

HABERSHAM COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: World Fuel Loaner Truck Lease

DATE: September 9th, 2022

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

BUDGET INFORMATION:

☐ **STATUS REPORT**

ANNUAL- \$0

☐ **OTHER**

CAPITAL- \$0

COMMISSION ACTION REQUESTED ON: September 19th, 2022

PURPOSE: To enter into a no cost lease for a temporary Jet A refueler.

BACKGROUND / HISTORY: Our current fuel truck has exceeded its' useful life. World Fuel Services has agreed to supply us with a temporary 'loaner' truck so that we can continue fueling jet aircraft. This is a zero-cost lease.

FACTS AND ISSUES: The lease term would be from August 12th, 2022, on a month-to-month basis, terminable by either party with a 30 day notice. Insurance requirements and maintenance of the vehicle would be the responsibility of the HCBOC.

OPTIONS:

- 1) Approve recommendation
 - 2) Deny recommendation
 - 3) Commission defined alternative
-
-

RECOMMENDED SAMPLE MOTION: Motion to approve World Fuel Services Refueler Lease Agreement.

DEPARTMENT:

Prepared by: Will Regan

Director: Will Regan

ADMINISTRATIVE

COMMENTS: _____

_____ DATE: _____

County Manager

REFUELER LEASE AGREEMENT

This Refueler Lease Agreement (this "Lease Agreement") outlines the terms and conditions under which Ascent Aviation Group, Inc. ("Lessor") agrees to lease a refueler as described below (hereinafter the "Refueler") Habersham County Board of Commissioners ("Lessee"). The terms and conditions shall continue until modified as provided herein by either of the parties hereto.

Lessor: Ascent Aviation Group, Inc.
One Mill Street
Parish, NY 13131
315-625-7299

Lessee Bill To: Habersham County Board of Commissioners
130 Jacob's Way
Clarkesville, GA 30523

Lessee Ship To: 112 Airport Road
Cornelia, GA 30531

Refueler Description: 5000 Gallon Jet Refueler ID # 55149 VIN: 1HTSDAAR51H320629 Insurance Value: \$60,000.00

1. **Term** – This Lease Agreement and all obligations herein shall begin on **August 12, 2022** and shall continue for a period of at least one (1) month or until terminated as provided for herein. After this initial lease term has expired, this Lease Agreement will renew automatically on a month-to-month basis until terminated by either party giving thirty (30) days advance, written notice to the other.
2. **Payments** – Lessee shall have use of the refueler at **\$0.00** no charge. Should Lessee choose to keep refueler past that date, Lessee shall pay Lessor the total sum of **\$US Dollars** per month plus any applicable taxes for the lease of said Refuelers. This sum is payable and due on the first of each month, and any such payment not received by the 10th of each month shall be subject to additional late charges.
3. **Delivery and Return of Refueler** – Lessor to cover freight at this time. At the termination of this Lease Agreement, Lessee shall be responsible for return of said refueler in the same good order and condition in which it was received by Lessee, reasonable wear and tear accepted. **Lessee is responsible for all costs associated with the application and removal of any customer and/or site-specific decals and imaging.** Upon non-compliance of said Lease by Lessee, Lessor shall have the right to take possession of said Refueler at any time.

Pre-surrender Inspection – Should Lessee decide to keep refueler more than 6 months, then at least 30 days prior to surrender of the Refuelers, but in no event earlier than 60 days prior to such surrender, an in depth physical inspection will be conducted by an appropriate service representative on behalf of, and selected by Lessor, and paid for by Lessor. Any part, component, or function found not to be within the manufacturer's tolerances and operational specifications will be replaced or brought within those tolerances and specifications to the satisfaction of Lessor, at the sole cost and expense of Lessee. The cost of physical damage, both internal and external, will be the responsibility of the Lessee, and there shall be no broken glass. Pumping system will be fully operational with no missing or damaged parts. Tires shall be of matched generic type and tread design, and have a minimum of 10/32^{nds} remaining tread. Batteries shall be fully operational, hold a charge, and perform with the manufacturer's standards, with no dead cells or cracked cases. Brake drums shall not be cracked, and have an average of 50% remaining wear, and brake linings shall have no less than 50% remaining lining.

