

La Crosse Regional

A I R P O R T



AIRPORT FUEL FARM LEASE

La Crosse Regional Airport
La Crosse, Wisconsin

between

La Crosse Regional Airport
City of La Crosse, Wisconsin

and

{LESSEE}

**LA CROSSE REGIONAL AIRPORT
AIRPORT FUEL FARM LEASE**

This Lease, made and entered into by and between the La Crosse Regional Airport (hereinafter “Lessor” or “Airport”) and _____ (hereinafter “Lessee”).

WITNESSETH:

WHEREAS, the City of La Crosse owns and operates a commercial airport which includes a fuel farm, said airport being known as the La Crosse Regional Airport, and said Lessor is desirous of leasing the fuel farm on the airport premises to the Lessee, together with the right to use and enjoy in common with others.

NOW, THEREFORE, for and in consideration of the rents, covenants, and agreement herein contained, the Lessor does hereby lease, demise, and let to Lessee, and Lessee does hereby hire, take and lease from the Lessor the following premises, rights and easements on and to the airport upon the following terms and conditions:

ARTICLE I. PREMISES

- A. Description.** The Lessor does hereby grant and non-exclusively lease unto Lessee for the term of this Lease a portion of the fuel farm at the La Crosse Regional Airport, hereinafter called the “Tank Position”, consisting of _____ Tank Positions described as _____, a drawing of which is attached "Exhibit A". Tank positions are drawn as relative locations and exact tank layouts and leased space will be determined through approved engineering drawings prior to installation.
- B. Right of Ingress and Egress.** Lessee shall have the right of ingress and egress from the leased premises, which shall be limited to streets, driveways, taxiways, or sidewalks designated for such purposes by the Lessor, which right shall extend to Lessee's employees, passengers, guests, invitees and patrons.

ARTICLE II. FUEL STORAGE TANK REQUIREMENTS

All aviation fuel storage tanks shall be located above ground. All fuel storage tanks and associated piping shall be installed and maintained in full compliance with all applicable local, state, and federal codes. Lessor, prior to installation, shall submit complete plans certified by an aviation fuel system installer with said installation being approved in writing by the Airport Director prior to construction. Lessor shall adhere to all requirements within the current Airport Rules and Regulation or Airport Minimum Standards as they may apply. The Lessee shall lease, at a minimum, one Tank Position, on which the fuel tank(s) shall be placed. Minimum aviation fuel storage tank size shall be 5,000 gallons or more as required under an existing Lease Agreement or Airport Minimum Standards, whichever is stricter. However, no fuel tank larger than 12,000 gallons shall be approved without a fuel study. All fuel shall be removed from fuel farm storage tanks and delivered to aircraft via trucks from the fuel storage tanks.

ARTICLE III. MAINTENANCE OF FUEL FARM AND TANKS

A. Maintenance of Fuel Farm. Lessor agrees to properly maintain the Fuel Farm, other than the Lessee's fuel farm system including fuel tanks, in accordance with all applicable federal, state and local laws. Lessor shall further maintain a Spill Prevention and Countermeasure Plan (SPCC) for the Fuel Farm facility. Lessor shall provide monthly electrical service, access control, and site video surveillance to the Fuel Farm at its sole cost and City's determination.

B. Maintenance of Fuel Farm System and Tanks. Lessee agrees to properly maintain its fuel farm system and tanks and its designated fuel farm sites in accordance with its obligation as contained in the Lease and in accordance with all applicable federal, state and local laws. Lessee shall initially fund any costs associated with updating the Airport Fuel Farm SPCC plan to accommodate the Lessee's new system and tanks to include any engineering review or certification. Lessee shall provide Lessor with copies of all regulatory documents including inspections and compliance reports no later than 14 days from the time which said forms are received or submitted.

ARTICLE IV. TERM

A. The term of this Lease shall be for five (5) years commencing on _____ . Lease shall automatically renew upon the same terms and conditions

for additional five (5) year terms unless written notice of non-renewal from either party is made declaring the intent to not renew this Lease at least thirty (30) days prior to renewal. Lease shall terminate no later than _____ (“Termination Date”).

ARTICLE V. RENTAL FEES

Lessee agrees to pay Lessor for the non-exclusive use of the fuel farm located in the designated location of the Airport defined and for the rights and privileges granted hereunder, the following rental fees:

A. Land Rate. The Lessee shall pay the Lessor, without demand, annually on the twentieth (20th) day of the month in which this Lease commenced, \$1,200.00 per tank within the Lessor’s fuel farm so long as Lessee flows a minimum of 250,000 gallons a year in aggregate. Should the Lessee fail to flow a minimum of 250,000 gallons a year an additional fixed fee of \$2,500.00 per tank will be payable to the Lessor on the twentieth (20th) day of the month on the annual anniversary of this Lease.

