



Request for Council Action

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Travis Block, Public Works Director
MEETING DATE: April 9, 2019
SUBJECT: Approve Private Hangar Land Lease

Background:

The City has received a Private Hangar Land Lease Agreement from Ron & Bev Ovans, and Tom & Bev Wirtzfeld. Mr. and Mrs. Ovans are long-term tenants who were displaced by the storm. A new lease agreement is required before a building permit for construction can be issued. Mr. and Mrs. Ovans, along with Mr. and Mrs. Wirtzfeld will be constructing the new hangar on the same lot.

Attached is a copy of the agreement.

Recommendation:

Approve the above-referenced Private Hangar Land Lease Agreement

Attachments:

- Private Hangar Land Lease Agreement

PRIVATE HANGAR LAND LEASE AGREEMENT

This agreement, made this 1st day of April, 2019, by and between the CITY OF FARIBAULT (the “City”) and Ron & Mary Ovans and Tom & Bev Wirtzfeld (the “tenant”), is for the purpose of outlining the rights and responsibilities of the parties to this Agreement. The parties to this Agreement do agree as follows:

1. **Lease of airport property:** The tenant leases from the City a private hangar lot, as described on a map located at the City Engineer’s office. The lot is situated upon the Faribault Municipal Airport, an airport owned by the City. The lot is leased together with land and any improvements that may have been placed on it. This lease is for lot 625 (hereinafter referred to as “Premises”).
2. **Use of the airport:** The tenant has the privilege of using the public portions of the airport in common with other users. Tenant shall have the right to conduct all operations authorized pursuant to the terms of this lease, provided, however, that this lease shall not be deemed to grant to tenant, or those claiming under tenant, the exclusive right to use any part or portion of the airport other than the Premises. Use of the airport is subject to the rules and conditions as now exist or may be enacted in the future by the City, the State of Minnesota, or the United States government. The tenant is subject to customary charges for such use as may be established from time to time by the City. The City reserves the right to enter, at any time, upon the leased land as described in this agreement and any building on said land for the purpose of inspection to determine compliance with all terms of this agreement. Reasonable efforts will be made to notify tenant of such entry before entry is made.
3. **Term of this agreement:**
 - a. **Initial Term**

The term of this lease shall be twenty (20) years (“Term”), commencing on April 1, 2019, (“Commencement Date”) and expiring, unless earlier terminated, on April 1, 2039.
 - b. **Holding Over**

If tenant remains in possession of the Premises after the expiration of the term, such holding over will only create a year-to-year tenancy, which may be terminated by either party at the end of any calendar year, upon thirty (30) days advance written notice. In the event of such holding over, tenant shall perform all of the terms and conditions of this lease.

4. Lease payments: The tenant agrees to pay to the City:

An annual sum of \$.1672 per square foot per year, as determined by the outside dimensions of the building, is due each year. Lease payments are due in advance annually by the 1st day of January, beginning on January 1, 2020. Lease payments for 2019 will be prorated from April 1, 2019 to December 31, 2019.

The City reserves the right to amend rates identified at any time during the term of this agreement. The City's Airport Advisory Board shall recommend any revision of rates to the City Council. The City shall give rate revisions with due regard to the value of the property leased, the improvements used, and the expense to the City of the tenant's operations. Rate revisions are reviewed and adopted, if necessary, by the City Council annually.

5. Construction of private buildings on leased property:

Any structure built upon leased property shall be constructed in compliance with applicable building codes and any building requirements established by the Airport Advisory Board. The building and any attachments and appurtenances, other than ramps or driveways, must be located entirely upon the leased premises. Any building constructed shall be used for the sole purpose of storage of aircraft registered or leased to the tenant and related aviation purposes.

Uses of any building on leased property are subject to the same restrictions placed on City-owned hangars. Any uses of the building, other than aircraft storage, shall be described and approved by the City, in writing.

The tenant agrees that any building shall be constructed at no cost to the City. In the event the tenant has not completed construction of the building on the leased premises within twelve (12) months from the date of this agreement, the City may terminate the lease without further obligation to the tenant.

Prior to construction of any building located on leased property, the tenant shall furnish to the City, for the Airport Advisory Board's review and approval by the City Council, the plans for the building, and provide the estimated cost of completing the building. The tenant shall provide the City with a letter of credit, bond or other security with a surety satisfactory to the City conditioned upon the commencement, completion of and payment for the construction of the building; and against loss or damage by reason of mechanics lien. City staff may specify the acceptable type of surety.

