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PLANNING, ZONING AND BUILDING SAFETY

Public Health,  
Housing Inspections &  
Inspection Services

MEMORANDUM

**To:** Mayor and City Council Members  
**Cc:** Gregg Mandsager, City Administrator  
**From:** Steven Boka, Director of Community Development  
**Date:** April 15, 2011  
**Re:** Amendment to the FBO Lease – Municipal Airport

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**INTRODUCTION:** The City has utilized the services of a Fixed Base Operator (FBO) at the Muscatine Municipal Airport for over 30 years. A current 5-year FBO Agreement/Lease was recently negotiated and approved on July 1, 2010. The FBO provides many services at the airport to include, flight training, charter services, aircraft rental, tie-down service, fuel & oil dispensation and sales, aircraft storage in Bldg D, and aircraft storage, repair and maintenance in Bldg. B.

**BACKGROUND:** As of April 1, 2011, the lease with BSAM (previously Bandag) has expired and hangar C has been turned over to the City. Until a lease for a large hangar can be negotiated to serve a future need, the hangar utilities and hangar maintenance is the responsibility of the city. Staff has negotiated an amendment to the FBO agreement (Carver Aero, Inc.) to assume responsibility for the maintenance and all utility costs for this hangar, in addition to all utility costs for Hangar D. The FBO will also pay the city an additional \$1,200 per year for the use of the Hangar until a need arises for a better use of the facility. The FBO has approved and signed the Amendment.

**RECOMMENDATION/RATIONALE:** It is recommended that the City Council approve the amendment to the Fixed Base Operator (FBO) Lease for the Muscatine Municipal Airport providing for the rent and use of Bldg. C and the assumption of all utility costs associated with Hangars C & D, in addition to the other provisions contained in the current agreement.

**BACKUP INFORMATION:**

1. Proposed Amended Agreement

**CITY OF MUSCATINE  
FIXED BASE OPERATOR LEASE  
MUSCATINE MUNICIPAL AIRPORT**

This Agreement is effective July 1, 2010, and as amended on 4 B, 2011 between the City of Muscatine, Iowa, hereinafter called "Lessor" and Carver Aero, Inc., hereinafter called "Lessee."

**WITNESSETH:**

WHEREAS, Lessor owns and operates the Muscatine Municipal Airport and the Lessor is willing to lease to the Lessee certain premises hereinafter more fully described and located on said Airport upon the terms and conditions stated herein; and

WHEREAS, said leased premises will be used for the operation of a flight training school, aircraft maintenance and repair, aircraft charter, aircraft sale and rental, sale of aircraft fuel and oil, and any other activities which, because of their direct relationship to the operation of aircraft, can appropriately be regarded as an "aeronautical activity."

NOW, THEREFORE, in consideration of the rents, covenants, and agreements herein contained, Lessor does hereby lease to Lessee the premises outlined on the plan marked Exhibit "A," attached hereto and made a part hereof.

**ARTICLE I**

**TERMS OF LEASE:** The term of this Lease shall be for five (5) years commencing July 1, 2010, and ending June 30, 2015. At its regular annual January meeting the Airport Advisory Commission and Lessee shall review the terms and conditions of this Agreement and the performance of the Fixed Base Operator.

**ARTICLE II**

**PAYMENT BY LESSEE:** In consideration of the leasing of said premises and permission to perform the said services, the Lessee hereby agrees to pay the Lessor the annual amounts, payable monthly, with payment due on the first day of the month in advance as follows:

(1) Fixed Base Operation –

(A) Payment for space in Terminal Building (Bldg. T)	\$ 800.00
(B) Flight Training	1,000.00
(C) Aircraft Charter	1,000.00
(D) Aircraft sale, rental, tie downs, hangar	1,000.00
(E) Sale of aircraft fuel and oil	2,500.00
(F) Aircraft storage in Bldg. C & D	2,400.00
(G) Aircraft storage, repair and maintenance shop in Bldg. B	1,200.00

Total Annual Rent: \$9,900.00

(2) The Lessee shall pay all utilities, including electricity, water, gas, and sewer for Buildings B, C & D.

(3) The Fixed Base Operator shall make no alternations to any buildings or facilities leased from the City without the approval of the City.

(4) The parties hereto agree to enter into good faith negotiations on November 1 of each year of this agreement concerning the amounts to be paid by the Lessee in Section (1) Fixed Base Operation with the expectation to reach mutual agreement, at which time the Lease will be amended, provided however, that if the parties cannot reach mutual agreement then the amounts as indicated herein shall remain the same or as is subsequently amended by reason of negotiations during the term of this Lease.

