

April 11, 2019

Honorable Mayor and Members of Council  
Galveston, Texas

Dear Honorable Mayor and Members of Council,

**Subject:** Consider for approval, authorizing the City Manager to execute the 2019 Air Traffic Control Tower Operating Agreement (TOA) between the Federal Aviation Administration (FAA) and Scholes International Airport, upon final approval of the City Attorney.

## **I. Background**

- A. The FAA is renewing the TOA for each sponsor-owned FAA Contract Tower (FCT). This action is to ensure that the FAA stays in compliance with current FAA policies and directives, and to standardize and clarify the conditions under which the FAA will provide air traffic control services at sponsor-owned FCTs.
- B. The TOA outlines the requirements of both the FAA and the Airport Sponsor.
- C. The FAA agrees to fund the cost of the controllers, subject to the availability of funds, by contracting with a services provider of the FAA's choice. In this case, that service provider is Robinson Aviation (RVA), who has been providing this service since January 1, 2006.
- D. The Airport Sponsor agrees to provide, maintain and replace all non-FAA owned tower equipment, lighting controls, airfield lighting, and maintenance and upkeep of the tower facility.
- E. The most recent TOA was approved by City Council on December 14, 2017.

## **II. Current Situation**

- A. The Airport received a request, dated March 7, 2019, from the FAA requesting the City sign the new TOA no later than April 30, 2019.
- B. Without a new TOA in place, continued FAA funding for the staffing of the Air Traffic Controllers is in jeopardy.

## **III. Alternatives:**

- A. City Council approves authorizing the City Manager to execute the Air Traffic Control Tower Operating Agreement (TOA) between the Federal Aviation Administration (FAA) and Scholes International Airport.



- 1) **Benefit** – Approving this Agreement will ensure continued funding of the Controllers by the FAA.
- 2) **Cost** – Routine maintenance of the Control Tower is done using current budget line item accounts.

B. Do not approve the Request.

**IV. Recommendation:**

Staff recommends City Council approves authorizing the City Manager to execute the Air Traffic Control Tower Operating Agreement (TOA) between the Federal Aviation Administration (FAA) and Scholes International Airport, upon final approval of the City Attorney.

**V. Fiscal Impact Report:**

Requested by:	Mike Shahan, Airport Director
Funding Source:	N/A
Cost of Implementation	N/A
Estimated Cumulative Revenue:	N/A
Additional Information:	See attached Tower Operating Agreement

**Respectfully submitted,**



**Mike Shahan**  
**Airport Director**



**AIR TRAFFIC CONTROL TOWER OPERATIONS AGREEMENT BETWEEN**

**FEDERAL AVIATION ADMINISTRATION (FAA)**

**AND**

**CITY OF GALVESTON, TEXAS**

**I. PARTIES**

This Air Traffic Control Tower Operations Agreement (TOA) (hereinafter “Agreement”), is hereby made and entered into this \_\_\_\_\_ day of April, 2019 by and between the Federal Aviation Administration (“FAA”) and the City of Galveston, Texas (“Airport Sponsor”) (collectively known as the “Parties”).

**II. SCOPE**

The purpose of this Memorandum of Understanding (MOU) between the FAA and the Airport Sponsor is to set forth the terms under which the FAA will provide air traffic control (ATC) services to the Airport Sponsor at Scholes International Airport (“Airport”), located in Galveston, Texas. This Agreement replaces and supersedes any prior TOA signed by the parties.

**III. ROLES AND RESPONSIBILITIES OF THE PARTIES**

**A. Roles and responsibilities of the FAA.**

The FAA shall provide ATC services at the Airport, by way of a contractual agreement between the FAA and an air traffic control services provider of the FAA’s choice, in accordance with standards established by the FAA, subject to the availability of funds.

The tower hours of operation will be 6:00am to 6:00pm Daily.

The FAA reserves the right to adjust those hours in accordance with applicable FAA standards, regulations and policy.

The FAA/ATC contractor will collect hourly and daily traffic count data during tower operating hours.

The FAA will maintain all FAA-owned equipment installed in the tower.

The FAA will conduct annual occupational safety and health inspections, for any FCT that is an FAA employee’s duty station.

The FAA will conduct periodic security inspections based upon the criteria identified in FAA Order 1600.69, as may be amended. Relevant portions of the Order will be provided to Airport Sponsors. (A Signed Non-Disclosure Agreement (NDA) will be required to receive a copy of the Order.)

## **B. Roles and responsibilities of the Airport Sponsor.**

The Airport Sponsor shall provide and maintain, at no expense to the FAA, an Airport Traffic Control Tower (ATCT) that meets all applicable state and local codes, standards and regulations.

In the absence of applicable state and local codes, standards, and regulations, the Airport Sponsor shall provide and maintain, at no expense to the FAA, an Airport Traffic Control Tower (ATCT) that meets all applicable Federal codes, standards and regulations.

The Airport Sponsor shall provide, maintain, and replace, at no expense to the FAA, all non-FAA-owned tower equipment required by the Minimum Equipment and Facilities List (MEL).

The Airport Sponsor shall provide and continually maintain all utilities and services, including but not limited to: heating, air conditioning, electrical, water, gas and sewer. The Airport Sponsor shall maintain janitorial services (to include washing tower cab windows and shades, interior and exterior, when necessary).

The Airport Sponsor shall be responsible for the proper and continued functioning of all equipment that the FAA determines is necessary for ATC operations, including that which cannot be placed in operation or otherwise controlled from the ATCT building or that is not otherwise within the control of the FAA, its agents, representatives or contractors. Examples include, but are not limited to airport lighting, windsock, obstruction lights, rotating beacon, etc.

