

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
OAG Aviation Worldwide LLC
For
Provision of Commercial Flight Data**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and OAG Aviation Worldwide LLC ("Contractor"), having offices at 55 Chapel Street, Suite 103, Newton, MA 02458.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Paul Lewis, Phone: (617) 202-0463, Email Address: PLewis@flightview.com. The City's Contract Manager for the engagement shall be Phillip Bays, Phone: (512) 530-2638, Email Address: Phillip.Bays@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

City is engaging with Contractor on behalf of City's Aviation Department (Aviation) to purchase direct flight data compilations. Contractor receives the information for these compilations chiefly from airlines, with some data being provided by aviation software and travel technology firms. Data is obtained by Contractor via File Transfer Protocol (FTP), e-mail and other means, then formatted and transmitted to Aviation. This data will be used by Aviation to more effectively plan and organize its operations, such as cargo/baggage handling, security, maintenance scheduling, gate management and traffic control.

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:

2.2.1 Provide to Aviation, via e-mail to City's Contract Manager on the first business day of each calendar month, a report showing direct flight data for all flights arriving at and departing from Austin Bergstrom International Airport (ABIA) for the next six (6) calendar months.

2.2.2 Format report provided to Aviation as an Excel spreadsheet, capturing the data as described in Exhibit C.

2.3 Contractor may be required to modify the format of the monthly report provided to Aviation due to changes in laws, rules or regulations. If such changes occur, Contractor shall notify City promptly of revisions to Contractor's reporting format.

2.4 If Contractor's report to Aviation contains any serious errors or omissions due to Contractor's fault, Contractor shall correct, reproduce and deliver to City a replacement report at no cost to City.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$24,000.00 for all fees and expenses (refer to Exhibit B).

3.2 **Economic Price Adjustment.**

3.2.1. **Price Adjustments.** Prices shown in this Contract shall remain firm for the first twelve (12) months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the contract effective date and the most recent, non-preliminary data at the time the price adjustment is requested. In no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line item made pursuant to this provision. Prices for product or services unaffected by verifiable cost trends shall not be subject to adjustment.

3.2.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary of the contract effective date and remain in effect until contract expiration unless changed by subsequent amendment.

3.2.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

3.2.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).

3.2.4.1.2 **Base Price.** Initial price quoted, proposed and/or contracted per unit of measure.

3.2.4.1.3 **Adjusted Price.** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.

3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.

3.2.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

3.2.4.2.2 If the referenced index is no longer available shift up to the next higher category index.

3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Data processing and related services	
Series ID: PCU5182105182104	
X Not Seasonally Adjusted	Seasonally Adjusted
Geographical Area: United States	
Description of Series ID: Data management and storage, information transformation and other services	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

3.2.5 **Calculation.** Price adjustment will be calculated as follows:

3.2.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on contract effective date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

3.2.6 If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

3.3 **Invoices.**

3.3.1 **Invoices shall be monthly, and shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Aviation
Attn:	Accounts Payable

Address	P. O. Box 1088
City, State, Zip Code	Austin, TX 78767

3.3.2 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.3.3 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 **Payment.**

3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.4.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.4.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- 3.4.3.1 delivery of defective or non-conforming deliverables by the Contractor;
- 3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- 3.4.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- 3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- 3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 3.4.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
- 3.4.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.5 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 **Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for a term of forty-eight (48) months.

4.1.1 Upon expiration of the contract term, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 This is a forty-eight (48) month Contract. Prices are firm for the first twelve (12) months.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 Equal Opportunity.

5.1.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit A. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.2 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.3 Delays.

5.3.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.3.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.4 Ownership And Use Of Deliverables.

5.4.1 **Ownership.** The data or information contained within the Custom Schedules files provided by the Contractor as described in Section 2 of the Contract (the "Data") is licensed, not sold. As between the parties, the Contractor owns all right, title and interest in and to the Data. The City acknowledges that certain aspects of the Data, including but not limited to the databases, programs, protocols and displays (as well as the selection, arrangement and sequencing of the contents thereof), are proprietary and unique to the Contractor, as to which copyright, patent or other proprietary rights may be held by the Contractor or third parties from whom the Contractor has licensed or otherwise acquired such rights. The City agrees to comply with all

copyright, trademark, trade secret, patent and other laws necessary to protect the Contractor's (or its licensors') rights in such proprietary information, and agrees not to remove or conceal any copyright or similar notices from the Data or other material supplied by the Contractor.

