

**CITY OF CRETE, NEBRASKA AIRPORT AUTHORITY
FUEL DEPOT OPERATOR AGREEMENT**

This Agreement is entered into between the Airport Authority of the City of Crete, Nebraska ("Authority") and Crete Fuel, LLC, 17701 Prairie Vista Drive, Roca, NE 68430, ("Operator") upon the date of signature by both parties.

RECITALS:

- A. The Airport Authority of the City of Crete, Nebraska is a duly created authority under the Cities Airport Authorities Act (Neb. Rev. Stat. §§ 3-501 to 3-514) and has the power to enter into contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the Authority.
- B. Operator seeks to operate the fuel depot at the Crete Municipal Airport ("Airport") and finance the fuel inventory for the sale of aircraft gasoline on behalf of and to the benefit of the Authority.
- C. The Authority and Operator have discussed and agreed upon terms and conditions related to Operator's operation of the fuel depot, and this written agreement is intended to and shall memorialize the entire agreement between the parties.

AGREEMENT:

Premised on the Recitals above and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

PART I: GENERAL TERMS AND CONDITIONS.

§1.01 Contract Term.

The term of this contract will be five (5) years from October 1, 2020 ("Contract Term"); therefore, the termination date of this contract shall be September 30, 2025 ("Termination Date").

§1.02 Services Provided by Operator; Fuel Depot Operations.

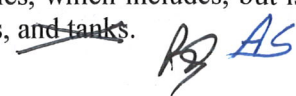
Operator shall operate the Fuel Depot and own all fuel inventory necessary to meet the aircraft fuel needs of the general aviation community at the Airport. The Fuel Depot shall include all services related to aircraft fueling including, but not limited to, full-service fueling from fuel pumps, self-service fueling from fuel pumps, truck-based fueling, and any other fueling services that exist now or in the future.

In operating the Fuel Depot, the Operator shall reasonably:

- (1) Purchase and maintain adequate inventory of aviation fuel;
- (2) Monitor, track, and perform day-to-day operations of the Fuel Depot;
- (3) Keep and maintain copies of all fuel transactions;
- (4) Pay credit card transaction costs related to dispensing fuel; and,
- (5) Report the condition of the Fuel Depot to the Authority if operability changes from normal conditions.

Operator shall have the right to use any storage and dispensing facilities at the Airport, including but not limited to: pumps, dispensers, nozzles, hoses, filters, and tanks owned by the Airport Authority.

Operator shall maintain, repair, and replace any consumable or minor parts necessary for the continued operation of the existing storage and dispensing facilities, which includes, but is not limited to, replacing fuel filters, nozzles, and hoses, cleaning the fuel system, repairing hardware, updating software, and maintaining safety equipment.

If a new fuel system is installed, Operator shall maintain, repair, and replace any parts, major or minor, necessary for the continued operation of the new storage and dispensing facilities, which includes, but is not limited to, fuel filters, nozzles, hoses, hardware, software, pumps, dispensers, and tanks. 

§1.03 Rights and Services Provided by the Authority.

Operator shall have the right to use, in common with others, the aeronautical facilities at the Airport. This may include, but is not limited to, the landing area and its extensions and additions, the access roadways, the apron, the taxiways, the public air navigation facilities, and all other facilities and equipment used for the flying, landing, and taking-off of aircraft.

The Authority shall be responsible for any major repairs to the existing storage and dispensing facilities and for any major upgrades, changes, or modifications to the Fuel Depot, fuel dispensing system, and fuel storage facilities.

§1.04 Payment for Services Provided; Flowage Fee; Failure to Pay.

In exchange for operating the Fuel Depot, Operator shall be entitled to receive any and all revenue from fuel sales through the Fuel Depot. All retail fuel charges shall be reasonable and comparable to other airports within a fifty-mile radius.

Operator shall pay the Authority a monthly flowage fee based on the amount of fuel dispensed from the Fuel Depot during the prior month at a rate of Eight Cents (\$0.08) per gallon of unleaded auto gasoline, 100LL octane aviation gasoline, Jet "A" fuel, or any other fuel dispensed. This rate shall be renegotiated each September during the Contract Term. If, after a good faith effort, the parties are unable to reach a mutually satisfactory rate, this agreement shall immediately terminate, and any further rights, duties, or obligations under this agreement shall be null and void.

