

**CITY OF ST. LOUIS
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®**



**FIRST AMENDMENT
FUEL SYSTEM LEASE AND USE AGREEMENT**

STL FUEL COMPANY, LLC

NO. AL-442

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
FIRST AMENDMENT TO FUEL SYSTEM LEASE AND USE AGREEMENT
STL FUEL COMPANY LLC**

This First Amendment (“**First Amendment**”) to Fuel System Lease and Use Agreement (“**Agreement**”) is dated _____, 2014, and is between The City of St. Louis, Missouri, and STL Fuel Company LLC, a limited liability company organized and existing under the laws of the State of Delaware.

RECITALS

The City owns and operates the Lambert-St. Louis International Airport®, located in the County of St. Louis, State of Missouri.

The Agreement between the parties hereto was authorized by St. Louis City Ordinance #69039 dated November 18, 2011.

The parties hereto desire to amend the Agreement to include the Maintenance Facility as part of the Leased Premises and to correct certain typographical errors.

The parties, therefore, agree as follows:

Section 1. The effective date of this First Amendment shall be March 1, 2014

Section 2. The Definition of “Ancillary Agreements” in Article I of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“Ancillary Agreements” means the Fuel System Access Agreements, Non Contracting User Agreements, Interconnection Agreements, Fuel System Operating Agreement, and the Maintenance Facility Sublease in effect at any time.

Section 3. The Definition of “Environmental Condition” in Article I of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“Environmental Condition” means the presence of Hazardous Materials, environmental contamination or damage by Hazardous Materials at, upon, under or adjacent to the Leased Premises as a result of the escape, seepage, leakage, spillage, discharge, deposit, disposal, emission, or release of Hazardous Materials from the Fuel System or Maintenance Facility, or arising out of the operation of the Fuel System or Maintenance Facility. Environmental Condition shall not include any such conditions to the extent created by or arising out of the operations of an Into-Plane Agent on or after the Commencement Date or the operation of any party on or of the Maintenance Facility before March 1, 2014 and not described in Exhibit “F”.

Section 4. The Definition of “Existing Environmental Condition” in Article I of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“Existing Environmental Condition” means (i) an Environmental Condition in existence before the Commencement Date, or (ii) the presence of Hazardous Materials, environmental contamination or damage by Hazardous Materials at, upon, under or adjacent to the Maintenance Facility, or as a result of the escape, seepage, leakage, spillage, discharge, deposit, disposal, emission, or release of Hazardous Materials arising out of or relating to into-plane fueling before March 1, 2014.

Section 5. The Definition of “Maintenance Facility Agreement” in Article I of the Agreement is deleted in its entirety.

Section 6. The following definition is added to Article I of the Agreement:

“Maintenance Facility Sublease” means the sublease between Company and the Fuel System Operator for the lease and/or use of the Maintenance Facility.

Section 7. The Definition of “User” in Article I of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

“User” means an entity that has entered into an Ancillary Agreement with Company and that has access to the Fuel System or the Maintenance Facility pursuant to such Ancillary Agreement.

Section 8. Section 301 “Leased Premises” of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

Subject to the terms of this Agreement, the City hereby grants to Company, and Company takes and leases from the City, the exclusive use of the Fuel System and the Maintenance Facility, including all Capital Improvements thereto, and the non-exclusive use of the Right-of-Way (together, the “Leased Premises”).

Section 9. Section 401(A) “Operation of the Fuel System” of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

(A) Company, at its own cost and expense, shall manage, operate and maintain the Fuel System and the Maintenance Facility in accordance with this Agreement. In the alternative, at its discretion, Company may provide for the management, operation, and maintenance of the Fuel System and the Maintenance Facility by a Fuel System Operator upon execution of an agreement with terms and conditions consistent with this Agreement and acceptable to the City. The City reserves the right to approve the identity of any Fuel System Operator to ensure that the Fuel System Operator has: (i) significant experience in the management and operations of complex, integrated aviation fueling facilities in a competent and professional manner; (ii) financial strength and management competency, with personnel having appropriate experience, to manage, operate and maintain the Fuel System; and (iii) demonstrated experience with federal environmental controls, emergency spill response and compliance with permitting requirements for aviation fueling facilities.