5.4.2 **Grant of License; Restrictions on Use.** Contractor grants the City a non-exclusive, non-transferable, revocable, worldwide license for the City's Aviation Department to use the Data for the term specified in Section 4.1 solely for the purpose set forth in Section 2 (the "Permitted Purpose"). The City shall ensure that the Data (including extractions or compilations thereof) may only be accessed and used by authorized users in accordance with the Permitted Purpose. Except as expressly allowed in writing by the Contractor, the Data (including extractions or compilations thereof) may not be copied or reproduced (except for internal back-up purposes), used, amended, modified, reverse engineered (unless applicable law prohibits such restriction), distributed, sold, sublicensed, transmitted or broadcast in any form without the prior written permission of the Contractor. Except as necessary to achieve the Permitted Purpose, the City shall not permit any user of the Data to download, extract, copy or otherwise reproduce all or any substantial part of the Data and place such Data into a secondary database, including, without limitation, caching of the Data. **Notwithstanding anything to the contrary in this Contract, upon expiration of this Contract the City may retain and continue to use the Data so long as it complies with the confidentiality and use restrictions under this Contract. For the avoidance of doubt, the City acknowledges that, notwithstanding anything to the contrary in this Contract, the Contractor shall have no liability to the City or any third party for any reason whatsoever under any legal or equitable theory with respect to the Data beyond the expiration date; such use of the Data is solely at the City's risk.**

5.5 **Rights to Proposal and Contractual Material.** All material (other than the Data) submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.6 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.2 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.2.1 disposal of major assets;

7.2.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.2.3 any significant termination or addition of provider contracts;

7.2.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.2.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.2.6 reorganization, reduction and/or relocation in key personnel;

7.2.7 known or anticipated sale, merger, or acquisition;

7.2.8 known, planned or anticipated stock sales;

7.2.9 any litigation against the Contractor; or

7.2.10 significant change in market share or product focus.

7.3 **Right To Audit.**

7.3.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.3.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.4 **Indemnity.**

7.4.1 Definitions:

7.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.4.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.4.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.4.3 **Limitation of Liability.** Except in the case of gross negligence, willful or intentional acts, or the abandonment of the agreement, the Contractor will have no liability to the City for any indirect, punitive, consequential or special damages or losses. Except for the Contractor's indemnification obligations, the Contractor's maximum total aggregate liability per occurrence under this Contract will not exceed the total aggregate charges that the City has paid to the Contractor for the Data during the twelve (12) months prior to the damage alleged to have been caused.

7.5 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.6 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:	To the Contractor:
City of Austin, Purchasing Office	OAG Aviation Worldwide LLC
ATTN: Roger Stricklin, Corporate Contract Administrator	ATTN: Legal Counsel
P O Box 1088	55 Chapel Street, Ste. 103
Austin, TX 78767	Newton, MA 02458

7.7 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.8 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.9 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.10 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.11 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the

performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.12 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.13 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.14 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.15 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.16 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.17 **Dispute Resolution.**

7.17.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.17.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator

within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.18 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.18.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.18.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.18.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.19 **Subcontractors.**

7.19.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.19.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.19.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.19.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.19.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable

the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.19.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.19.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.19.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.19.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.20 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.21 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.22 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.23 Survivability of Obligations. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.24 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.25 Incorporation of Documents. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

OAG AVIATION WORLDWIDE LLC

By: [Signature]
Signature

Name: Mark Mattio
Printed Name

Title: Head of Sales, North America

Date: 10/1/15

CITY OF AUSTIN

By: [Signature]
Signature

Name: Sai Purcell
Printed Name

Title: Senior Buyer Specialist

Date: 10/6/15

List of Exhibits

- Exhibit A Non Discrimination Certification, Section 0800
- Exhibit B OAG Aviation Worldwide LLC Proposal dated 05/28/15 (“Contractor’s Proposal”)
- Exhibit C Data Elements/Format for Reporting

