

**RESOLUTION R-2023-99
LUZERNE COUNTY COUNCIL**

*A Resolution of the Luzerne County Council Authorizing the County Manager to
Execute an Airport Operation Management Services and Lease Agreement between Luzerne
County and Valley Aviation, Inc*

WHEREAS, the Home Rule Charter, Section 2.09(B)(6.), Powers and Duties, requires Luzerne County Council to approve by resolution adopted by affirmative vote of at least a majority of its current members, agreements to acquire, lease, sell, convey, vacate, or abandon land, buildings or other real property; and

WHEREAS, Luzerne County owns the Wilkes-Barre Wyoming Valley Airport located in Forty Fort and Wyoming Boroughs, Luzerne County, Pennsylvania; and

WHEREAS, Valley Aviation, Inc. has leased and operated the Wilkes-Barre Wyoming Valley Airport since January 1, 2006; and

WHEREAS, the new Operation and Lease Agreement has an initial term of five (5) years (July 2023 to June 2028) with five options to renew for an additional three (3) years each; and

WHEREAS, the new Operation and Lease Agreement includes annual payments as follows:

<u>Year</u>	<u>Annual Payment</u>
2023-2024	\$18,000.00
2024-2025	\$18,000.00
2025-2026	\$20,000.00
2026-2027	\$20,000.00
2027-2028	\$22,000.00

WHEREAS, the new Operation and Lease Agreement also includes a monthly flowage fee payment of eleven cents (11¢) per gallon of actual fuel pumped at the Airport (July 2023 to June 2024) with a one cent (1¢) increase per subsequent year.

NOW, THEREFORE, BE IT RESOLVED, the Luzerne County Council authorizes the County Manager to execute an Airport Operation Management Services and Lease Agreement between Luzerne County and Valley Aviation, Inc. pursuant to the terms contained therein with said lease attached hereto, the terms of which are incorporated by reference as though fully set forth herein.

This resolution shall become effective six days after adoption.

ADOPTED at a meeting of the Luzerne County Council held July 25, 2023.

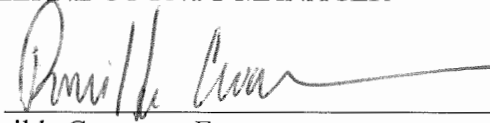
ROLL CALL VOTE (11-0)

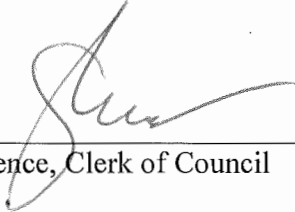
YES: Bienias, Lescavage, Lombardo, McDermott, McGinley, Mitchell, Perry, Thornton, Vough, SJ Urban and Wolovich

LUZERNE COUNTY COUNCIL

By: 
Kendra Vough, Chair

LUZERNE COUNTY MANAGER

By: 
Romilda Crocamo, Esq.
County Manager

Attest: 
Sharon Lawrence, Clerk of Council

AIRPORT OPERATION MANAGEMENT SERVICES AND LEASE AGREEMENT

(Effective 2023)

This is an Agreement effective as of the ____ day of _____ 2023 by and between

County of Luzerne, an incorporated Pennsylvania Municipal County with an address of 200 North River Street, Wilkes-Barre, Pennsylvania 18711, ("County"), and

Valley Aviation Inc., a Pennsylvania corporation with an address of 613 Monument Ave, Wyoming, Pennsylvania 18644 ("Lessee").

Background

I. The County of Luzerne owns, operates, and controls the Wilkes-Barre Wyoming Valley Airport located in Forty Fort and Wyoming Boroughs, Luzerne County, Pennsylvania (the "Airport"); and

II. Fix-based operation ("FBO") services and other related services are essential to the proper commercial, general and military uses of the Airport; and

III. The County intends to continue to enhance the FBO services and other important services provided at the facilities of the Airport; and

IV. The County also intends to assure that proper management and operational services are provided at the Airport; and

V. Valley Aviation Inc. is qualified to do business in Pennsylvania and to provide important services to the County that are identified in this Agreement; and

VI. The County intends to contract with Valley Aviation Inc. to provide those services per the terms of this Agreement and to lease hereby to Valley Aviation Inc. the property known as the Wilkes-Barre Wyoming Valley Airport.

