

## CITY OF WILLMAR

Planning and Development Services  
City Office Building  
333 SW 6<sup>th</sup> Street  
Willmar, MN 56201  
320-235-8311

### COUNCIL ACTION REQUEST

**DATE:** November 17, 2016

**SUBJECT:** Fixed Base Operator Agreement for Willmar Municipal Airport

**RECOMMENDATION:** Staff recommends the City Council authorize the Mayor and City Administrator to sign the FBO agreement with Oasis Aero, Inc.

**BACKGROUND:** On June 6, 2016 the City Council voted to terminate the contract with the FBO Maximum Cruise Aviation. The City took over fuel operations at the Airport on Friday June 24, 2016. On July 1, 2016 the City sent out RFP's for an FBO and published it in the paper July 2 and 8, 2016. Proposals were due on July 29, 2016. The City received two submittals: Oasis Aero, Inc. (Paul Beck & Eric Rudningen); and Ron Buchanan, Dan O'Meara, Brian Frost, and William Fry. Interviews were held on August 23 and 25, 2016. The Interview Committee consisted of two Airport Commission members, City Council Liaison, and two City Staff. On September 6, 2016, the City Council authorized City Staff to negotiate an FBO contract with Oasis Aero, Inc. A five-year agreement has been negotiated that will result in a higher level of FBO service, as well as increased revenue for the City.

**FINANCIAL CONSIDERATION:** The City will get a fuel flowage fee of \$.15/gallon through the end of 2017, and then there will be \$.01 increases each subsequent year. The FBO agrees to pay \$37,766.55 a year for rent of the FBO facility with a \$.10/ sq. ft. increase each subsequent year. The FBO will provide reimbursable services such as courtesy service, fuel records, and on-call services that will be reimbursed at \$738.89 a week. The applicable hourly wages will increase \$.05/hour in 2018 and each subsequent year.

**LEGAL:** The City Attorney drafted the agreement and has reviewed Oasis Aero's Insurance Policy.

**DEPARTMENT/RESPONSIBLE PARTY:** Megan M. DeSchepper, ACIP, Planner/Airport Manager

**PRIMARY FIXED-BASE OPERATOR'S AGREEMENT  
BETWEEN THE CITY OF WILLMAR, MINNESOTA  
AND OASIS AERO, INC.**

**THIS AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Willmar, a municipal corporation existing by and under the authority of the laws of the State of Minnesota, 333 6<sup>th</sup> Street Southwest, Willmar, Minnesota, 56201, hereinafter referred to as the "City", and Oasis Aero, Inc., a Minnesota corporation, with its principle place of business at 6600 Highway 40 West, Willmar, Minnesota, 56201, hereinafter referred to as the "FBO"; collectively, the City and the FBO are hereinafter referred to as the "Parties".

**WHEREAS**, the City owns and operates an airport known as the Willmar Municipal Airport—John L. Rice Field (the "Airport"), which Airport facilities are depicted on the attached Exhibit A (the "Airport Facilities"); and

**WHEREAS**, the City desires to lease certain premises located on the Airport, together with the right to use and enjoy individually and in common with others, the Airport Facilities, to a party that will provide needed aviation services to Airport users, including, among other services, selling aircraft fuel, performing aircraft maintenance, ramp area/tie downs, and rental car assistance; and

**WHEREAS**, the FBO has proposed to lease property at the Airport from the City and serve as the primary fixed-base operator at the Airport from and after November 1, 2016, engaging in the business of providing needed aviation services to Airport users and providing the primary fixed-base operator services at the Airport; and

**WHEREAS**, the FBO is under common ownership with Eric's Aviation Services, Inc., which entity is under contract to provide Airport Operations Supervisor services to the City through December 31, 2017 pursuant to that certain Airport Operations Agreement between the City and Eric's Aviation Services, Inc., dated August 25, 2014 ("Airport Operations Agreement"), and it is the expectation of the parties that they will amend this Agreement in advance of January 1, 2018 to allow the FBO to assume responsibility for providing the Airport Operations Supervisor services enumerated in said Airport Operations Agreement in addition to the primary FBO services enumerated in this Agreement, pursuant to terms and conditions to be negotiated in said amendment, beginning on January 1, 2018.

**NOW, THEREFORE**, for and in consideration of the rents and covenants of this agreement, the FBO and the City agree as follows:

**ARTICLE 1. TERM.**

**1.1 Term.** The initial term of this Agreement shall commence on November 1, 2016 and continue in effect until December 31, 2021 or earlier termination pursuant to Article 6 herein.

1.2 **Renewal Terms.** Upon the expiration of the initial term of this Agreement under Section 1.1, or any renewal term under this Section, this Agreement shall automatically renew for an additional term of one year, unless either party shall deliver written notice of its intention not to renew to the other party not fewer than 120 days prior to the expiration of the initial term or renewal term then in effect, in which case this Agreement shall terminate upon the expiration of such initial term or renewal term.

ARTICLE 2. LEASE OF AIRPORT PROPERTY.

2.1 **Leased Premises.** The City agrees to lease to the FBO, who agrees to lease from the City, the following spaces at the Airport, which are depicted on Exhibit B, attached hereto (the "Leased Premises"):

FBO Hangar (86'8" x 100')	8,667 s.f.
Support Areas (18' x 86'8")	1,560 s.f.
Reception Desk	120 s.f.
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Total Area	10,347 s.f.

