

AIRPORT OPERATIONS AGREEMENT

This Agreement is made on this _____ day of _____, 2016, effective January 1, 2017, and entered into by and between the City of Aurora (hereinafter referred to as “City”) and Dan Wolf, Inc., an Illinois corporation (hereinafter referred to as “DWI”).

Witnesseth:

Whereas, the City of Aurora owns and operates the Aurora Municipal Airport located in Sugar Grove and Big Rock Townships, Kane County, Illinois, and;

Whereas, it is the desire of all parties to execute an Agreement to provide for the operation of the airport to include the management and maintenance of the Aurora Municipal Airport;

Now therefore, in consideration of the mutual covenants contained therein and the performance of the acts hereinafter set forth, the parties hereto agree to the following:

Section 1. Scope of Work for Maintenance.

- (a) DWI shall provide all manpower and required equipment without regard to the time of day or day of the week to provide for the maintenance of the Aurora Municipal Airport. DWI shall be on call, on a 24 hour basis, to perform required maintenance and assist as needed in the resolution of an emergency.

While the major aspects of this maintenance agreement are snow removal, mowing and airfield lighting, DWI shall be prepared and required to perform other duties as required. These include, but not limited to, building maintenance, i.e. window, door, siding and roof repairs; field tile repair; fencing installation and replacement and special events as approved by the City. DWI shall keep records and reports on the condition of the airport lights, pavement and other appurtenances to verify the functional capability of the facility following normal FAA protocols.

- (b) As a minimum, the following criteria are agreed upon by the parties for the maintenance of the Aurora Municipal Airport in the following specific areas:
 - i) Snow Removal:
 - a. No more than 1” of snow shall be allowed to accumulate on the primary runway.
 - b. No more than 1” of snow shall be allowed to accumulate on the transient apron.
 - c. No more than 2” of snow shall be allowed to accumulate on the remaining pavements.
 - d. De-icing chemicals shall be used to maximize safety and efficiency to aircraft and automobiles.
 - e. Snow removal equipment shall be kept clean and in good repair.

- ii) Mowing:
 - a. All areas under the jurisdiction of the Airport that are visible to the public in the non-aircraft movement areas shall be mowed at intervals to keep the grass less than 3" in height.
 - b. All areas under jurisdiction of the airport that are not included in the areas described in item 2a above, shall be mowed at intervals to keep the grass less than 6" in height.
 - c. All lights, poles, outlet structures, fences, pavement cracks and other appurtenances shall be regularly trimmed or sprayed to keep them free of grass or weeds.
 - d. All areas disturbed by plowing, mowing or other incidents shall be restored to proper grade and have turf repaired immediately when the disturbed area violates FAA safety standards as soon as possible in other areas.

- iii) Painting:
 - a. All poles, fences, lights, signs, structures and other appurtenances under the jurisdiction of the Airport shall be maintained according to FAA criteria and/or shall be kept free of rust by painting.
 - b. All Airport pavements shall be properly marked or painted to maintain the pavements according to FAA standards.

- iv) Electrical:
 - a. All airfield lights, gates and signs shall be checked on a daily basis and maintained as needed to be in working order. All lights that are out of service shall be repaired in 24 hours.
 - b. Inventory of common electrical components shall be organized and kept in sufficient numbers to facilitate timely repairs.
 - c. All airfield light lenses shall be cleaned as necessary to insure proper functioning.

- v) Storm Water System:
 - a. All storm water drainage system components, including but not limited to, outfall structures, inlet structures, manholes, field tiles, spillways and low flow flumes shall be regularly inspected.
 - b. Any vegetation that causes restriction of the flow of storm water shall be removed.

Section 2. Equipment.

- (a) In order to perform the items of work described in Section 1., (a) & (b), herein, the City agrees to provide to DWI, his employees, agents or assignees, the use of snow removal equipment, trucks and other equipment which will remain the property of the City which shall be insured by the City. Said equipment shall be maintained in good working order by DWI and shall be kept out of the weather when not in use in a facility owned by the City. DWI shall provide all minor maintenance to said equipment as part of this agreement, such as oil and lubrication, hoses and light body work. The City shall provide for all major repairs such as engine, transmission and hydraulics overhauls.

