs will be made in proportion to the amount of the project satisfactorily completed at the time of the payment application.
9. The State shall make all reasonable attempts to acquire state funding for the completion of this project within two years. If the sponsor does not move forward with the project, they shall reimburse the state 100% of all costs expended at the point of notification that the project will not be completed.

PART III - Sponsor Responsibilities

1. In accepting the Agreement, the Sponsor guarantees that:
 - a. it will comply with Attachment A, Certification of Airport Fund, attached and made a part of this Agreement; and
 - b. it will comply with the Attachment B, Certification of State Single Audit Requirements, attached and made a part of this Agreement; and
 - c. it will, in the operation of the facility, comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State of Texas in connection with the Agreement; and
 - d. the Airport or navigational facility which is the subject of this Agreement shall be controlled for a period of at least 20 years, and improvements made or acquired under this project shall be operated, repaired, and maintained in a safe and serviceable manner for the useful life of the improvements, not to exceed 20 years; and

- e. consistent with safety and security requirements, it shall make the airport or air navigational facility available to all types, kinds, and classes of aeronautical use without discrimination between such types, kinds and classes and shall provide adequate public access during the period of this Agreement; and
- f. it shall not grant or permit anyone to exercise an exclusive right for the conduct of aeronautical activity on or about an airport landing area. Aeronautical activities include, but are not limited to scheduled airline flights, charter flights, flight instruction, aircraft sales, rental and repair, sale of aviation petroleum products and aerial applications. The landing area consists of runways or landing strips, taxiways, parking aprons, roads, airport lighting and navigational aids; and
- g. it shall not permit non-aeronautical use of airport facilities, unless noted on an approved Airport Layout Plan, without prior approval of the State/FAA. This includes but is not limited to the process of land disposal, any changes to the aeronautical or non-aeronautical land uses of the airport, land's deeded use from non-aeronautical to aeronautical, requests of concurrent use of land, interim use of land, approval of a release from obligations from the State/FAA, any of which will require 18 months, or longer; and
- h. through the fence access shall be reviewed and approved by the State; and
- i. it will acquire all property interest identified as needed for the purposes of this project and comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State of Texas in the acquisition of such property interest; and that airport property identified within the scope of this project and Attorney's Certificate of Property Interests shall be pledged to airport use and shall not be removed from such use without prior written approval of the State; and
- j. the Sponsor shall submit to the State annual statements of airport revenues and expenses; and
- k. all fees collected for the use of an airport or navigational facility constructed with funds provided under the program shall be reasonable and nondiscriminatory. The proceeds of such fees shall be used solely for the development, operation and maintenance of the airport or navigational facility. Sponsor shall not be required to pledge income received from the mineral estate to airport use unless state and/or federal funds were used to acquire the mineral estate of airport lands or any interest therein; and
- l. an Airport Fund shall be established by resolution, order, or ordinance in the treasury of the Sponsor, or evidence of the prior creation of an existing airport fund or a properly executed copy of the resolution, order, or ordinance creating such a fund, shall be submitted to the State. Such fund may be an account as part of another

fund but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernable from other types of monies identified in the fund as a whole. All fees, charges, rents, and money from any source derived from airport operations must be deposited in said Airport Fund and shall not be diverted to the general revenue fund or any other revenue fund of the Sponsor for any purposes other than operation of the airport. All expenditures from the Airport Fund shall be solely for airport purposes. Sponsor shall be ineligible for a subsequent grant or loan by the State unless, prior to such subsequent approval of a grant or loan, Sponsor has complied with the requirements of this subparagraph; and

