

CITY OF AURORA, ILLINOIS  
RESOLUTION NO. R10-285  
DATE OF PASSAGE August 24, 2010

RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE  
A DIRECT AVIATION OPERATING AGREEMENT BETWEEN  
EXECUTIVE FLIGHT MANAGEMENT AND THE CITY OF AURORA

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City owns and operates the Aurora Municipal Airport; and

WHEREAS, Executive Flight Management has operated on the Aurora Municipal Airport since December 18, 2001 under a lease with the City; and

WHEREAS, Executive Flight Management and the City have terminated Executive Flight Management's lease by agreement so that JA can occupy the leased space formerly occupied by Executive Flight Management and Executive Flight Management is now sub-leasing space at the Airport which is owned by BCI Jets, Inc. at the Airport, and as a result the Direct Aviation Operating Agreement is required.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, that the City Council of the City of Aurora does hereby approve the Direct Aviation Operating Agreement between Executive Flight Management and the City of Aurora as attached hereto.

PASSED AND APPROVED by the City Council of the City of Aurora, Illinois on  
Aug. 24, 2010

Michael B. Santle

John Peter Mark-Buras

Richard B. B...

William Schulz

Jim V. K...

Billman

ATTEST:

City Clerk

Christy M. Donhoff

AYES 10

NAYS 0

ABSENT 0

Mayor

Thomas Weisner

## DIRECT AVIATION OPERATING AGREEMENT

THIS CONTRACT made and entered into this 24th day of August, 2010, and effective \_\_\_\_\_, 2010, by and between the City of Aurora, a Municipal Corporation of the State of Illinois ("City"), and Executive Flight Management, Inc. an Illinois Corporation, hereinafter referred to as Operator of ("EFM").

WHEREAS, the City of Aurora owns and operates a public airport known as the Aurora Municipal Airport ("Airport"); and

WHEREAS, Operator leased space at the Airport since December 18, 2001; and

WHEREAS, by Agreement between the parties hereto said Lease was terminated and Operator has ben operating under a Sub-Lease Agreement since February 1, 2008; and

WHEREAS, because of negotiations between the City and EFM regarding this Agreement there have been no payments by EFM to the City since February 1, 2008; and

WHEREAS, the City and Operator have agreed that this Direct Aviation Operating Agreement when executed by the parties will resolve all issues between the parties regarding fees owed to the City by Operator for the prior period from February 1, 2008 to present; and

WHEREAS, the Operator is willing to operate a general aviation business at said Airport for the use and benefit of the public and to promote aviation at said Airport.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the parties hereby covenant and agree as follows:

1. The City of Aurora does hereby engage Operator and Operator does hereby agree to be a non-exclusive limited operator of a general aviation business at said Airport as of this date and does hereby assume the responsibility for the efficient conduct of said operations. Operator agrees to maintain sufficient qualified personnel at the airport during such times as may be required for the efficient operation of its facilities.
2. Without limiting the generality of the foregoing, Operator shall have the following non-exclusive rights, privileges and uses in connection with the operation of said Airport.
  - a. The use of airport automobile parking areas, appurtenances of public improvements thereon.
  - b. The use of common areas of the airport, including runways, taxiways, aprons (exclusive of tiedowns), roadways, control tower, floodlights, landing lights, signals and other conveniences for the take-off, flying and landing of Operator's aircraft.