Section 10. Section 406(A) and 406 (B) "Modification of Leased Premises" of the Agreement are deleted in their entirety and the following is substituted in lieu thereof:

Subject to the approval and permitting requirement provisions of Article VII, Company shall have the right to:

(A) build, install, maintain and operate facilities and equipment for all activities related to the operation, maintenance, remediation, repair, improvement and inspection of the Fuel System and the Maintenance Facility; provided, however, that the particular Leased Premises are designed to be used for said purpose or that said use has been approved by the City; and

(B) install, maintain and operate personal property, including furniture, furnishings, supplies, machinery, and equipment deemed necessary or prudent for the operation, maintenance, repair, improvement and inspection of the Fuel System and the Maintenance Facility.

Section 11. Section 407 "Communication Systems" of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

Company and the Fuel System Operator shall have the right to install, maintain, and operate such radio, telecommunications, and computer equipment, facilities and associated wiring, as may be necessary for the management, operation, and maintenance of the Fuel System and the Maintenance Facility. The location of such equipment and facilities, method of installation, and type of equipment shall be subject to the prior approval of the City. The City may require modification, removal, or relocation of such equipment if it interferes with other communication, meteorological, or aerial navigation systems operated by the City, other tenants, or governmental agencies. The City shall have the right to charge a fee, surcharge, or rental charge for any equipment location outside of the Leased Premises.

Section 12. Section 410 "Other Agreements" of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

As provided in Section 401, Company may enter into a Fuel System Operating Agreement with the Fuel System Operator to exercise the rights and obligations granted in this Agreement for the management, operation and maintenance of the Fuel System. Company also may enter into a Maintenance Facility Sublease as set forth in this Agreement. In addition, Company shall enter into agreements with other third parties for access to, and use of, the Fuel System including, but not necessarily limited to Non-Contracting User Agreements, Fuel System Access Agreements, and Interconnection Agreements. The City expressly reserves the right to review and approve, in its sole discretion, the form of the Ancillary Agreements, and any material amendments thereto. The City also reserves the right to review and approve the form of those provisions, or amendments thereto, of the Company's limited liability company agreement or the Interline Agreement affecting membership status, including access fees imposed on new members, and the treatment by Company of Users other than Contracting Airlines.

Section 13. Section 502 “Rent” of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

Beginning on March 1, 2014, Company shall pay an annual Rent to the City for the Leased Premises in the amount of \$581,534 (five hundred eighty one thousand five hundred thirty four dollars, comprised of \$466,247 (four hundred and sixty six thousand two hundred forty seven dollars) as Rent for the Fuel System and \$115,287 (one hundred and fifteen thousand and two hundred eighty even dollars) as Rent for the Maintenance Facility. The annual Rent payable to the City for the Fuel System (and explicitly excluding Rent for the Maintenance Facility) shall be setoff each year by an amount equal to the amount deposited by Company into the Capital Escrow Account during such year; provided, however, that the annual Rent setoff throughout the Term shall not exceed 20% of the total annual Rent for the Fuel System as set forth herein, or as it may be adjusted from time to time in accordance with Section 503. Rent payments, net of setoffs allowed in accordance with this Section 502, shall be due to the City in twelve equal monthly installments, in advance, on or before the first day of each calendar month.

Section 14. The word “proceeding” in the last sentence of Section 507(B) is deleted and the word “preceding” is substituted in lieu thereof.

Section 15. Section 701 “General” in Article VII “Capital Improvements” of the Agreement is deleted in its entirety and the following is substituted in lieu thereof:

Company shall make, or cause to be made, Capital Improvements to the Fuel System and the Maintenance Facility of any nature whatsoever, whether seen or unforeseen:

- (A) to ensure the environmental integrity of the Fuel System to then-current industry standards and regulations;
- (B) for safety or security reasons;
- (C) to comply with all applicable federal, state, and local laws, ordinances, regulations and permits, grant assurances made by the City, and the Rules and Regulations;
- (D) to settle claims, satisfy judgments, or comply with judicial orders rendered by a court of competent jurisdiction arising out of judicial or administrative cases in which Company is a party;
- (E) to repair damage covered by Company’s indemnification of the City in accordance with Section 1103;
- (F) to keep the Fuel System and Maintenance Facility in essentially the same working condition as on the Commencement Date; provided however, that Company may give one-year Notice to terminate this Agreement if the cost of such Capital Improvement is budgeted to exceed:

(i) \$10,000,000 during any 12 consecutive months at any time throughout the period beginning on the fifth anniversary and ending on the tenth anniversary of the Commencement Date,

(ii) \$5,000,000 during any 12 consecutive months at any time throughout the period beginning on the tenth anniversary and ending on the fifteenth anniversary of the Commencement Date, or

(iii) \$1,000,000 during any 12 consecutive months at any time throughout the period beginning on the fifteenth anniversary of the Commencement Date; or

(G) as proposed by Company.

Section 16. Sections 903(B) and (C) "Maintenance by Company" of the Agreement are deleted in their entirety and the following is substituted in lieu thereof:

(B) Fuel Farm and Maintenance Facility. In addition to providing maintenance in accordance with Subsection 903(A), Company shall maintain the Fuel Farm and the Maintenance Facility and all Capital Improvements thereto in a clean, neat, orderly, sanitary and presentable fashion, and shall remove and dispose of all trash and refuse in a manner approved by the City. Such maintenance shall be in quality and class necessary to preserve the facilities in good order and condition, based on a standard of care

(C) Utility Systems on Leased Premises. In addition to maintaining the Leased Premises in accordance with Subsections 903(A) 903(B), Company shall maintain the utility systems on the Leased Premises as follows:

Section 17. Sections 1002 (A) *Environmental Permits*, (B) *Duty to Notify City*, and (D)(iii) *Environmental Remediation* of the Agreement are deleted in their entirety and the following is substituted in lieu thereof:

(A) *Environmental Permits.*

(i) Company shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Company engages at the Airport. In any event in which either Company or the City could lawfully be the permit holder under Environmental Laws related to Company's activities pursuant to this Agreement, Company shall obtain such permit as the permit holder. Company shall cause its sublessees (excluding sublessee's activities as an Into-Plane Agent) to obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which the sublessee engages at the Airport. To the extent both the City and Company and/or any User must be co-permit holders, the Company shall be responsible for all permit obligations related to Company's activities pursuant to this Agreement and City shall cooperate with Company's effort to comply with said co-permit obligations.

(ii) Company shall comply, and shall cause its sublessees to comply (excluding Into-Plane Agents acting in that capacity outside the Maintenance Facility), with any requirement: (1) imposed by an Environmental Permit obtained by the City that is generally applicable to the Airport, including tenant operations, and is applicable to Company or Company's activities at the Airport, or (2) imposed by a plan or program developed pursuant to such an Environmental Permit; provided, however that the City shall adequately notify Company of such Environmental Permit and associated requirements, including all applicable deadlines for compliance.

(iii) If Company wishes to participate in negotiations over the language of a particular City Environmental Permit applicable to the activities of Company at the Airport, and any amendments thereto, City will cooperate with Company to request the government agency issuing the Environmental Permit to issue an individual permit to Company.

(B) *Duty to Notify City.* In the event of any material release or threatened release of Hazardous Materials relating to the Fuel System or Maintenance Facility, or arising from the Company's operation or maintenance of the Leased Premises, and known by Company, its employees, agents, contractors or suppliers, whether or not required by applicable Environmental Laws, Environmental Permits, or Rules and Regulations to be reported by Company to a governmental agency, and whether as a result of negligent conduct or otherwise, at, on, under or about the Airport, or any portion thereof, or in the event any written claim, demand, complaint or action is made or taken against Company that pertains to Company's failure or alleged failure to comply with any Environmental Laws or Environmental Permits at the Airport, Company shall notify the City as soon as reasonably practical of all known facts pertinent to such release, threatened release, claim, demand, complaint, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If Company is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials at, on, under or about the Airport, or any part thereof, Company shall simultaneously provide a copy of such notice or report to the City. To the extent that the City is required to report any information related to a release or threatened release of Hazardous Materials involving Company or any of the Users, the Company shall cooperate with the City and make available information needed by the City to make such report.