During construction of the building, the tenant and/or tenant's contractor shall provide a certificate of insurance showing liability limits of at least \$1 million and name the City as an Additional Insured and shall provide insurance with respect to tenant's full indemnification and defense responsibilities contained in this lease. All required insurance policies shall insure on an occurrence and not a claims-made basis, shall be

issued by insurance companies which are reasonably acceptable to the City, and shall not be cancelable, reduced or materially changed unless thirty (30) days prior written notice shall have been given to the City. The City must approve insurance coverage before construction begins. The tenant and/or tenant's contractor shall protect the City from liability to persons or property for damages arising out of the construction or customary use of the building prior to obtaining an occupancy permit from the City. The tenant shall provide the City with a current certificate of liability insurance consistent with these requirements.

The tenant shall obtain the necessary regulatory authority and permits from the City of Faribault. All construction shall be in a good and workmanlike manner and shall be in conformity with building codes, ordinances, and other regulations applicable to the City and Faribault Municipal Airport.

Tenants shall construct aircraft storage facilities that conform to design standards described by the City Council. These design standards may include color, style, size, and other aesthetic requirements. Construction and significant improvements may not begin before receiving written authority from the City.

Tenants shall pay the entire cost of such construction, and shall pay the entire cost of utility services and other required building systems. The tenant shall pay all site improvement costs, including but not limited to, grading, gravel, bituminous, concrete, utility installations, and any other improvements required on the leased property.

6. **Maintenance of leased property:** Tenants, at their own cost and expense, shall take good care of the leased property and any buildings or structures placed thereon. Tenants shall keep and maintain the property in good order and repair and in a clean and neat condition.

Tenant shall not permit any waste or nuisance on the leased property nor permit anything on the leased property to interfere with the rights of other tenants of the City or users of the airport. In the event the property is not properly maintained, the City may, after notifying the tenant, cause the property to be maintained. The costs of maintenance and an administrative fee will be billed to the tenant and become tenant's responsibility. Unpaid billings shall be certified to property taxes.

The cost for customary maintenance routinely performed by the City, related to areas affecting the value or use of leased properties are included in the annual lease costs charged for the property, and includes snow removal, grounds maintenance and maintenance of apron areas. Snow removal is performed by City employees on a priority basis. The City of Faribault reserves the right to perform snow removal functions in whatever manner it deems necessary. In any case, snow removal in front of buildings is the tenant's responsibility. The City is not required to perform any snow removal function on leased property, but may plow snow on or adjacent to leased properties to expedite other snow removal operations at the airport. Mowing and weed control are the

tenant's responsibility, however, the City may mow or perform weed control on or adjacent to leased properties to expedite other maintenance operations. The City shall establish the standards by which ramp areas and other paved surfaces are maintained.

7. **Hazardous Materials:** Tenant shall not store hazardous materials on the leased premises except such materials normal to and reasonably necessary for aircraft operation and such maintenance operations reasonably conducted on the Premises. All hazardous materials shall be stored, handled, and disposed of properly in accordance with all local, state and federal rules and regulations, and any spill or discharge shall be immediately reported to the City. Improper storage, use, handling, or disposal of hazardous materials shall be grounds for termination of this lease agreement.

8. **Taxes, assessments, and other charges:**

In addition to other charges identified in this agreement, the tenant shall pay all taxes, assessments, licenses, fees, or other charges that may be levied or assessed upon the tenant's property or building or any activity of the tenant. Should it be determined that the interest of the tenant in this Agreement is taxable, and should any tax be levied, the tenant shall pay such tax. Upon request by the City, the tenant shall provide proof of such payment.

The tenant shall establish their own accounts for utilities, and pay all rates and charges for any utility used or consumed in connection with or in the leased property during the term of this Agreement. Upon request by the City, the tenant shall provide proof of such payment.

In the event the tenant fails to pay the lease payments, taxes, assessments, fees, or other charges due, the City shall notify the tenant of the default. If the tenant fails to cure such default within ten days from the receipt of the written notice, the City shall have the right to immediately terminate this lease without further obligation to the tenant.