- m. the Sponsor shall operate runway lighting at least at low intensity from sunset to sunrise and to provide for the continuous operation and maintenance of any navigational aid funded under this Grant Agreement during the useful life of the equipment; and
- n. insofar as it is reasonable and within its power, Sponsor shall adopt and enforce zoning regulations to restrict the height of structures and use of land adjacent to or in the immediate vicinity of the airport to heights and activities compatible with normal airport operations as provided in Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Sponsor shall also acquire and retain avigation easements or other property interests in or rights to use of land or airspace unless Sponsor can show that acquisition and retention of such interest will be impractical or will result in undue hardship to Sponsor. Sponsor shall be ineligible for a subsequent grant or loan by the State unless Sponsor has, prior to such subsequent approval of a grant or loan, adopted and passed an airport hazard zoning ordinance or order approved by the State; and
- o. it will provide upon request of the State, and the engineering or planning consultant, copies of any maps, plans, or reports of the project site, applicable to or affecting the above project; and
- p. after reasonable notice, it will permit the State and any consultants and contractors associated with this project, access to the project site, and will obtain permission for the State, consultants and contractors associated with this project, to enter private property for purposes related to this project.
- q. all development of an airport constructed with program funds shall be consistent with the Airport Layout Plan approved by the State and maintained by the Sponsor. A reproducible copy of such plan, and all subsequent modifications, shall be filed with the State for approval; and
- r. Carry out and complete the project without undue delay and in accordance with the plans and specifications which are submitted to and approved by the staff. The State has the option to withhold the payment of any State funds unless the plans

and specifications have been completed and approved by the State, if applicable.

2. The Sponsor certifies to the State that it will have acquired clear title in fee simple to all property upon which construction work is to be performed, or have acquired a leasehold on such property for a term of not less than 20 years, prior to the advertisement for bids for such construction or procurement of facilities that are part of the above project, and within the timeframe of the project, a sufficient interest (easement or otherwise) in any other property interest which may be part of the project.
3. The Sponsor, to the extent of its legal authority to do so, shall save harmless the State, the State's agents, employees or contractors from all claims and liability due to activities of the Sponsor, the Sponsor's agents or employees performed under this agreement. The Sponsor, to the extent of its legal authority to do so, shall also save harmless the State, the State's agents, employees, or contractors from any and all expenses, including attorney fees which might be incurred by the State in litigation or otherwise resisting said claim or liabilities which might be imposed on the State as the result of such activities by the Sponsor, the Sponsor's agents, or employees.
4. The Sponsor's acceptance of this Offer and ratification and adoption of the Agreement incorporated shall be evidenced by execution of this instrument by the Sponsor, as provided, and the Agreement shall comprise a contract, constituting the obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the project and the operation and maintenance of the airport. Such Agreement shall become effective upon execution of this instrument and shall remain in full force and effect for a period of at least 20 years.
5. The Sponsor and not the State shall, for all purposes, be the "Sponsor" of the project. Sponsor agrees to assume responsibility for operation of the facility in compliance with all applicable state and federal requirements including any statutes, rules, regulations, assurances, procedures, or any other directives before, during and after the completion of this project.
6. The Sponsor by execution of this grant certifies that it has implemented, or will implement during this project, an effective airport pavement maintenance-management program and it assures that it will use such program during the period of this Agreement. It will provide upon written request such reports on pavement condition and pavement management programs as the State determines may be useful. Failure to comply with this condition may make the Sponsor ineligible for future grants.
7. The Sponsor shall have on file with the State a current and approved Attorney's Certificate of Airport Property Interests and Exhibit A property map.
8. The Sponsor agrees to assume the responsibility to assure that all aspects of the grant and project are done in compliance with all applicable state and federal requirements including any statutes, rules, regulations, assurances, procedures, or any other directives, except as

otherwise specifically provided.

9. The Sponsor shall submit to the State the following:
 - a. documentation of official designation of the consultant selection committee, evaluation criteria, scoring matrix and consultant ranking; and

PART IV- State Responsibilities

1. Responsibility of the State shall include, if appropriate, but not be limited to:
 - a. certification of the consultant selection procedures; and
 - b. receive, review, approve and process Sponsor's reimbursement requests for approved services and materials supplied in accordance with approved contracts, no more than once a month; and

