

RESOLUTION 11-01 Passed January 10, 2011

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO SIGN A SPECIALIZED SERVICE OPERATOR (SASO) AGREEMENT FOR AN AIRCRAFT MAINTENANCE OPERATION WITH FLY AMERICA, INC. AT THE DEKALB TAYLOR MUNICIPAL AIRPORT.

WHEREAS, the City of DeKalb is owner of the DeKalb Taylor Municipal Airport (DTMA) and has the authority to contract for a Specialized Aviation Service Operator (SASO) thereon and desires to exercise that authority; and,

WHEREAS, Jeffery Kohlert, Owner of Fly America, Inc. is an experienced mechanic on piston and turbine powered aircraft and desires to continue a commercial operation on property at the DeKalb Taylor Municipal Airport; and,

WHEREAS, the City of DeKalb staff has determined that the proposed agreement with Fly America meets or exceeds the Airport Minimum Standards; and,

WHEREAS, Jeffery Kohlert, Owner of Fly America, Inc. agrees to pay the City an annual aircraft maintenance fee of \$400 per year for the privilege of having an aircraft maintenance facility at DTMA; now,

THEREFORE, IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute a Specialized Aviation Service Operator agreement with Jeffery Kohlert, Owner of Fly America, Inc., a copy of which is attached hereto and made a part hereof as Exhibit "A".

Section 2. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 10th day of January 2011, and approved by me as Mayor on the same day. Passed on a roll call vote 6-1. Aye: Simpson, Teresinski, Verbic, Gallagher, Naylor, Kammes. Nay: Baker.

ATTEST:


STEVEN C KAPITAN, City Clerk




KRIS POVLSSEN, Mayor



DEKALB TAYLOR MUNICIPAL AIRPORT

AGREEMENT
FOR
SPECIALIZED AVIATION SERVICE
OPERATION

Between
The City DeKalb, Illinois
And
Fly America Aircraft Maintenance

January 11, 2011
through
January 12, 2013

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THIS NON-EXCLUSIVE AGREEMENT made and entered into this 11TH day of JANUARY 2011, by and between the City of DeKalb of DeKalb County, Illinois, a municipal corporation hereinafter called the "CITY" and Fly America, Inc., an Illinois corporation with offices at DeKalb, Illinois, as a Specialized Aircraft Service Operation, hereinafter referred to as the "SASO".

This is an agreement to authorize Fly America, Inc. to conduct a limited fixed based operation for the purposes of providing aircraft maintenance, sale of goods and services of the kind that would customarily be provided by an operator at the airport subject to the terms of this agreement.

WITNESSETH:

WHEREAS, the CITY is the owner of a public airport known as the DeKalb Taylor Municipal Airport located in Section 24, Township 40 North, Range 4 East, and Section 18 & 19, Township 40 North, Range 5 East of the Third Principal Meridian in DeKalb County, Illinois, and as such owner has the authority to contract for a Specialized Aviation Service Operator thereon and desires to exercise that authority; and

WHEREAS, Fly America, Inc. desires to act as a Specialized Aircraft Service Operation on said airport;

NOW THEREFORE, in consideration of the covenants and Agreements hereinafter set forth, and other good and valuable consideration, the parties hereto agree as follows:

1. TERM:

The term of this Agreement shall be for Two (2) years beginning January 11, 2011 and ending January 12, 2013. Upon mutual Agreement by both parties, a (2) year extension or renewal of this Agreement shall be upon terms and conditions negotiated by the parties to this Agreement as soon as practicable and at least ninety (90) days in advance of the expiration of said Agreement. SASO shall provide written notice to the City of its intention to renew this Agreement.

2. FEES:

SASO agrees to pay Four Hundred Dollars (\$400.00) annually in consideration of the rights and privileges hereinafter set forth to the CITY on or before the 10th day of July each year of the term and any extensions thereto.

3. MAINTENANCE AND INSPECTION OF RECORDS:

SASO, at all times during the term of this Agreement and any extensions thereto, shall maintain accurate books, accounts, records, receipts and invoices showing the true status of all business conducted on the premises and the same shall be made available for inspection by the CITY upon reasonable request. SASO shall provide copies of receipts to the CITY for an audit on a biannual basis on

December 31st and June 30th of each year during the term of the Agreement and any extensions thereto.