9. **Default**

a. **Events of Default**

Any of the following shall constitute a default under this lease:

- (1) Tenant fails to pay money owed to City under this lease when due, and such failure continues for ten (10) days after written notice from City to tenant.
- (2) Tenant uses the Premises for any purpose not expressly authorized by this lease and such default continues for ten (10) days following written notice from City to tenant.

- (3) Tenant fails to allow an inspection in accordance with the terms and conditions of this lease and such default continues for ten (10) days following written notice from City to tenant.
- (4) Tenant assigns, subleases or transfers this Lease except as otherwise permitted, and such default continues for ten (10) days following written notice from City to tenant.
- (5) Tenant fails to carry the insurance required under this lease; any insurance required under this lease is cancelled, terminated, expires or is reduced or materially changed so as to not comply with this lease; or City receives notice of any such conditions, and such failure continues for a period of ten (10) days following written notice from City to tenant.
- (6) Tenant vacates or abandons the Premises, and such default continues for ten (10) days following written notice from City to tenant.
- (7) Tenant fails to discharge, by payment or bond, any lien or encumbrance placed upon the Premises or improvements in violation of this lease within thirty (30) days following written notice from City to tenant that any such lien or encumbrance is filed against the Premises and/or improvements.
- (8) Tenant (a) makes a general assignment for the benefit of creditors; (b) commences any case, proceeding or other action seeking to have an order for relief entered or to adjudicate tenant bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or (c) involuntarily becomes the subject of any proceeding for relief which is not dismissed within sixty (60) days of its filing or entry.
- (9) Tenant fails to comply with any other term or condition of this lease and such default continues for more than thirty (30) days after written notice from City to tenant, or for a longer period of time as may be reasonably necessary to cure the default, but only if: (i) tenant is reasonably capable of curing the default, and (ii) is working diligently as determined by City to cure the default.

b. City Remedies

If a default occurs, City, at its option and in its sole discretion, may at any time thereafter do one or more of the following to the extent permitted by applicable law:

- (1) City may, without releasing tenant from its obligations under the lease, attempt to cure the default. City may enter the Premises for such purpose and take such action as it deems desirable or appropriate to cure the default. This entry is not an eviction of tenant or a termination of this lease;
- (2) With legal process, but without further notice to tenant, re-enter the Premises or any part thereof and take possession of it fully and absolutely, without such re-entry working a forfeiture of the money to be paid and the terms and conditions to be performed by tenant for the full term of this lease. City's re-entry of the Premises is not a termination of this lease. In the event of such re-entry, City may proceed for the collection of money to be paid under this lease or for properly measured damages;
- (3) Terminate this lease upon written notice to tenant and re-enter the Premises as of its former estate, and tenant covenants in the case of such termination to indemnify City against all loss of rents and expenses during the remainder of the term; and
- (4) Exercise all other rights and remedies including injunctive relief, ejectment or summary proceedings such as an eviction action and any other lawful remedies, actions or proceedings.

In the event of any default and for any type of remedy chosen by City, tenant shall reimburse City for all reasonable fees and costs incurred by City, including reasonable attorneys' fees, relating to such default and/or the enforcement of City's rights hereunder, and costs incurred attempting to cure a default. Any and all legal remedies, actions and proceedings shall be cumulative.

c. Cumulative Default

Notwithstanding the notice and cure periods set forth above, and subject to the inspection procedures or rights set forth herein, City shall only be required to provide tenant with notice and opportunity to cure two (2) cumulative defaults in any calendar year. Only for purposes of this paragraph, cumulative default means: (i) tenant's failure to pay money due under this lease; (ii) tenant's failure to comply with the use of premises section of this lease; and (iii) any violation of the terms and conditions of this lease which has the likelihood in City's reasonable discretion to cause harm to life or property. In addition, City shall only be required to provide tenant with notice and opportunity to cure two (2) defaults of failing to allow an inspection of the Premises in any calendar year. Beginning with the third (3rd) cumulative default or third (3rd) failure to allow an inspection in any calendar year, City will not be required to provide notice and opportunity to cure and may immediately take such action as City deems appropriate under this lease.

d. Default of Other Agreements

A default by tenant of any other agreement between tenant and City shall constitute default of this lease. Notice of a default in another agreement shall be deemed notice of default under this lease.

