

AIRPORT FACILITIES USE AGREEMENT

WITTMAN REGIONAL AIRPORT

WINNEBAGO COUNTY, WISCONSIN

THIS AGREEMENT, made and entered into this _____ day of October, 2018, by and between Winnebago County Wisconsin, hereinafter referred to as the "Lessor", and Oshkosh Corporation, hereinafter referred to as the "Operator".

WITNESSETH;

WHEREAS, the Lessor owns and operates an airport which includes all aviation navigation facilities, said airport being known as Wittman Regional Airport, located in the City of Oshkosh, Winnebago County, Wisconsin, and the Lessor is desirous of allowing the Operator to use certain premises hereinafter more fully described, located on said airport, together with the right to use and enjoy individually and in common with others the facilities referred to; and,

WHEREAS, the Operator will use a portion of the airport for limited testing of large motor vehicles associated with the manufacture of such units, and for this purpose desires to lease certain property and rights from the Lessor.

NOW, THEREFORE, in consideration of the rents, covenants, and agreements herein contained, the Lessor does hereby lease, demise and let to the Operator, and the Operator does hereby hire, take and lease from the Lessor, the following terms and conditions:

1. Premises Leased. Operator will be permitted to use certain taxiways and apron areas as designated in the attached document, OSH-PROC-ENG007, for the purpose of motor vehicle testing. Such testing will be in accordance with the procedures and guidelines set forth in OSH-PROC-ENG007. Said procedures, guidelines and operational areas may be amended from time to time as necessary to ensure safe and efficient operational practice on the Airport.
2. Use Fee. The operator will pay to the Lessor a use fee for the leased premises hereunder as follows:

Premises (A) Vehicle Test Areas

One-Hundred Eighty Dollars (\$180.00) per vehicle per test hour. Total hours to be reported to the Lessor by the tenth day of each calendar month for the preceding calendar month.

Fee for use of said premises will be due monthly within 30 days of receipt of invoice.

Payment shall be made to: Winnebago County Treasurer, Courthouse - 415 Jackson Street, P. O. Box 2808, Oshkosh, WI 54903. Failure to pay any invoice within 60 days of receipt of that invoice shall cause cancellation of this agreement, provided Operator has failed to cure such failure to pay within 30 days of written notice from Lessor.

3. Term. The term of this agreement shall be for three (3) years beginning on November 1, 2018 and ending October 31, 2021. Upon expiration, the parties may renew this Agreement on like terms and may negotiate in good faith reasonable changes to the Use Fee upon such renewal. Lessor reserves the right to cancel this agreement at any time at Lessor's sole discretion.
4. Operator shall, at its own expense, install and maintain an appropriate access road and access gate to the north/south service road for the purpose of test vehicle access.
5. Insurance. Operator agrees, at its own cost and expense, to furnish County with a Certificate of Insurance indicating proof of the following insurance from companies licensed in the State:
 - (a) Commercial General Liability Insurance (non-aircraft) - Oshkosh Corporation maintains a commercial general liability policy (occurrence form) providing the following limits:
 - i. \$1,000,000 Each Occurrence (bodily injury/property damage)
 - ii. \$2,000,000 Products/Completed Operations Aggregate
 - iii. \$5,000,000 General Aggregate
 - iv. \$1,000,000 Personal/Advertising Injury Liability
 - v. \$ 500,000 Damage to Rented Premises
 - (b) Automobile Liability Insurance with a minimum limit of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage Liability. This insurance shall include Bodily Injury and Property Damage for the following coverage:
 - i. Owned Vehicles
 - ii. Hired Vehicles
 - iii. Non-Owned Vehicles

Such insurance shall include Winnebago County as an additional insured as pertains to the negligence of the user or lessee. Operator will provide a thirty (30) day notice prior to cancellation or material policy change, which notice shall be given to the Winnebago County Insurance Administrator, c/o Courthouse, 415 Jackson Street, Oshkosh, WI 54903. All such notices will name the user or lessee and identify the contract. Operator shall provide evidence, as necessary, of workers compensation insurance's as required by state law.

