



Request for Council Action

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Travis Block, Public Works Director
MEETING DATE: October 23, 2018
SUBJECT: Approve First Addendum to Airport Management and Operating Agreement

Background:

The City has a Management and Operating Agreement with Fixed Based Operator (FBO) Quality Aviation Inc. The agreement contains the terms and conditions necessary to operate the Airport. Under the agreement, the City is to provide the FBO with the premises in which to operate. The premises, also known as the Arrival/Departure Building, was destroyed by the storm on September 20, 2018.

Since the time of the storm, the FBO has relocated to an undamaged hangar on the west side of the airfield. The FBO will continue to rent hangar space until the time the City owned building can be replaced. Staff is recommending compensating the FBO up to \$5,000.00 per month, as a result of having to rent hangar space, as outlined in the first addendum. Funding is expected to be covered under the City's insurance policy. Any amount not covered will be pursued through Minnesota Department of Transportation (MnDOT) disaster funding.

Recommendation:

Approve First Addendum to Airport Management and Operating Agreement

Attachments:

- First Addendum

FIRST ADDENDUM TO AIRPORT MANAGEMENT AND OPERATING AGREEMENT (FBO)

The first addendum to the Management and Operating Agreement (Agreement) entered into this 23rd day of October, 2018, by and between the City of Faribault, Minnesota (CITY), and Quality Aviation, Inc., a corporation under the laws of the State of Minnesota with authority to do business in the State of Minnesota (FBO).

Recitals

WHEREAS, the parties hereto entered into an Airport Management and Operating Agreement (the “Agreement”) on October 28, 2014, a copy of which is depicted on Exhibit A, attached hereto and;

WHEREAS, the Agreement included, among other items, several provisions related to the premises, to be provided by the CITY, and;

WHEREAS, the parties hereto wish to enter into an addendum to the Agreement to include additional compensation for the premises not included in the Agreement.

NOW, THEREFORE, it is hereby agreed by the CITY and FBO as follows:

1. Article VI of the Agreement related to Payments shall be replaced with the language as follows:

ARTICLE VI – PAYMENTS

- A. Fee. The CITY agrees to pay the FBO in accordance with the following fee schedule for operation and management of the premises described in Article II and Article III.

<u>Year</u>	<u>Fee</u>
2015 – 2019	\$17,000

The CITY agrees to pay the FBO up to \$5,000.00 monthly as compensation for the absences of the premises described in Article II. Compensation shall begin upon execution of the first addendum and continue until the premises described in Article II is restored.

- B. Payment. The management fee specified above shall be paid monthly in advance, the first payment to be made on January 15th of this Agreement and like payments to be made on or before the first day of each month thereafter during the term of this Agreement.

The first payment of compensation for premises shall be made upon execution of the first addendum and like payments to be made on or before the first day of each month thereafter until the premises is restored.

This first addendum shall not take effect until it has been approved by the City Council of the City of Faribault.

CITY OF FARIBAULT

By: _____
Kevin F. Voracek, Mayor

ATTEST:

Timothy C. Murray, City Administrator

QUALITY AVIATION, INC.

Gerald L. Serres
Airport FBO/Manager

EXHIBIT A

AIRPORT MANAGEMENT AND OPERATING AGREEMENT (FBO)

This Management and Operating Agreement (Agreement) entered into this 28th day of October, 2014, by and between the City of Faribault, Minnesota (CITY), and Quality Aviation, Inc., a corporation under the laws of the State of Minnesota with authority to do business in the State of Minnesota (FBO).

WITNESSETH:

WHEREAS, the CITY now owns, controls, and operates the Faribault Municipal Airport in the City of Faribault, County of Rice, State of Minnesota, and;

WHEREAS, fixed base operation services are essential to the proper accommodation of general and commercial aviation at the Airport, and;

WHEREAS, the CITY desires to make such services available at the Airport and the FBO is qualified, ready, willing, and able to provide such services.

NOW, THEREFORE, in consideration of the premised and mutual covenants contained in this Agreement, the parties hereby agree as follows:

ARTICLE I – TERM

The term of the Agreement shall be for a period of five (5) years, commencing on January 1, 2015 and continuing through December 31, 2019. This agreement may be renewed for an additional five (5) years by mutual agreement of the parties, at which time compensation will be reviewed.

ARTICLE II – PREMISES

The CITY hereby provides to the FBO, the following premises, identified and shown on Exhibit A, together with the right of ingress and egress for both vehicles and aircraft:

- A. Real Property as follows: Non-agricultural land area on Airport, south of MnTH21 and west of I-35.