Agreement

In consideration of the recitals above, the rights and duties expressed below and intending to be legally bound, the County and Valley Aviation Inc. agree as follows.

A. County Contracts with Valley Aviation Inc. The County hereby leases to Lessee the property known as the Wilkes-Barre Wyoming Valley Airport and further contracts with Lessee to provide the County the FBO services and related management, operational and miscellaneous services at the Airport that are described in this Agreement.

B. Duration of Agreement. This Agreement shall exist for an initial term of five years commencing on **July 1, 2023** and terminating on **June 30, 2028** unless sooner terminated for cause, and all rental payments due hereunder shall commence as of July 2023. Lessee, upon the expiration of the initial term, shall have the option to lease the airport property as described above for five (5) additional terms of three (3) years upon substantially the same terms and conditions, except for rental and flowage, which shall be adjusted as provided below. Lessee

shall, however, give to County at least one hundred twenty (120) days written notice prior to the termination of the initial term of this Lease or any extension of his intention not to renew. Failure to give the written notice will cause the Lease to terminate at the end of the initial term or any extension.

C. Managed Premises. The County contracts with Lessee to manage the Wilkes-Barre Wyoming Valley Airport on behalf of the County, including all real property and improvements, and other related rights, as the airport presently exists and as it may be expanded in the future by the County. See Exhibit "A" Leased Facilities.

D. Lessee as Full-time Airport Fixed Base Operator - Independent Contractor. The County contracts with Lessee as an independent contractor on a non-exclusive basis for the Lessee to establish a full-time on-site Fixed Base Operator business at the Airport (the "FBO"). The minimum services and equipment to be provided by the FBO are described in Exhibit "B" of this Agreement. The County reserves the right to enter into future licenses, leases, ground leases, operating agreements and other contracts with other enterprises at locations on the Airport as the County deems in the best interest of the facility on terms that are equitable with the existing FBO.

E. General Service and Personnel Standards. Lessee, as FBO, warrants, represents and covenants to the County to comply with the service standards and other requirements specified in Exhibit "C" to this Agreement.

F. Mutual Financial Reporting. Lease Payments, etc.

1. Financial reporting. Lessee shall provide the County on a quarterly basis a financial report on an accrual basis prepared in accordance with generally accepted accounting principles that includes a statement of operations of the Airport for the prior quarter. Lessee shall also provide the County with appropriate copies of invoices and supporting documentation for any expenses previously approved by the County, if any, for reimbursement by the County.

2. Third Party Lease Payments. Lessee shall collect all third-party rental payments for leases of existing hangar and tie-down space.

3. Lessee Payments to County.

a. Airport Operating Expenses. Lessee shall pay and shall be solely responsible for all operating expenses for the Airport, with the intent that the County shall incur no expenses for Airport operations.

b. Monthly Lease Payment. Beginning in July 2023, Lessee shall pay the County on a monthly basis an annual use fee by the first of each month for rental of the leased premises. Lessee shall be in default if the County does not receive a monthly rental payment by the 10th day of the month.

<u>Year</u>	<u>Payment</u>
2023-2024	\$18,000.00
2024-2025	\$18,000.00
2025-2026	\$20,000.00
2026-2027	\$20,000.00

2027-2028

\$22,000.00

c. Annual rents for subsequent terms of this lease will be the subject of negotiations between the Lessee and the County, and could include the Lessee paying a percentage of gross sales receipts to the County.

d. Monthly Flowage Fee. Lessee shall pay eleven cents (11¢) per gallon in 2023 with a minimum escalation of one cent (1¢) per year of actual fuel pumped at the Airport during the prior month regardless of the use of this fuel. All flowage fees shall be paid semiannually on August 1 and February 1, and shall be accompanied by a complete report and invoices of fuel delivered to the fuel farm. Price escalation shall be evaluated and renegotiated with each renewal.

e. The flowage fee will be the subject of negotiations between the Lessee and the County for subsequent terms of this lease.

f. All fees due the County by the Lessee shall survive the termination of the agreement.

g. Lessee shall pay DEP licensing and inspection fees up to a maximum cost of seven hundred fifty (\$750) dollars per year.