6. Operator to Obey Rules. The Operator shall abide by any and all rules and regulations of the City, County, State, and Federal authorities respecting safety measures to be taken and observed in the use of the said premises. The Operator shall be subject to such written rules and regulations as the Winnebago County Board or its Aviation Committee may legally adopt. Such rules and regulations shall not, however, be in conflict with the terms of this Agreement.
7. Hold Harmless. Each party agrees to hold the other free and harmless from loss from each and every claim and demand of whatever nature, made on behalf of or by any person or persons, for any wrongful, careless, or negligent act or omission on the part of such party, agents, servants, and employees, and from all loss and damage by reason of such acts or omissions.
8. Compliance with Civil Rights Act of 1964. The Operator, in the use of the leased premises for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the premises 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 subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such premises 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 or, or otherwise be subjected to discrimination; (3) that the premises shall be used 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, Non-discrimination 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.

Operator shall have the right and privilege to engage in, and conduct all business operations authorized under the terms of this Agreement, provided, however, that this agreement shall not be construed in any manner to grant the Operator, or those claiming under him the exclusive right to use the premises leased exclusively to the Operator hereunder.

9. Breach of Conditions. If the Operator shall violate any of the restrictions in this Agreement, or shall fail to keep any of its covenants after written notice to cease such violation, and shall fail to correct such violation within thirty (30) days, the Lessor may at once, if it so elects, terminate the same and take possession of the premises.
10. Conditions of the Parties Obligations.
 - (a) This contract is contingent upon authorization of Federal and Wisconsin laws. Any material amendment or repeal of laws or judicial action affecting the authority of Winnebago County to execute this agreement shall serve to terminate this contract, except as further agreed to by the parties hereto.
 - (b) Nothing contained in this contract shall be construed to supersede the lawful powers or duties of either party.
 - (c) It is understood and agreed that the entire contract between the parties is contained herein, and that this contract supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.
11. Truck testing shall not be conducted between 10:00 p.m. and 6:00 a.m. daily. No truck testing shall be permitted beginning five business days prior to the official commencement of the annual EAA Fly-in Convention and ending two business days after the official conclusion of the Fly-in Convention. Official Fly-in dates are established at least 1 year in advance by the Experimental Aircraft Association.

12. Operator shall train drivers to regularly inspect the test area for foreign objects (FOD). FOD will be removed promptly or reported to the FAA control tower personnel on duty.
13. As necessary, Operator shall meet with Lessor to review and/or amend OSH-PROC-ENG007.
14. Operator shall not permit drivers to test vehicles on the airport if they have not completed an airfield driver orientation course and passed a written certification examination as administered by Operator.
15. Resolution of Disputes. This agreement shall be covered by the laws of the State of Wisconsin. Claims, disputes, and other matters in question between the parties to this Agreement arising out of, or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association then pertaining, upon the express written consent of all parties to this Agreement. In the event the parties proceed to arbitration, the following shall govern any such proceedings.
 - A. The American Arbitration Association shall submit a panel of five arbitrators to the parties. The parties shall alternate strikes until one arbitrator remains who shall arbitrate the dispute. The party initiating the first strike shall be determined by the winner of a coin flip.
 - B. The costs of the arbitration proceeding except the filing fee, which shall be borne equally by the parties. Each party shall pay their own legal fees and expenses incurred in connection with the proceeding.
 - C. Any arbitration shall take place in the City of Oshkosh, Winnebago County, Wisconsin.
 - D. Unless otherwise agreed by the parties, the arbitration hearing in this matter shall be limited to one day in length with the arbitrator providing each side equal time to present its case during the day.
 - E. Any discovery proceeding shall be limited to the thirty (30) day period prior to the date of the arbitration hearing. The party requesting the discovery shall pay for all costs incurred by the opposite party, except for attorney's fees, related to the discovery

procedure, including but not limited to witness and reporter's fees related to depositions, photocopying fees, postage fees, and delivery fees.

- F. The arbitrator, in issuing any ruling with regard to any arbitration matter, shall issue a written decision which shall include written finding of fact and conclusions of law.
- G. The proceeding and arbitration shall be governed by the laws of the State of Wisconsin, including specifically, Chapter 788 of the Wisconsin Statutes.

SIGNATURE PAGE FOLLOWS:

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

Winnebago County (Lessor)

By: _____

Mark L. Harris
County Executive

Susan Ertmer
County Clerk

Oshkosh Corporation
(Operator)

By: _____

Andrew Gratton

By: _____