B. Improvement on said real property as follows:

1. A/D Building and Maintenance Hangar
2. Hangar #4 Building 4 (FBO shall pay rent as established by City)
3. Ramp and Apron Area – Approximately 100,000 sq. ft.
4. Office area in main terminal building.

C. Fuel Storage Area: Storage tanks for at least 10,000 gallons aviation gasoline and 10,000 jet fuel, and 5,000 gallons of automobile gas storage.

ARTICLE III – RIGHTS AND OBLIGATIONS OF FBO

A. Required Services. The FBO agrees and is hereby granted the non-exclusive privilege to engage in the business of providing full and complete fixed base operation services at the Airport. Basic services, as described in 1, 2, and 3 below, shall typically be provided based on the following hours with flexibility of operating hours as approved by the Airport Advisory Board as needed:

From May 15 through September 15 – Monday – Saturday, 8:00 a.m. to 8:00 p.m.; Sunday, 8:00 a.m. to 5:00 p.m.

From September 16 through May 14 – Monday – Saturday, 8:00 a.m. to 5:00 p.m.; Sunday 8:00 a.m. to 4:00 p.m.

It is agreed that the business may close for the following holidays: January 1, Easter Sunday, Thanksgiving Day, December 25.

The repair and maintenance service described in 4 below shall be provided 8:00 a.m. to 5:00 p.m., Monday through Friday, year round. It is understood that the FBO shall have the authority to vary hours of operations based on weather conditions and other circumstances when airport use is not possible or highly unlikely.

All services shall be provided as requested or required basis twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year, including those listed below.

1. Ramp service, including sale and into-plane delivery of aviation fuels, lubricants, and other related aviation products.
2. Apron servicing of, and assistance to, aircraft, including itinerant parking, storage and tie-down service.
3. Customary accommodations for the convenience of users, including pilot lounge area, informational services and telephone service connections to the Flight Service Station as may be requested by the City.

4. Repair and maintenance of based and transient aircraft. FBO agrees to maintain and operate a repair shop employing one or more FAA certified authorized inspectors and Airframe and Power plant mechanics. The employee shall be based at Faribault with approximately 90% of time spent on location. FBO acknowledges that no right or privilege has been granted that would prevent any person, firm, or corporation operating aircraft on the Airport from performing service on its own aircraft, with its own qualified employees, including maintenance and repair services.
5. Flight training and instruction.
6. Aircraft rental available on the field. The type of aircraft shall at a minimum be equivalent to a Cessna 150.

B. Authorized Services. In addition to the services required to be provided by the FBO pursuant to Paragraph a above, the FBO is authorized, but not required, to provide the following services and to engage in the following activities:

1. Ramp service at the Main Terminal or other Airport Locations, including into-plane delivery of aircraft fuel, lubricants, and other related aviation products; loading and unloading of passengers, baggage, mail, and freight; and providing ramp equipment, aircraft cleaning, and other services for air carriers and other persons or firms.
2. Special flight services, including aerial sight seeing, aerial advertising, aerial photograph, and patrol of power lines or pipelines.
3. The sale of new and used aircraft.
4. Aircraft charter operations conducted by FBO or subcontractor to FBO.

C. Operating Standards. In providing any of the required and/or authorized services or activities specified in this Agreement, FBO shall operate for the use and benefit of the public and shall meet or exceed the following standards:

1. FBO shall furnish service on a fair, reasonable, and non-discriminatory basis to all users of the Airport. FBO shall charge fair, reasonable and non-discriminatory prices for each unit of sale or service.
2. FBO shall provide, at its sole expense, a sufficient number of employees to provide effectively and efficiently the services required or authorized in this Agreement.
3. FBO shall control the conduct, demeanor, and appearance of its employees, who shall possess such technical qualification as may be required in carrying out assigned duties.
4. FBO shall meet all expenses and payments in connection with providing services specified in Paragraphs A and B above, including taxes, (excluding real estate taxes), permit fees and license fees lawfully levied by the Local, State, and Federal governments.

5. FBO shall comply with all federal, state, and local laws, rules, and regulations that may apply to the conduct of the business, including rules and regulations promulgated by the CITY. FBO shall keep in effect and post in a prominent place all necessary and/or required licenses or permits.
6. FBO shall keep and maintain the premises in good condition, order, and repair, and shall surrender the same upon the expiration of this Agreement, in the condition in which they are required to be kept.
7. It is expressly understood and agreed that, in providing required and authorized services pursuant to this Agreement, the FBO shall have the right to choose, at its sole discretion, its vendors and suppliers.
8. FBO shall maintain a positive, progressive attitude in a cooperative effort with City officials, MnDOT officials, F.A.A. officials, pilots, and the general public to promote the future of the Faribault Municipal Airport. Specific requirements under this section include:
 - a. Host two or more public events such as a Fly-In Breakfast, and Balloon Rally annually.
 - b. Develop a pilot training program.
 - c. Promote the airport with various service groups.
 - d. Coordinate FAA flight safety seminars for local pilots.
 - e. Work with general public and local school on airport awareness.
 - f. Provide liaison with visiting pilots providing rental cars, motels, visitor packs, and other amenities.