PART V - Recitals

1. This Agreement is executed for the sole benefit of the contracting parties and is not intended or executed for the direct or incidental benefit of any third party. Furthermore, the State shall not be a party to any other contract or commitment which the Sponsor may enter or assume, or have entered or have assumed, regarding the above project.
2. This Agreement is subject to the applicable provisions of the V.T.C.A. Transportation Code, Title 3, Chapters 21-22, et seq., (Vernon and Vernon Supp.), and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Failure to comply with the terms of this Agreement or with the aforementioned rules and statutes shall be considered a breach of this contract and will allow the State to pursue the remedies for breach as stated below.
 - a. Of primary importance to the State is compliance with the terms and conditions of this Agreement. If, however, after all reasonable attempts to require compliance have failed, the State finds that Sponsor is unwilling and/or unable to comply with any of the terms and conditions of this Agreement, the State, may pursue any of the following remedies: (1) require a refund of any financial assistance money expended to the Agreement, (2) deny Sponsor's future requests for aid, (3) request the Attorney General to bring suit seeking reimbursement of any financial assistance money expended on the project pursuant to the Agreement herein, provided however, these remedies shall not limit the State's authority to enforce its rules, regulations or orders as otherwise provided by law, (4) declare this

Agreement null and void, or (5) any other remedy available at law or in equity.

- b. Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Agreement, or for enforcement of any of the provisions of this Agreement, is specifically set by Agreement of the parties in Travis County, Texas.
3. The State reserves the right to amend or withdraw this Agreement at any time prior to acceptance by the Sponsor. The acceptance period cannot be greater than 30 days after issuance unless extended by the State.
4. This Agreement constitutes the full and total understanding of the parties concerning their rights and responsibilities regarding this project and shall not be modified, amended, rescinded, or revoked unless such modification, amendment, rescission, or revocation is agreed to by both parties in writing and executed by both parties.
5. All commitments by the Sponsor and the State hereunder are subject to constitutional and statutory limitations and restrictions binding upon the Sponsor and the State (including Sections 5 and 7 of Article 11 of the Texas Constitution, if applicable) and to the availability of funds which lawfully may be applied.
6. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
7. Termination
This agreement may be terminated in the following manner:
 - ◆ by mutual written agreement and consent of both parties;
 - ◆ by either party upon the failure of the other party to fulfill the obligations set forth herein;
 - ◆ by the State if it determines that the performance of the Project is not in the best interest of the State.

If the contract is terminated in accordance with the above provisions, the Sponsor will be responsible for the payment of Project costs incurred by the State on behalf of the Sponsor up to the time of termination.

- A. In the event the State determines that additional funding is required by the Sponsor at any time during the development of the Project, the State will notify the Sponsor in writing. The Sponsor will make payment to the State within thirty (30) days from receipt of the State's written notification.

- B. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Sponsor, the State, or the Federal Government will be promptly paid by the owing party.
- C. In the event the Project is not completed, the State may seek reimbursement from the Sponsor of the expended funds. The Sponsor will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- D. The State will not pay interest on any funds provided by the Sponsor.
- E. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Sponsor in accordance with this Agreement.

All other terms and conditions of the agreement are unchanged and remain in full force and effect.

The above amendment to the Airport Development Agreement between City of San Antonio and the Texas Department of Transportation is mutually agreed to and accepted.

City of San Antonio, Texas
Sponsor

Sponsor Signature

Sponsor Title

Date

Execution by the State

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs and grants heretofore approved and authorized by the Texas Transportation Commission.

STATE OF TEXAS
TEXAS DEPARTMENT OF TRANSPORTATION

By: _____

Date: _____

CERTIFICATION OF AIRPORT FUND

The Sponsor does certify that the Airport Fund has been established for the Sponsor, and that all fees, charges, rents, and money from any source derived from airport operations will be deposited for the benefit of the Airport Fund and will not be diverted for other general revenue fund expenditures or any other special fund of the Sponsor and that all expenditures from the Fund will be solely for airport purposes. Such fund may be an account as part of another fund but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund.

City of San Antonio, Texas
(Sponsor)

Sponsor Signature

Sponsor Title

Date

ATTACHMENT B

Certification of State Single Audit Requirements

I, _____, do certify that the City of San Antonio will comply with all requirements of
(Designated Representative)

the State Single Audit Act if the city/county spends more than \$750,000 in any funding sources during this fiscal year. And in following those requirements the «SponsorName» will submit the report to the audit division of the Texas Department of Transportation. If your entity did not meet the threshold of \$750,000.00 in expenditures, please submit a letter indicating that your entity is not required to have an audit performed for FY ____.

Signature of Designated Representative

Title

Date