

Watford City Airport Authority

Fueling Permit

v1
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Watford City Airport Authority Fueling Permit

THIS FUELING PERMIT ("Permit") is made between the Watford City Airport Authority ("AUTHORITY") and _____, a (North Dakota Corp.) _____, ("Permittee").

WHEREAS, AUTHORITY owns and/or controls the real property at Watford City Municipal Airport ("Airport") located in the County of McKenzie, State of North Dakota; and

WHEREAS, Permittee is the Tenant under a lease with AUTHORITY, dated the ___ day of _____, _____ ("Lease"), whereby Authority has leased to Permittee Lot _____ at the Airport; and

WHEREAS, Permittee desires to perform retail fueling at the Airport; and

WHEREAS, the AUTHORITY has consented to execution of this Permit on Watford City Municipal Airport; and AUTHORITY and Tenant have executed an amendment to the Lease to allow installation of a Fuel storage tank (if applicable); and

WHEREAS, the definitions and defined terms in the Lease, Minimum Standards and Fueling Policy will have the same meaning in this Permit, unless such term is otherwise specifically defined in this Permit.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. AUTHORIZATION

Permittee is authorized to engage in retail fueling operations, at Permittee's own expense and in accordance with the terms and conditions of this Permit, the Lease, the Fueling Policy and the Minimum Standards. Permittee agrees to comply with the terms, conditions and requirements of this Permit, the Lease, the Policies, and the Minimum Standards at all times and as now or hereafter amended. A copy of the Fueling Policy current as of the Permit effective date is attached hereto and incorporated herein by this reference.

2. LOCATION

All fueling operations must occur in a designated non-movement area, as directed by the Airport Manager; and in compliance with all applicable Federal, State and local laws and regulations.

3. SUBORDINATE TO LEASE

This Permit is subject and subordinate to the Lease, and constitutes the written consent of AUTHORITY to engage in Fueling operations as authorized in this Permit.

All provisions and conditions of the Lease, apply to Permittee's activities conducted pursuant to this Permit.

4. TERM

The term of this Permit ("Term") shall be month-to-month commencing on _____, 20__, and will be automatically renewed each month until expiration or earlier termination of the Lease, unless terminated earlier pursuant to this Permit. In no event shall the Term of this Permit extend past the expiration or earlier termination of the Lease. This Permit is cancelable by AUTHORITY or Permittee as described in Section 9 [Cancellation, Default, and Termination] below.

5. FUEL FLOWAGE FEES, MAINTENANCE FEES & REPORTS

Permittee shall pay AUTHORITY fuel flowage fees, at the rate of \$0.10/gallon. Payment of fuel flowage fees shall be accompanied by a report and documentation, and certified as correct by Permittee or an authorized representative of Permittee, on a monthly basis with the report and payment of fees due to the AUTHORITY no later than 15 days after the end of the previous calendar month.

Permittee shall pay AUTHORITY a pro-rata share (according to the number of gallons the Permittee flows as a percentage of all flowage at the fuel farm) of all equipment maintenance, repair and upgrades at the fuel farm. The AUTHORITY shall have the final say as to what repairs, upgrades and maintenance are needed at the fuel farm. The AUTHORITY will bill Permittee for any such charges as they arise and are due within 10 days of the date of the AUTHORITY'S invoice.

6. BOOKS AND RECORDS & RIGHT TO AUDIT

Permittee shall keep true and accurate records of its Fueling operations.

AUTHORITY shall have the right at all reasonable times during the term of this Permit to inspect the records for a period of at least six (6) years prior to the end of the current year and continuing through to the completion of the audit ("Audit").

Permittee shall maintain current fuel reports on file, including total gallons of fuel delivered by type, make, and N number and make such reports available to Authority on a monthly basis. Delivered within 5 days of the end of the month.

In the event that an Audit discloses that Permittee has under reported fuel flowage fees, Permittee shall pay AUTHORITY any amounts due to AUTHORITY as a result of such under reported fuel flowage fees, together with a 5% late fee. In addition, if an Audit reveals that Permittee has under reported or under paid fuel flowage fees by five percent (5%) or more for any twelve (12) month period, then in addition to any of AUTHORITY'S other rights and remedies, Permittee shall reimburse AUTHORITY for the costs and expenses incurred in such Audit, along with AUTHORITY'S attorney'S fees and costs.

Permittee agrees to provide reasonable workspace to allow the conduct of any Audit and free access to and use of copiers, fax machines and other reasonable office equipment. Permittee will make the requested records available to AUTHORITY within thirty (30) days from the date of request by AUTHORITY, and will lend its own assistance in conducting the Audit at no cost to AUTHORITY. The records shall be provided to AUTHORITY for inspection during business hours.