9. The FBO shall not sublease services required under this agreement without the written consent of the City of Faribault. In addition, the subleasing of space within City owned facilities shall be limited to short term storage of aircraft unless written consent of the City is granted.

D. Signs. During the term of this Agreement, the FBO shall have the right, at its expense to place in or on the premises a sign or signs identifying the FBO and FBO's affiliation with product suppliers. Said sign or signs shall be of a size, shape, and design, and at a location or locations approved by the CITY. Notwithstanding any other provisions of this Agreement, said sign(s) shall remain the property of FBO. FBO shall remove, at its expense, all lettering, signs, and placards so erected on the premises at the expiration of the term of the Agreement.

E. Non-Exclusive Right. It is not the intent of this Agreement to grant to the FBO the exclusive right to provide any or all of the services described in this article at any time during the term of this Agreement. The CITY reserves the right to grant other certain rights and privileges upon the Airport, which are identified in part, or in whole to those granted to the FBO. However, the CITY does covenant and agree that:

1. It shall enforce all minimum operating standards or requirements for all aeronautical endeavors and activities conducted at the Airport, and;

2. Any other operator or aeronautical endeavors or activities will not be permitted to operate at the Airport under rates, terms, or conditions that are more favorable than those set forth in this Agreement, and;
3. It will not permit the conduct of any aeronautical endeavor or activity at the Airport except under an approved lease or operating agreement.

F. Additional Responsibilities/Manager

1. The FBO shall be responsible for prompt issuance of Notice to Airmen (NOTAM'S) when required regarding any abnormal conditions existing at the Airport.
2. The FBO shall give advisory assistance to pilots on such matters as air traffic, field conditions, and parking. Contact proper authorities, advising them of any violations of airport rules and regulations.
3. The FBO shall abide by City of Faribault, State of Minnesota, and Federal Government of the United States rules and regulations regarding operation and use of the Airport.
4. The FBO shall recommend to the City in writing, such rules and regulations as they believe to be necessary.
5. The FBO shall not make or suffer any unlawful, improper, or offensive use of the Airport premises or any use of any occupancy thereof contrary to any law, ordinance, or government regulation.
6. The FBO shall monitor the actions of any persons on airport property, including, without limitation, agents, and employees of the Operator, and members of the public operating or working upon said premises, including employees of the City. The FBO shall establish rules and controls subject to City approval. Implementation and enforcement of rules and regulations established by the FBO and the City shall be the responsibility of the FBO.
7. The FBO shall, in compliance with all applicable state or federal statutes, rules, or regulations, and in the exercise of sound discretion determine when the airport shall be closed as a result of weather or other conditions rendering use of the airport unsafe for aviation purposes.
8. The FBO shall determine traffic patterns and establish rules and regulations for the implementation of such traffic patterns related to landing, ground movement of aircraft, parking of aircraft, automobile parking and any and all other kinds of traffic, vehicular or otherwise, upon the airport.
9. The FBO shall report any hazardous conditions, which exist on the airport premises immediately to the City and shall take such steps as necessary to warn and protect the public against existing hazards.

10. The FBO shall submit to the City a written report by February 15 of each year describing the mode, method, and number of operations, fee charges for ordinary services provided, the volume of activity of the preceding year, the efforts of the FBO to promote the use of the airport facilities, and such other information as the City may request or which the FBO feels is necessary to provide an understanding of the airport operation.
11. The FBO shall keep and maintain adequate financial records and reports of the business operation and such reports and records shall be available for inspection by the City Administrator and the Faribault City Council upon request.
12. The FBO shall furnish and maintain clean arrival/departure facilities and public areas. FBO will file a cleaning schedule with the Director of Public Works
13. The FBO shall monitor and report to the City on the occupancy and usage of City owned hangars, and shall maintain a current list of potential tenants. The City shall be responsible for all billing and rent collection.
14. The FBO shall serve as the Airport Manager for the purposes of carrying out the duties and responsibilities as listed in Article III Section "F".