The City shall provide all materials, fuel and lubricants to operate and maintain City equipment. DWI shall not have exclusive use of the equipment during this Agreement but may be used by other City Departments when it is not needed by DWI to perform the duties described herein. DWI shall not use said equipment for any purpose other than the performance of obligations described herein.

- (b) DWI agrees to provide all mowing and other equipment and tools necessary to comply with the provisions of this agreement. Further, DWI shall provide a front end loader capable of properly loading de-icing materials in the snow removal equipment in addition to other uses. DWI shall maintain all of his equipment at his expense including, but not limited to parts, labor and/or replacements. DWI shall provide all oils and lubricants for the operation of his equipment. The City shall provide all fuels.

When available, the City agrees to allow DWI to store his equipment in facilities owned by the City at the Airport.

Section 3. Insurance and Indemnification.

- (a) During the term of this Agreement, DWI shall provide the following types of insurance in not less than the specified amounts:
 - i) Comprehensive General Liability - \$1,000,000 per occurrence;
 - ii) Workers Compensation – Statutory Employer Liability \$1,000,000 (the policy shall include a waiver of subrogation and may include an election by an owner/employee to exclude coverage)
 - iii) Umbrella Coverage (provided the Comprehensive General Liability Coverage is less than \$2,000,000), excluding aviation coverage - \$1,000,000; and
 - iv) Auto Liability – Combined Single Limit in the amount of \$1,000,000 on any DWI owned and/or hired and/or non-owned motor vehicles engaged in the Maintenance Services within the scope of this Agreement.
- (b) DWI shall furnish to the City satisfactory proof of coverage of the above insurance requirements, by a reliable company or companies and filed with the City. Said certificates shall contain a clause to the effect that, for the duration of this Agreement, the insurance policy shall be canceled, expired or changed so as to the amount of coverage only after written notification thirty (30) days in advance to the City. In addition, said certificates shall list the City and its officers, agents and employees as primary, non-contributory additional insured on all required insurance policies.
- (c) DWI shall require sub-contractors, if any, not protected under DWI's policies, to take out and maintain insurance of the same nature in amounts, and under the same terms, as required of DWI.
- (d) DWI shall indemnify, defend and save harmless the City, its officers, agents, employees, representatives and assigns, from lawsuits, actions, costs (including reasonable attorney's fees), claims or liabilities of any character, including as allowed by law, liabilities incurred by the City due to negligence of DWI, and brought because of any injuries or damages received or sustained by any person, persons, or property on account of any act or omission, neglect or misconduct of said DWI, its

officers, agents and/or employees (but excluding acts of employees or other independent contractors of the City working at the Airport unless such acts were at the direction of DWI) arising out of, or in performance of any of the provisions of this Agreement, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered against the City under the “Workers Compensation Act” or any other law, ordinance, order or decree (but excluding Workers Compensation claims of persons employed by the City and working at the Airport unless such claims arise as a result of direction given to such persons by DWI). DWI shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs arising out of such claims, lawsuits, actions or liabilities arising out of the negligent or willful conduct of DWI.

Section 4. General Provisions.

- (a) It is agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1948, as amended, and the City reserves the right to grant to others the privilege and right to conduct any one or all activities of an aeronautical nature.

- (b) DWI assures the City that an affirmative action program has been implemented as required by 14 CFR Part 152, Subpart E, to ensure that no person shall, on the ground of race, creed, color, national origin or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. DWI assures the City that no person shall be excluded based upon the foregoing grounds, from participating in or receiving the services or benefits of any program or activity covered by the foregoing Subpart. DWI assures the City that they will require that any of their suborganizations will provide assurance to DWI that they too, will undertake affirmative action programs and that they will require assurances from any of their suborganizations, as required by 14 CFR Part 152, Subpart E.

- (c) DWI further agrees to comply with such enforcement procedures as the United States Government might demand that the City take in order to comply with the assurances required herein.

- (d) DWI agrees to furnish its services on a fair, equitable and not unjustly discriminatory basis to all users of the Aurora Municipal Airport.

Section 5. Term. This Agreement shall remain in effect for a period of five (5) years, with two automatic one-year renewals, upon mutual consent of the City of Aurora and Dan Wolf Inc. This would commence on January 1, 2017.