EXHIBIT A
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 1 day of October, 2015

CONTRACTOR

Authorized
Signature

Title

OAG Aviation
Mark Matto
[Signature]
Head of Sales, NA

Exhibit B



Data
Essential information
you can trust

Insight
Advanced intelligence
to drive your business

Solutions
Expert knowledge for
smarter decisions

Cargo
Business critical
cargo data solutions

Traveler
Accurate global travel
planning tools

May 28 2015

Phillip Bays
Austin Bergstrom International Airport
3600 Presidential Blvd
Austin TX 78719

Phillip,

OAG is pleased to provide Austin Bergstrom International Airport with pricing
OAG Schedules File Delivery.

OAG Schedules XLS/CSV File Delivery

Four Year Agreement as defined below:

Term	Monthly Cost	Yearly Cost
Year 1	\$500	\$6000
Year 2	\$500	\$6000
Year 3	\$500	\$6000
Year 4	\$500	\$6000
	Total Cost	\$24,000

Please contact me with any questions. I look forward to hearing from you.

Best Regards,

Pablo Lopez
Sales Manager, Airport and Airport Services
630-515-2042 W
630-965-0320 C

3025 Highland Parkway, Suite 200,
Downers Grove, Illinois, 60515-5561, USA
t: +1 (630) 515 5300

OAG is a brand of UOM Aviation Worldwide LLC



Exhibit C

Column Number	Field Name	Field Description	Code Defined by
1	Carrier1	Carrier code (3 byte ending in 'O' if controlled duplicate cargo carrier)	IATA (e.g. AA)
2	FlightNo1	4 figure flight number) right justified)	(e.g. 123)
3		Blank	
4	SpecificAcft	Specific aircraft type for departure aircraft	IATA (e.g. 74R)
5	ArrDaysOfOp1	Local days of operations at arrival airport (AUS)	(e.g. 1)
6	ArrDaysOfOp 2	Local days of operations at arrival airport (AUS)	(e.g. 2)
7	ArrDaysOfOp 3	Local days of operations at arrival airport (AUS)	(e.g. 3)
8	ArrDaysOfOp 4	Local days of operations at arrival airport (AUS)	(e.g. 4)
9	ArrDaysOfOp 5	Local days of operations at arrival airport (AUS)	(e.g. 5)
10	ArrDaysOfOp 6	Local days of operations at arrival airport (AUS)	(e.g. 6)
11	ArrDaysOfOp 7	Local days of operations at arrival airport (AUS)	(e.g. 7)
12	LocalArrTime	Local Arrival time – 24 hour (AUS)	(e.g. 1030)
13		Blank	
14	DepAirport	Departure airport code (PREVIOUS CITY)	IATA (e.g. JFK)
15		Blank	
16	EffFrom	Local effective from date of departure (appears according to local windows settings) (AUS date)*	(e.g. DD/MM/YY)
17	EffTo	Local date effective to date of departure (appears according to local windows settings)(AUS date)*	(e.g. DD/MM/YY)
18		Blank	
19		Blank	
20	Service	Type of service of departure aircraft (e.g. J=Passenger, A=Combi, F=Pure Cargo, U=Surface Transport, etc.)	IATA (e.g. J)

The above is for flights arriving to AUS (AUS is the identifier for ABIA).

