

NOTICE OF PROPOSED GUIDANCE DOCUMENT

DTIMBOA36

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIMBOA36, a proposed guidance document.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBOA36>

2. Mailing written comments to:

Division of Transportation Investment Management
Wisconsin Department of Transportation
4822 Madison Yards Way
PO Box 7913
Madison, WI 53707-7913

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at wisconsin.dot.gov to allow for ongoing comment.

AGENCY CONTACT

Kaleb Vander Wiele
DOTDTIMGuidanceDocs@DOT.WI.GOV

(SAMPLE)
FIXED-BASE OPERATOR'S AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of (month) _____, 20___, by and between the (city, village, county, etc. as the airport owner) _____, in the State of Wisconsin, a municipal corporation existing by and under the authority of the laws of the State of Wisconsin, hereinafter referred to as the Lessor, and the (new FBO) _____, hereinafter referred to as the Lessee.

WHEREAS, the (city, village, county, etc.) _____ owns and operates an airport known as the _____ Airport, and Lessor is desirous of leasing to Lessee certain premises located on the airport, together with the right to use and enjoy individually and in common with others the facilities; and

WHEREAS, Lessee may engage in the business of selling gasoline, oil and other lubricants, maintaining and operating full aircraft servicing facilities, selling aircraft engines, accessories and parts, providing storage space for aircraft, a repair shop for the repairing and servicing of aircraft engines, instruments, propellers and accessories in connection with said business, giving flying instructions, providing pilots for operating planes for others and carrying passengers and freight for hire, and desires to lease property and rights from the Lessor.

NOW, THEREFORE, for and in consideration of the rents and covenants of this agreement, the Lessee leases from the Lessor the following premises, rights and easements on and to the airport upon the following terms and conditions;

1. **Property Description.** (Here describe the property leased. Include airport layout map as an attachment, if desired.)
2. **Building Construction.** A Lessee shall have the right to erect, maintain, and alter office and administration buildings, shops, hangars, radio antennae and other buildings or structures on the described premises, providing such buildings or structures conform to the Building Code Requirements of the Wisconsin Industrial Commission and any (city, county, or town) ordinance now or hereafter in effect. All plans for buildings or structures shall be reviewed and approved in writing by the Lessor prior to construction. Title to such buildings erected by the Lessee shall remain with the Lessee and shall be transferable.
3. **Term.** The term of this lease shall be for a period of _____ years, commencing on _____.
4. **Rent and User Fees.**
 - a. The Lessee agrees to pay to the Lessor for the use of the premises, rights, and easements, a yearly rental of _____ cents per square foot for the land leased in the commercial area, for total annual charge of \$_____, and _____ cents per square foot for the land leased in the T-hangar area for total annual charge of \$_____. The Lessee also agrees to pay a user charge of _____ cents per gallon for all aviation gasoline and _____ cents per gallon of oil, delivered to Lessee at the airport by any supplier during each year. Land rental payments will be annually, and user charge fees will be paid quarterly.
 - b. It is expressly understood between the Lessor and the Lessee that the rate of ground rental per square foot per annum herein specified, together with the fuel flowage fee, shall be subject to reexamination and readjustment at the end of each three year period of this lease, provided that any readjustment of present rates shall be reasonable.

5. **Insurance.**

- a. The Lessee agrees to deposit with the Lessor a policy of comprehensive liability insurance. The policy shall be issued by a company licensed to do business in Wisconsin and shall insure the Lessee against loss from liability to the amount of \$_____ for the injury or death of one person in any one accident; and in the amount of \$_____ for the injury or death of more than one person in any one accident, and the amount of \$_____ for damage to property of others for any one accident.
- b. The policy of insurance shall be approved by the _____ as to legal form before it is filed, and shall contain a provision that the same may not be canceled before the expiration of its term except upon 30 days' written notice to the _____
—
- c. The cancellation or other termination of any insurance policy issued in compliance with this section shall automatically terminate the lease, unless another policy has been filed and approved pursuant to this section and shall be in effect at the time of such cancellation or termination.