ARTICLE IV – APPURTENANT PRIVILEGES

- A. Use of Airport Facilities. FBO shall be entitled, in common with others so authorized, to use all public facilities and improvements which are now or may hereafter be connected with or appurtenant to the Airport, including the use of landing areas, runways, taxiways, navigational aids, terminal facilities, and aircraft parking areas designated by the CITY.
- B. Maintenance of Airport Facilities. The CITY will attempt to maintain all public and common or joint use of the Airport, including the Air Operations Area, in good repair, and shall make such repairs, replacements, or additions thereto as, in its opinion, are required and necessary for the safe and efficient operations of the Airport.
- C. Non-competition. The CITY will not engage directly or indirectly in any of the activities described in Paragraphs A and B of Article III of this Agreement.

ARTICLE V – LEASEHOLD IMPROVEMENTS

- A. Existing Improvements. Improvements already made to the premises by the FBO prior to this Agreement and any improvements covered by Paragraph B, below shall remain the property of the FBO until the Termination Date, at which time they shall become the property of the CITY.

- B. New Improvements. Any further improvements to the premises by the FBO must first be approved in writing by the CITY. Improvements made for the convenience of the FBO or to further the FBO's business shall be at the expense of the FBO.
- C. Removal of Improvements. The FBO shall not be permitted to remove attached leasehold improvements except upon prior written consent of the CITY.

ARTICLE VI – PAYMENTS

- A. Fee. The CITY agrees to pay the FBO in accordance with the following fee schedule for operation and management of the premises described in Article II and Article III.

<u>Year</u>	<u>Fee</u>
2015 – 2019	\$17,000

- B. Payment. The management fee specified above shall be paid monthly in advance, the first payment to be made on January 15th of this Agreement and like payments to be made on or before the first day of each month thereafter during the term of this Agreement.

ARTICLE VII – UTILITIES

- A. Public Utilities. The CITY agrees to provide normal utility services including electricity, water, and sewer to the premises throughout the term of this Agreement. The services are at no cost to the FBO.

ARTICLE VIII – INSURANCE

- A. Required Insurance. The FBO shall obtain and maintain, at its sole expense, continuously in effect at all times during the term of this Agreement, the following insurance:
 1. Comprehensive general liability insurance protecting CITY against any and all liability by reason of the FBO's conduct incident to the use of the premises, or resulting from any accident occurring on or about the roads, driveways, parking areas, runways, taxiways, or other places used by the FBO at the Airport, caused by or arising out of any wrongful act or omission of FBO, in the amount of \$1,500,000. The CITY shall be named as an additional insured.
 2. Hangar keepers liability insurance in the minimum amount of \$1,500,000.
 3. Product liability insurance in the minimum amount of \$1,500,000.
 4. Professional liability insurance in the minimum amount of \$1,500,000.
 5. Passenger liability insurance in the minimum amount of \$1,500,000 per occurrence.

6. Fire and extended coverage insurance on all fixed improvements erected by the FBO on or in the premises to the full insurable value thereof.
7. Workers Compensation Insurance as required by State law.

The FBO shall annually supply a Certificate of Insurance to the CITY showing the limits and period of the insurance. The Certificate shall contain a binding statement that the policy may not be canceled, terminated, changed, or modified without giving thirty (30) days written advance notice thereof to the CITY. If at any time any of the policies shall be or become unsatisfactory to the CITY, the FBO shall promptly obtain a new and satisfactory policy in replacement. The FBO shall furnish copies of these policies to the City Administrator's office when they are received by the FBO.

- B. Notice. The CITY agrees to notify the FBO in writing as soon as practicable of any claim, demand, or action arising out of an occurrence covered hereunder of which the CITY has knowledge, and to cooperate with the FBO in the investigation and defense thereof.
- C. Indemnify and Hold Harmless. The FBO shall indemnify and hold harmless the CITY, its Mayor, Council, Officers, Agents, and Employees from and against all claims, demands, and lawsuits of third parties arising or alleged to arise out of or in connection with injuries to its passengers or any other person or persons, while riding in or on, boarding or alighting from, or being struck by any aircraft operated, owned, used, or maintained by the FBO. Nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to either party, whether set forth in Minnesota Statutes Chapter 466 or otherwise.

ARTICLE IX – INDEPENDENT CONTRACTOR

In conducting its business hereunder, it is agreed that the FBO acts as an independent contractor and not as an agent of the CITY. The selection, retention, assignment, direction, and payment of FBO employees shall be the sole responsibility of the FBO.

ARTICLE X – ASSIGNMENT

This Agreement, or any part thereof, may not be assigned, transferred, or subleased by the FBO, by process or operation of law or in any manner whatsoever, without the prior written consent of the CITY. The CITY shall respond, in the positive or negative, to any written request regarding this Article within 90 days of receipt of such request.