- c. The right to perform the following activities: aircraft management services, aircraft flight operations (excluding retail flight training, provide flight crews, aircraft storage), aircraft maintenance services, and aircraft sales. All of which is subject to Operator's compliance with all appropriate laws of the Federal Government, the State of Illinois and the ordinances of the City of Aurora and the requirements of the Federal Aviation Administration or any other duly authorized government agency.
  - d. Operator shall have the use during the term hereof of all administrative buildings of the Aurora Municipal Airport on an equal basis with other users.
  - e. Aurora Municipal Airport shall not grant any of the non-exclusive privileges and rights herein granted to Operator to any other persons, firm or corporation upon more favorable terms than is afforded to the Operator.
  - f. Aurora Municipal Airport shall generally aid and cooperate with the Operator in the promotion of interest in aviation and aviation business at the Airport.
3. This agreement shall remain in full force and effect upon the execution of this document by the City Council of Aurora and shall be in effect until January 31, 2013.
4. The Operator agrees to pay to the City of Aurora as rent one and one-half percent (1.5%) of its gross income on all permitted activities generated or performed on or occurring at the premises retro-active to February 1, 2008 and excludes aircraft sales in the calculation of gross income.
- a. Gross income is defined as all cash received arising from business activities generated by lessor, less deductions for State and/or Federal Sales/Excise Taxes as evidenced by lease. Payment records must be submitted in a form, as required by the City, on a monthly basis due no later than forty-five (45) days from the close of each respective month.
  - b. If for any reason, the rent as set forth in this contract is not paid when due, carrying charge of two percent (2%) per month or any portion of the month thereof shall be imposed on the amount which remains due and unpaid and be due and payable within the next rental payment. In addition to the remedies provided in Section nine (9) hereof, if the Operator is determined to be delinquent for any two (2) months during a consecutive twelve (12) month period, then the Operator may be required to post a security bond equivalent to six (6) months of rent (based on the amount set forth in Section 4c of this document) or be in violation of this lease.
  - c. In no event, shall the total rent as set forth in paragraph 4 be less than \$6,000 annually, to be paid in equal monthly installments commencing May 1, 2010.
  - d. The parties agree that retro-active rent from February 1, 2008 to April 30, 2010 is \$6,036.43. Operator will owe the City for the period subsequent to April 30, 2010 the 1.5% of its gross income on all permitted activities as hereinbefore provided. Operator shall remit the determined amount within thirty (30) days to the City. If all amounts in arrears are remitted within the thirty (30) day period the late fee as set forth in subsection (b) above shall not

be applicable. Upon receipt of said amount the City shall close any collection proceedings that may have been instituted by it to collect said amounts.

5. Operator covenants and agrees to have insurance in force and effect at all times during the term of this Agreement public liability insurance in the amount of \$1,000,000 combined single limit, \$2,000,000 aggregate, for bodily injuries and property damage or such other amount as may be set forth in the most current Rules and Regulations of the Aurora Municipal Airport as adopted by the City of Aurora. Said insurance shall protect Operator and the Aurora Municipal Airport and the City of Aurora and its agents and employees from loss on account of each and every claim or demand arising from alleged wrongful or negligent acts or omissions on the part of Operator, its agents, servants or employees. Said insurance shall be with a company or companies satisfactory to the City of Aurora and shall include coverages commonly known as "General Liability Insurance". The City of Aurora shall be named as an additional insured in such insurance and shall be provided with certificates of insurance evidencing such coverage. Said insurance shall be primary and the City of Aurora insurance shall be secondary and non-contributory.
6. Operator shall not permit any mechanics' lien to be placed upon the demised premises during the terms of this Agreement and in the case of such lien as a result of any work permitted to be done on the demised premises, Operator will pay promptly the amount of the same. In the event of default by Operator of the requirements of this paragraph which shall continue for more than thirty (30) days after written notice thereof from the City to the Operator, the City of Aurora shall have the right and privilege, at City of Aurora's option, to pay the same of any portion thereof without inquiry as to the validity thereof and any amount so paid, including expenses and interest, shall become an additional indebtedness hereunder due from Operator to the City of Aurora.
7. Operator covenants and agrees that it will protect, save and keep the City of Aurora and its agents or employees forever harmless and indemnified against any claims, actions, penalty, damage or charge imposed for any violation of any laws or ordinances by Operator, and that it will at all times protect, indemnify, save and keep harmless the City of Aurora and its agents or employees against claims, actions, costs, damages or expenses including the City's reasonable attorney fees that may arise out of the City and the Operator entering into this Agreement.
8. Operator agrees not to erect any building, structure or sign on the airport premises without first securing the written consent of the City of Aurora. Operator further agrees to operate said business from and in the facility commonly known as 43W622 US Rt.30 Sugar Grove, IL. Operator shall present to the City of Aurora an executed sublease with BCI Jets, LLC. If the primary lease is cancelled for any reason or the firm of BCI Jets, LLC ceases to exist, this Agreement shall become null and void immediately. Operator shall notify the City of Aurora within 14 days if its operations move to a different hangar/facility at the Aurora

Municipal Airport. Operator is only a Tenant of BCI and is not responsible for BCI obligations. Operator is only a tenant of BCI and is not responsible for BCI obligations.