10. Termination provisions:

At the termination of this lease the tenant has the privilege of removing all buildings and properties placed upon the property. The tenant shall have a period of ninety-days (90 days) from the termination date to remove property. In the event the tenant cannot complete the removal within 90 days, the City may grant an extension of time, no longer than six months, if the tenant can demonstrate the reasons for failure to remove property within the ninety-day (90 day) period are beyond the control of the tenant. If the tenant does not remove the property within the period granted by the City, the City may retain ownership of the building and property for any municipal purpose.

If the leased premises becomes deserted, abandoned or vacated, the City may terminate the lease. If the tenant's interest in the property is taken by process of law, the City may terminate the lease. If the buildings or properties on the Premises are destroyed, the City or tenant shall have the right to terminate this agreement upon giving written notice, with response, to the other party.

Should the tenant default in the performance of any terms, conditions or covenants of this Agreement not otherwise specified, and should the default continue for a period of more than twenty (20) days after the City serves the tenant with written notice, the City may terminate the lease. This may be done with or without terminating this Agreement and without prejudice to any other remedy for lease payments or breach of covenant. In any such event the City may terminate this Agreement by giving written notice of the termination. The rights and remedies given to the City are, and shall be deemed to be, cumulative, and the exercise of one shall not be deemed to be an election excluding the exercise by the City at any other or different time of a different or inconsistent remedy.

Should the leased property be declared condemned, either because the airport is closed to the public, or the property is needed for another municipal purpose, the City shall reimburse the tenant for all lease payments received from time the lease was signed until the property is vacated. The City shall provide the tenant with ninety-days (90 days) notice of such action. The tenant shall have a period of ninety-days (90 days) from the termination date to remove property. In the event the tenant cannot complete the removal within 90 days, the City may grant an extension of time, no longer than six months, if the tenant can demonstrate the reasons for failure to remove property are beyond the control of the tenant.

11. Liability provisions; Indemnification; Insurance:

Notwithstanding anything to the contrary in this lease, the City, its officers, agents, and employees shall not be liable or responsible in any manner to the tenant, tenant's successors or assigns, the tenant's contractor or subcontractors, material suppliers, laborers, or to any other person or persons for any claim, demand, damage, or cause of action of any kind or character arising out of or by reason of the execution of this lease or the performance of this lease, nor will the tenant make any claim against the City for or on account of any injury, loss or damage resulting from the tenant's property or use thereof. The tenant, and the tenant's successors or assigns, agree to protect, defend and save the City, and its officers, agents, and employees, harmless from all such claims, demands, damages, and causes of action and the costs, disbursements, and expenses of defending the same, including but not limited to, attorneys fees, consulting services, and other technical, administrative or professional assistance. Nothing in this lease shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes, Chapter 466 or otherwise.

The tenant shall obtain and keep current a liability insurance policy in at least the sum of \$1,500,000 (aggregate, \$500,000 each person) coverage. The occupant shall during the term of this agreement adequately insure against any loss or damage to the hangar premise in the amount required by the City in its sole discretion. The tenant's policy shall include the City as an additional insured, shall be in a form acceptable to the City and shall provide insurance with respect to tenant's full indemnification and defense responsibilities contained in this lease. All required insurance policies shall insure on an occurrence and not a claims-made basis, shall be issued by insurance companies which are reasonably acceptable to the City, and shall not be cancelable, reduced or materially changed unless thirty (30) days prior written notice shall have been given to the City. The tenant shall provide the City with a current certificate of liability insurance consistent with these requirements.

The tenant shall meet, and provide upon request verification of, all licensure requirements of the City of Faribault, State of Minnesota and/or the United States Government to legally comply with this lease.

12. Transferring, subletting, selling: The tenant shall not assign, transfer, sublet or sell any interest in this agreement or in the improvements located on the property without first obtaining the written consent of the City. Failure to obtain written consent shall be sufficient grounds for terminating this agreement without obligation of the City to the tenant.

13. **Discrimination provision:** The tenant, in the use of the Faribault Municipal Airport, shall not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, or national origin or in any manner prohibited by Part 21 of the Regulations of the Office of the United States Secretary of Transportation, and the tenant further agrees to comply with any requirement made to enforce such regulation which may be demanded of the City by the United States Government under authority of said Part 21.