4. AUTHORIZED COMMERCIAL ACTIVITIES:

- a. SASO agrees to perform aircraft maintenance which shall include annual and 100 hour inspections, maintenance program management, General Aviation maintenance and repair, Airframe repair, Engine sales and procurement, and other commercial activities as may be reasonably related to the aircraft business provided written approval by the CITY is secured in advance of implementing these related businesses.

- b. SASO agrees to comply with all environmental rules and regulations concerning disposal of all hazardous waste created and handled by said SASO. A containment system and a hazardous waste disposal plan shall be in place including a contract with a certified and licensed hazardous waste hauler to dispose of all hazardous waste that is produced and handled by said SASO.

5. SUB-CONTRACTING:

SASO may subcontract any specialized services or operations not provided by SASO under this Agreement with prior written permission from the CITY and such permission shall not be unreasonably withheld.

6. ADVERTISING:

SASO may install and operate, at its own expense, such signs and advertising materials posted on airport premises as have been expressly approved by the CITY and such approval shall not be unreasonably withheld. SASO shall obtain any necessary permits for such advertising or signage.

7. USE OF AIRPORT FACILITIES:

SASO is authorized to use, in common with others, the aeronautical facilities at the Airport. These shall include, but not be restricted to, the landing area, its extensions and additions, the access roadway, the runways, the apron, the taxiways, the public air navigation facilities, such radio aids, beacons, signals, flood lights, landing lights, and all other facilities and equipment for flying, landing, and the taking off of aircraft.

8. RULES AND REGULATIONS – MINIMUM STANDARDS:

CITY shall retain the authority to revise, issue, and publish Rules and Regulations and Minimum Standards for the use of the airport premises by all persons. SASO will abide by such Rules and Regulations and Minimum Standards and any amendments which may be made from time to time thereafter. Such

Rules and Regulations and Minimum Standards shall in no way alter or amend the rights of the parties under this Agreement.

9. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS, RULES AND REGULATIONS:

- a. SASO agrees to operate the airport facility under its control (See Exhibit "A") for the use and benefit of the public; to make available its airport facilities and services to the public without unjustly discriminatory or other unreasonable charges of fees or any use of the airport or its facilities or for any airport services. SASO agrees to operate the facility under its control in strict compliance with the Rules and Regulations and Minimum Standards as adopted by the CITY as amended from time to time, and to perform all services required of the SASO as a minimum.
- b. SASO agrees to conduct all flight and ground activities on, at, or near the airport in accordance with proper rules and regulations of all authorities having jurisdiction over such operations including, but not limited to, the Federal Aviation Administration, and the Illinois Division of Aeronautics.
- c. SASO agrees to obtain and pay for all licenses, permits, approvals, fees, or other similar authorizations or charges required under federal, state, or local laws or regulations insofar as they are necessary to exercise the privileges extended to SASO under the terms of this Agreement. Further, SASO agrees to abide by all applicable federal, state and local laws and regulations of public agencies with jurisdiction over the activities of the SASO.

10. NON-DISCRIMINATION REQUIREMENTS:

SASO in the operation and use of the Airport will comply with the following covenants:

- a. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the CITY reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.
- b. SASO for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, religion, color or national origin, shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, religion, color, or national origin shall be excluded from participation in, denied the benefits of, or Fixed Base Operator's Contract otherwise be subjected to

discrimination, (3) that the FBO shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

- c. SASO agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; PROVIDED, that the SASO may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types or price reductions to volume purchasers. It is a condition of this Agreement that the CITY shall have the right to take action as the United States of America may direct to enforce this covenant. Non-compliance with the covenant shall constitute a material breach of this Agreement, and in the event such non-compliance the CITY, the State of Illinois, or the United States of America may take appropriate action to enforce compliance, may terminate this Agreement to which this covenant relates, or seek judicial enforcement of this covenant. This covenant shall become effective on the execution of this Agreement and shall constitute a part hereof, and shall remain in full force and effort so long as said airport under this Agreement continues to be used and operated as a public airport.

11. CONSTRUCTION OF AGREEMENT:

Nothing herein contained shall be construed in any way that would be in violation of the rules and regulations of the Federal Aviation Administration, the Illinois Division of Aeronautics, or any other state or federal authority with jurisdiction over the Airport or the funds used in the construction or improvements of said Airport. In the event that any of the provisions herein contained should conflict with such rules and regulations, then such rules and regulations shall prevail. Further, the CITY does not grant or permit by this Agreement any exclusive right for the use of the Airport forbidden by Section 308 of the Federal Aviation Act of 1958 as amended.