4. Records. Lessee shall keep all records, accounts and books for a period of at least three (3) years after the termination of the Agreement. The County shall have the right, through its representatives, at reasonable times, to inspect all these records of Lessee, and to audit Lessee fuel sales at the Airport at the County's expense.

5. Calendar Year Financial Reporting. In addition to the monthly statement of operations required under this Agreement, within 90 days after the close of each calendar year, Lessee shall submit to the County a compilation or review of financial records for its operations at the Airport for the prior year, to include at a minimum a balance sheet and income statement, as well as a copy of its Federal Income Tax Return. These documents shall be prepared in accordance with statements prepared in accordance with generally accepted accounting principles (GAAP). Lessee shall deliver these reports to the office of the County Controller and the County Manager or any other place as the County shall designate in writing. Lessee and its members hereby warrant, represent and covenant to the County that all its annual financial statements shall be true and correct, to the best of their knowledge, at time of delivery to the County. The County will treat this information confidentially.

6. Calendar Year Budget. Lessee shall also provide to the County a proposed capital expense budget for the Airport at least 90 days before the start of the calendar year. The County shall adopt and approve all Capital expense budgets relating to Airport improvements.

G. Business Sign at Entrance.

Lessee, at its sole expense, shall maintain the business sign for its company's use only on Airport property near the Airport's main entrance road at its intersection with Route 11.

H. Airport Charges to Third Parties.

Lessee agrees to use the mutually approved schedule of fees, policies and charges stated in Exhibit "E" to this Agreement, and to comply with all subsequent changes or additions to that schedule, as approved by the County. As noted above, Lessee shall be responsible for any and all bad debts incurred by it in the performance of its duties and responsibilities under the Agreement. Exhibit "E" to be evaluated annually and mutually agreed to changes by both parties.

I. Facilities and Equipment.

1. The property leased to Lessee and licensed by the County shall be occupied and operated at the sole expense of Lessee as specified in this Agreement. The space is described generally in Exhibit "A" to this Agreement ("Licensed Facilities"). Lessee shall secure the Licensed Facilities with appropriate access control to assure adequate security at their sole expense.

2. Lessee agrees that all facilities, equipment, materials, tools and other supplies purchased or made available to it by the County, as described in Exhibits "A" and "D" to this Agreement, or by any third parties, shall be Lessee's sole responsibility, and shall be properly secured and protected by Lessee against loss or damage.

3. Lessee shall be responsible for all routine, normal preventative maintenance on any and all equipment and all buildings supplied by or provided by the County in connection with operations at the Airport. The County shall not reimburse these costs to Lessee. Subject to the availability of funds, the County shall be responsible for capital expenses and associated labor costs for the repair or replacement of buildings that exceed \$5,000 per repair or replacement, including labor costs. Unless otherwise designated and agreed upon by the parties, all improvements and fixtures to the buildings shall become property of the County. Any and all contractors employed by Lessee shall timely execute and provide to County a Waiver of Mechanic Liens to be filed with the Luzerne County Prothonotary. All contractors must also be insured and duly licensed as per the requirements of the local municipalities.

4. All machinery, appliances, underground installations and other equipment and vehicles provided by or at the expense of the County for Lessee and its business operations under this Agreement shall be maintained by Lessee in good mechanical condition and appearance and shall be kept modern and up-to-date. This equipment shall at all times meet all requirements reasonably necessary or lawfully required for fire protection and for the enhancement of safety of operations at the Airport, considering the nature of the business in which Lessee is engaged.

5. The personal property placed or installed by Lessee on the leased premises, including all fixtures which may be removed without damage to the leased premises, shall remain the property of Lessee, and shall be removed on or before the expiration of the terms of this Lease, or any renewal thereof. In the event of termination of this Lease for any cause whatsoever, Lessee shall have sixty (60) days after notice of termination in which to remove such property. If Lessee's property is not removed as herein provided, County may, at its option as agent for Lessee and at Lessee's risk and expense, remove such property to a public warehouse for deposit, or retain the same in the County's possession and after the expiration of thirty (30) days, sell the same, with or without notice and at public or private sale, the proceeds of which shall be applied first to the expenses of the sale and storage, second to any sum owed by Lessee to County, and any balance remaining shall be paid to Lessee.