2.2 **Rent.**

2.2.1 Annual Rent. The FBO agrees to pay to the City for the use of the Leased Premises, a yearly rental of \$3.65 per square foot for the balance of 2016 and the entirety of calendar year 2017, for an initial total annual charge of \$37,766.55 (\$3.65 x 10,347 s.f.), which yearly rental shall increase by \$0.10 each year thereafter beginning in calendar year 2018 and in each subsequent calendar year during the initial term of this agreement (i.e. the annual per square foot rental rate will be \$3.75 in 2018, \$3.85 in 2019, \$3.95 in 2020 and \$4.05 in 2021). For any renewal terms, the annual per square foot rental rate shall increase by \$0.10 each year (for example, the yearly rental would be \$4.15 in 2022, \$4.25 in 2023, \$4.35 in 2024, etc.).

2.2.2 Reimbursable Services. The annual rental fee specified in Section 2.2.1 above shall be reduced by the amount of reimbursements the FBO is entitled to for providing services as specified in Section 3.2 herein.

2.2.3 Payments. The FBO shall make payment of one-twelfth of the annual rent specified in Section 2.2.1, less the reimbursements as specified in Section 3.2, on or before the last day of the month for each month in which this Agreement is in effect.

2.2.4 Airport Closings. During any period when the Airport shall be closed by any lawful authority restricting the use of the Airport in such a manner as to interfere with the use of same by the FBO for its business operation, the rent shall abate and the period of such closure shall be added to the term of this Agreement then in effect so as to extend and postpone the expiration thereof.

**2.3 FBO Rights:** The FBO shall have the rights:

2.3.1 In common with others so authorized, to use common areas of the Airport, including runways, taxiways, aprons, roadways, floodlights, landing lights, signals and other conveniences for the take-off, flying and landing of aircraft.

2.3.2 To the nonexclusive use, in common with others, of the Airport parking areas, appurtenances and improvements thereon.

2.3.3 To the rent-free nonexclusive use of the reception areas in the main terminal building as necessary to perform the FBO services set forth in Article 3 herein.

2.3.4 To install, operate, maintain, repair and store, subject to approval of the City in the interests of safety and convenience of all concerned, all equipment necessary for the conduct of the FBO's business and performance of the FBO services set forth in Article 3 herein.

2.3.5 Of access to and from the Leased Premises, limited to streets, driveways or sidewalks designated for such purposes by the City, and which right shall extend to the FBO's employees, passengers, guests, invitees, and patrons.

2.3.6 In and on the Leased Premises, to take all actions make all such use of the Leased Premises as necessary to perform the FBO services set forth in Article 3 herein, subject to the limitations of this Agreement.

**2.4 Quiet Enjoyment.** So long as the FBO conducts its business in a fair, reasonable and workmanlike manner in accordance with the requirements of this Agreement, the FBO shall peaceably have and enjoy the Leased Premises, and all the rights and privileges granted herein.

**2.5 Improvements.** The FBO shall not have the right to construct improvements upon the Leased Premises or to improve any structures located thereon unless the City shall first approve the same in writing in its sole discretion upon reviewing all plans and specifications for such improvements, which plans must be submitted to the City by the FBO at least one month in advance of the proposed construction. All plans and specifications for improvements authorized by this Section and all construction upon the Leased Premises must meet all fire, building, and other applicable city, state and federal regulations and code requirements. The FBO shall be responsible for obtaining required building permits and for paying all permit fees associated with such improvements. Upon final completion and acceptance of the improvements by the City, FBO must provide one set of as-built plans and one electronic copy of the record documents to the Airport Manager, who will keep one set of plans on file at the Airport Manager's office. Upon termination of this Agreement, ownership of any Improvements constructed by the FBO on the Leased Premises shall revert to the City, free and clear of all liens, claims and other encumbrances or adverse interest in the Leased Premises or the improvements thereon. Facilities should be in commercially reasonable condition, normal wear and tear excepted. All personal property of the FBO shall

be removed from the Leased Premises within seven calendar days following termination as called for in this Agreement.

- 2.6 Maintenance of Buildings.** The FBO will maintain the Leased Premises and all structures thereon in good order, excepting only those functions expressly made the responsibility of the City in this Agreement, and shall make non-structural repairs to the buildings on the Leased Premises, including routine repairs to the plumbing, heating, ventilation, and electrical systems and fire sprinkler system monitoring system and fire extinguishers, as necessary. The FBO shall provide notice to the City prior to commencing any such routine repairs. (The City shall be responsible for making major repairs pursuant to Section 5.1.4 herein).
- 2.7 Trash and Refuse.** The FBO must arrange for the collection and lawful disposal of all trash and other refuse resulting from operations on the Leased Premises in compliance with all applicable laws and regulations relative to trash disposal, and must pay or cause to be paid the costs associated with trash removal and disposal. The FBO shall not pile boxes, barrels or other similar items in or within view from a public area. For flammable waste such as oil and oil soaked rags, etc., the FBO must provide and use suitable sealed fireproof receptacles.
- 2.8 Pets Prohibited.** The FBO may not keep or permit to be kept any pets anywhere on the Leased Premises or Airport Facilities without the prior written consent of the City, except that pets of transient pilots and/or passengers and approved service animals are excluded from this prohibition.
- 2.9 Assignment and Subleasing.** The FBO may not, at any time during the term of this Agreement, assign, or transfer this Agreement or any interest therein, without the written consent of the City; the FBO shall have the right to lease that portion of the buildings located on the Leased Premises which are not needed by the FBO in the operation of its business, subject to written approval of the City. A transfer, assignment or sublease approved by the City and entered into by the FBO pursuant to this Section shall not relieve the FBO of any of its liability and responsibilities under this Agreement, and any such transfer, assignment or sublease shall incorporate the terms of this Agreement, which shall be binding on the assignee, subcontractor or sublessee, as the case may be.