The failure to pay the flowage fee within thirty (30) days of receiving written notice from the Authority shall be deemed a substantial breach of this agreement.

§1.05 Incorporation of RECITALS.

All paragraphs of the RECITALS above are hereby incorporated as agreed provisions of this contract.

The Authority and any other duly authorized official of the City of Crete must have full access to and the right to examine, audit, excerpt, or transcribe any of the Operator's records pertaining to this agreement and the operations of the Fuel Depot.

If required, audits of this agreement will be conducted in accordance with the requirements and procedures established by the City of Crete.

§4.05 Notice.

Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed by U.S. Mail, postage prepaid and return receipt requested, to the parties at their respective addresses as may be specified in writing. All notices, requests, or communications shall be deemed effective upon personal delivery or four (4) calendar days following deposit in the mail.

§4.06 Insurance; Taxes and Assessments.

Operator shall obtain and maintain throughout the Contract Term a comprehensive general liability insurance policy and any workers' compensation or other insurance policies as required by law. The comprehensive general liability insurance policy shall cover any and all claims for bodily injury, death, or property loss or damage in an amount not less than One Million Dollars (\$1,000,000) combined single limit with Three Million Dollars (\$3,000,000) aggregate coverage for any single occurrence. Operator agrees to provide proof of such liability coverage to the Airport Authority at the commencement of the Contract Term and at any time upon request.

The City of Crete and the Airport Authority must be named a coinsured upon all policies, and the policies must include coverage of loss to the Airport Authority's property and the property of other lessees caused by the actions, negligence, or omissions of Operator and its agents, employees, invitees, successors, or assigns. Every certificate of insurance shall contain at least a thirty (30) day notice of cancellation.

Operator shall pay, prior to delinquency, and remain responsible for any and all personal taxes or assessments levied upon the property owned by Operator and kept or stored upon the Premises. The Airport Authority shall pay all real estate taxes as they become due and any and all assessments for the Premises.

§4.07 Non-Liability/Hold Harmless.

The Airport Authority shall not be liable to Operator or its agents, representatives, invitees, guests, or employees for any personal injury, death, or damage to personal property caused by theft, burglary, fire, or any other cause occurring on or about the property possessed and controlled by Operator. Both parties agree to be responsible for and to indemnify and hold the other party harmless from any and all claims, demands, or actions made by any person for any loss or damage sustained based upon or arising out of the negligent or willful acts or omissions of the party, its agents, invitees, guests, or employees. Neither party shall have the right to indemnification or contribution from the other for any judgments rendered against it.

§4.08 Compliance with Law; Governing Law.

Operator shall comply with all applicable federal, state, and local laws and Federal Aviation Administration Regulations pertaining to Operator's use of the Fuel Depot and the Airport. Nothing contained in this agreement shall be construed in any way that would be in violation of said laws and regulations.

§3.04 Non-Waiver/Waivers in Writing.

The Airport Authority's failure to insist upon the strict performance of any provision of this contract or to exercise any right based upon breach will not constitute a waiver of any rights under this contract. No custom or practice of the parties which varies from a term of this contract shall be a waiver of any party's right to demand exact compliance with the terms of this contract, and no conditions or provisions of this contract can be waived unless approved by the Airport Authority in writing.

PART IV: SUPPLEMENTAL TERMS AND CONDITIONS.

§4.01 Designation of Officials to Execute Contract and Amendments.

The Airport Authority or their designee is the official authorized to execute this contract and any amendments to this contract on behalf of the Airport Authority.

Operator's representative who is duly authorized by law to execute this contract, or their successor, is the official authorized to execute this contract and any amendments to this contract on behalf of Operator.

Either party may request amendments to this contract; however, amendments will not take effect until mutually agreed to, in writing, by both parties.

§4.02 Assignment of Interest; Binding Effect.