J. Reports and Information.

As noted above, Lessee shall prepare and submit any and all reports and statistical data regarding its operations that the County may reasonably request from time to time concerning services at the Airport. Upon request, Lessee's Airport manager shall attend and report on Airport operations at the quarterly meeting of the Airport Advisory Board.

K. General Restrictions on Lessee.

1. Lessee shall not conduct or permit anyone else to conduct any of the following business activities on any property of the County without consent of the County:

- a. Vending Machine Operations, except those that are specifically approved in advance in writing by the County;
- b. Food and beverage sales of any kind, unless approved by the County beforehand;
- c. Wholesale or retail sale of non-aviation related products or merchandise;
- d. Automotive maintenance and repair services for vehicles, or equipment other than equipment being used exclusively for aviation purposes and classified as Airport ground equipment.

2. The four categories of business activities, products and services listed above and any and all other aviation-related activities, services or other business activities of Lessee, its subsidiaries, affiliates, contractors, agents, licensees, assignees, etc., which take place from, on or about the property of the County not specifically detailed in this Agreement shall require prior written approval of the County, which consent may not be unreasonably withheld.

L. Responsibilities and Obligations of County.

1. The County, subject to availability of funds, shall be responsible for:

- a. Its obligations as sponsor with the United States Government and the Pennsylvania Bureau of Aviation and will continue to operate and maintain the Airport, subject to the terms of this Agreement, consistent with and pursuant to the assurances given as sponsor.
- b. Structural repairs to the foundation, frame, roof and exterior walls of all buildings and other facilities at the Airport in excess of \$5,000.00.
- c. Capital costs for equipment to provide heat, air conditioning, hot and cold water and sewage service in the main hangar at the Airport. Lessee shall pay all related operating expenses.
- d. Structural repairs to the runways, taxiways, lighting and guidance systems.

M. Environmental Hazards.

1. Lessee shall comply with, and take all actions within Lessee's control to cause all of its agents, employees, representatives, licensees, concessionaires, customers, clients, and vendees to comply with all environmental laws and shall obtain and comply with, and shall take all actions to cause all of Lessee's agents, employees, representatives, licensees, concessionaires, customers, clients, and vendees to obtain and comply with, all Airport environmental permits. Without limiting the generality of the foregoing, Lessee shall not engage in any activity or manner of conduct, including but not limited to the use, treatment, generation, transportation, processing, handling, disposal, production or storage of hazardous substances, whether gaseous, solid or liquid, or the use of solvents, lubricants, petroleum, degreasers, or other compounds, in such a manner as to risk contamination of the soil, ground, or open waters; or the emissions of vapors or gases which constitute atmospheric pollutants, which creates or may create, an unlawful, dangerous, injurious, noxious, or otherwise objectionable environmental condition. Lessee at all times shall conduct its business, and assure to the extent within its control, that its customers, clients, vendees, concessionaires, licensees and the general public, while present in or on Lessee's place of business or at the Airport, comply with all environmental laws and environmental permits. For purposes of this Agreement:

(a) "environmental laws" shall mean all County, federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, rules, regulations, resolutions, standards and codes relating to the protection of the environment and/or governing the use, treatment, generation, transportation, processing, handling, disposal, production and storage of hazardous substances and the rules, regulations, resolutions, policies, guidelines, interpretations, decisions, orders and directives of the County, federal, state, and local governmental agencies with respect thereto (including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 6901, et seq.) the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, et seq.) the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 2601, et seq.), as now in effect or hereafter amended; (b) environmental Permits shall mean all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law or Laws in connection with the use and/or operation by Lessee business of businesses or the Airport or the use, treatment, generation, transportation, processing, handling, disposal, production or disposal of hazardous substances; and (c) "hazardous substance" shall mean any substance so classified under any applicable environmental law (including, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyl, petroleum and petroleum based products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials and their byproducts.)

2. Should Lessee, through its negligence or otherwise, experience an incident or accident, or in any way cause any real or potential environmental contamination, it shall take any and all reasonable actions to cease, contain and remediate the pollution, contamination or other environmental damage or risk, shall immediately notify the County, and shall notify the appropriate agencies having jurisdiction over the activity which caused the incident and the contamination, cleanup, or mitigation.