14. **Civil Rights:** Tenant agrees that it will comply with applicable laws, statutes and rules that are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates tenant or its transferee for the period during which federal assistance is extended to the airport, except where federal assistance is to provide, or is in form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (1) the period during which the property is used by the sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (2) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

15. **Laws, rules and regulations:** The tenant shall abide by and conform with all laws, rules, and regulations, including future amendments thereto, controlling or in any manner affecting the tenant relative to the use or occupancy of the tenant.

16. **Commercial Use:** Tenant must indicate to City at time of signing that the leased property will be used to conduct commercial activities and obtain written permission from the City to conduct such activities. Any wish to alter the use of the property to include commercial activity during the term of this agreement requires prior written consent of the City. Failure to notify the City and obtain written consent as described above shall be grounds for immediate termination of this agreement. Commercial activities include repair, restoration, maintenance or rental of aircraft. No commercial activity which is not directly related to aeronautics is permitted. No outdoor storage of planes or equipment is permitted in the hangar area. Any hangar constructed or used to conduct commercial activities shall comply with any all applicable City of Faribault building code requirements for commercial buildings.

17. **General Provisions**

a. **Airport Access**

Tenant has the privilege of using the public portions of the airport, such as runways and other public facilities, under such terms, ordinances, rules and regulations as now exist or may be enacted by City, and subject to charges for such use as may be established by City, by ordinance or agreement with tenant.

b. Waiver

The waiver by City or tenant of any breach of any term of this lease shall not be deemed a waiver of any prior or subsequent breach of the same term or any other term of this lease.

c. Headings

The headings in this lease are for convenience in reference and are not intended to define or limit the scope of any provision of this lease.

d. Entire Agreement; Amendments

This lease represents the entire agreement between the parties and supercedes any prior agreements regarding the Premises. This lease may only be amended or modified if done in writing and executed by all parties to this agreement.

e. Severability

If any part of this lease shall be held invalid, it shall not affect the validity of the remaining parts of this lease, provided that such invalidity does not materially prejudice either party under the remaining parts of this lease.

f. Choice of Law and Venue

This lease shall be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this lease shall be heard in the state or federal courts of Minnesota, and all parties to this lease waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

g. Public Data

City shall use reasonable care to treat matters pertaining to tenant in a confidential manner to the extent permitted by law. This lease, and the information related to it, are subject to the Minnesota Government Data Practices Act, which presumes that data collected by City is public data unless classified otherwise by law.

h. Commitments to Federal and State Agencies

Nothing in this lease shall be construed to prevent City from making such commitments as it desires to the Federal Government or the State of Minnesota in order to qualify for the expenditure of Federal or State funds on the airport.

i. Successors

This lease shall extend to bring the legal representatives, successors and assigns of the parties to this lease.

j. Relationship of Parties

Nothing contained in this lease shall be deemed to create a partnership, association or joint venture between City and tenant, or to create any other relationship between the parties other than that of landlord and tenant.

k. Multiple Parties

If more than one person or entity is named as the tenant, the obligations of the tenant shall be the joint and several responsibilities of all persons or entities named as tenant.

l. Consent and Approvals

Whenever in this lease the consent or approval of City is required, such phrase means the formal approval or consent of City through a meeting of the Faribault City Council. When the consent or approval of City's staff is required, such phrase means the consent or approval from the appropriate employee or agent of City.

m. Notice

Any notice required under this lease shall be in writing and delivered in person or by courier or mailed by certified mail, return receipt requested by United States Mail, postage prepaid addressed as follows:

If to the City: City of Faribault
 Department of Public Works
 1200 Belview Trail
 Faribault, MN 55021

If to the tenant:

Ron & Mary Ovans
2580 28 1/4 Street
Birchwood, WI 54817

Notice is deemed given (i) two business days after being deposited in the mail, whether or not the notice is accepted by the named recipient, or (ii) if delivered by any other means, the date such notice is actually received by the named recipient. Either party may change the party's address for notice by providing written notice to the other party.

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

CITY OF FARIBAULT:

Dated: _____ By: _____
Kevin F. Voracek, Mayor

Attest: _____
Timothy C. Murray, City Administrator

TENANT:

Dated: _____ By: _____
Ron Ovans

Mary Ovans

Tom Wirtzfeld

Bev Wirtzfeld