Paint and/or body damage must not exceed \$500.00 per unit including but not limited to, body, fenders, bumpers, grill, fuel tanks, rust damage etc. Interior must be in good condition. Dash panels and interior trim pieces must not be missing and be free of any holes, cracks or breaks. No rips, tears or burn holes in the seats will be accepted. All gauges and knobs must be in working condition and not missing. Interior damage must not exceed \$150.00. There shall be no fluid leaks on the engine, engine components and drivetrain. Leaks are defined as A) normal build up, B) wet accumulation, C) drips. A is acceptable, where B & C are not acceptable and must be repaired/replaced prior to turning back in. Engines must be free of all engine warning and error lights and active codes. All trucks 2008 and newer must have an operational diesel particulate filter capable of regeneration. All emissions components and systems, including but not limited to DPF, EGR, EGR cooler, SCR and DEF systems must be operational and pass industry test and inspection.

Product hoses shall be less than 5 years old, and free from abrasions, cuts, soft spots, carcass separation, worn covers, blisters, exposed reinforcement, cracks, twists and sharp bends that give the appearance of pending failure. Product hose life will be based on available hose life left in hose and costs prorated, with 10 year new hoses being 100%, 5 years remaining 50% etc. Hose certificates must be available.

4. **Condition of Refueler** – It is understood and agreed that the Refueler provided hereunder will be well-maintained and operable when delivered; but Lessor makes no warranties, express or implied, concerning same. Without making itself a party to any warranties, and without becoming liable thereon, Lessor agrees to make available for the benefit of Lessee any warranties, which Lessor has or may obtain from manufacturers, dealers or sellers of said Refueler. Lessee or Lessee's agent will inspect the Refueler at the point of delivery, prior to accepting it, and represents that it is qualified to do so. A Bill of Lading, signed by Lessee or Lessee's agent, shall be proof that Lessee has inspected and accepted the Refueler in satisfactory condition.
5. **Maintenance of Refueler** - Lessee is responsible for all maintenance except that Lessor shall provide major repairs and/or replacements, as set forth in Exhibit "A" attached hereto and made a part hereof, for the vehicle drive train (engine, transmission, differential) and product delivery system (pumps, power take-off) which, in Lessor's sole but reasonable judgment, are not necessitated by Lessee's neglect, abuse, accident or failure to perform maintenance as provided in this Lease Agreement for a period of thirty (30) days from original delivery date.

All other repairs and replacements of the Refuelers which the Lessor deems necessary or desirable shall be made by and at the expense of the Lessee. Approved changes in maintenance responsibilities will require this Lease Agreement to be modified accordingly by written amendments executed by Lessor and Lessee. If Lessee fails to perform any maintenance or repair for which Lessee is obligated hereunder within ten (10) days after notification and request by the Lessor, the Lessor may (without prejudice to its other rights on account of such breach of this Lease Agreement) perform such maintenance or repair and shall be reimbursed by Lessee on demand for all reasonable, necessary and documented costs incurred by the Lessor relating to the necessary maintenance or repair.

6. **Refueler Inspections**- Lessee agrees to perform all State, Federal, Provincial and Commercial inspections as required by specific location.
7. **Operation of Refueler** – Refueler shall be used only for dispensing fuel purchased from Lessor unless otherwise agreed to in writing. Lessee shall exercise direct control over all persons who operate the Refueler and shall insure that such persons operate the Refueler safely and in accordance with all laws, ordinances, rules and regulations, which apply to the use of refuelers on airports. Lessee agrees to use the Refueler only for the purpose for which it is intended. This Refueler may not be driven on public streets and highways nor used by a third party without the express written consent of Lessor.
8. **Inspection of Refueler** – Upon forty-eight (48) hours' notice, Lessee shall afford Lessor and/or its designated representatives access to the premises where the Refueler is located for the purpose of inspecting such Refueler and all applicable maintenance or other records relating thereto at any reasonable time during normal business hours and at Lessor's sole cost and expense; provided, however, if Lessee defaults as to its obligation hereunder, no prior notice or other limitation shall apply to Lessor's inspection rights and any such inspection shall be at Lessee's expense. Lessee shall, whenever reasonably requested by Lessor, advise Lessor of the exact location of any and all items of Refueler.
9. **Indemnification** – To the fullest extent permitted by applicable law, Lessee shall indemnify, defend and hold harmless Lessor and agents, employees, and successors of any of them or any other entity as required by this Lease Agreement from and against claims, suits, penalties, damages, losses, response costs, administrative order, notice letter, or enforcement action and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Lease Agreement provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of the tangible property including clean up or remediation costs due to threat of release, discharge, escape of hazardous substance or waste, including aviation gasoline, jet fuel, preblended jet fuel, motor gasoline, diesel fuel and biodiesel fuel but only to the extent caused by the negligent acts or omissions of Lessee or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