6. **Lessee Rights.** Lessee shall have the right:

- a. In common with others so authorized, to use common areas of the airport, including runways, taxiways, aprons, roadways, floodlights, landing lights, signals and other conveniences for the take-off, flying and landing of aircraft.
- b. To the nonexclusive use, in common with others, of the airport parking areas, appurtenances and improvements thereon, but this shall not restrict the right of the Lessor to charge visitors a fee for the use of such areas.
- c. To install, operate, maintain, repair and store subject to approval of Lessor in the interests of safety and convenience of all concerned, all equipment necessary for the conduct of Lessee's business.
- d. Of access to and from the premises, limited to streets, driveways or sidewalks designated for such purposes by the Lessor, and which right shall extend to Lessee's employees, passengers, guests, invitees, and patrons.
- e. In and on the premises, to sell gasoline, oil and other lubricants, maintain and operate full aircraft servicing facilities, sell aircraft, engines, accessories and parts, and provide storage space for instruments, propellers and accessories in connection with the business. The right to conduct these activities shall apply to aircraft of other persons as well as aircraft belonging to Lessee.
- f. To give flying instructions, to provide pilots for operating planes for others, and to carry passengers and freight for hire, subject to all appropriate laws of the Federal Government, the State of Wisconsin, the ordinances of the Lessor, and the requirements of the FAA and the Wisconsin Department of Transportation or any other duly authorized governmental agency.

7. **Maintenance of Buildings.** Lessee will maintain the leased structures occupied by him and the surrounding land premises in good order and make repairs as necessary. In the event of fire or any other casualty, the owner of any structure so affected shall either repair or replace the building or remove the damaged building and restore the leased area to its original condition; this action must be accomplished within 120 days of the date the damage occurred. Upon petition by the Lessee, the Lessor may grant an extension of time if it appears an extension is warranted.

8. **Right to Inspect.** Lessor reserves the right to enter upon the premises at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this agreement.
9. **Lease Transfer.** Lessee may not, at any time during the term of this lease, assign, or transfer this agreement or any interest therein, without the written consent of Lessor; the Lessee shall have the right to lease that portion of the buildings placed on the premises by Lessee which are not needed by Lessee in the operation of his business with the approval of the Lessor.
10. **Laws and Regulations.** Lessee agrees to observe and obey during the term of this lease, all laws, ordinances, rules and regulations promulgated and enforced by Lessor, and by any other proper authority having jurisdiction over the conduct of the operations at the airport.
11. **Hold Harmless.** Lessee agrees to hold Lessor 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 the Lessee, his agents, servants and employees, and from all loss and damages by reason of such acts or omissions.
12. **Quiet Enjoyment.** So long as Lessee conducts his business in a fair, reasonable and workmanlike manner, Lessee shall peaceably have and enjoy the leased premises, and all the rights and privileges granted.
13. **Signs.** Lessee agrees that no signs or advertising matter may be erected without the consent of Lessor.
14. **Obstruction Lights.** Lessee agrees to permit Lessor to install, maintain and operate proper obstruction lights on the tops of all buildings or structures to be placed on the premises at no cost to the Lessee.
15. **Fair and Nondiscriminatory Services.** Lessee in the conduct of any aeronautical activity for furnishing services to the public at the Airport, shall furnish services on a fair, equal and not unjustly discriminatory basis to all users, and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
16. **Title VI, Civil Rights Assurances.** The Lessee, for himself, his personal representatives, successors in interest, and assigns, agrees 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 land 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 of, or be otherwise subjected to discrimination, (3) that the Lessee shall use the premises 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, Nondiscrimination, in Federally Assisted Programs of the Department of Transportation- Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.
17. **Nonexclusive Rights.** Lessee shall have the right and privilege of engaging in and conducting a business on the premises of the airport under the terms and conditions as set forth, provided, however, that this agreement shall not be construed in any manner to grant Lessee or those claiming under it the exclusive right to the use of the premises and facilities of the airport other than those premises leased exclusively to Lessee.
18. **Affirmative Action.** The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race,

creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered sub-organizations provide Assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