### ARTICLE 3. PRIMARY FBO SERVICES.

- 3.1 Primary Fixed-Base Operator Services.** The City hereby grants permission to the FBO and FBO agrees to perform primary Fixed-Base Operator and other professional services at the Airport as more particularly described in this Article and in conformance with the Airport's adopted Minimum Standards for Aeronautical Activity ("Minimum Standards"), as the same may be amended from time to time. The FBO shall not provide any services not specifically authorized in this Article.

**3.1.1 Courtesy Service.** The FBO shall provide courtesy service for transient pilots and passengers, including providing a vehicle for use as a courtesy car by such parties or other ground transportation (rental car, taxi, etc.) as needed, as well as access to a telephone.

3.1.2 Unicom Radio. The FBO shall monitor and assist pilots calling into the Airport. Services and general information must be disseminated to pilots requesting this service.

3.1.3 NOTAMS (notices to airmen). The FBO shall observe airfield conditions and assist with the issuance of a NOTAM when Airport management is unavailable. The FBO must notify the Airport Manager of any condition that may be a hazard to pilots.

3.1.4 Fuel and Oil Sales; daily fuel records. The FBO shall operate and maintain sufficient fuel quantities within the City-owned fueling facilities; under no circumstances shall the FBO maintain a minimum fuel inventory of fewer than 1,000 gallons for each fuel type Jet A and 1000 LL. The FBO shall conduct daily inspections of the fueling system and quality control. The FBO shall maintain daily records of fuel sales, and shall provide monthly reports to the City on or before the fifth business day of each month for the preceding calendar month based on each pump's meter and the daily records of fuel sales. The FBO shall immediately notify the City if a pump's meter and the daily log records are not in balance.

Fuel Flowage Fee: A fuel flowage fee of \$0.15 per gallon shall be charged to the FBO for each gallon of jet fuel or aviation fuel sold, used or furnished for any purpose at any time during the balance of 2016 and the entirety of calendar year 2017, which flowage fee shall increase by \$0.01 each year thereafter beginning in calendar year 2018 and in each subsequent calendar year during the initial term of this agreement (i.e. the flowage fee will be \$0.16 in 2018, \$0.17 in 2019, \$0.18 in 2020, and \$0.19 in 2021). For any renewal terms, the flowage fee shall increase by \$0.01 each year (for example, the flowage fee would be \$0.20 in 2022, \$0.21 in 2023, \$0.22 in 2024, etc.)

3.1.5 Weekend and On-Call Service. Weekend service shall be made available by the FBO at the Airport. In addition to regularly scheduled service, the FBO shall be on-call to provide basic line service needs to based and transient pilots needing to use the Airport.

3.1.6 Secure Terminal Building. The FBO shall be responsible for the security of the City-owned main terminal facility. All doors shall be locked during all non-office hours.

3.1.7 Ramp Service. The FBO shall provide adequate ramp service such as towing aircraft, inflating aircraft tires, washing aircraft windscreens, and recharging batteries.

3.1.8 Repair and Maintenance. The FBO shall make repairs and maintenance to based and transient aircraft available.

3.1.9 Aircraft Rental. The FBO shall have available for use for the purpose of renting, either owned or under written lease to Operator, not less than one properly certificated aircraft. The aircraft must be certified for flight under instrument flight rules. The FBO may partially own an aircraft through the FBO's membership in a flying club.

3.1.10 Flight Instruction. The FBO shall ensure that flight instruction services are provided at the Airport, which services may be contracted out to a single service provider pursuant to the requirements of Section 2.9 herein, and the FBO shall provide a copy of any subleases or other agreements with such single service provider to the City.

3.1.11 Aircraft Charter Service. The FBO may provide or arrange for on-demand charter service (FAR Part 135) to be provided to the community for the purpose of transporting goods and people to and from the Airport, and the FBO shall provide a copy of any subleases or other agreements with any charter service provider to the City. In the event that on-demand charter service is not provided at the Airport, the FBO shall direct parties interested in such service to the nearest available location where such service is offered.

3.2 **Reimbursements.** To compensate the FBO for benefits it provides to the City as a contact for the Airport, certain services to be provided by the FBO pursuant to this Article shall be reimbursable pursuant to the schedule of weekly employee wages and overhead expenses incurred by the FBO in providing such reimbursable services attached to this Agreement as Exhibit C.

3.3 **Aircraft Service by Owner or Operator.** It is clearly understood by the FBO that no right or privilege has been granted herein which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform.

3.4 **Standard of Care.** The FBO shall exercise the same degree of care, skill and diligence in the performance of services under this Agreement as is ordinarily possessed and exercised by members of the same profession, currently practicing, under similar circumstances.

3.5 **Hours of Operations.** The FBO agrees to perform the services under this Agreement at all reasonable times in accordance with the Minimum Standards, including on-call service after regular business hours.

3.6 **Review of Performance.** Representatives of the FBO shall meet regularly (at least annually) with the Willmar Airport Commission for purposes of reviewing its performance of the services required by this Agreement. The FBO shall provide annual reports to the City no later than January 31 of each year summarizing its previous year's operations and performance of the FBO services. All records and reports of the FBO relevant to its performance of the FBO services or its use of the Leased Premises or Airport Facilities shall be made available to the City upon the City's request.

#### ARTICLE 4. FBO RESPONSIBILITIES.

4.1 **Laws and Regulations.** The FBO agrees to observe and obey during the term of this Agreement, all laws, ordinances, rules and regulations promulgated and enforced by the City,

and by any other proper authority having jurisdiction over the conduct of the operations at the Airport.