The Airport Sponsor is responsible for ensuring security and controlled access to the tower is established and maintained in accordance with FAA Order 1600.69, as may be amended. Relevant portions of the Order will be provided to Airport Sponsors. (A Signed NDA will be required to receive a copy of the Order.)

The Airport Sponsor agrees to enter into a Letter of Agreement (LOA) with the ATC service provider's local representative specifically for the purpose of providing an airport point of contact and procedures to follow to ensure a timely response to requests concerning equipment, security or building problems.

In accordance with FAA Order JO 7210.3, as revised, other Letters of Agreement may be necessary for topics such as airport emergency service, control of vehicular traffic on airport movement areas, operation of airport lighting, local procedures and reporting airport conditions. However, the terms and conditions set forth in this Agreement or the FAA Contract Tower (FCT) contract cannot be waived or superseded by such local agreements.

## **IV. BENEFIT/COST RATIOS CONSIDERATION**

Current procedures require FAA to recalculate benefit/cost ratios periodically to determine the percentage of funds for which the FAA and the airport are responsible. The FAA currently provides full funding for sites with a benefit/cost ratio of 1.0 or greater. Fully funded sites whose benefit/cost ratio decreases to less than 1.0 will be offered the opportunity to participate in the FCT Cost Share Program.

## **V. SUPPLEMENTAL HOURS**

If the Airport Sponsor requests ATC services outside of FAA approved tower hours of operation, the provision of such additional services shall be at the expense of the Airport Sponsor. These supplemental

hours of operation may be achieved through an agreement with the air traffic control services provider, supplemental agreement with the FAA, or by other authorized means.

## **VI. POINTS OF CONTACT**

### Airport Sponsor

Mike Shahan, Airport Director  
Scholes International Airport  
2115 Terminal Drive  
Galveston, Texas 77554  
409-797-3590  
[airport@galvestontx.gov](mailto:airport@galvestontx.gov)

### FCT Program Implementation Manager

Abraham Oommen  
FAA Contract Tower (FCT)  
Program Implementation Manager  
Central Service Area  
10101 Hillwood Parkway Room 3S-406  
Fort Worth, TX 76177  
817-222-4261  
[Abraham.oommen@faa.gov](mailto:Abraham.oommen@faa.gov)

### FCT Program Manager

Lisa Bush-Caudle  
FCT Program Manager  
Federal Aviation Administration  
600 Independence Ave., SW  
Washington, DC 20951

## **VII. CHANGES AND/OR MODIFICATIONS**

Changes and/or modifications to this Agreement shall be in writing and signed by both parties. The modification shall cite the subject Agreement, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

## **VIII. TERMINATION**

The Airport Sponsor agrees that notwithstanding any other provisions of this TOA, the FAA's ability to provide contract ATC service is contingent upon the appropriation of adequate funds. If adequate annual appropriations are not provided, the FAA may terminate this Agreement without penalty.

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least Ninety (90) days prior written notice of termination. Upon receipt of a notice of termination,

the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

#### **IX. TERM OF THE AGREEMENT**

This Agreement shall automatically renew annually on the effective date unless terminated by either of the parties in writing, as provided herein.

#### **X. DISPUTES**

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the Director of Operations- Headquarters (AJT-2) will resolve the dispute. The decision of the Director of Operations- Headquarters is not subject to further administrative review and, to the extent permitted by law, is final and binding.

#### **XI. INSURANCE**

The Airport Sponsor shall arrange by insurance or otherwise for the full protection of the Airport Sponsor from and against all liability to third parties arising out of, or related to, the performance of this Agreement to the extent permitted by law.

#### **XII. LIABILITY**

The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by the Airport Sponsor, its employees or contractors, or any third party acting on its behalf. The Airport Sponsor agrees to hold the FAA harmless against any claim by third persons for injury, death, or property damage arising out of or in connection with the Airport Sponsor's performance under this Agreement.

#### **XIII. LEGAL AUTHORITY**

This "other transaction" MOU is entered into under the authority of 49 U.S.C. §§ 106 (f)(2)(A) and 106(l) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary. This MOU is not a Memorandum of Agreement, procurement contract, grant or cooperative agreement. Nothing in this Agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

#### **XIV. CIVIL RIGHTS ACT**

The Airport Sponsor shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in federally assisted programs and, if requested, provide a certification to that effect.

#### **XV. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this MOU.

#### **XVI. FUNDING**

No funds are obligated under this MOU. Each party shall bear the full cost it incurs in performing, managing, and administering its responsibilities under this MOU.

**XVII. CONSTRUCTION**

Parties agree to exercise good faith in achieving the goals of this MOU; this means that the Government will adopt and perform the above delineated roles and responsibilities and will provide air traffic control services for the above designated airport sponsor at the designated location. The Airport Sponsor also agrees to adopt and perform the above delineated roles and responsibilities. Neither party is authorized or empowered to act on behalf of the other with regard to any matter, and neither party shall be bound by the acts or conduct of the other in connection with any activity under this MOU. This provision shall survive termination of this MOU. The undersigned TOA holder affirms that this MOU is entered knowingly and voluntarily.

The FAA reserves the right to withdraw FAA funding for ATC services from Airport Sponsors that do not comply with the terms of this agreement.

AGREED:

Airport Sponsor

Federal Aviation Administration

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_