ARTICLE XI – NON-DISCRIMINATION

Notwithstanding any other or inconsistent provision of the Agreement, the FBO, for itself, its heirs, personal representatives, successor in interest and assigns, as part of the consideration for this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, sex, sexual orientation, national origin, marital status, status with regard to public assistance, disability or age shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the use the premises, and;
- B. In the construction of any improvements on, over, or under the premises, and the furnishing of services therein or there, no person on the grounds of race, color, religion, creed, sexual orientation, sex, national origin, marital status, status with regard to public assistance, disability or age shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and;
- C. The FBO shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended, and;
- D. In the event of breach of any of the above non-discrimination covenants the CITY reserves the right to terminate this Agreement and re-enter and reposes the premises and hold the same as if said Agreement has never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 have been followed and completed, including expiration of Appeal rights.

ARTICLE XII – REQUIREMENTS OF THE UNITED STATES

This Agreement shall be subject and subordinate to the provisions of any existing or future agreement between the CITY and the United States, or any agency thereof, relative to the operation or maintenance of the Airport. The CITY will, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of the FBO in and to the premises.

ARTICLE XIII – DEFAULT AND TERMINATION

- A. Termination. This Agreement may be subject to termination by the FBO or the CITY in the event of any one or more of the following events:
 - 1. Abandonment of the Airport as an airport or airfield for any type, class or category of aircraft.

2. Damage to or destruction of all or a material part of the premises or Airport facilities necessary to the operation of the FBO business.
 3. The lawful assumption by the United States or any authorized agency thereof, of the operation, control, or use of the Airport, in such a manner as to restrict substantially the FBO from conducting business operations for a period in excess of ninety (90) days.
 4. Violation by the FBO of any of the provisions of the Agreement.
- B. Exercise. Exercise of the rights of termination set forth above shall be upon 10 days written notice given to the other party at their business address. Upon six months written notice, either party may terminate the agreement without cause.
- C. Removal of Property. Upon termination of this Agreement, the FBO, at its sole expense, shall remove from the premises, all signs, trade fixtures, furnishings, personal property, equipment, and materials, which the FBO was permitted to install or maintain under the rights granted herein.

ARTICLE XIV – MISCELLANEOUS PROVISIONS

- A. Entire Agreement. This Agreement constitutes the entire understanding between the parties, and as of its effective date supersedes all prior or independent agreements between the parties covering fixed base operation services at the FBO Municipal Airport. Any change or modification hereof must be in writing, signed by both parties.
- B. Severability. If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provision shall continue in effect as nearly as possible in accordance with the original intent of the parties.
- C. Notice. Any notice given by one party to the other in connection with the Agreement shall be in writing and shall be sent by registered mail, return requested, with postage and registration fees prepaid:

If to the CITY, addressed to:

City Administrator
City of Faribault
208 NW 1st Avenue
Faribault, MN 55021

If to the FBO, addressed to:

Gerald L. Serres
Quality Aviation, Inc.
3401 W. Hwy. 21
Faribault, MN 55021

Notice shall be deemed to have been received on the date of receipt as shown on the return receipt.

- D. Headlines. The headings used in this Agreement are intended for convenience of reference only and do not define or limit the scope of meaning of any provisions of this Agreement.
- E. Governing Law. This Agreement is to be constructed in accordance with the laws of the State of Minnesota.
- F. Public Data. This Agreement, and the information related to it, is subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, (the "Act") which presumes that data collected by the **FBO/Airport Maintenance Supervisor** or the City is public data unless classified otherwise by law. All of the data created, collected, received, stored, used, maintained, or disseminated by the **FBO/Airport Maintenance Supervisor** or the City in performing functions under this Agreement is subject to the requirements of the Act and both the City and the **FBO/Airport Maintenance Supervisor** must comply with those requirements. If any provision of this Agreement is in conflict with the Act or other Minnesota state laws, state law shall control.

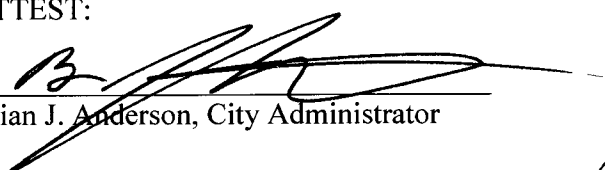
IN WITNESS WHEREOF, the parties have hereto set their hands and seals this day and year in this Lease first above written.

CITY OF FARIBAULT

By: 

John R. Jasinski, Mayor

ATTEST:


Brian J. Anderson, City Administrator

QUALITY AVIATION, INC.


Gerald L. Serres

Airport FBO/Manager