

## AERIAL APPLICATOR AGREEMENT

THIS AGREEMENT made and entered into by and between the **Crete Airport Authority**, hereinafter referred to as "Airport", and **Emrich Aerial Spraying** hereinafter referred to as "Aerial Applicator".

WHEREAS, Aerial Applicator desires to use the airport in connection with its aerial application and crop dusting business, and

WHEREAS, Airport agrees to allow Aerial Applicator to use the airport for said aerial application business but desires to be indemnified against any environmental hazard or waste contamination.

NOW, THEREFORE, in consideration of the mutual covenants herein described, the parties agree as follows:

1. Aerial Applicator shall pay a fee of \$500 before the start of Aerial Applicator spray operations, for the calendar year of 2022, for the use of the airport in connection with its aerial application business. The term of this Agreement shall be for the calendar year of 2022. Aerial Applicator shall also provide and have available a spill prevention kit to contain and absorb any fuel or chemical spill on Crete Airport property. Any spills will be cleaned up immediately and completely at the Aerial Applicator's expense and to the satisfaction of the Crete Airport Authority.

2. The parties acknowledge that Aerial Applicator uses certain hazardous substances in the course of conducting its business. Aerial Applicator shall, at Aerial Applicator's sole cost and expense, comply with all the requirements and orders now in force in which may hereafter be imposed by all federal, state, county, municipal and other applicable governmental authorities pertaining to Aerial Applicator's use and occupancy of the airport for its aerial application business.

- (a) In the event Aerial Applicator receives a notice of violation from a governmental authority or becomes aware of an event or condition which would give rise to a violation involving operations on the Crete Airport, Aerial Applicator shall give prompt notice

thereof to the Airport Manager, including an accurate and complete written report of the event or condition. Aerial applicator shall also provide to the Airport Manager a written plan for the repair, abatement or remediation, as the case may be, of the violation, including a timetable for completion of the plan. Aerial Applicator shall promptly execute the plan at his sole cost and expense.

(b) In the event Aerial Applicator fails to perform any act required under this paragraph 2, it shall be deemed in default under the terms of this Agreement and Airport may terminate this Agreement. Airport shall be entitled to collect from Aerial Applicator any fines, penalties, expenses of repair, expenses of remediation (including professional's expenses and consultant's fees) and all other direct and consequential damages incurred as a result of Aerial applicator's default under this paragraph 2.

3. Aerial Applicator agrees to indemnify and hold Airport harmless against any loss, liability, cost, expense or clam, including but not limited to attorney fees, disbursements, laboratory fees and consultant fees which the Airport may sustain resulting from or on account of any claims arising from the enforcement of any environmental protection laws by any federal, state or municipal environmental protection laws, regulations or policies. Aerial Applicator shall not be responsible for any expense related to any condition created or contributed to by Airport, which condition is volatile of any environmental law, regulation or policy. The provisions of this paragraph shall survive the termination of this Agreement and inure to the benefit of Airport, its successors or assigns.

4. Aerial Applicator shall obtain, maintain in full force and effect, and strictly comply with any and all governmental permits, approvals and authorizations necessary for the conduct of its business operations and shall supply the Airport with copies of such permits, approvals and authorizations upon request. Aerial Applicator shall promptly notify the Airport Manager of the expiration or the revocation of any such permits, approvals and authorizations and shall promptly notify the Airport Manager with a copy of any notice of violation of any environmental law, regulation, state, ordinance, policy or order Aerial Applicator receives.

5.. Aerial Applicator is permitted to bring fuel onto the Crete Municipal Airport for the purpose of self-fueling aircraft in connection with Aerial Applicators business. If the Aerial Applicator chooses to do this, the Aerial Applicator shall pay to the Airport a flowage fee on all fuel of any type pumped by the Aerial Applicator in the amount of **5 cents per gallon.**

6. The Aerial Applicator shall provide the total number of gallons and approximate dates of arrival to the Airport Manager by **October 31st**, along with a check for the flowage fees due.

7. The parties hereto recognize that Aerial Applicator will be using or producing substances which are deemed "hazardous" under certain federal and state laws and regulations, that such use or production will be in the ordinary course of Aerial applicator's business and cannot be avoided, and that there are no substitute substances available which are not "hazardous" substances.

8. The parties further recognize that the Airport needs adequate assurances that in the event of an adverse environmental occurrence, such as a leak during storage, transportation, handling or disposal, or a release of one of these substances, Aerial Applicator will have sufficient financial resources to remedy the problem, as required by federal and state law, and to adequately compensate for proven injury to person or property of third parties who may be affected by the adverse environmental occurrence. The term "an adverse environmental event" shall be defined as a release of a hazardous substance (as defined below) which is sudden and accidental, which release either poses a threat to the quality of air, water, lawn, fish, wildlife or natural resources, or a threat of damage to persons or property, and which will require remediation under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

9. The parties further recognize that under CERCLA, 42 USC § 960 I et seq., the federal authorities are not required to recognize the hold harmless provision contained elsewhere in this Agreement, whereby Aerial Applicator agrees to indemnify Airport for the cost of remediation and injury to persons and property, among other things. The intent of the parties is to provide a source of funds to reimburse Airport for such

remediation costs and damages, should they be deemed liable therefore by any governmental authority or court of law. Accordingly, Aerial Applicator shall provide written proof by providing a copy of the insurance policy, bond or irrevocable letter of credit (hereafter "security"), in at least the amount of \$500,000, which shall name the Airport as additionally insured, beneficiary or payee, as the case may be. The security shall be payable to Airport in the event that an adverse environmental event occurs on the leased property.

10. The term "hazardous substance" shall mean any substance hazardous under any of the following statutes, or under any other statute or regulation of any governmental authority: The Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et seq.; the Resource Conservation and Recovery Act, 42 USC § 6901 et seq.; the Hazardous Material Transportation Act, 49 USC § 1801 et seq.; and the Toxic Substances Control Act, 15 USC § 2601 et seq.; and regulations promulgated thereunder.

11. It is the intent of the parties that Aerial Applicator be responsible for the expense of any clean up, remediation or damages. The security is to be provided as extra protection against such expenses.

12. Aerial Applicator shall provide proof of the existence of such security to Airport before using the airport for aerial application. Aerial Applicator shall also provide to Airport proof of payment of any premium or fees in connection with the security. If an insurance policy is used, Aerial Applicator shall obtain a clause in the policy guaranteeing Airport a thirty (30) day notice prior to cancellation of the policy for any reason. In the event Aerial Applicator fails to pay a premium or fee when due, Airport may pay the same and charge the cost thereof back to Aerial Applicator as additional fees. Such additional fees shall be due and payable on the first day of the month following the month in which Airport made payment. Failure to maintain the required security throughout the duration of the agreement term, or to reimburse Airport for its payment of a premium or fee, shall be an event of default under this Agreement.

13. Aerial Applicator shall use all reasonable means to prevent an adverse

environmental occurrence and Airport, through its representatives, employees and agents, shall be permitted at all reasonable times to inspect any of Aerial Applicator's facilities and equipment for the purpose of determining compliance with this paragraph.

14. This Agreement shall not be assigned by Aerial Applicator without express written consent of Airport.

WHEREFORE, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Aerial Applicator Authorized Signature

\_\_\_\_\_  
Crete Airport Authority Chairperson

\_\_\_\_\_  
Aerial Applicator Contact Name (Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email