(5) Lessee agrees to pay additional compensation to Lessor for the sale of jet fuel in the amount of \$.03 (three cents) per gallon, which is in addition to the \$2,500 paid for sale of aircraft fuel and oil. This shall be paid by the 15<sup>th</sup> of each month for the previous month's jet fuel sales.

(6) Lessee agrees that the City shall have sufficient space reserved in Bldg D for the storage of snow removal equipment intended for use at the airport. Said space shall be available at no cost to the City.

### ARTICLE III

MAINTENANCE OF AIRPORT: Lessor reserves the right to further develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as it sees fit, provided that if the Airport facilities are closed for more than seven (7) consecutive days due to improvement construction, then the Lessee shall have the right to request a prorated abatement of the payments made to the City in Article II.

Lessor 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 Lessee from erecting, or permitting to be erected, any building or other structure on the Airport which in the opinion of the Lessor would limit the usefulness of the Airport or constitute a hazard to aircraft.

## ARTICLE IV

**RESPONSIBILITY OF LESSEE:** In addition to the other terms and conditions contained in this Agreement, Lessee shall have the following responsibilities:

- (1) Provide an FAA certified flight instructor (private pilot only) to be available upon demand within a reasonable time for the purpose of providing adequate flight training and ground school.
- (2) Provide one single engine aircraft for rental and flight school services on regular business days.
- (3) Provide or have available on call an adequate multi-engine aircraft for passenger charter service on regular business days.
- (4) Provide Avgas for general aviation aircraft and jet fuel to the extent that the same is available from regular suppliers, that being made available to the public during the hours the Terminal Building is open, and on an "on call" basis until 10:00 PM every night, except for designated City holidays. There shall be no service charges made by the Fixed Base Operator for fueling services during terminal hours. During the times when the Terminal Building is closed pursuant to the contract, a reasonable service charge may be made for fueling services.
- (5) Provide or have available aircraft maintenance services for single and twin engine aircraft with properly certified mechanics.
- (6) The services performed by the Fixed Base Operator under the terms and conditions hereof shall be to the standard that a reasonably prudent person would expect from a qualified Fixed Base Operator.
- (7) The Fixed Base Operator shall be open seven (7) days per week from 7:00 AM to 6:00 PM, except on designated City holidays.

## ARTICLE V

**FIRE AND OTHER DAMAGE:** Lessee shall be responsible for and promptly repair or replace at Lessee's expense any part of the Airport or any building or improvement thereon damaged or destroyed by negligence or willful act of Lessee, his employees, or subcontractors which is not covered by insurance, except as otherwise provided in this Lease. Lessee shall not be responsible or liable for reasonable wear and tear. Lessee shall not be responsible for damage caused by negligence or willful fault of Lessor, nor for the consequences of acts or omissions of Lessor, its officers, employees, and subcontractors or of other parties who use or come upon the Airport.

Fire and extended coverage insurance on the buildings on the Airport shall be maintained by Lessor at its expense. Lessee shall not be liable for any loss or damage resulting from any other than risks which are ordinarily covered by standard form policies of fire and extended coverage insurance, regardless of the extent or amount of such loss or damage and regardless of whether Lessor has such insurance in force at the time of such loss or damage, and whether or not such loss or damage is caused by any act or omission of Lessee, his employees or agents, or any other party for whose act or omission Lessee might otherwise be liable.

## ARTICLE VI

**INDEMNIFICATION AND INSURANCE:** Lessee covenants and agrees to hold Lessor free and harmless from loss, in whole or in part, from each and every claim and demand of whatever nature made by or on behalf of any person or persons for any wrongful act or omission arising out of the use of the Muscatine Municipal Airport on the part of Lessee, its agent, servants, invitees, and employees, and for such purpose, Lessee agrees to carry liability insurance naming the Lessor and its officers and employees as additional insured, such insurance to have limits of not less than the following:

(1) Worker's compensation insurance including Employer's Liability and Occupational Disease covering all Iowa employees for statutory Iowa benefits who perform any of the obligations assumed by the Fixed Base Operator under the Lease Agreement. The policy will contain a broad form all states endorsement.