**EffFrom and EffTo need to be based on Arrival date at AUS*

Exhibit C

Column Number	Field Name	Field Description	Code Defined by
1	Carrier1	Carrier code (3 byte ending in 'O' if controlled duplicate cargo carrier)	IATA (e.g. AA)
2		Blank	
3	FlightNo1	4 figure flight number) right justified)	(e.g. 123)
4	SpecificAcft	Specific aircraft type for departure aircraft	IATA (e.g. 74R)
5	LocalDaysOfOp1	Local days of operation at departure airport (Monday) (AUS)	(e.g. 1)
6	LocalDaysOfOp2	Local days of operation at departure airport (Tuesday) (AUS)	(e.g. 2)
7	LocalDaysOfOp3	Local days of operation at departure airport (Wednesday) (AUS)	(e.g. 3)
8	LocalDaysOfOp4	Local days of operation at departure airport (Thursday) (AUS)	(e.g. 4)
9	LocalDaysOfOp5	Local days of operation at departure airport (Friday) (AUS)	(e.g. 5)
10	LocalDaysOfOp6	Local days of operation at departure airport (Saturday) (AUS)	(e.g. 6)
11	LocalDaysOfOp7	Local days of operation at departure airport (Sunday) (AUS)	(e.g. 7)
12		Blank	
13	LocalDepTime	Local departure time – 24 hour (AUS)	(e.g. 2045)
14		Blank	
15	ArrAirport	Arrival airport code (DESTINATION)	IATA (e.g. LHR)
16	EffFrom	Local effective from date of departure (appears according to local windows settings) (AUS date)	(e.g. DD/MM/YY)
17	EffTo	Local date effective to date of departure (appears according to local windows settings) (AUS date)	(e.g. DD/MM/YY)
18		Blank	
19		Blank	
20	Service	Type of service of departure aircraft (e.g. J=Passenger, A=Combi, F=Pure Cargo, U=Surface Transport, etc.)	IATA (e.g. J)

The above is for flights departing AUS (AUS is the identifier for ABIA).

Arrivals and Departures, although on separate lines, should be included in one Excel spreadsheet, sorted by Airline and sequenced by date/time at ABIA.



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 05/28/2015 DEPT: Aviation
TO: Purchasing Officer or Designee FROM: Phillip Bays
BUYER: PHONE: (512) 530-2638

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- a procurement necessary to preserve or protect the public health or safety of municipality's residents
- a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- a procurement for personal, professional, or planning services
- a procurement for work that is performed and paid for by the day as the work progresses
- a purchase of land or right-of-way
- a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- a purchase of rare books, papers, and other library materials for a public library
- paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- services performed by blind or severely disabled persons
- goods purchased by a municipality for subsequent retail sale by the municipality
- electricity
- advertising, other than legal notices
- Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

The OAG Data Suite is sold only by OAG and is not sold by any third party resellers. OAG is the only company authorized to sell the OAG Data Suite.

To OAG's knowledge, no other single company provides both aggregated flight status and schedule data and the combination of schedules, capacity, traffic, connections, and DOT data analytical Data.

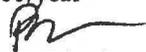
4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

No other company in the world has a wider range of commercial aviation data than OAG. They have been collecting schedules data since 1929. There are other companies that can provide flight status information but not flight schedule data.

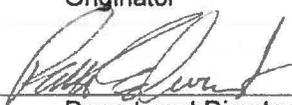
6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with OAG Aviation WorldWide LLC. which will cost approximately \$ 24,000.00 (Provide estimate and/or breakdown of cost).

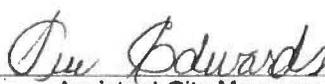
Year 1	\$500/month	\$6000/year	Year 2	\$500/month	\$6000/year
Year 3	\$500/month	\$6000/year	Year 4	\$500/month	\$6000/year

Recommended
Certification

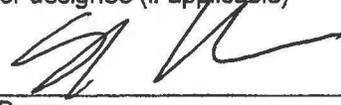
 _____ 5/29/15
Originator Date

Approved
Certification

 _____ 5/29/15
Department Director or designee Date

 _____ 6/30/15
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

 _____ 10/6/15 _____
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

_____ Date
Purchasing Officer or designee

02/26/2013



Data
Essential information
you can trust

Insight
Advanced intelligence
to drive your business

Solutions
Expert knowledge for
smarter decisions

Cargo
Business critical
cargo data solutions

Traveler
Accurate global travel
planning tools

May 26, 2015

Phillip Bays
Austin Bergstrom International Airport
3600 Presidential Blvd
Austin, TX 78719

Hello Phillip,

OAG Aviation Worldwide LLC provides valuable aviation information and is uniquely capable of providing any combination of schedules, capacity, traffic, and DOT data. The OAG Data Suite is sold only by OAG employees and is not sold by any third party resellers. OAG is the only company authorized to sell the OAG Data Suite.

No other company in the world has a wider range of commercial aviation data than OAG. We have been collecting schedules data since 1929. To our knowledge, no other single company provides both aggregated flight status and schedule data and the combination of schedules, capacity, traffic, connections, and DOT data analytical Data.