9. In the event either party defaults on the prompt and full performance of the covenants and agreements herein contained, and such default is not remedied or prompt and full performance is not accomplished by the defaulting party, or such defaulting party has not promptly instituted and is not pursuing such remedies as are necessary to rectify such default within (30) days after demand is made by the other party, then in any such event, the party against whom such default is made, if it so elects, may terminate this Agreement.
10. The City of Aurora shall have the right, if it so elects, to terminate this Agreement immediately upon the filing of any petition, voluntarily or involuntarily, for the adjudication of the Operator as a bankrupt, or the making by the Operator of any general assignment for the benefit of creditors.
11. The provisions of the Rules and Regulations of the Aurora Municipal Airport as amended from time to time by the City of Aurora are hereby made a part of this Contract by reference and said provisions shall be binding on the parties to this Agreement.
12. This Agreement is subject to approval of the Division of Aeronautics of the State of Illinois, the United States Government and the Federal Aviation Administration, and other regulatory agencies, before execution hereof by the parties.
13. Pursuant to Title VI of the Civil Rights Act of 1964, and Part 21 of the regulations of the Office of the Secretary of Transportation, the parties to this Agreement hereby agree that neither the City of Aurora nor the Operator in the operation or usage of the subject property shall in any way on the ground of race, color or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21; furthermore, that the parties will include or require the inclusion, in every Agreement or concession pursuant to which any person operates or has the right to operate any facility herein concerned providing services to the public. The foregoing covenant is an obligation assumed by that person, together with the provisions granting the parties the right to take such action as the government may direct to enforce that covenant.
14. It is hereby agreed between the parties that the City of Aurora and the Operator will operate the airport for the use and benefit of the public on fair and reasonable terms, and without unjust discrimination; that in its operation and the operation of all facilities of the airport, neither party nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed or national origin in the use of any facilities provided for the public on the airport; that in any agreement, contract, lease or

other arrangement under which a right or privilege at the airport is granted, any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the airport, the parties hereto will insert and enforce provisions requiring the Operation"

- a. to furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof; and,
- b. to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that the Operator shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar price reductions to volume purchasers.

15. Books and Records Maintained: The Operator at all times during the terms of the lease shall maintain accurate books, accounts, records and receipts in a manner acceptable to a Certified Public Accountant, showing the true status of all business conducted on the lease premises and shall preserve same until they have been audited by the City of Aurora's auditor and shall make them available at any time to the City of Aurora for examination and audit.

- a. Financial Reports: Operator shall annually present to the City of Aurora, within ninety (90) days after fiscal year end, a copy of all financial statements audited and certified by a licensed Certified Public Accountant.
- b. In lieu of (a) above, the Operator shall present to the City of Aurora quarterly, a financial statement in a format acceptable to the City of Aurora and certified by the Operator. If this option is used by the Operator there shall be an annual audit fee of not less than \$200.00 and not more than \$500.00 payable on the anniversary date of this lease and annually thereafter, a like amount payable upon performance of audit work done by the City of Aurora.

IN WITNESS WHEREOF, the parties have executed this Contract in duplicate, the day and first year above written.

AURORA MUNICIPAL AIRPORT  
by Thomas Weiser  
Mayor

ATTEST:

by Cheryl M. Vonnhoff  
City Clerk

EXECUTIVE FLIGHT MANAGEMENT, INC.  
by [Signature]  
President

ATTEST:

[Signature]

by \_\_\_\_\_  
Secretary