3. The County, and other federal, state, and local agencies having jurisdiction shall at all times, have the right, in their sole discretion, to take any and all actions as they may individually or collectively deem appropriately to cease, contain, remediate, or otherwise respond to a condition which results from, causes or threatens to cause any environmental pollution,

contamination or damage, and to charge Lessee for any such action, which charges shall be paid promptly by Lessee.

4. Without limiting the generality of the provisions, Lessee shall assume the risk of, be responsible for, defend, indemnify and hold harmless the County, including without limitation its directors, officers, agents, employees, customers, invitees and licensees from any and all losses, claims, fines, costs, liabilities, damages and expenses (including cost of suit and fees and expenses for legal services) resulting from any environmental pollution, condition or damage, or from a failure to comply with any Environmental Law or Environmental Permit, arising from Lessee's, its agents', employees', representatives', licensees', or concessionaires' negligence.

N. Hold Harmless and Indemnification.

1. Lessee shall indemnify, save and hold harmless County, its board members, agents and employees, from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs, expenses (including reasonable attorney's fees), or losses for injury to or death of persons or damage to property arising from or due to any negligent or willful act or omission to act on the part of Lessee, its officers, agents or employees arising out of or as a consequence of Lessee's operations hereunder, Lessee's operation of any other business activities on the Airport, or Lessee's fuel handling activities, which may result by virtue of the County's having entered into this Agreement with the Lessee

2. The County shall indemnify, save and hold harmless Lessee, its officers, agents and employees, from and against any and all judgments, liabilities, damages, losses, costs, expense (including reasonable attorney's fees), or losses for injury to or death of persons or damage to property arising from or due to any negligent or willful act or omission of County, its agents or employees acting within the scope of their employment and on behalf of the County.

O. Indemnification - Airport Operations Area (AOA).

Lessee agrees that if any of its actions or omissions or the actions or omissions of its agents, employees, representatives, licensees, concessionaires, vendees, or customers and clients within the areas it controls result in a prohibited incursion into the Airport Operations Area (AOA), or breach the safety or security of the AOA, the airfield and runway areas, or other sterile areas and such incursion or breach results in a civil penalty action being brought against the County by the U.S. Government, then Lessee shall save, hold harmless, indemnify and reimburse the County for all expenses, including attorney fees, incurred by the County in defending against the civil penalty or settlement amounts paid by the County as a result of such incursion or breach of AOA, airfield, or other sterile area security. Expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation(s) of FAR Part 107, Airport Security. The provisions of this paragraph shall survive the expiration or early termination of this Agreement for matters arising before such expiration or early termination.

P. Insurance.

1. Throughout the term of this Lease and any extension or renewal thereof, the Lessee shall maintain insurance with minimum limits as follows:

Minimum Limit

(1)	Commercial General Liability Insurance	\$2,000,000 per occurrence
(2)	Hangar keepers Legal Liability Insurance	\$500,000 per aircraft
		\$1,000,000 total loss
(3)	Workers Compensation Insurance	Statutory Limits
(4)	Business Automobile Liability*	\$300,000 each accident
(5)	Aircraft Liability Insurance*	\$2,000,000 combined single limit
		\$100,000 each passenger

* Items 4 and 5 are not required at the inception of the lease. If the Lessee acquires automobiles or aircraft that require the coverage, the Lessee shall immediately notify the County and provide a revised Certificate of Insurance.

2. All insurance policies shall be issued by insurers of recognized responsibility who shall have a Best's rating of at least "B++," and are licensed and certified by the Pennsylvania Insurance Department to do business in the Commonwealth of Pennsylvania, and shall provide County with thirty (30) days' advanced notice of cancellation. The County of Luzerne shall be included as Additional Insured on all insurance policies required by this Lease. In addition, Lessee agrees to save and hold harmless County from any and all claims, actions, judgments, citations, or other liability arising from, cause by, or resulting from, directly or indirectly, the acts or omissions of Lessee, its employees, agents, servants, or invitees, in the conduct of Lessee's activities at the airport. Lessee agrees to provide County with Certificates of Insurance evidencing compliance with the foregoing requirements. County and Lessee shall review the insurance limits stipulated above annually and the parties shall confer with their respective brokers at the time to evaluate insurance amounts. Lessee further agrees that it will maintain adequate insurance for any loss of use for any period of restoration and repair in the event the premises are partially or totally destroyed by fire or other casualty.