Operator may not assign or transfer any interest in this contract without the prior, written authorization of the Airport Authority. If any assignment or transfer is authorized, Operator shall remain solely responsible for all obligations under this contract and for the conformance to the terms and conditions of this contract by any assignee or transferee. Any breach or default of this contract by any assignee or transferee shall be considered a breach or default of Operator.

This agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, heirs, and legal representatives.

§4.03 Relationship of the Parties; Independent Contractor.

Nothing in this contract should be construed in any manner as creating or establishing a partnership, joint venture, or agency relationship between the parties, nor shall either party have the right, power, or authority to create any obligations or duty, express or implied, on behalf of the other party.

Operator agrees it is, and will conduct itself as, an independent contractor in performing the services required of it under this contract. Neither Operator nor anyone employed by Operator to fulfill the terms of this contract will be considered employees of the Authority. Employees of Operator will be under the sole direction and control of Operator and will not be entitled to any compensation, rights, or benefits from the Authority or the City of Crete, including but not limited to: tenure rights, medical care or health insurance, sick or vacation leave, severance pay, or retirement benefits.

§4.04 Recordkeeping; Access to Records; Audits.

All records pertinent to the operation of the Fuel Depot must be retained by Operator until completion of the contract and for a following period of at least five (5) years.

§2.05 Personnel and Subcontractors.

Operator may rely upon various agents, officers, employees, consultants, and subcontractors to provide the agreed upon services and may contract labor to operate the Fuel Depot from time to time. If some or all of the duties of Operator are carried out by agents, officers, employees, consultants, or subcontractors, Operator shall, nonetheless, remain solely responsible for fulfilling the terms of this agreement and shall be the sole point of contact by the Authority regarding all contractual matters. The provisions of this agreement shall be binding on any such agents, officers, employees, consultants, or subcontractors.

§2.06 Damage or Destruction of Fuel Depot.

In the event of substantial damage to or a partial destruction of the Fuel Depot, the Authority shall endeavor to repair the damage in a reasonable and timely fashion, provided the repairs can be made within one hundred twenty (120) days. Any damage or partial destruction shall neither annul nor void this contract; however, in the event the Authority cannot make the repairs within the specified time or the repairs are impracticable or not cost-effective in light of the damage to the Fuel Depot, the contract shall be terminated.

§2.07 Incorporation of Rules and Regulations.

All parts, provisions, and definitions found in the Crete Municipal Airport Rules and Regulations shall be incorporated herein by reference, and all rights, duties, and responsibilities contained therein shall be fully binding on both parties as if wholly set out in this agreement.

PART III: BREACHES AND TERMINATION.

§3.01 Early Termination.

This contract may be terminated, in whole or in part, prior to the completion of the Contract Term if and when both parties agree that continuation is not feasible or would not produce beneficial results for either party. The parties must agree on the termination conditions, including the effective date of the termination, the portion (if in part) to be terminated, and any payments that may be due under the contract.

§3.02 Non-performance or Other Breach by Operator.

In the event of a substantial breach of the provisions of this contract, the Airport Authority will be entitled to declare such substantial breach a default and to terminate the contract in whole or in part. The Airport Authority may allow Operator time to cure a breach of the contract; however, allowing Operator time to cure a breach does not waive the Airport Authority's right to terminate the contract for the same or different breach which may occur at a different time.

§3.03 Force Majeure.

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster or other similar event outside the control of and not attributable to the fault or negligence of the party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. A party so affected shall immediately give notice to the other party of the Force Majeure Event. The Airport Authority may grant relief from the performance of the contract if Operator is prevented from performance by a Force Majeure Event. The burden of proof for the need of such relief shall rest with Operator. To obtain release based on a Force Majeure Event, Operator must file a written request for such relief with the Airport Authority.

PART II: SPECIAL CONDITIONS.

§2.01 Fuel Inventory.

Operator shall purchase all of the existing fuel inventory from the Authority for the wholesale cost, including any applicable taxes, that the Authority paid to acquire it. Operator shall procure and maintain all future fuel inventory at its own expense and shall pay all applicable taxes. Operator shall ensure that unleaded auto gasoline, 100LL octane aviation gasoline, and Jet "A" fuel for aircraft are available to the general public.