19. **Aircraft Service by Owner or Operator.** It is clearly understood by the Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform.
20. **Hours of Operations.** Lessee agrees to maintain operations during a schedule of hours, which schedule shall be filed with and approved by the _____. Hours of operation shall not be reduced below the minimum without written consent of the _____, except during any period when the airport is closed by any lawful authority restricting the use in such a manner as to interfere with use by the Lessee for its business operation.
21. **Airport Closings.** During any period when the airport shall be closed by any lawful authority restricting the use of the airport in such a manner as to interfere with the use of same by Lessee for his business operation, the rent shall abate and the period of such closure shall be added to the term of this lease so as to extend and postpone the expiration thereof.
22. **Snow Removal.** Lessor agrees to provide snow removal services to the Lessee for the area covered by the Lessee's ramp leading from the taxiway to Lessee's hangar. Lessor also agrees to provide snow removal services to the Lessee's leased premises in the T-hangar area.
23. **Taxes.** Lessee shall pay all taxes or assessments that may be levied against the personal property of the Lessee or the buildings which it may erect on lands leased exclusively to him.
24. **Airport Development.** Lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee, and without interference or hindrance. If the development of the airport requires the relocation of the Lessee, the Lessor agrees to provide a comparable location and agrees to relocate all buildings or provide similar facilities for the Lessee at no cost to the Lessee.
25. **Lessor's Rights.** Lessor reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of Lessee in this regard.
26. **Obstructions.** Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of the Lessor, would limit the usefulness of the airport or constitute a hazard to aircraft. Lessee shall, upon approval by Lessor and prior to any construction of any nature within the boundaries of the airport, prepare and submit to the Federal Aviation Administration, FAA Form 7460-1, "Notice of Proposed Construction or Alteration", as required by Federal Aviation Regulation Part 77.
27. **Subordination Provision.** This lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States or the State of Wisconsin, relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the airport. Furthermore, this lease may be amended to include provisions required by those agreements with the United States or the State of Wisconsin.

28. **Performance Bonds.** Lessee shall provide a performance bond in the amount of \$ _____, insuring the completion of the building to be erected on the leasehold.
29. **Financial Disclosure.** Lessee shall furnish such evidence as may be reasonably requested by Lessor to show the Lessee is financially capable of providing the services and facilities set forth in the lease.
30. **Default.** The Lessee shall be deemed in default upon:
- a. Failure to pay rent within 30 days after due date;
 - b. The filing of a petition under the Federal Bankruptcy Act or any amendment, including a petition for reorganization or an arrangement;
 - c. The commencement of a proceeding for dissolution or for the appointment of a receiver;
 - d. The making of an assignment for the benefit of creditors;
 - e. Violation of any restrictions in this lease, or failure to keep any of its covenants after written notice to cease such violation and failure to correct such violation within thirty days;
 - f. Abandonment of leased premises.
31. **Rights After Termination.** In the event of termination for default by the Lessee, the Lessor shall have the right at once and without further notice to the Lessee, or surety, to enter and take possession of the premises occupied by the Lessee, by force or otherwise, and expel, oust and remove any and all parties who may occupy any portion of the premises or Airport covered by this Lease, and any and all goods and chattels belonging to the Lessee or his associates which may be found, without being liable for prosecution or to any claim for damages.

Upon such termination by the Lessor, all rights, powers and privileges of the Lessee shall cease, and the Lessee shall immediately vacate any and all space occupied by him under this Lease, and shall make no claim of any kind whatsoever against the Lessor, its agents or representatives, by reason of such termination, or any act incident thereto.

In the event of termination for any cause which is determined by the Lessor to be beyond the control and without the fault or negligence of the Lessee, payment to the Lessor hereunder shall immediately cease, and the Lessee shall be entitled to have monies which have been prepaid or advanced to the Lessor predicated on occupancy of the premises to the end of the period, if any, refunded to him by the Lessor.

The Lessee shall, in addition to other rights provided for by law, be permitted to remove his operating facilities, merchandise, etc., in a manner and at a time agreed upon by the parties.

32. **Arbitration.** Any controversy or claim arising out of or relating to this Lease or any alleged breach thereof, which cannot be settled between the parties, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the dispute rendered by the arbitrator(s) shall be final and binding on the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this

day of _____, 20__.

In the City of _____,
County, Wisconsin.

IN THE PRESENCE OF:

LESSOR:

By: _____

By: _____

LESSEE:

TITLE: _____

Subscribed and sworn to before me this

day of _____, 20__.

Notary

My Commission Expires: _____