4.2 **Indemnification.** The FBO shall indemnify, protect, save, hold harmless and insure the City, and its respective officers, directors, employees and members and agents, from and against any and all claims and demands for, or litigation with respect to, all damages which may arise out of or be caused by the FBO or its agents, employees, contractors, subcontractors, or sublessees with respect to the FBO's performance of its obligations under this Agreement. The FBO shall defend and indemnify the City against the foregoing, or litigation in connection with the foregoing, at the FBO's expense, with counsel reasonably acceptable to the City. The City, at its expense, shall have the right to participate in the defense of any claims or litigation and shall have the right to approve any settlement, which approval shall not be unreasonably withheld. The indemnification provision herein shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of the City. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.

4.3 **Insurance.** At all times throughout the term of this Agreement, the FBO shall maintain at a minimum the following insurance coverages in the indicated amounts from financially solvent insurance carriers:

Commercial General Liability Insurance: \$2,000,000 combined single limit, including endorsements to include contractual liability;

Aircraft Liability Insurance: \$100,000 passenger liability and \$1,000,000 per occurrence;

Products Operations: \$1,000,000 per occurrence and \$2,000,000 aggregate;

Products Hazard and Completed Operations: \$1,000,000 per occurrence and \$2,000,000 aggregate;

Hangar Keepers: \$250,000 per aircraft and \$500,000 per occurrence;

Premises Liability Insurance: \$1,000,000 per occurrence;

Automobile Liability: \$1,000,000 per occurrence;

Workers Compensation: in statutory amounts; and

Any other insurance coverages required by state or federal laws or regulations applicable to the FBO.

4.3.1 All policies of insurance evidencing the coverages set forth above shall be approved by the City as to legal form before they are filed, and shall contain an

endorsement that the same may not be canceled before the expiration of its term except upon 10 days' written notice to the City.

4.3.2 With the exception of the Workers Compensation policies, all policies required above shall provide event-based coverage, shall insure the defense and indemnity obligations assumed by the FBO under this Agreement, and shall name the City as an additional insured under the policy.

4.3.3 True, accurate and current certificates of insurance, showing evidence of the required insurance coverages, are hereby provided to the City by the FBO and are attached hereto as Exhibit D.

**4.4 Hazardous Substances.** The FBO shall comply, and shall require any sublessee to comply with all environmental laws, rules, regulations, orders and permits applicable to the use of the Leased Premises and/or the Airport Facilities, including but not limited to, required National Pollutant Discharge Elimination System Permits and all applicable laws relating to the use, storage, generation, treatment, transportation, or disposal of hazardous or regulated substances. Except for the Hazardous Substances governed by and transported in full compliance with the transportation laws of the state or federal government, The FBO must not knowingly use, store, generate, treat, transport, or dispose of any hazardous or regulated substances or waste on or near the Leased Premises and/or Airport Facilities without first obtaining all required permits and approvals from all authorities having jurisdiction over the operations conducted on the Leased Premises and/or Airport Facilities.

4.4.1 If The FBO determines that a threat to the environment, including but not limited to a release, discharge, spill or deposit of a hazardous or regulated substance, has occurred or is occurring which affects or threatens to affect the Leased Premises and/or the Airport Facilities, or the persons, structures, equipment, or other property thereon, The FBO must notify immediately by oral report, in person or by telephone, to be promptly confirmed in writing within twenty four (24) hours to the Airport Manager as required by law or regulation.

4.4.2 The FBO or its designee shall keep a readily accessible file of Materials Safety Data Sheets ("MSDS") for each Hazardous Substance on site or transported, in accordance with federal and state transportation laws, which file must be posted and immediately available to any City employee or Airport tenant who responds to report of a discharge of a Hazardous Substance on the Leased Premises and/or Airport Facilities.

4.4.3 The FBO will cause prompt remediation and the payment of all costs associated with any action or inaction of The FBO that directly or indirectly prevents the Airport from materially conforming to all then applicable environmental laws, rules, regulations, orders, or permits. In the event The FBO fails to fulfill this obligation following written notice and a reasonable cure period, the City may perform any such remediation and the direct and indirect cost of such action shall be invoiced to the The FBO plus a fifteen percent (15%) administrative fee. Payment of such charges are due and payable upon

demand and may not be contested. The rights and obligations set forth in this Section Paragraph shall survive the earlier expiration or termination of this Agreement.

- 4.5 **Signs.** The FBO agrees that no signs or advertising matter may be erected or installed on the Leased Premises or Airport Facilities without the consent of the City.
- 4.6 **Obstruction Lights.** The FBO agrees to permit the City to install, maintain and operate proper obstruction lights on the tops of all buildings or structures located on or to be placed on the Leased Premises at no cost to the FBO.
- 4.7 **Utilities.** The FBO shall provide for heat in the FBO hangar and be responsible for the natural gas used for such purposes and payment therefore.
- 4.8 **Fair and Nondiscriminatory Services.** The FBO in the conduct of any aeronautical activity for furnishing services to the public at the Airport, shall furnish services on a fair, equal and not unjustly discriminatory basis to all users, and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that the FBO may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. The FBO specifically covenants that: (1) no person on the grounds of race, creed, color, religion, sex, age, national origin, sexual orientation, marital status, handicap, disability, or political belief or affiliation will be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination in the use of the Leased Premises or the Airport Facilities; (2) in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, age, national origin, sexual orientation, marital status, handicap, disability, or political belief or affiliation will be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination.

4.8.1 Nondiscrimination - Business Owner. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The FBO for itself, and as a requirement for any sublessee, agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award of performance or any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

4.8.2 Remedy for Breach. If the FBO is found by a final verdict of a court of competent jurisdiction to have deliberately breached a non-discrimination covenant, or to have permitted any sublessee to deliberately breach a non-discrimination covenant, the City may immediately enforce the remedies directed by the Court's decision, which may include the City's right to reenter the Leased Premises, retake possession thereof and terminate this Agreement. This provision is not effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are completed, including exercise of any rights to appeal.