(D)(iii) provided it is a New Environmental Condition anywhere at the Airport, or migrating from the Airport, if such Hazardous Material, environmental contamination, condition or damage resulted from acts or omissions of Company or its agents, employees, sublessees (excluding sublessee's activities as an Into-Plane Agent outside the Maintenance Facility), or contractors, whether resulting from negligent conduct or otherwise;

Section 18. Sections 1103 (A), (C) and (E) "Indemnification" of the Agreement are deleted in their entirety and the following is substituted in lieu thereof:

(A) Company shall defend, indemnify, and hold harmless St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their respective officers, agents and employees (the "Indemnified Parties") from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards, settlements, costs, and expenses, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs and expert fees) of any nature, arising out of and in connection with: (i) the acts or omissions of Company, Fuel System Operator (acting in such capacity only), their agents, employees, sublessees (excluding sublessee's activities as an Into-Plane Agent outside the Maintenance Facility), contractors, or suppliers in the lease, occupancy, or operation of the Leased Premises or use of the other areas or facilities at the Airport; or (ii) any violation by Company of any provision, warranty, covenant, or condition of this Agreement. Company shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

(C) Company shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, permits, ordinances, grant assurances, or court orders affecting the Airport, by Company, the Fuel System Operator (acting in such capacity only), or their agents, employees, contractors, sublessees (excluding sublessee's activities as an Into-Plane Agent outside the Maintenance Facility), or suppliers, in conjunction with Company's or Fuel System Operator's (acting in such capacity only) lease, occupancy, or operation of the Leased Premises or the use of other areas or facilities at the Airport. Company will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

(E) If a prohibited incursion into the Airfield Operations Area occurs, or if the Airfield Operations Area or sterile area security is breached, by or due to the negligence or willful act or omission of any of Company's or Fuel System Operator's (acting in such capacity only) employees, agents, contractors, , or suppliers, and such incursion or breach results in a civil penalty action against the City, Company shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Company of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives

Section 20. All other terms, covenants and conditions of the Agreement, not inconsistent with this First Amendment, are hereby ratified and remain in full force and effect.

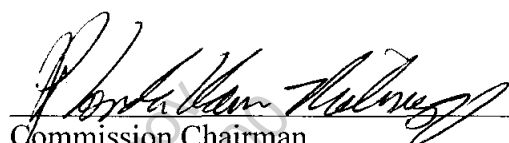
IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this First Amendment as of date first written above.

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®:

Pursuant to Ordinance 69693, approved MARCH 12, 2014.

The foregoing Agreement was approved by the Airport Commission at its meeting on FEBRUARY 5, 2014.


By:

 3/28/14
Commission Chairman Date
and Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on February 19, 2014.

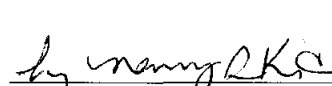
Approved as BB#295

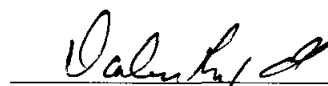
By:

 4-3-14
Secretary, Board of Estimate & Date
Apportionment

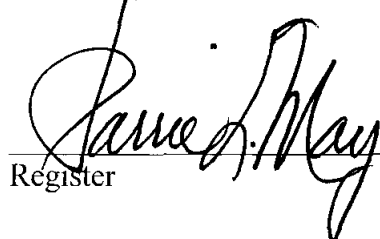
APPROVED AS TO FORM ONLY:

COUNTERSIGNED:

 4/2/14
City Counselor Date

 4/2/14
Comptroller Date

ATTESTED:

 APR 07 2014
Register Date

COMPTROLLER'S OFFICE
DOCUMENT NUMBER 63637

STL FUEL COMPANY LLC:

(First Amendment to AL-442)

By: SHANE THRASHER



12/13/13

Title: Chairman

Date

ATTESTED:

By:

Title:

Date

Confidential
garvinm@stlouis-mo.gov
2020-01-15 17:39:51 +0000