Q. Future Airport Development.

1. County reserves the right to further develop or improve the landing and other areas or facilities of the Airport as it sees fit. The County shall have the right to relocate any or all areas assigned to the Lessee in this Agreement, in accordance with reasonable needs of the County for changes in the use of the Airport that may be made during the term of this Agreement. The County, in the event of any relocation, agrees to make an effort to provide Lessee with reasonably similar or better locations, facilities and equipment for the operation of its services required in this Agreement.

2. This Agreement shall be subordinate to the provisions of any existing or future federal statutes and any existing or future Agreements entered into between the County and the United States of America related to the improvement, operation, or maintenance of the Airport, and to the reasonable provisions of all minimum standards, rules, and or regulations governing the operation of the Airport from time to time adopted by the County.

3. County has applied for and has received federal and state grant or grants or money for the development and expansion of the Airport. County in the future may apply for and receive further such grants and in connection therewith. County has undertaken and may in the future undertake certain obligations respecting its operations of the airport and the activities of its

Lessee thereon, and Lessee, therefore, covenants and agrees that if the Federal Aviation Administration or any other governmental officer or body having jurisdiction over the enforcement of the obligations of County in connection with any federal or state grant in aid, shall make any enforceable orders, recommendations or suggestions respecting the performance by Lessee of its obligations under this Agreement, Lessee shall promptly comply therewith at the time or times when and to the extent that County may direct. It is expressly understood and agreed that this Agreement shall be subject to the requirements of non-exclusivity as the Federal Aviation Administration defines that term. It is mutually agreed that this Lease is subordinate to any and all grant agreements executed between County and any federal and state agency, for the development and expansion of the Wilkes-Barre/Wyoming Valley Airport, provided that the substantive rights of Lessee are not adversely affected or derogated, and should those rights be affected or derogated, then Lessee shall have the Option of terminating the Lease forthwith without penalty.

R. Termination of Agreement.

1. Either party may terminate this Agreement without cause on 120 days written notice.
2. After the occurrence of any of the following events during the term of this Agreement, as amended, the County shall have the unilateral power in its sole discretion to terminate this Agreement:
 - a. If Lessee shall become insolvent or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property;
 - b. If by order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any other state thereof;
 - c. If a petition under any part of the federal bankruptcy laws or any action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed within sixty (60) days after the filing thereof; or
 - d. If by or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Lessee and such possession or control shall continue in effect for a period of sixty (60) days;
 - e. If Lessee shall become an entity in dissolution whether voluntary or involuntary;
 - f. If the interest of or rights of Lessee in this Agreement shall be transferred to, pass to, or revolve upon, by operation of law or otherwise, to any other person, firm,

corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceeding or occurrence described in subsection a, b, c, d, or e of this paragraph;

g. If Lessee shall voluntarily discontinue its operations at the Airport, or after exhausting or abandoning any further appeals, the Lessee shall be prevented for a period of thirty (30) days by action of any government agency from conducting its operations on the premises, regardless of fault of the Lessee;

Then, upon the occurrence of a listed event of default noted, or at any time thereafter during the continuation of it, the County may, at its sole option and without prior notice, terminate this Agreement.

3. Any of the events enumerated in Section R, (2), (a-g) occur with respect to any member or manager of Lessee shall be deemed an occurrence of default and the County, at its option and without prior notice, may terminate this Agreement at its sole discretion.

4. If Lessee shall for any reason become either a survivor by merger, a merged entity or a constituent of a consolidation, the merger or consolidation shall in and of itself not be grounds for termination of this Agreement if: (1) the County in its sole discretion determines that the survivor or successor shall have all of the capabilities of Lessee; and (2) the survivor or successor shall have acknowledged in writing to the County that it shall comply with all the obligations of Lessee under this Agreement. Should either or both conditions not be met within 10 days of written notice from the County, then the County may at its sole option terminate this Agreement upon sending a second written notice specifying the termination by registered or certified mail, to Lessee at the address stated on this Agreement. The notices shall be deemed given when mailed by the County.

5. If Lessee shall fail to pay any sum when due to the County under this Agreement, or if Lessee shall otherwise be in default under this Agreement, the County may, give (30) days written notice of default to Lessee by certified or registered mail. Lessee may unilaterally cure any default within 10 days after the initial notice of default.