4.8.3 **Affirmative Action.** The FBO shall cause to be implemented an affirmative action program as required by 14 CFR Part 152, Subpart E, to provide (i) that no person on the grounds of race, creed, color, religion, sex, age, national origin, handicap, disability, or political belief or affiliation is excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E; (ii) that no person will be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by that Subpart; (iii) that third parties otherwise retained by the FBO or its designee shall provide similar assurances to the FBO or its designee to undertake affirmative action programs and to require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E. The FBO or its designee at no expense to the City shall comply with any applicable requirements of the Americans with Disabilities (ADA) as it may be amended, with respect to the Leased Premises and the Airport Facilities.

4.9 **Nonexclusive Rights.** The FBO shall have the right and privilege of engaging in and conducting a business on the Leased Premises under the terms and conditions as set forth in this Agreement, provided, however, that this Agreement shall not be construed in any manner to grant the FBO or those claiming under it the exclusive right to the use of the Airport Facilities other than the Leased Premises.

4.10 **Financial Disclosure.** The FBO shall furnish such evidence as may be reasonably requested by the City to show the FBO is financially capable of providing the FBO services set forth in Article 3 prior to the City's approval of this Agreement and at such further times as the City may require.

## ARTICLE 5. CITY RIGHTS AND RESPONSIBILITIES.

5.1. **City Responsibilities.** To facilitate the FBO's performance of the FBO services set forth in Article 3, the City shall supply in proper time and sequence, the following to the FBO:

5.1.1. **Airport Operation.** The City shall operate the Airport as a public airport during all such times when this Agreement is in effect, subject to the assurances given by the City to the United States Government.

5.1.2. **Quiet Enjoyment.** The City covenants that it has the authority to execute this Agreement, that at commencement of the Agreement, the City has good title to the Leased Premises and that throughout the term hereof, the FBO will have peaceful and uninterrupted possession of the Leased Premises subject to its payment of rent and other charges and to its performance of the FBO services set forth in Article 3 and adherence to the terms and conditions of this Agreement. The City agrees to remedy any violation of quiet enjoyment caused by the City or one of the City's other tenants and to honor the FBO's tenancy so long as this Agreement shall be in effect.

- 5.1.3. **Access to Airport Facilities.** The City shall allow the FBO access to the following facilities: the main hangar with supporting facilities, main ramp area, and reception area.
- 5.1.4. **Exterior Maintenance.** The City shall provide snow removal and grass mowing services on the Leased Premises, and will provide maintenance of the exterior of the City-owned buildings on the Leased Premises and will perform any needed structural repairs to such buildings, including all maintenance and repair of exterior doors, windows and roofs. In the main terminal, the City shall be responsible for repair and maintenance of the plumbing, heating, and electrical systems. The City shall be responsible for the repair and maintenance of the public restrooms and all other areas used by or available to the public. The FBO will provide general repair and maintenance (not structural repair) for all structures located on the Leased Premises as more specifically detailed in Section 2.6 herein.
- 5.1.5. **Fuel Facility Maintenance.** The City shall maintain the City-owned fueling facility at the Airport and maintain the fueling systems in full working order.
- 5.1.6. **Insurance.** The City shall provide fire and extended coverage insurance on all City-owned buildings which are either leased to or used by the FBO.
- 5.1.7. **Utilities.** The City shall provide for heat, electricity, water and air conditioning in the main terminal building, and shall provide for electricity and water to the FBO hangar.

5.2. **Rights Reserved to the City.** The City expressly reserves the following rights:

- 5.2.1. **Right to Inspect.** The City reserves the right to enter upon the Leased Premises at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this Agreement.
- 5.2.2. **Airport Development.** The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the FBO, and without interference or hindrance. If the development of the Airport requires the relocation of the FBO, the City agrees to provide a comparable location and agrees to relocate all buildings or provide similar facilities for the FBO at no cost to the FBO.
- 5.2.3. **City's Rights.** The City reserves the right, but shall not be obligated to the FBO, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the FBO in this regard.
- 5.2.4. **Obstructions.** The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction,

together with the right to prevent the FBO from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft. The FBO shall, upon approval by the City and prior to any construction of any nature within the boundaries of the Airport, prepare and submit to the Federal Aviation Administration, FAA Form 7460-1, "Notice of Proposed Construction or Alteration", as required by Federal Aviation Regulation Part 77.

5.2.5. **Mineral Rights.** The City expressly reserves all water, gas, oil and mineral rights in and under the soil beneath the Leased Premises, but testing for and/or removal of any such gas, oil, or minerals shall be done in a manner so as not to disturb the Leased Premises or disrupt the operation of the business being conducted thereon.

## ARTICLE 6. DEFAULT, TERMINATION AND DISPUTE RESOLUTION.

6.1 **Default.** The FBO shall be deemed to be in default of its obligations under this Agreement upon the FBO's causing or permitting any of the following to occur:

- (1) Failure to pay rent within 30 days after due date;
- (2) Failure to perform any of the FBO services set forth in Article 3.
- (3) Failure to comply with any terms or conditions of this Agreement.
- (4) The cancellation or other termination of any insurance policy issued as required by Section 4.3, unless another policy has been filed and approved by the City pursuant to Section 4.3 and shall be in effect at the time of such cancellation or termination.
- (5) The filing of a petition under the Federal Bankruptcy Act or any amendment, including a petition for reorganization or an arrangement;
- (6) The commencement of a proceeding for dissolution or for the appointment of a receiver;
- (7) The making of an assignment for the benefit of creditors;
- (8) Abandonment of the Leased Premises.