Section 6. Compensation. The City shall pay DWI for the services as listed in this Agreement at the initial rate of three-hundred thirty thousand dollars (\$330,000) per year, payable in twelve (12) installments at the end of each month of the Term. The compensation for each of the subsequent years of this agreement shall be adjusted each January 1st equal to the amount of any increase of the Consumer Price Index (CPI) for the Chicago area. (see Cost of Living Adjustment Rider attached hereto as Exhibit A).

DWI shall be paid in equal monthly installments by the 15th of each month, commencing February 15, 2017, and thereafter upon satisfactory completion of the duties described herein.

Further, as part of the compensation, DWI shall reside in the residence(s) located on the airport, at no cost, including the cost of all utilities for the term of the agreement. DWI agrees not to sublease the residence without the written approval of the City.

Both parties further agree that if either party notifies the other party, in writing, no sooner than September 1, and no later than September 30, of each year, that the work required has substantially changed due to development at the airport, that both parties agree to negotiate with each other as to changes in the foregoing compensation amounts.

Section 7. Compliance. It is agreed by both parties that the compensation provided for in this Agreement is for work completed. Should duties not be performed per the provisions of this Agreement, the City has the discretion to withhold all or partial payment to DWI.

The City shall notify DWI, in writing, of any observed defaults in the performance duties by DWI. Failure of the City to observe and/or notify DWI of a default does not absolve DWI of the default. Further, should all or partial payments for improper compliance with the provision of this Agreement be withheld, a written explanation shall accompany the payment illustrating the defaults and the times of the default.

DWI may appeal any loss of payment to the Mayor and City Council.

Section 8. Status. The parties intend that the relationship between them created under this Agreement is such that DWI shall serve as an independent contractor to the City. DWI shall not be considered an agent or employee of the City for any purpose, and the City is interested only in the results obtained under this Agreement; with the manner and means of performing the services being subject to DWI sole and exclusive control.

DWI shall be responsible for all state, federal and local taxes, including estimated taxes, social security, disability insurance, if any, and other similar form of payments, as well as all employment or independent contractor reporting, for any of DWI's employees or agents.

DWI shall agree to random testing of all employees for substance abuse that work on the Airport at the discretion of the City.

DWI assures the City that all employees operating equipment on the Airport have all required training and licenses, as prescribed by law, for said equipment. DWI further agrees to abide by all FAA and State of Illinois procedures for operation and communication of men and machines on the Airport.

Section 9. Notices. Any notices permitted or required under this Agreement shall be deemed given upon the date of personal delivery or forty-eight (48) hours after deposit in the United States mail, postage fully prepaid, certified mail, return receipt requested, addressed to DWI at:

Dan Wolf, Inc., 5S790 Dugan Rd, Sugar Grove, IL 60554

And addressed to the City at:

City of Aurora
44 East Downer Place
Aurora, IL 60506
Attn: Corporation Counsel

or at any other address as a party may, from time to time, designate by notice given in compliance with this Section.

Section 10. Waiver. The waiver by either party of the breach of any provision of this Agreement with the other party shall not operate or be construed as a waiver of any subsequent breach.

Section 11. Assignment. Except as otherwise provided within this Agreement, neither party hereto may transfer or assign this Agreement without the prior written consent of the other party.

Section 12. Law Governing. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

Section 13. Attorney Fees. In the event any suit or action is brought by either party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorneys' fees to be fixed by the trial court and/or appellate court.

Section 14. Titles and Captions. All article, section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

Section 15. Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

Section 16. Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

Section 17. Modifications Must Be in Writing. This Agreement may not be changed orally. All modifications of this Agreement must be in writing and must have been signed by each party.

Section 18. Counterparts. This Agreement may be executed in two (2) counterparts and both so executed shall constitute an Agreement, binding on the parties hereto even though both of the parties are not signatories to the original or the same counterpart.

Section 19. Savings Clause. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Executed and delivered as of the day and year first above written.

City of Aurora

Dan Wolf, Inc.

By: _____
Mayor

By: _____
President

Attest: _____
City Clerk

Attest: _____
Secretary