Lessee shall pay or reimburse Lessor, and indemnify, defend and hold Lessor harmless from, on an after-tax basis, all taxes, assessments, fees and other governmental charges paid or required to be paid by Lessor or Lessee in any way arising out of or related to the Refueler or any Lease Agreement before or during the term or after the term in the event Lessee defaults, including but not limited to, foreign, US, state, county and municipal fees, taxes and assessments, and property, value-added, sales, use, gross receipts, excise, stamp and documentary taxes, and all related penalties, fines, additions to tax and interest charges ("Impositions"), excluding only taxes based on or measured by Lessor's net income unless such taxes are in lieu of any Imposition Lessee would otherwise be required to pay hereunder. Lessee shall timely pay any Imposition for which Lessee is primarily responsible under law and any other Imposition not payable or not paid by Lessor, but Lessee shall have no obligation to pay any Imposition being contested in good faith and by appropriate legal proceedings, the nonpayment of which does not, in the opinion of Lessor, result in a material risk of adverse effect on the title, property, use, disposition or other rights of Lessor with respect to the Refueler. Upon Lessor's request, Lessee shall furnish proof of its payment of any Imposition.

10. **Insurance** – At all times during this agreement, Lessee at its own expense shall maintain the following insurance coverage:
- a) Aviation General Liability insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate as respects Products and Completed Operations Liability. Lessor and its affiliates, subsidiaries, and the directors, officers, agents and employees shall be named as additional insured.
 - b) Workers Compensation with statutory limits required by all applicable state and Federal Worker's compensation laws.
 - c) Pollution liability insurance with limits at least \$1,000,000 that includes coverage for bodily injury, property and cleanup costs.
 - d) Physical damage coverage covering the value of any leased equipment. Lessor shall be named as Loss Payee as its interests appear.
- i. It is agreed that the coverage maintained by Lessee is primary and must not require nor contemplate contribution by any insurance maintained by the Lessor.
- ii. All Lessee's insurance policies shall provide to Lessor least 30 days advance notice of cancellation of any of Lessee's policies.
- iii. All Lessee's insurance shall be underwritten by insurers with an AM Best rating of A- or better.
- e) A Certificate of Insurance as proof of the aforementioned insurance policies shall be provided to:

Ascent Aviation Group
Attn: Equipment Group
Email: equipmentgroup@wfscorp.com
1 Mill Street
Parish, NY 13131