6.2 **City Rights Upon Default.** In the event that the FBO shall be in default of its obligations under this Agreement pursuant to Section 6.1 and such default shall continue for thirty days after receiving written notice thereof from the City, then the City may terminate this Agreement. If the default cannot reasonably be cured within said thirty (30) days or within any other time as set out in the notice of default, the FBO shall be deemed to have cured the default if it commences the remedy process within the applicable period and thereafter diligently prosecutes the same to completion.

6.3 **Rights After Termination.** In the event of termination for default by the FBO or other expiration of this Agreement, the City shall have the right at once and without further notice to the FBO, to enter and take possession of the Leased Premises, and expel, oust and remove any and all parties who may occupy any portion of the Leased Premises, and any and all goods and chattels belonging to the FBO or its associates which may be found, without being liable for prosecution or to any claim for damages. Upon such termination by the City, all rights, powers and privileges of the FBO shall cease, and the FBO shall immediately vacate

the Leased Premises, and shall make no claim of any kind whatsoever against the City, its agents or representatives, by reason of such termination, or any act incident thereto. Upon such termination or expiration, any sublessees present on the Leased Premises who were properly approved by the City in writing pursuant to Section 2.9 shall be entitled to remain on the Leased Premises and continue their operations thereon through the expiration of the term of this Agreement then in effect. In the event of termination for any cause which is determined by the City to be beyond the control and without the fault or negligence of the FBO, payment to the City hereunder shall immediately cease, and the FBO shall be entitled to have monies which have been prepaid or advanced to the City predicated on occupancy of the Leased Premises to the end of the period, if any, refunded to it by the City. The FBO shall, in addition to other rights provided for by law, be permitted to remove its personal property from the Leased Premises in a manner and at a time agreed upon by the parties.

**6.4 Dispute Resolution.** The FBO and the City agree to negotiate all disputes between them under this Agreement in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their respective rights under law.

#### ARTICLE 7. GENERAL PROVISIONS.

**7.1 Subordination to U.S.A./FAA Requirements.** This Agreement is subordinate to the provisions of any existing or future agreement between the City and the United States of America or the State of Minnesota relating to the operation or maintenance of the Airport. Furthermore, this Agreement may be amended to include provisions required by those agreements with the United States or the State of Minnesota.

**7.2 Minimum Standards and Rules and Regulations.** The City has adopted and will enforce Minimum Standards and reasonable rules and regulations to be uniformly applied to similar uses and users of similar space at the Airport, which the FBO agrees to observe and obey with respect to its use of the Leased Premises and Airport Facilities and the health, safety and welfare of those using the Leased Premises and Airport Facilities. The Minimum Standards and rules and regulations may be amended from time to time following notice to the FBO.

**7.3 Independent Contractor Status.** The FBO, at all times and for all purposes hereunder, shall be an independent contractor and is not an employee of the City for any purpose. No statement contained in this Agreement shall be construed so as to find the FBO to be an employee of the City, and the FBO shall not be entitled to any of the rights, privileges, or benefits of employees of the City, including but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims. The FBO acknowledges that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from any payments due the FBO hereunder, and that it is the FBO's sole obligation to comply with the applicable provisions of all Federal and State tax laws. The FBO shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide the services identified herein. The FBO is responsible for hiring sufficient workers to perform the services/duties required

by this contract, withholding their taxes and paying all other employment tax obligations on their behalf.

- 7.4 **No Partnership, Joint Venture, or Fiduciary Relationship.** Nothing contained in this Agreement shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the City and the FBO, it being understood that the sole relationship created hereby is one of landlord and tenant.
- 7.5 **No Third Party Benefit.** No provision of this Agreement creates a third party claim against the City, the Airport, or the FBO beyond that which may legally exist in the absence of any such provision.
- 7.6 **No Waiver.** Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.
- 7.7 **Force Majeure.** Neither the City nor the FBO will be deemed to be in breach of this Agreement if either is prevented from performing any of its obligations hereunder by reason of Force Majeure. Force Majeure means any prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, including inclement weather and/or periods of rain or snow, inability to obtain labor or materials, or reasonable substitutes therefore, governmental restrictions or requirements, governmental regulations, governmental controls, inability to timely obtain governmental approvals, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform. All of the foregoing events excuse the performance by either party for a period equal to any prevention, delay, or stoppage, including the obligations imposed with regard to commencement or payment of rental and other charges to be paid by the FBO pursuant to this Agreement and the obligation of the City to deliver the Leased Premises.
- 7.8 **Covenant Against Contingent Fee.** The FBO warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the FBO to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Agreement.
- 7.9 **Minnesota Law Governs.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

- 7.10 **Venue.** Venue of any action brought under this Agreement lies in Kandiyohi County, Minnesota, exclusively, where the Agreement was executed and will be performed.
- 7.11 **Terms Binding on Successors and Assigns.** All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the FBO and the City.
- 7.12 **Notices.** All notices required or permitted to be given to the parties hereunder shall be in writing and may be given personally or deposited in the United States Mail, postage prepaid, and addressed to the parties' respective addresses as follows:

CITY:  
City of Willmar, Airport Manager  
PO Box 755  
Willmar, MN 56201

FBO:  
Oasis Aero, Inc.  
6600 Highway 40 West  
Willmar, MN 56201

Notices shall be deemed given as of the date said notice is deposited in the mail or personally delivered.

The Parties must notify each other promptly in the event of a change in name or address.