B. Fuel Facility Charge. Lessee agrees to pay to the Lessor, without demand, on the twentieth (20th) day of each month the fuel facility flowage fees from the previous calendar month. Said fee shall consist of a per gallon fuel flowage facility fee, at the rate that is currently approved by the Aviation Board on all fuel flowage as a fuel facility charge. The fuel facility flowage fee at the execution of this Lease is \$0.01 per gallon. Lessor may exempt certain airlines from the fuel facility flowage fee in which case a listing of airlines exempt from the fuel flowage shall be provided to Lessee in writing.

C. CPI Index. On January 1 of each year for the period of this Agreement, the amounts of the payments and charges outlined in (A) shall be adjusted in accordance with the preceding year’s September Consumer Price Index. Said adjustment shall be computed as follows:

New Rate = Most recent year’s rate x (CPI for September of most recent year/CPI for the September of the previous year)

D. Place of Payment. Unless notified in writing of another address, the Lessee shall make all monthly payments to the Lessor by check, payable to:

City of La Crosse
c/o La Crosse Regional Airport
Attn: Airport Director
2850 Airport Road
La Crosse, WI 54603

E. Late Payments. If any monthly payments due the Lessor remain unpaid thirty (30) days from the due date, interest shall be due and billed at the rate of 1.5% per month.

ARTICLE VI. INDEMNIFICATION AND INSURANCE

A. General Indemnification. To the fullest extent allowable by law, Lessee hereby indemnifies and shall defend and hold harmless, at Lessee's expense, La Crosse, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Lessee, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on Lessor. Lessee's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of Lessor, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as Lessor waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

B. Independent Contractor. The relationship of the Lessee to the Lessor shall be that of an independent contractor. Nothing in this Lease shall be construed so as to deem the Lessee, its

employees or agents as employees of the Lessor. The Lessee shall carry Workmen's Compensation coverage for all of its employees and agents as required by state law and shall furnish the Lessor certificates as proof of coverage. The Lessee has no authority to incur any obligation for or on behalf of the Lessor.

C. Environmental Damages and Indemnification.

1. Lessee Indemnification. The Lessee agrees to indemnify, defend and hold harmless Lessor from and against any loss, liability, cost, expense (including expenses of litigation, investigation, counsel), damage, fine, penalty, or other charge arising from any actual or threatened suit, claim, proceeding, hearing, administrative action, order, judgment, writ or decree based upon or resulting from any environmental damages, actual or alleged, pertaining to the Fuel Farm caused by the fault or negligence of Lessee; provided, however, that Lessee shall have no liability to indemnify Lessor if such environmental damages, actual or alleged, arise from Neighbors, Lessor and/or from the possession or operation of Lessee's Fuel Farm Site prior to the time it has been occupied by Lessee. The Lessor shall give to Lessee prompt and reasonable notice of any such claims or actions and the Lessee shall have the right to investigate, compromise, and defend the same as long as no liability or obligation results to Lessor.

3. Storage. Lessee shall not cause or permit any Hazardous Materials to be stored or used on or about the premises by Lessee, its agents, employees, licensees or contractors, except in compliance with Environmental Laws as hereinafter defined.

4. Compliance. Lessee shall comply with all local, state, and federal laws, ordinances, regulations, and orders relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of Hazardous Materials, (collectively, "Environmental Laws") on or about the premises.

5. Handling of Hazardous Materials. Lessee shall, at its expense, procure, maintain, and comply with any necessary permits, licenses, and other governmental and regulatory approvals required for Lessee's use of the Premises, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the

Premises. Lessee shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Premises in conformity with all applicable Environmental Laws and prudent industry practices regarding the management of such Hazardous Materials. Except for lawful discharges, emissions, or releases of Hazardous Materials, Lessee shall cause any spent or waste Hazardous Materials it generates to be removed from the Premises and to be properly managed in compliance with Environmental Laws. Upon the expiration or earlier termination of the term of its Lease except for lawful or de minimis releases of Hazardous Materials, Lessee shall cause all Hazardous Materials it owns, possesses, controls or is otherwise responsible for to be removed from the Premises in compliance with all applicable Environmental Laws; provided, however, that Lessee shall not enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to such Hazardous Materials in any way connected with the Premises, without first notifying the Airport Director of Lessee's intention to do so and affording the Airport Director ample opportunity to appear, intervene, or otherwise appropriately assert and protect the Lessors interest with respect thereto.