6. If Lessee fails materially to comply with its obligations stated in Exhibits "B" and "C" of this Agreement.

7. The County shall retain, as an additional remedy, upon giving of notice of termination the continuing right to re-enter all the areas leased to Lessee under this Agreement, without any further notice of any kind, and shall have absolute possession of those areas. The County's re-entry or regaining of possession, however, shall not in any legal manner affect, alter or diminish any obligations of Lessee under this Agreement and shall in no event constitute a legal acceptance of surrender of the leased premises.

8. In the event that Lessee should fail to keep all of the covenants of this Agreement, including but not limited to, the prompt payment of rent due hereunder, Lessee authorizes and empowers any attorney of any Court of record in Pennsylvania to appear for it and confess judgment against it for possession and for such sums as may then be due, and further authorizes the issuance of a writ of possession, waiving the benefit of any stay, exemption or provision of the Pennsylvania Landlord-Tenant Act.

S. Ingress and Egress: Inspection by County.

1. The County, through its agents, invitees, contractors and employees, shall have the right, at any time and as often as it considers necessary, to inspect the leased premises to enter therein and to take such action therein as may be required for the protection of persons or property and for the enforcement of any of the terms and conditions hereof.
2. The County, either directly or through others, shall have the ability to maintain existing and future utility lines, sprinkler, fire fighting, fuel oil for heating, sewage, drainage and communication systems, including all pipes, lines, wires, conduits, fixtures and equipment in and about the space subject to this Agreement to make such repairs, replacements and alterations as may be deemed necessary or advisable, and from time to time, construct or install in and about such area, lines, pipes, mains, wires, conduits, fixtures, and equipment.

T. Non-Discrimination by Contractor.

1. Lessee, for itself, its successors in interest, its subcontractors and its assigns, warrants, covenants and represents that:
 - a. No person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Airport facilities on the grounds of race, color, sex, or national origin;
 - b. In the construction of any improvements on, over, or under Airport land and the furnishing of services there, no person in shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, sex, or national origin;
 - c. Lessee shall use the Airport 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", as amended. The County reserves the right to take any action as the United States government may direct to enforce this covenant.
 - d. 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 be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. on the grounds of race, creed, color, sex, or national origin. Lessee also 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. Lessee assures that it will require that its covered sub- organizations shall provide assurances, and that they similarly will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

In the event of breach of any of these non-discrimination covenants, the County shall have the right to terminate this Agreement upon written notice.

U. Non-Exclusive Agreement.

This Agreement shall not be construed as, grant or authorize the granting of an exclusive right to conduct any aeronautical activity on the Airport or to provide any service to the general public to the extent the service is prohibited by the Federal Aviation Act of 1958 as amended. The County specifically reserves the right to grant to others the privileges and the rights of conducting any aeronautical activity on the Airport as hereby granted to the Lessee.

V. Force Majeure.

The Lease herein granted is subject to the paramount use by the government of the United States, the Commonwealth of Pennsylvania, or any agency, department or instrumentality of each of the said governmental bodies, respectively. Whenever because of war, national emergency or other cause in the public interest, it is deemed necessary by the foregoing governmental bodies, their agencies, departments or instrumentalities, to close or to take possession of the whole or any part of the premises for which this Lease has been granted herein, or in any manner to restrict the use of such premises, then the Lease herein granted shall immediately cease and determine on notice thereof to Lessee. Whenever, because of war, national emergency, state emergency or other cause in the public interest, the foregoing governmental bodies, their agencies, departments or instrumentalities shall deem it necessary to exercise the sovereign power to appropriate by Eminent Domain, the whole or any part of the leased premises, or in any manner to restrict the use of the leased premises, the leasehold hereby created thereby shall terminate to the extent and as provided by law.

W. Agreement Neither Assignable Nor Delegable By Lessee.

This Agreement, and the rights granted in it shall not be assigned, transferred, sublet, or otherwise delegated by Lessee without the express written consent of the County, which consent may be withheld absolutely by the County in its sole discretion.

X. Miscellaneous.

1. General Meanings. The County and Lessee intend that the language of this Agreement shall be interpreted or construed simply in accordance with the fair meaning of its terms and shall not be strictly interpreted or construed for or against either the County or Lessee.