Please let me know if you have any questions. We appreciate your continued business.

Sincerely,

Mark Mattio

North America
OAG Aviation WorldWide LLC.

3025 Highland Parkway, Suite 200,
Downers Grove, Illinois, 60515-5561, USA
t: +1 (630) 515 5300

oag.com



Absolute Aviation Advantage

Data
Essential information
you can trust

Insight
Advanced intelligence
to drive your business

Solutions
Expert knowledge for
smarter decisions

Cargo
Business critical
cargo data solutions

Traveler
Accurate global travel
planning tools

May 28 2015

Phillip Bays
Austin Bergstrom International Airport
3600 Presidential Blvd
Austin TX 78719

Phillip,

OAG is pleased to provide Austin Bergstrom International Airport with pricing
OAG Schedules File Delivery.

OAG Schedules XLS/CSV File Delivery

Four Year Agreement as defined below:

Term	Monthly Cost	Yearly Cost
Year 1	\$500	\$6000
Year 2	\$500	\$6000
Year 3	\$500	\$6000
Year 4	\$500	\$6000
Total Cost		\$24,000

Please contact me with any questions. I look forward to hearing from you.

Best Regards,

Pablo Lopez
Sales Manager, Airport and Airport Services
630-515-2042 W
630-965-0320 C

3025 Highland Parkway, Suite 200,
Downers Grove, Illinois, 60515-5561, USA
t: +1 (630) 515 5300

OAG is a brand of USM Aviation Worldwide LLC

oag.com





DATA PRODUCTS ORDER FORM

OAG Aviation Worldwide LLC ("OAG"), 3025 Highland Parkway, Suite 200, Downers Grove, Illinois 60515

Customer Name:	Austin Bergstrom International Airport
Billing Contact:	Phillip Bays
Billing Address:	3600 Presidential Blvd Suite 411 Austin TX 78719
Ship to Address:	3600 Presidential Blvd Suite 411 Austin TX 78719
Customer Technical Contact:	Phillip Bays

1. Data Type, Format, Delivery Method, Frequency of Delivery, Price Per Delivery

OAG Data Type	Format	Delivery Method	Frequency of Delivery	Price Per Delivery (USD)
SSIM Data				
MCT Data				
Locations Data				
Daylight Savings Time (DST) Data				
Worldwide Direct Flight Data	XLS	EMAIL/FTP	MONTHLY	\$500.00

Changes to the frequency of data delivery may be made at any time upon prior written notice from Customer to OAG and will be at OAG's then-current price.

2. Permitted Purpose (Please Initial All Applicable Permitted Purposes)

- Customer may use the data solely for Customer's internal business purposes.
- Customer may use the data solely to: (i) allow its travel agent and corporate travel department customers access to the data resident on a Customer-owned or controlled computer system via remote terminals ("Customer System") for purposes of providing ticket booking and schedules quotations services per the requests of specific airline passenger customers or prospects via remote terminals; and (ii) allow e-travel portal customers access to the data resident on a Customer System for purposes of providing on-line schedules quotations and ticketing booking services per the on-line requests of specific passengers or prospects; and (iii) allow use by the Customer's own internal passenger reservation departments for the express purposes of providing ticket booking for and schedules quotations to specific airline passenger customers and prospects.
- Customer may use the data solely: (i) for internal use; and (ii) as a value-added part of analyses and reports that Customer performs for and provides to its clients or customers for the internal use of such clients or customers.
- Customer may allow its contracted service providers to use the data solely on behalf of Customer in furtherance of the above-initialed permitted purpose(s) provided that Customer: (i) shall obtain such service providers' agreement to be bound by the restrictions regarding non-disclosure and use of the data that is consistent with the terms and conditions of this order; (ii) shall be responsible for the compliance by such service providers with such terms and conditions; and (iii) shall immediately notify OAG should Customer become aware of any unauthorized use of the data by such service providers.
- Customer may use the data in accordance with the permitted purpose(s) specified in Attachment 1, attached hereto.

3. Services

OAG will provide the data files specified in Section 1 above in the format and frequency listed. OAG may change the format, at its sole discretion, in response to any IATA or governmental agency requirements, regulations, or laws. OAG will use its reasonable efforts to provide Customer with prior notice of any such change.