11. **Title to Refueler** – Title to the Refueler remains with Lessor and or third party throughout the term of this Agreement. Lessee shall not encumber the Refueler in any way. Lessee does not have any ownership interest in the Refueler and may not assign the Refueler or this Lease Agreement to anyone without the express written consent of Lessor, which shall not be unreasonably withheld or delayed. During the term of this Lease Agreement, Lessor shall have the option of substituting the Refueler identified above with refuelers of substantially similar specifications. Substituted refuelers shall be subject to this Lease Agreement. Substitutions will not cause increases in the amount of the payments due under this Lease Agreement.
12. **Default** – If Lessee defaults in any of its obligations of this Lease Agreement, other than lease payments, Lessor shall give notice to Lessee concerning the nature of the default. If such default is not corrected within ten (10) days of such notice, Lessor shall have the right to terminate the Lease Agreement. Should this Lease Agreement be terminated for this or for any other reason whatsoever, Lessor shall have the right to take immediate possession of the Refueler without demand or legal process and free of all rights of Lessee. Lessee specifically waives any right of action it might otherwise have arising out of such entry and repossession, whereupon all rights of Lessee in the Refueler or its contents shall terminate immediately. In the event of any action, legal or equitable, by either party to enforce this Lease Agreement or any of its provisions, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court and taxed as costs in the action.
13. **Acceleration** - Lessor reserves the right, in addition to all other rights and remedies available to it under the law, in equity or otherwise, to accelerate and demand payment of all amounts due, if Lessee fails to make any payment or otherwise comply with the terms as herein provided, if Lessee is in breach of any other agreement with Lessor, or if Lessor, in its sole discretion, at any time deems itself insecure with regard to the creditworthiness or financial condition of Lessee.
14. **Notices** – All notices required to be given, shall be in writing and posted or hand delivered to the addresses shown above.
15. **Governing Law; Venue; Waiver of Jury Trial.** This Lease Agreement, including all exhibits attached hereto, is governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflict of laws provisions. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other party arising from or relating to this Lease Agreement in any forum other than, at Lessor's option, either 1) the courts sitting in Oswego County, New York, or 2) the courts sitting in the county (or its equivalent) where the Refuelers are physically located. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS LEASE AGREEMENT, INCLUDING ALL EXHIBITS ATTACHED HERETO, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16. **Assignment and Waiver**- Lessee shall not assign this Lease Agreement without the written consent of Lessor. The Refuelers may be owned by a third party and leased by Lessor, and this Lease Agreement may be subordinate to such Lease. In the event that such third party becomes entitled to possession of the Refuelers, Lessee agrees to abide by such Lease or enter into a new lease with such third party. As used herein, an "Affiliate" of Lessor is any corporation, partnership, joint venture or other entity in which World Fuel Services Corporation, a Florida corporation, owns, directly or indirectly, an equity interest of fifty percent (50%) or more. The waiver by either party of the breach of any provision hereof shall not constitute a waiver of any subsequent or continuing breach of such provision or provisions.
17. **Entire Agreement** – The terms and conditions of this Lease Agreement constitute the entire Lease Agreement among the parties with respect to the Refueler and supersede all previous negotiations, representations or agreements between the parties, whether written or oral. If any part of this Lease Agreement is deemed to be unenforceable, the remainder of this Lease Agreement shall remain in full force and effect. Only a written instrument executed by Lessor and Lessee may amend this Lease Agreement.
18. **No Conflict** - Each of Customer and Seller represents and warrants to the other that neither the execution and delivery of this Agreement by it, nor the consummation of the transactions contemplated hereby, will: (a) violate or conflict with, or result in a breach of any provision of, or constitute a default under any existing agreement or other instrument or obligation to which it is a party; (b) violate any applicable law, regulation, ordinance, or rule with which it must comply; (c) violate any of its respective internal policies, procedures, or guidelines; or (d) require any action, or consent or approval of, or review by, any other party, except as shall have been duly obtained and effective as of the date of this Agreement.

In Witness Whereof, the parties have hereby agreed to all of the above terms and conditions as of the date last indicated below.

For Lessor: _____

Print: Steve Drzymalla

Title: SVP Business Aviation

Date: _____

For Lessee: _____

Print: _____

Title: _____

Date: _____

**EXHIBIT "A" ATTACHED TO
REFUELER LEASE AGREEMENT**

Repairs provided by the Lessor to said Refueler, as stated in Paragraph 5 of this Lease Agreement, are further defined as follows. If any repairs are caused by the Lessee failing to perform maintenance required in Exhibit A, Lessee shall be responsible for all such repairs.

1. ENGINE
 - (a) Block and internal components
 - (b) Cylinder heads, head gaskets and valves
 - (c) Blower or turbo charger assembly
 - (d) Timing chain and gear assembly, gasket and seal
 - (e) Flywheel and ring gear
 - (f) Front and rear crankshaft seal
 - (g) Oil pump and shaft
2. TRANSMISSION
 - (a) Housing and internal components
 - (b) Torque converter
 - (c) Input and output shaft bearings and seals
3. DIFFERENTIAL
 - (a) Housing and internal components (ring gear and pinion assembly)
 - (b) Pinion bearing and seal
4. FRAME, AXLES, WHEELS, AND SUSPENSION
 - (a) Chassis frame rails and cross members
 - (b) Springs, load cushions and airbags
 - (c) Walking beams and torsion bars
 - (d) Wheel hubs
 - (e) Axles, king pins and spindles
 - (f) Steering box internal components including bearings and seals
5. BRAKE SYSTEM
 - (a) Air compressor internal components
 - (b) Master cylinder and vacuum booster
6. PRODUCT PUMP, PTO, AND TRANSFER CASE
 - (a) Housing and internal components
 - (b) Input and output shaft bearings and seals