12. SUBORDINATION TO AGREEMENTS BETWEEN CITY AND UNITED STATES AND/OR STATE OF ILLINOIS:

This Agreement shall be subordinate to the provisions of any existing or future Agreement between the CITY and the United States, relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. CITY represents, however, that it has no knowledge of any project, plans, regulations or actions of any governmental body, which would prevent the use of this Agreement for its full term. However, in the event any Agreement existing or entered into in the future pursuant to

this paragraph, conflicts with any material term of this Agreement in a substantial matter, then upon mutual Agreement of the parties this Agreement may be modified to comply, or at the option of either party, it may be terminated, with 60 days prior written notice to the other party.

13. PAYMENT OF TAXES, ASSESSMENTS OR OTHER CHARGES:

SASO will pay when due, all lawful taxes, assessments, or charges which during the term hereof may become a lien or be levied by the United States of America, the state, county, city, or other tax levying body upon any real or personal property owned or leased by City. Said payment shall be due and payable at the adoption of this agreement and annually there after on the date set forth in this Agreement.

14. INSURANCE:

SASO shall obtain and maintain continuously in effect at all times during the term of this Agreement, or any extension thereto, at SASO's sole expense, insurance issued by an insurance company licensed to do business in the State of Illinois and having a minimum A rating in "Best's Key Rating Guide". The CITY reserves the right to annually review and adjust the Comprehensive General Liability coverage minimums to comply with current insurance industry standards. SASO shall provide copies of any policies to the City at the time this Agreement is executed. Said policies shall show on their face that SASO is a named insured and CITY is an additional named insured and shall be in the following categories and amounts:

Comprehensive General Liability:

- 1) Bodily injury liability - For injury or wrongful death to one person \$1,000,000 for injury or death to more than one person - \$1,000,000;
- 2) Property damage liability - For all damages arising out of injury or destruction of property in any one accident - \$1,000,000;
- 3) Hangar keeper's Insurance - For any airplane - \$200,000; in any occurrence - \$200,000;
- 4) Product Liability insurance - For injury or wrongful death per person - \$200,000; for injury or wrongful death per occurrence - \$500,000; property damage - \$200,000.

All of said policies shall be endorsed to provide that they shall not be canceled or materially changed without thirty (30) days prior written notice to the CITY. Further, SASO shall supply the CITY with evidence that the aircraft maintained for the purpose of leasing or renting by SASO, are insured for liability pursuant to law for SASO negligence or its strict liability, if any; and that as to said insurance, a certificate shall be delivered to the CITY containing a stipulation that the coverage shall not be canceled or materially changed without thirty (30) days prior written notice to the CITY. SASO assumes all risk of loss, damage or injury, by fire or otherwise, to persons or property, caused solely by reason of

SASO's management, control, or its operations on the airport and releases the CITY, its officers and employees from all claims for such loss, damage or injury sustained by the SASO or by any person whomsoever. SASO further agrees to indemnify and hold harmless the CITY, its officers and employees against all claims for such loss, damage or injury sustained by the SASO, or by any agent or employee of the SASO or by any person whomsoever, when such injury, loss or damage is due to the negligence or fault of the SASO. The CITY shall maintain property insurance for city-owned property.

15. WORKER'S COMPENSATION:

SASO shall provide and carry Worker's Compensation Insurance on all of its employees as required by law and make required reports to agencies and furnish suitable evidence thereof to the CITY upon request by the CITY.

16. AIRPORT MAINTENANCE:

- a. The CITY will be responsible for maintenance of the following items at the Airport:
 1. Paved landing areas, taxiways, ramps, and all air navigation facilities at said Airport in at least the same condition as they are at the commencement of this Agreement.
 2. Snow removal and mowing of large areas, which may be plowed and mowed with a large truck, plows and tractor mowers.
 3. Maintaining weed control on all pavement areas and fences.
 4. The CITY will be responsible for the electricity for field lighting and the furnishing of light bulbs and parts and maintenance of runway lights, taxiway lights, beacon lights, PAPI, AWOS, ILS, obstruction lights, directional lights, ramp lighting, and non-directional beacon.
- b. SASO, at its sole expense, shall be responsible for hand mowing, landscape maintenance, trimming and snow removal within 10 feet of the SASO's building.
- c. SASO agrees to maintain all property pursuant to City of DeKalb property maintenance provisions at a minimum and in as clean, orderly and healthful condition as on the date hereof.
- d. Inspection: CITY shall retain all rights of inspection and supervision over the premises described in Exhibit "A" at reasonable times and upon reasonable notice, for the purpose of enforcement of the provisions of this Agreement.
- e. SASO shall not permit deterioration or damage to any property or improvements located on the Airport which are subject to its control, except as shall result from ordinary wear and tear and damage by the elements.