(2) Comprehensive General Liability, including independent contractors, completed operations and products, contractual liability, broad form property damage, personal injury, and X, E, and U coverage. Coverage must meet the following limits and deductibles on bodily injury are not acceptable:

<u>Coverage</u>	<u>Minimum Limits</u>
Bodily Injury or Death	Each occurrence and \$1,000,000 aggregate
Property Damage	\$1,000,000 each occurrence and aggregate
Umbrella Liability Coverage	\$5,000,000

Lessee further agrees to file a certificate of insurance with Lessor evidencing that such insurance has been furnished, and that the same will not be cancelled without thirty (30) days notice to Lessor. During the term of this Agreement, the City will annually review the insurance limits to assure the limits are in accordance with City policy, and reserves the right to request the Fixed Base Operator to increase the above insurance limits provided thirty (30) days prior notice is provided by the City.

**WAIVER OF SUBROGATION:** Anything in this Lease contrary notwithstanding, Lessor or Lessee shall be liable to the other for any business interruption or any loss of damage to property or injury to or death of person occurring on the demised premises or the adjoining properties, sidewalks, streets, or alleys, or in any manner growing out of or connected with Lessee's use and occupation of the demised premises, or the condition thereof, or of sidewalks, streets, or alleys adjoining caused by the negligence or other fault of Lessor or Lessee or of their respective agents, employees, subtenants, licensees, or assignees to the extent that such business interruption or loss or damage to property or injury to or death of persons is covered by or indemnified by proceeds received from insurance carried by the other party (regardless of whether such insurance is payable to or protects Lessor or Lessee or both) or for which such party is otherwise reimbursed and Lessor and Lessee each hereby respectively waives all right of recovery against the other, its agents, employees, subtenants, licensees, and assignees, for any such loss or damage to property or injury to or death of persons to the extent the same is covered or indemnified by proceeds received from any such insurance or for which reimbursement is otherwise received. Nothing in this paragraph contained shall be construed to impose any other or greater liability upon either Lessor or Lessee than would have existed in the absence of this paragraph.

## ARTICLE VII

**RIGHT TO ENTER PREMISES:** Lessor, represented only by the City Administrator or his designated representative, reserves the right to enter upon the leased premises at any reasonable time for the purpose of making any inspection it may deem expedient.

## ARTICLE VIII

A-1. The Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49CFR Part 21, Nondiscrimination in Federally

Assisted Programs of the Department of Transportation and as said Regulations may be amended.

## ARTICLE IX

**ADVERTIZING:** The Lessee agrees that no signs or advertising material shall be placed or erected upon the leased premises without the prior written consent of Lessor, and such signs shall meet the requirements of the City's Sign Ordinance.

## ARTICLE X

**SUBORDINATION OF AGREEMENT:** This Agreement is subordinate and subject to the following conditions:

(1) During time of war or national emergency, Lessor shall have the right to enter into an agreement with the United States Government for military or naval use or part for all of the landing area, the publicly-owned air navigation facilities, and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provision of the agreement with the Government shall be suspended.

(2) This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States relative to the maintenance, operation, or development of the Airport.

(3) The Lessee agrees that the Lessor has the right to adopt and enforce reasonable rules and regulations applicable to the public's use of the Airport, and that Lessee and all its employees, agents, and servants will faithfully observe and comply with all rules and regulations as may be promulgated by the Lessor, the United States of America or any Department or Agency thereof, and the State of Iowa.

(4) Lessor reserves the right (but shall not be obligated to Lessee) 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 Lessee in this regard.

## ARTICLE XI

**ASSIGNMENT PROHIBITED:** The Lessee may not assign or transfer this Lease, or any interest therein, or sublet the premises or any part thereof without the prior written consent

of the Lessor (except normal aircraft hangar service) which Lessor shall not in good faith unreasonably withhold, and any attempt at assignment, transfer, or subletting shall be void and at the option of the Lessor, demand sufficient grounds for the cancellation and termination of this Lease.

## ARTICLE XII

**DEFAULT OF LESSEE:** If Lessee fails to pay the rent herein provided or any part thereof promptly when the same becomes due and payable, or if Lessee fails in any material respect to comply with the terms of this Lease, Lessor shall give Lessee written notice of such default, describing the nature of the default and requesting that it be remedied. If Lessee does not remedy such default (a) within five (5) days after receipt of such notice if the default consists of failure to pay any sum of money due hereunder, or (b) within thirty (30) days after receipt of such notice in the case of any other default, then Lessor may, at its option terminate this Lease forthwith by giving Lessee written notice of such termination. In the event of any such termination, Lessee shall within three (3) days after receipt of such notice of termination, surrender the Airport to Lessor; and Lessor may thereafter and without further notice enter upon the Airport and take full possession thereof, or bring an action of forcible entry and detainer to recover such possession, or enforce the terms and provisions of this Lease in any other manner as provided by law. In the event that suit is brought hereon to enforce any of the provisions of this Lease, or to collect the rents or any part thereof due hereunder, or to recover possession of the Airport, Lessee shall pay a reasonable attorney's fee for Lessor's attorney, the same to be taxed as part of the costs in any legal proceedings brought hereunder.