- 7.13 **Severability.** Each provision, paragraph, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any provision, paragraph, section, sentence, clause, phrase, and/or word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.
- 7.14 **Voluntary and Knowing Action.** The parties, by executing this Agreement, state that they have carefully reviewed this Agreement and understand fully the contents hereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- 7.15 **Authorized Signatories.** The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

7.16 **Data Practices.** The parties acknowledge that data collected by the City pertaining to this Agreement may be subject to the requirements of Minnesota’s Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*

7.17 **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, to the extent applicable, the FBO agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the FBO and involve transactions relating to this Agreement. The FBO agrees to maintain these records for a period of six years from the date of termination of this Agreement.

7.18 **Waiver and Assumption of the Risk.** The FBO knows, understands and acknowledges the risks and hazards associated with using the Airport Facilities and Leased Premises and hereby assumes any and all risks and hazards associated therewith. The FBO hereby irrevocably waives any and all claims against the City or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the FBO as a result of using the Airport Facilities or the Leased Premises and hereby irrevocably releases and discharges the City and any of its officials, employees or agents from any and all claims of liability.

7.19 **Attorney Fees.** The FBO shall pay all costs, attorney fees, and expenses incurred by the City to enforce this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

*[Remainder of page intentionally left blank]*

**FBO:**

**OASIS AERO, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

Date: \_\_\_\_\_

**CITY:**

**CITY OF WILLMAR, MINNESOTA**

By: \_\_\_\_\_  
Marvin Calvin, Its Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mike McGuire, Its Interim City Administrator

Date: \_\_\_\_\_





# EXHIBIT B LEASED PREMISES

WILLMAR, MINNESOTA  
AIRPORT

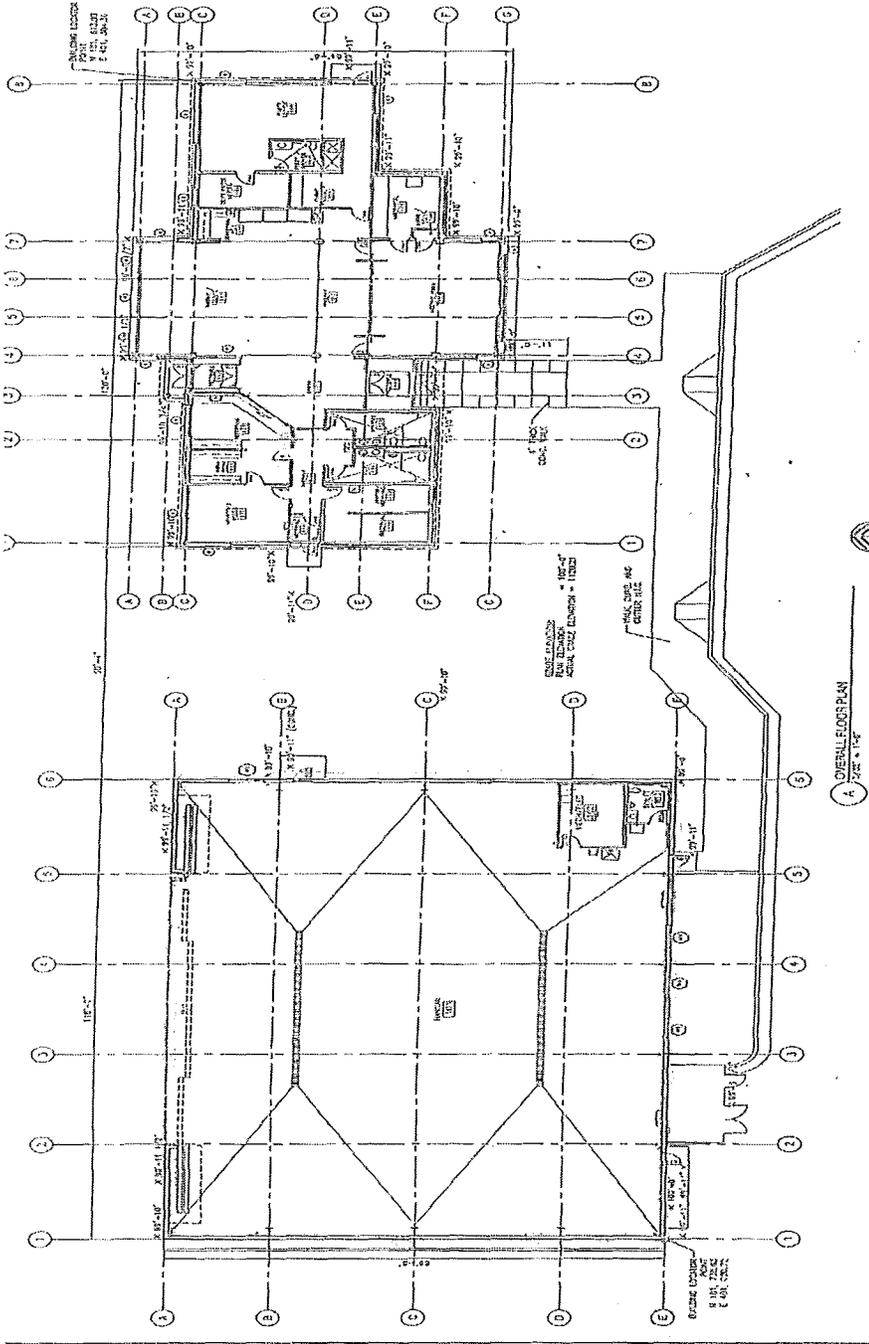
OVERALL FLOOR PLAN

A001

**W. H. HARRIS & ASSOCIATES**  
Engineers & Architects  
10000 Hennepin Avenue, Suite 200  
Minneapolis, MN 55424  
Phone: 651-636-1111