17. FURNISHING OF CITY SERVICES:

The CITY shall be responsible for the aforementioned mowing and weed control services, and for snow removal of aircraft movement areas. SASO may negotiate with CITY for any services the CITY may request upon mutually agreed upon terms and conditions.

18. DEFAULT:

a. The occurrence of any of the following shall constitute a default of this Agreement:

- 1) Filing of a petition, voluntarily or involuntarily for the adjudication of SASO as bankrupt;
- 2) The making by SASO of any general assignment for the benefit of creditors;
- 3) The occurrence of any act, which operates to deprive SASO permanently of the ability to perform its duties under this Agreement;
- 4) Failure to make the annual payments as set forth in paragraph 2 above;
- 5) The abandonment or discontinuance by SASO of any operation herein required at the Airport without cause;
- 6) Failure by SASO to observe and perform any other provision of this Agreement;
- 7) Use of airport by SASO for unlawful purposes.
- 8) Failure to maintain insurance coverage as stated in paragraph 14.

b. If (1) SASO defaults in the payments of fees or any additional charges and such default continues for five (5) days after the same has become due, or (2) SASO defaults in fulfilling any of the covenants or terms of this Agreement on its part to be kept or performed and such default is not cured or commenced to be cured (and diligently prosecuted to completion) within ten (10) days after written notice from CITY, then and in any of such events CITY may give SASO a written notice specifying said default and a date not less than ten (10) days thereafter whereupon the term shall end, and on the day specified, the term of this Agreement shall terminate and SASO shall remain liable as hereinafter provided.

c. Upon such termination by CITY, all rights, powers, and privileges of SASO shall cease, and SASO shall cease and desist performing any SASO operation that was granted by the City and shall make no claim of any kind whatsoever against the CITY, its agents, representatives, by reason of such termination or any act thereto.

d. If CITY defaults in fulfilling any of the covenants or terms of this Agreement on its part to be kept or performed and such default is not cured or commenced to be cured (diligently prosecuted to completion) within thirty

(30) days after written notice from SASO, then and in any such events SASO may give CITY a written notice specifying a day not less than ten (10) days thereafter whereupon the term of this Agreement shall expire.

19. INDEMNIFICATION:

SASO agrees to indemnify, defend, and save harmless the CITY, its authorized agents, officers, representatives, commissioners, and employees from and against any and all claims, causes of action, including, but not limited to, legal fees, attorneys fees and court costs associated with any such claim or cause of action, and arising directly or indirectly out of any acts of the SASO, its agents, servants, guests or business visitors.

CITY agrees to indemnify, defend and save harmless the SASO, its authorized agents, officers, representatives, successors and assigns from and against any and all claims, causes of action, liability or loss resulting from claims or court actions, and arising directly or indirectly out of acts of the City, its agents, its servants or guests.

20. EXPENSES OF LITIGATION:

If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement, or for damages by reason of an alleged breach of this Agreement, the prevailing party in such action shall be entitled to recover all costs and expenses of litigation, including reasonable attorney's fees.

21. CORPORATE OWNERSHIP:

SASO states that it is an Illinois corporation in good standing. SASO may not assign or transfer this Agreement, or any interest therein, without the prior written consent of CITY, and SASO shall, at all times, assure that the shareholders of SASO shall substantially remain as presently held and that any transfer of forty (40) percent or more of the shareholder interest in the stock of the SASO to a shareholder other than Jeffery Kohlert, shall be subject to the approval of the CITY. It is agreed and understand that Jeffery Kohlert is to maintain the position of President of the corporation of SASO. In the event any other person assumes the duties of Officers of SASO, the prior consent of the CITY must be obtained or this Agreement may be terminated upon three (3) months written notice to SASO by the CITY.