## ARTICLE XIII

**DEFAULT OF LESSOR:** If Lessor fails in some material respect to comply with the terms of this Lease, Lessee shall give Lessor written notice of such default, describing the nature of the default and requesting that it be remedied. If Lessor does not remedy such default within thirty (30) days after receipt of such notice, Lessee may, at its option, terminate this Lease forthwith by giving Lessor written notice of such termination. In addition, Lessee may terminate this Lease forthwith by giving Lessor written notice of such termination, in the event of any of the following, but only if such event is not caused by Lessee's negligence or willful fault, and only if such event substantially interferes with or prevents the performance by Lessee of services or activities which Lessee may lawfully perform hereunder: any substantial construction, alteration, or improvement authorized or undertaken by Lessor upon the Airport; the making of any agreement affecting the Airport between Lessor and any governmental body (including, without limiting the generality of the foregoing) the adoption or amendment of any rule or regulation by Lessor or any governmental body or authority or the failure of Lessor; in the event that any major building or improvement on the Airport is damaged or destroyed, to begin within sixty (60) days the repair or replacement of the same.]

#### ARTICLE XIV

**DELIVERY OF PREMISES:** At the expiration or termination of this Lease, Lessee agrees that it will give peaceful possession of the leased premises in as good a condition as they are now, ordinary wear and tear excepted.

#### ARTICLE XV

**BINDING AGREEMENT:** This Agreement shall extend to and be binding upon the heirs, executors, administrators, trustees, successors, receivers, and assigns of the parties hereto.

#### ARTICLE XVI

**NON-EXCLUSIVE RIGHT:** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended.

#### ARTICLE XVII

**ANNUAL REPORT:** Lessor may require not more than often than annually that Lessee submit to Lessor for examination an annual report detailing the activities and operation of the Airport, provided that such report shall not include information as to the Lessee's financial statements.

#### ARTICLE XVII

**TERMINATION CLAUSE:** The City may elect to terminate this Agreement for the default by the FBO of the terms and conditions hereof on giving (30) days written notice to the FBO of the intention to terminate as follows:

A. The City shall give ten (10) days written notice to the FBO of the default and if the default has not been corrected within twenty (20) days thereafter, this Agreement shall terminate at the option of the City.

B. The adjudication of the FBO as bankrupt, or the initiation of bankruptcy proceedings by the FBO or its creditors without a subsequent dismissal thereof within thirty (30) days shall terminate this Agreement at the option of the City.

The Fixed Base Operator shall surrender the demised premises in default under the provisions hereof in the same manner as provided in Article XIV herein for the surrender of the premises on expiration of the Lease term, and if Fixed Base Operator shall fail to surrender the premises, the City shall have all rights and remedies for repossession.

The City shall have the right to obtain reimbursement from Fixed Base Operator of all expenses incurred in regaining possession of the premises and the right to recover all

additional rental required under the Lease term if the City does not elect to terminate the Lease, but re-enters and re-lets the premises for the benefit of Fixed Base Operator.

NON-WAIVER OF RIGHTS OR REMEDIES: The failure of the City to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that the City may have regarding that specific instance only, and shall not be deemed a waiver or any subsequent breach or default in any terms and conditions.

NOTICES: All notices to be given with respect to this document shall be in writing, shall be sent by certified mail, postage prepaid and return receipt requested, to the part to be notified at the address set forth herein or at such other address as either party may, from time to time, designate in writing.

Every notice shall be deemed to have been given at the time is shall be deposited in the United States mail in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of an original notice or other legal process.

Executed this 1<sup>st</sup> day July 2010, at Muscatine, Iowa.

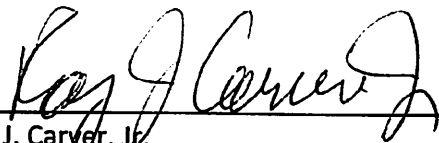
LESSOR: City of Muscatine, Iowa

\_\_\_\_\_  
Richard O'Brian, Mayor

Attest:

\_\_\_\_\_  
Gregg Mandsager, City Clerk

LESSEE: Carver Aero, Inc.

  
\_\_\_\_\_  
Roy J. Carver, Jr.

Approved by the City Council on the \_\_\_\_ day of July, 2010.  
Amended by the City Council on the \_\_\_\_ day of \_\_\_\_, 2011