6. Notice. If at any time Lessee shall become aware, or has reasonable cause to believe, that any Hazardous Material used, owned, possessed or controlled by, or for which the Lessee is responsible for, has come to be located on or about the premises in violation or potential violation of Environmental Laws, or has been released or discharged into the environment in violation or potential violation of Environmental Laws, the Lessee shall, immediately upon discovery of the presence or suspected presence of the Hazardous Material, provide the Airport Director with written notice of that condition. In addition, Lessee shall immediately notify the Airport Director in writing of (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened against Lessee concerning its unlawful use or release of any Hazardous Material on the premises pursuant to any Environmental Laws, (2) any claim or threatened claim by any person against Lessee or its use of the premises relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from the unlawful use of any Hazardous Materials on the premises by the Lessee, and (3) any reports made by the Lessee to any local, state, or federal environmental agency arising out of or in connection with any allegations of violation or potential violation of Environmental Laws associated with Hazardous Materials used on, or

removed from, the premises by the Lessee, including any complaints, notices, warnings, or asserted violations in connection therewith. Lessee shall also supply to the Airport Director as promptly as possible, and in any event within five (5) calendar days after Lessee first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations in connection therewith. Lessee shall promptly deliver to the Airport Director copies of hazardous waste manifests concerning its lawful disposal of all Hazardous Materials generated and removed from the premises by the Lessee.

7. Environmental Indemnification. Except to the extent caused or contributed to by the City, its agents or employees, or other tenants of the Airport, Lessee shall indemnify, and hold harmless the City, its officers, employees, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, damages, costs, or expenses (including reasonable attorneys' fees, consultant fees, and expert fees) for the death of or injury to any person or damage to the premises or any property whatsoever, arising from the Lessee's failure to comply with any Environmental Laws or any covenants, terms or conditions relating to environmental matters in this Lease. Lessee's obligation under this Paragraph shall include any and all reasonable investigation costs incurred in connection with any unlawful release of Hazardous Materials on the premises by the Lessee, and any associated costs of any required repair, cleanup, decontamination or remediation of the premises and the preparation and implementation of any required closure, remediation, or other required action in connection therewith. Lessee's obligations under this Paragraph shall survive the expiration or earlier termination of the term of the Lease concerning the premises for a period of two (2) years.

D. Insurance

1. The Lessee shall procure from a reputable company authorized to do business in Wisconsin and maintain continuously in effect at all times during the term of this Lease, at Lessee's sole expense environmental insurance as well as general liability insurance for the leased premises and shall furnish the Airport Director with certificate(s) and endorsements of such insurance, with respect to which Lessor shall be named as an additional insured insuring Lessor's liability relative to Lessee's use of the leased premises and the conduct of its business.

a. All certificate(s) and endorsements are to be provided to the Airport Director within 30 days of final execution of this Contract. If such certificate(s) and endorsements are not received, the Airport has the authority to declare this Contract terminated.

b. All policies shall contain a provision that coverage will not be cancelled or materially changed unless fifteen (15) days prior written notice is given to the Airport Director.

c. Lessee shall immediately notify the Lessor of the cancellation or termination of any insurance policy issued in compliance with this section. The cancellation or other termination of any insurance policy issued in compliance with this section, and the failure of the Lessee to obtain replacement policies within a reasonable time, shall be grounds for termination of this Lease. Lessor shall have the right to suspend Lessee's operations until replacement policies have been approved and are in full force and effect.

2. Coverages (minimum). Insurance coverage will meet or exceed the insurance amount required within the Airport Rules and Regulations as is currently approved by the Aviation Board. Insurance coverage will be reviewed annually and any increased amounts or types will be reasonable and will be paid by Lessee. Lessor will provide Lessee thirty (30) days written notice of any changes in requirements for insurance coverage.

3. Environmental Insurance. Lessee agrees to procure environmental insurance naming the Lessor, as an additional insured. Such insurance will be procured from a reputable company authorized to do business in Wisconsin in the minimum amount of \$2,000,000 each occurrence, and \$2,000,000 annual aggregate; provided, however that Lessee shall be permitted to unilaterally increase the amount of such insurance. Such insurance shall indemnify Lessor and shall cover all pre-existing claims.

4. Fire. Each party agrees to insure its property against loss covered by the standard fire and extended coverage insurance policy plus special extended coverage endorsement; and

each party hereby waives all claims against the other for loss or damage to the property which each has hereunder agreed to insure.

5. Review and Approval. The policies of insurance hereunder shall be subject to approval by the City of La Crosse City Attorney as to legal form, which approval will not be unreasonably withheld, and shall contain a provision that the same not be cancelled before the expiration of its term except upon fifteen (15) days written notice to the Lessor.

ARTICLE VII. AIRPORT REGULATIONS

Lessee agrees to observe and obey during the term of this Lease, all laws, ordinances, rules, operating procedures, and regulations promulgated and enforced by Lessor, and by any other proper authority having jurisdiction over the conduct of the operations at the airport. Lessee further agrees to fully comply with all Lessor ordinances and amendments thereto, providing minimum standards at the La Crosse Regional Airport which are adopted by reference and made a part hereof as if fully set forth herein.