Permittee'S duty to maintain records and AUTHORITY'S rights under this Permit to conduct any Audit(s) shall survive the expiration or earlier termination of this Permit.

7. INSURANCE

Effective as of the date this Permit is fully executed, and continuing during the Term of this Permit, Permittee, at its expense, shall obtain and maintain in full force the following insurance coverage (in addition to the insurance required by the Lease or Minimum Standards):

Worker’s Compensation	In compliance with laws of North Dakota
Owners, Landlords & Tenants Liability (“Owners”)	\$1,000,000 per occurrence
Business Automobile Liability (“Auto”)	\$1,000,000 per occurrence (owned, non-owned, and hired)
Aircraft Liability (“Aircraft”)	\$1,000,000 per occurrence
Hanger keepers	\$1,000,000 per occurrence
Environmental (3 rd party liability & site cleanup)	\$1,000,000 per occurrence
Comprehensive General Liability including products completed operations coverage (“General Liability”)	\$1,000,000 per occurrence

Permittee agrees that AUTHORITY may, from time to time, require reasonable modification to the limits and coverages set forth in this Section, which modification will apply to Permittee and all other similarly situated permittees.

All required insurance policies shall be issued by insurance companies which are licensed or admitted in North Dakota and have an A.M. Best rating of at least A-. Permittee shall be responsible to ensure all policies are not cancelable, reduced or materially changed unless thirty (30) days prior written notice shall have been given to AUTHORITY. Any policy issued to AUTHORITY providing duplicate or similar coverage shall be deemed excess over Permittee’s policies by endorsement or by terms and conditions of the policy(s).

Permittee agrees to provide the insurance required above for the benefit of AUTHORITY, including all liabilities, losses, damages, suits, actions, claims, charges, judgments, settlements, fines or demands against AUTHORITY. Permittee shall be responsible for all deductibles.

Original certificates using the most current standard ACORD form, or at AUTHORITY’s option, copies of the policies evidencing coverage shall be delivered to AUTHORITY or to its designated agent at least ten (10) days prior to the date this Permit is fully executed and at least fifteen (15) days prior to each renewal of such insurance. If Permittee fails to comply with these insurance requirements or to deliver to AUTHORITY copies of such policies and certificates evidencing the required coverage, AUTHORITY, in addition to any remedy available pursuant to this Permit, the AUTHORITY may cancel this Permit.

Notwithstanding anything contained in this Permit to the contrary, Permittee waives all claims it may now have or may hereafter acquire against AUTHORITY, its commissioners, officers, employees, agents, and any successors, as well as any successors to AUTHORITY's interest ("Indemnitees") with regard to or arising out of any loss or damage to the Leased Property and any of the Improvements, Permittee's trade fixtures or personal property, to the extent that Permittee is entitled to assert a claim and Permittee receives insurance proceeds under any of the insurance policies Permittee is required to maintain under this Permit or under any other insurance policies Permittee may have in force and effect at the time of the loss or damage.

It is understood that the specified amounts of insurance in no way limit the liability of Permittee to AUTHORITY.

7.1. Endorsements

All insurance policies required by the Fueling Policy shall carry all of the following endorsements on each policy:

- "The City of Watford City and the Watford City Airport Authority (collectively "Watford City"), are hereby added as additional insureds."
- "This policy shall be considered primary insurance as respects any other valid and collectable insurance Watford City may have, and any other insurance Watford City does possess shall be considered excess insurance only. Insurer waives subrogation rights against Watford City."
- "This insurance shall act for each insured, and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company".
- "Thirty (30) days prior written notice of cancellation shall be given to Watford City in the event of cancellation and/or reduction on coverage of any nature". Language on a certificate stating the insurance company will "endeavor to provide 30 days written notice" is unacceptable.

8. ASSIGNMENT OF PERMIT

This Permit is personal to Permittee and shall not inure to Permittee's successors or assigns unless written consent by AUTHORITY is first secured to any such assignment. Permittee shall not assign or transfer this Permit, nor permit this Permit to become transferred by operation of law or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part.

It is specifically stipulated and agreed that Permittee will not enter into any other arrangement(s) or agreement(s) with any other operator(s) or assign any of the rights herein whereby other operators share in the privileges or services authorized in this Permit or allow other operators to dispense fuels or lubricants under this Permit.

9. CANCELLATION, SUSPENSION OR TERMINATION

Permittee may cancel this Permit upon ten (10) calendar days' written notice.

Upon default by Permittee in the performance of any of the undertakings, covenants and conditions to be performed by Permittee under this Permit, this Permit shall thereupon be suspended or terminated by AUTHORITY, at its option, on five (5) days' notice to Permittee, such suspension or termination to be without prejudice to AUTHORITY's right to damages or other legal or equitable relief, including payment of reasonable attorney's fees.