4. Payment

- 4.1. All charges are payable in United States dollars, clear of all setoffs and deductions, within thirty (30) days from the date of invoice, at such location as OAG shall designate. Notwithstanding anything contained herein to the contrary, OAG may increase prices for any renewal term, upon at least sixty (60) days written notice prior to the beginning of the renewal term, by the average annual percentage increase, if any, in the Consumer Price Index; All Urban Consumers, All Items, 1982-84=100 ("CPI") as published by the Bureau of Labor Statistics of the United States Department of Labor (or, if the CPI is no longer published, by what OAG deems to be, in OAG's sole discretion, comparable inflationary increases published by the United States Government) for the twelve (12) month period immediately preceding the month in which the renewal term commences. In addition to the charges due under this order, Customer shall pay or reimburse OAG for amounts equal to any previously unpaid taxes and tariffs resulting from this order, including any sales or use taxes, local privilege or excise tax, tariff, duty, property tax, or assessment (excluding taxes based on OAG's net income) and related interest and penalties.
- 4.2. Invoices not paid in full within thirty (30) days of the date of invoice are past due. OAG may charge a late payment fee equal to the lesser of one and one half percent (1 ½ %) per month or the maximum permitted by applicable law on any unpaid amount for each calendar month or fraction thereof that payment is overdue.
- 4.3. If Customer files or has filed against it a petition in bankruptcy, receivership or insolvency of any kind, then Customer shall either prepay OAG's monthly or yearly charges or shall immediately deposit with OAG an amount equal to all amounts due under this order to be held in escrow against any amount due and owing. If Customer fails to pay OAG for any reason, Customer agrees to, and OAG shall, offset the escrow against any amounts due and owing.

5. Restrictions on Use; Grant of License; Confidentiality

- 5.1. OAG owns all right, title and interest in and to the data. Any copyright and/or database right in and to any and all extractions and compilations of the data provided by OAG to Customer, in whatever form they exist, vest solely in OAG. Except as expressly allowed in writing by OAG, the data (including extractions or compilations thereof) may not be reproduced (except for internal back-up purposes), used, distributed, displayed, transmitted or broadcast in any form (including, without limitation, print media, electronic or digital format) without the prior written permission of OAG. Customer shall not remove any copyright or similar notices from the data or other material supplied by OAG.
- 5.2. OAG grants Customer a non-exclusive, non-transferable, worldwide license to use the data solely for the Permitted Purpose set forth in Section 2 above. Customer shall ensure that the data (including extractions or compilations thereof) may only be accessed and used by its authorized users in accordance with the Permitted Purpose.
- 5.3. Customer shall promptly notify OAG if Customer becomes aware of any unauthorized use or copying of any data by any third party.
- 5.4. This order, including the charges, and all information as to the business methods or operations of OAG acquired or learned by Customer, shall be treated as strictly confidential by Customer and Customer shall ensure that the same are treated as confidential by its employees and agents.

6. Term and Termination

- 6.1. This order shall be effective on the date that this order is signed by Customer subject to acceptance of this order by OAG and shall continue in full force and effect for a period of forty-eight (48) months. Either party may terminate this order by notifying the other party of its desire to terminate thirty (90) days before the end of a term.
- 6.2. Either party may suspend performance of, or terminate, this order if the other party breaches any material term hereof and such breach is not remedied within thirty (30) days (fourteen (14) days in the case of non-payment of any sum due to OAG) after written notice to the breaching party.
- 6.3. Either party may, at its option and without prior notice, terminate this order effective immediately, should the other party file or have filed against it a petition in bankruptcy, receivership or insolvency of any kind.

7. Replacement or Correction of Data File

Except as provided below, OAG accepts no liability for any errors or omissions that may exist in the data. If there are serious errors or omissions in the data due to the fault of OAG, OAG will correct, re-produce and deliver a replacement data file at no additional cost to Customer. In such case OAG shall have no further liability to Customer in connection with such errors or omissions. Customer assumes all risk for using, and for any results it obtains, or liability it incurs, by or as a result of using the data.