In the event this agreement terminates prior to the Termination Date, the Authority shall purchase all remaining fuel inventory from the Operator for the wholesale cost, including any applicable taxes, that Operator paid to acquire it.

The Authority shall be responsible for all fuel inventory that must be disposed of due to any major upgrades, changes, or modifications to the Fuel Depot, fuel dispensing system, or fuel storage facilities. Fuel inventory that is contaminated or that must be discarded due to changes to the fueling system shall be purchased from the Operator at wholesale cost.

§2.02 Fuel Supplier; Advertising.

Operator may, at its own discretion, choose to use any fuel supplier, whether an independent broker or a branded or unbranded fuel supplier.

Operator may install and operate, at its own expense, signs and advertising materials at the Airport. All signs and advertising materials shall be expressly approved by the Authority and shall only be located at designated places approved by the Authority. Such approvals shall not be unreasonably withheld.

§2.03 Fuel Spills.

The Authority shall be responsible for any soil or water contamination that has occurred prior to the execution of this agreement, including contamination caused by existing fuel storage facilities, underground fuel lines, or unidentified fuel spills.

Operator shall be responsible for any and all fuel spills and contamination events that are a direct result of the actions of the Operator or its representatives, employees, authorized agents, guests, or invitees. This includes, but is not limited to, any customers of the Fuel Depot during normal business hours and any customers using the self-service fuel pumps after normal business hours.

The Authority may adopt a written spill prevention control and countermeasure ("SPCC") plan that is appropriate for the Fuel Depot and any fuel dispensing or storage equipment. The adopted SPCC plan shall be consistent with local environmental regulations with respect to reporting requirements, immediate clean-up and remediation, and post-incident monitoring.

§2.04 Non-Exclusive Rights.

Nothing in this agreement shall be construed to grant or authorize the granting of exclusive rights prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Airport Authority reserves the right to grant others the privilege and right of conducting any or all of the activities listed therein or any other activity of an aeronautical nature.

This contract shall be governed by, construed according to the laws and regulations of, and subject to the jurisdiction of the State of Nebraska.

§4.09 Americans with Disabilities Act (ADA); Non-Discrimination.

Operator must comply with all provisions of the Americans with Disabilities Act (ADA) with respect to hiring, training, and employment practices, including reasonable accommodation of persons with disabilities in hiring, training, and employment practices, and in assuring access by persons with disabilities to facilities and services provided by Operator to the general public.

Operator agrees to operate the Fuel Depot for the use and benefit of the general public and to make the facilities and services under its control available to the general public without unjustly discriminatory practices or charging unreasonable fees for any use of the facilities or services. Operator covenants and agrees to comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment.

§4.10 Entire Agreement; Counterparts; Severability.

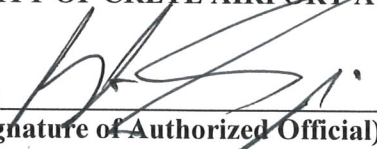
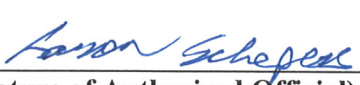

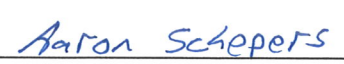


This instrument and any documents incorporated herein by reference constitute the entire agreement of the parties, and any representations or promises not contained herein shall not be binding upon the parties.

This agreement or any amendment to this agreement may be signed in any number of counterparts; each of which will be considered an original, and all of which taken together will constitute one agreement or amendment, as the case may be.

Each section, paragraph, clause, sentence, and word of this agreement is intended to be severable. If any part of this contract or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other portions of this contract that can be given effect without the invalid part.

ACCEPTANCE PROVISIONS.

The parties acknowledge they have read and understand this contract, they agree to its provisions, and that it will be effective on the date when both parties have signed.

CITY OF CRETE AIRPORT AUTHORITY	CRETE FUEL, LLC
By:  (Signature of Authorized Official)	By:  (Signature of Authorized Official)
 (Typed or Printed Name/Title)	 (Typed or Printed Name/Title)
 (Date)	 (Date)