ARTICLE VIII. IMPROVEMENTS TO PROPERTY

A. Improvements Owned by Lessor. Any and all improvements, exclusive of personal property, made to the leased sites will be the property of the Lessor.

B. Removal of Lessee's Fixtures and Personal Property. Upon termination of this Lease, by expiration or otherwise, or of any renewal or extension hereof, the Lessee shall remove any fixtures or personal property owned by Lessee and placed upon the premises, other than fixtures installed to replace those owned by the Lessor; provided, however, that the Lessee leave the premises in the same condition of repair as they were in prior to the addition of such personal property or fixtures. Personal property and fixtures includes, but is not limited to, fuel tanks, filter vessels, truck unloading containment pads and all associated piping to tanks.

ARTICLE IX. GENERAL TERMS AND PROVISIONS

A. Waiver of Breaches. No waiver of any breaches of this Agreement shall be held to be a waiver of any other or any subsequent breaches. All remedies afforded in this Agreement shall be considered to be cumulative and in addition to any other remedies provided by law.

B. Non-Assignability. The parties agree that there shall be no assignment of or transfer of this Lease, nor of any interests, rights or responsibilities herein contained, except as agreed to in writing.

C. Modification. This Lease shall not be modified or altered except in writing pursuant to mutual agreement of the parties.

D. Disclaimer. The Lessee agrees and understands the Lessor or Commission is not responsible for the accuracy of the information accessed by the Lessee and the Lessee assumes all liability for verifying its contents.

E. Applicable Law. This contract shall be governed under the laws of Wisconsin and is made at La Crosse County, Wisconsin, and venue for any legal action to enforce the terms of this Lease shall be exclusively in La Crosse County Circuit Court.

F. Counterparts. This Lease may be executed in counterparts and shall constitute an agreement binding on all parties notwithstanding that all parties are not signatories to the original or the same counterpart provided that all parties are furnished a copy or copies thereof reflecting the signature of all parties.

G. Headings. The headings which describe the provisions of this Lease are intended only for convenience of reference and are not to be considered in construing this instrument.

H. No Third-Party Beneficiary. Nothing contained in this Lease, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of any third-party.

I. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, manager, member, partner or employee of the Lessor have any personal liability arising out of this Lease, and Lessee shall not seek or claim any such personal liability.

J. Security. Lessee agrees to comply with Federal Aviation Regulations, and 1452 (Airport Security) and Airport policies as outlined in the Federal Aviation Administration approved Airport Certification Manual and Department of Homeland Security approved Airport Security Plan. Lessee further agrees that any fines levied upon the City or Lessee through enforcement of these regulations because of acts by Lessee's employees, agents, suppliers, guests, or patrons shall be borne by Lessee to the extent said acts contributed to said fines.

K. Non-Discrimination. This lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, pursuant to law, it is unlawful and Lessee agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Lessee shall include or cause to be included in each subcontract covering any of the services to be performed under this Lease a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

L. Lease Subordinate to Leases with the United States. This Lease is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future leases

between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the La Crosse Municipal Airport. Should the effect of such Lease with the United States government be to take any of the property under lease or substantially destroy the commercial value of such improvements, City shall terminate this Lease. This clause shall be self-operative and no further instrument of subordination shall be required.

M. Lease Subordinate to Other Agreements. This lease is subject and subordinate to any and all other written agreements, now or in the future, between the City and Lessee that affect the fuel farm. This clause shall be self-operative and no further instrument of subordination shall be required.

ARTICLE X. NOTICES

Notices given shall be valid only if in writing and addressed to:

- (1) When the Lessor is to receive such notice:

La Crosse Regional Airport
Attn: Airport Director
2850 Airport Road
La Crosse, WI 54603

COPY ALSO TO:
City of La Crosse City Attorney
400 La Crosse Street
La Crosse, WI 54601

- (2) When the Lessee is to receive such notice:

ARTICLE XI. THIRD-PARTY APPROVALS

Lessee acknowledges that various of the specific undertakings described in this Agreement may require approvals from the City of La Crosse Common Council, other City of La Crosse bodies, the Federal Aviation Administration and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Lessee further acknowledges that this Agreement is subject to approval by the La Crosse Common Council. Lessor's obligation to perform under this Agreement is conditioned upon obtaining all such approves in the manner required by law. Lessor cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

ARTICLE XII. ENTIRE AND SUPERSEDING AGREEMENT

This writing, all exhibits hereto and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof and all prior agreements, correspondences, discussions and understandings of the parties (where written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City granting approvals or conditions attendant with such approval, the specific action of the City shall be deemed controlling.

Both parties hereto, having read and understood the entirety of this Lease, hereby affix their authorized signatures.

Dated this ____ day of _____, _____.

La Crosse Regional Airport (Lessor)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