In addition, AUTHORITY may suspend or terminate this Permit effective immediately if: (1) such action is necessary for public health, safety or welfare in the operation of the Airport as determined in the sole discretion of AUTHORITY; (2) Permittee fails to maintain the insurance required by this Permit; (3) Permittee has given false or misleading information during the application process; or (4) Permittee does not allow an inspection as provided in the Fueling Policy.

AUTHORITY shall provide written notice to Permittee of any default and corresponding suspension or termination, and shall set forth the reasons for any suspension or termination.

Upon termination of this Permit, all Fueling Equipment (including Fuel tanks) must be, at Permittee's sole cost, removed or properly abandoned in compliance with all applicable laws and regulations.

10. CROSS DEFAULT

A default by Permittee of the Lease shall constitute a default of this Permit, and a default by Permittee of this Permit shall constitute a default of the Lease. Notice of a default under the Lease shall be deemed notice of a default under this Permit.

11. GENERAL PROVISIONS

11.1. North Dakota Law

This Permit is governed by North Dakota law.

11.2. Consent of AUTHORITY

Where this Permit refers to the consent or approval of "AUTHORITY," it means the formal consent or approval of AUTHORITY's Board.

11.3. Waiver

The waiver by AUTHORITY or Permittee of any breach of any term of this Permit shall not be deemed a waiver of any prior or subsequent breach of the same term or any other term of this Permit.

11.4. Severability

If any part of this Permit shall be held invalid, it shall not affect the validity of the remaining parts of this Permit, provided that such invalidity does not materially prejudice either party under the remaining parts of this Permit.

11.5. Public Data

AUTHORITY shall use reasonable care to treat matters pertaining to Permittee's business in a confidential manner to the extent permitted by law. This Permit, and the information related to it, are subject to the North Dakota open records laws, which presumes that data collected by AUTHORITY is public data unless classified otherwise by law.

11.6. Commitments to Federal and State Agencies

Nothing in this Permit shall be construed to prevent AUTHORITY from making such commitments as it desires to the Federal Government or the State of North Dakota in order to qualify for the expenditure of Federal or State funds on the Airport.

11.7. Subordination to Agreements with the United States

This Permit shall be subordinate to the provisions of and requirements of any existing or future agreement between AUTHORITY and the United States, relative to the development, operation, or maintenance of the Airport.

This Permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

11.8. Relationship of Parties

Nothing contained in this Permit shall be deemed to create a partnership, association or joint venture between AUTHORITY and Permittee.

11.9. Multiple Parties

If more than one person or entity is named as the Permittee, the obligations of the Permittee shall be the joint and several responsibilities of all persons or entities named as Permittee.

11.10. Commitment of Space

AUTHORITY has no obligation to provide space, beyond the Leased Property under the Permittee's Lease, for purposes authorized by this Permit.

11.11. Attorney's Fees and Costs

In the event of any default of this Permit, Permittee shall reimburse AUTHORITY for all reasonable and documented fees and costs incurred by AUTHORITY including reasonable attorney's fees, relating to such default and/or the enforcement of AUTHORITY's rights hereunder.

11.12. Headings

The Section headings in this Permit are for convenience in reference and are not intended to define or limit the scope of any provision of this Permit.

11.13. Force Majeure

If performance of any of the provisions of this Permit is rendered impossible or is delayed by reason of strikes, fire, flood, explosion, civil commotion, riot, insurrection, terrorism, or act of God, then such performance shall be excused if impossible, or postponed for the period of such delay, if delayed.

11.14. Notices

Any notice or election herein requested or permitted to be given or served by either party hereto upon the other, shall be deemed given on the date placed in the mail, correctly addressed, by United States mail, postage prepaid, or on the date of personal delivery or confirmed facsimile (if, in the case of a confirmed facsimile, a copy is contemporaneously mailed by first class mail, or delivered to a messenger for prompt personal delivery). Notices and communications shall be given to:

To AUTHORITY:

Manager
Watford City Municipal Airport
PO Box 563
Watford City, ND 58554

To Permittee:

Name
Company
Street
City, State, Zip

The effective date of such notice, consent, or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt or the courier receipt, or the date personal delivery is certified, unless provided otherwise in this Permit. Either party may change the address to which mailed notice is to be sent to it by giving to the other party not less than fifteen (15) days advance written notice.

IN WITNESS WHEREOF, AUTHORITY and Permittee have signed on the date(s) indicated below, intending to be bound thereby.

WATFORD CITY MUNICIPAL AIRPORT

PERMITTEE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____