22. NOTICE:

Whenever any notice is required by this Agreement to be made, given or transmitted to the parties hereto, such notice shall be deemed to have been given if enclosed in an envelope with sufficient postage attached to insure delivery by certified mail, return receipt requested, and deposited in the United States mail, at DeKalb, Illinois address to -

CITY: City of DeKalb

Airport Division
3232 Pleasant Street
DeKalb, IL 60115

COPY TO: Legal Department
200 S. Fourth St.
DeKalb, IL 60115

SASO: Fly America, Inc.
3232 Pleasant Street
DeKalb, IL 60115

or such other place as either party shall in writing designate in the manner herein provided.

23. ASSIGNMENTS AND SUBLEASING:

SASO shall not at any time assign any part of this Agreement herein contained and bind the legal representatives, successors and assigns of the respective parties hereto without the prior written consent from CITY and such consent shall not be unreasonably withheld. The parties agree and acknowledge that CITY may reasonably withhold consent in the event that the same is necessary to preserve tax-exempt financing for construction of the premises; SASO further agrees that it shall take no action that would impair such tax exempt status of financing. This clause shall not apply to the rental of hangar space used for the maintenance and storage of aircraft.

24. AMENDMENTS:

All amendments to this Agreement must be made in writing by mutual agreement of the parties and no oral amendments shall be made of any force or effect whatever.

25. NON-WAIVER PROVISION:

No waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same, or of any other terms, conditions, or covenants herein contained, nor of the strict and prompt performance thereof by either party.

26. CAPTIONS:

The captions and headings of the various sections or paragraphs of this Agreement are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof.

27. VENUE:


The venue of any action brought on this Agreement shall be in DeKalb County, Illinois.

28. TERMINATION:

If the City finds that the SASO is engaging in conduct that causes air safety concerns or interferes with the operation of the Airport, the City may immediately without notice, terminate or suspend this Agreement until such time as the conduct ceases. If this Agreement is terminated or suspended, the SASO shall immediately cease any further exercise of the permitted activities. If the SASO fails to do so, the City may take or seek whatever legal remedies it may deem appropriate, including but not limited to civil or criminal trespass, self-help and injunctive relief. Notice shall be deemed delivered when either personally served upon an officer or agent of the other party, or on the 2nd day after mailing such notice to the address shown in paragraph 22 above.

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

CITY OF DEKALB
A MUNICIPAL CORPORATION



KRIS POVLSEN, MAYOR


ATTEST:



STEVE KAPITAN, CITY CLERK



FLY AMERICA, INC.



JEFFERY KOHLERT President

ATTEST:

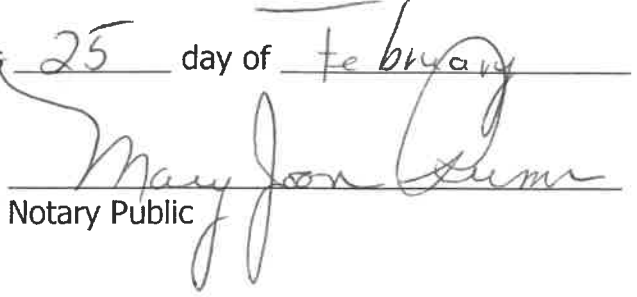


Secretary, JAMES GRIFFIN

STATE OF ILLINOIS)
) SS
COUNTY OF DEKALB)

I, Mary Joan Primm, A Notary Public in and for said county, in the State aforesaid, DO HEREBY CERTIFY that Jeffery Kohlert is known to be president and owner of Fly America, Inc., an Illinois Corporation, and also known to me to be the person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that as such owners he signed, sealed and delivered the said instrument as the free and voluntary act of said Corporation, for the uses and purposes therein set forth, and that he was duly authorized to execute the same by the Board of Directors of said Corporation.

Given under my hand and notarial seal, this 25 day of February
A.D., 2011.



Notary Public

(SEAL)

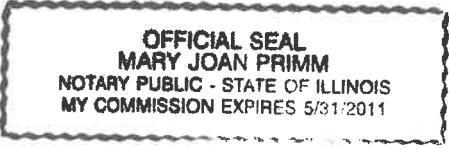


EXHIBIT "A"

Specialized Aviation Service Operation's Building Envelope Legal Description:

Fly America will have a combined total 3600 sq. ft. of hangar space and office space at the main FBO hangar at 3232 Pleasant Street, DeKalb, Illinois.