**St. Pauli Office**  
233 West Highway 36  
St. Paul, MN 55113  
Phone: 651-636-1111

**W. H. HARRIS & ASSOCIATES**  
10000 Hennepin Avenue, Suite 200  
Minneapolis, MN 55424  
Phone: 651-636-1111



(A) OVERALL FLOOR PLAN  
1/8" = 1'-0"

**EXHIBIT C**  
**SCHEDULE OF REIMBURSABLE EXPENSES**

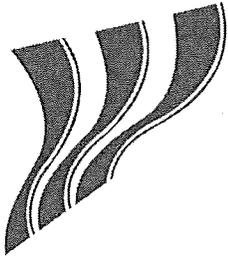
The following schedule of reimbursable expenses shall apply during the balance of 2016 and the entirety of calendar year 2017:

	Reimbursable Service	Manager Hours	Administrative Assistant Hours	Mechanic Hours	Part-Time Empl. Hours	Totals
1	Courtesy Service (Sec. 3.1.1)		6			6
2	Unicom radio (Sec. 3.1.2)		3			3
3	Issue NOTAMs (Sec. 3.1.3)					
4	Daily fuel records (Sec. 3.1.4)		2.5			2.5
5	Weekend & On-call (Sec. 3.1.5)			6	16	22
6	Secure Terminal (Sec. 3.1.6)		1.5			1.5
	Total Staff Time (hours per week)		13	6	16	35
	Applicable Hourly Wage		\$15.97	\$19.07	\$10.66	
	Employee Wages (per week)		\$207.61	\$114.42	\$170.56	\$492.57
	Company Overhead					150%
	Total Reimbursement (per week)					\$738.89

Total Reimbursable Expenses per week: \$738.89  
 Weeks per year: 52  
 Total Reimbursable Expenses per year: \$38,422.28  
 Months per year: 12  
 Total Reimbursable Expenses per month: \$3,201.86

Beginning in calendar year 2018 and for each subsequent calendar year during the initial term or any renewal term of this agreement, the applicable hourly wages from which the total reimbursable expenses are calculated shall increase by \$0.05 per year (i.e., in 2018 the applicable hourly wages will be \$16.02 for Administrative Assistant hours, \$19.12 for Mechanic hours, and \$10.71 for part-time employee hours; in 2019 the applicable hourly wages will be \$16.07 for Administrative Assistant hours, \$19.17 for Mechanic hours, and \$10.76 for part-time employee hours, etc.), and the schedule above shall otherwise remain unchanged.

**EXHIBIT D**  
**CERTIFICATES OF REQUIRED INSURANCE COVERAGES**



## CITY OF WILLMAR

Planning and Development Services  
City Office Building  
333 SW 6<sup>th</sup> Street  
Willmar, MN 56201  
320-235-8311

### COUNCIL ACTION REQUEST

**DATE:** November 17, 2016

**SUBJECT:** Industrial Park Land Sale

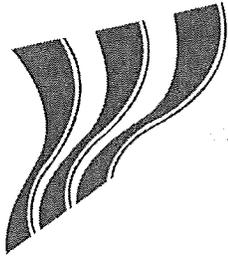
**RECOMMENDATION:** To approve the purchase agreement as presented. A copy of the purchase agreement will be made available as soon as it is received from the City Attorney.

**BACKGROUND:** Staff has been working with a current resident in the Industrial Park on the sale of an additional lot to the company for future expansion purposes. The property under consideration is Lot 4, Block 2, Willmar Industrial Park Third Addition. This property is directly across Airport Drive from the Buhler manufacturing facility.

**FINANCIAL CONSIDERATION:** The purchase price for the property is approximately \$330,000. This is based on the full price of \$1.25 per square foot. The purchaser proposes to create 33 new positions within the next two years. Under the terms of the Industrial Land Write-Down Policy, this would provide the company with a credit of \$330,000, thereby reducing the out of pocket purchase price to \$0.

**LEGAL:** The purchase agreement was drafted by City Attorney Robert Scott and is the standard format purchase agreement used by the City for Industrial Park transactions.

**DEPARTMENT/RESPONSIBLE PARTY:** Bruce D. Peterson, AICP – Director of Planning and Development Services



**CITY OF WILLMAR**

**Planning and Development Services  
City Office Building  
333 SW 6<sup>th</sup> Street  
Willmar, MN 56201  
320-235-8311**

## **COUNCIL ACTION REQUEST**

**DATE:** November 17, 2016

**SUBJECT:** Building Construction Update

**RECOMMENDATION:** Receive for Information

**BACKGROUND:** Staff will be prepared to discuss building construction levels from January through October for both 2015 and 2016. 2016 has seen a tremendous increase not only in the number of building permits, but in the valuation of projects, as well.

**FINANCIAL CONSIDERATION:** Fees collected for the building construction work also reflect significant increases from 2015 to 2016.

**LEGAL:** N/A

**DEPARTMENT/RESPONSIBLE PARTY:** Bruce D. Peterson, AICP – Director of Planning and Development Services

## Construction Update

	January through October 2015	January through October 2016
<b>No. of Building Permits</b>	419	445
<b>No. of Single Family Homes</b>	11	35
<b>Total Construction Value</b>	\$33,910,240	\$51,796,087
<b>Building Permit Revenue</b>	\$167,216	\$252,201
<b>No. Plumbing Permits</b>	50	65
<b>Plumbing Permit Revenue</b>	\$7,237	\$12,411
<b>No. Mechanical Permits</b>	127	215
<b>Mechanical Permit Revenue</b>	\$47,121	\$49,086
<b>Plan Check Revenue</b>	\$90,198	\$114,337