8. Limitation on Liability and Indemnification

- 8.1. IN NO EVENT SHALL OAG HAVE ANY LIABILITY TO CUSTOMER FOR ANY DIRECT, INDIRECT, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES OR LOSSES SUFFERED BY THE CUSTOMER, INCLUDING ANY LOSS OF BUSINESS, CONTRACTS, PROFIT, OPPORTUNITY, ANTICIPATED SAVINGS OR LOSS OF GOODWILL, EVEN IF OAG HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD OAG HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES OR LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES) ARISING OUT OF THE USE OF DATA PROVIDED UNDER THIS ORDER.
- 8.2. OAG MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICES OR DATA WILL MEET THE REQUIREMENTS OF CUSTOMER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, OAG MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, IN LAW OR IN FACT, ORAL OR IN WRITING, WITH RESPECT TO THE DATA PROVIDED AND/OR SERVICES

PERFORMED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, ADEQUACY OR COMPLETENESS.

8.3. OAG's maximum total aggregate liability under or in connection with this order will not exceed the total aggregate charges Customer has paid to OAG for the data during the twelve (12) months prior to the damage alleged to have been caused.

9. Notices

All notices shall be given to the addresses set forth on this order. If delivered by private express delivery service, notice shall be deemed conclusively made upon delivery by such service. If delivered by mail, notice shall be deemed conclusively made ten (10) days after deposit thereof in the mail. Notices to OAG shall be sent to: Legal Counsel.

10. Force Majeure

Neither party shall be liable for any delay in performing or failure to perform any obligation under this order (save for a payment obligation), to the extent that the delay or failure results from events or circumstances outside its reasonable control, including but not limited to, war, riot, civil commotion, strike, lockout or any other industrial action, act of God, storm, fire, earthquake, flood, disruption of communication systems, disruption of data feeds, electrical failure or action of government or revocation of any telecommunications authority consent. If any such event occurs then the periods in which the parties are required to perform their obligations hereunder shall be extended by the period of the duration of any such event and the party prevented from performing its obligations hereunder shall as soon as practicable give notice to the other of the occurrence of such event and of its cessation. Notwithstanding the foregoing, in the event of a delay exceeding six (6) months, either party may terminate this order on written notice to the other party.

11. Assignment

11.1. These terms shall be binding upon, and shall inure to the benefit of the parties and their permitted successors and assignees, and references in these terms to a party shall include its permitted successors and assignees.

11.2. This order and the rights and obligations under it are not assignable by Customer without the prior written approval of OAG (and any such attempted assignment shall be deemed null and void).

12. Governing Law

This order shall be governed by, and construed in accordance with, the laws of the State of Illinois of the United States of America, without reference to the principles of conflict or choice of laws thereof. Each party, as a condition of entering into this order, hereby submits to the jurisdiction of and venue within the state and federal courts of the State of Illinois.

13. General

13.1. This order supersedes all prior agreements, arrangements and understandings between the parties, whether written or oral, in respect of its subject matter and constitutes the entire agreement and understanding between the parties relating to the subject matter of this order. These terms may only be modified, amended or waived by a written document signed by authorized representatives of each party.

13.2. Any terms and conditions contained in a Customer purchase order or in any other document submitted by Customer which are additional to or inconsistent with the terms and conditions of this order are null and void.

13.3. Nothing in these terms shall constitute or be deemed to constitute either party as agent or partner of the other for any purpose whatsoever.

13.4. If any one or more provisions of this order is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable, and the other provisions of this order will remain in full force and effect.

13.5. A failure or delay of either party to enforce a provision of this order or a previous waiver or forbearance by either party shall not be construed as a continuing waiver of any provision of this order.

13.6. Notwithstanding termination or expiration of this order, the terms of Sections 4, 7, 8, 9, 12 and 13 and Paragraphs 5.1 and 5.4 shall survive termination or expiration and remain in full force and effect.

AS WITNESS the duly authorized representatives of the parties.

Signed by, for and on behalf of:

Austin Bergstrom International Airport

Signature: _____

Print Name: _____

Title: _____

Date: _____

Signed by, for and on behalf of:

OAG Aviation Worldwide LLC

Signature: _____

Print Name: _____

Title: _____

Date: _____