2. Section Headings. The section headings are for the convenience of the parties to the Agreement for reference only and are not intended or to be used to construe the intent of this Agreement or any part of it.

3. Parties Bound. This Agreement is binding on the parties to this Agreement and their respective successors, successors in interest and assignees, but only to the extent that the Agreement is legally assignable or delegable.

4. No Personal Liability. No elected official, appointed director, elected officer, agent or employee of the County shall be legally responsible in person, or be held contractually liable in person, by Lessee for any breach of any term or provision of this Agreement.

5. Notices. Any notice or other communication to a party to this Agreement shall be deemed validly given if sent by United States mail, registered or certified, with postage prepaid, addressed to the party at the addresses shown below:

Valley Aviation Inc.
613 Monument Ave
Wyoming PA 18644

County of Luzerne
200 North River Street
Wilkes-Barre PA 18711

ATTN: James Scrobola
President

ATTN: County Manager

6. Time is of the Essence. The time for payment of all amounts and the performance of all other obligations under this Agreement by the Contractor shall be deemed of the essence of this Agreement.

7. Entire Agreement. This Agreement constitutes the entire agreement of the parties on the subject matter thereof and may not be changed, modified or discharged or extended, except by written endorsement approved by the County Commissioners at a public meeting and duly executed on behalf of the parties and attached hereto. Lessee agrees that no representation or warranty shall be binding upon County, unless expressed in writing herein.

8. Title. It is expressly understood and agreed that nothing contained in this Lease is intended or shall be construed, in any way, to create the relationship of principal and agent between County and Lessee; and, on the contrary, it is understood and agreed that Lessee is acting as an independent contractor under this Lease and not as an agent or an employee of County.

IN WITNESS WHEREOF, the parties have caused their representatives to execute this Agreement based on valid resolutions of appropriate persons with that authority in the respective entities.

ATTEST:

COUNTY OF LUZERNE

Luzerne County Manager

ATTEST:

VALLEY AVIATION, INC.

President

Exhibit "A"

**Wilkes-Barre Wyoming Valley Airport
Leased Facilities**

- A. Maintenance Hangar/FBO Office/Terminal (Office) containing the office space and public area consisting of approximately 9,800 SF of aircraft storage and maintenance and 2,435 SF for airport FBO and terminal facilities.
- B. Two T-hangars for aircraft storage. The T-hangars are sized for 10 aircraft each; the third T-hangar is contracted separately and can store eight aircraft.
- C. Fuel Farm, currently consisting of one 10,000-gallon AST for AVGAS aviation fuel and one 10,000-gallon UST for jet fuel, along with associated pumps, filters, and metering devices.
- D. Airport parking for 26 vehicles.
- E. The non-exclusive use, in common with others, of the airport parking areas, appurtenances and improvements thereon.
- F. The right to install, operate, maintain, repair and store, subject to approval of County in writing in the interests of the safety and convenience of all concerned, all equipment necessary for the conduct of Lessee's business.
- G. The exclusive right of ingress to and egress from the demised premises, which right shall extend to the Lessor, Lessee's employees, passengers, guests, invitees and patrons.
- H. The right in and on the demised premises to conduct all activities as set forth in the Lease Agreement.
- I. The right to use the Leased property in accordance with the terms of this Lease, provided that said property is not to be used for any purpose other than those authorized herein without the written consent of County.
- J. The right, in common with others authorized so to do, to use common areas of the airport, including runways, taxiways, aprons, roadways, landing lights, signals and other conveniences for the takeoff, flying and landing of the aircraft of Lessee.
- K. The right to sub-lease Office to tenants chosen by Lessee on terms, prices approved by County in writing in advance, which approval shall not be unreasonably withheld.
- L. Lessee has examined the leased premises and agrees to take them in their present condition without any representation by County. Lessee agrees not to install any fixtures or make any alterations, additions improvements or repairs (except such as are normally installed or made in the regular course of its business) without the written consent or approval of County.

Exhibit "B"

Wilkes-Barre Wyoming Valley Airport
Minimum FBO and Airport Management Obligations of the Contractor

- A. Pilot Supply Shop. Lessee shall provide for the sale to the public an adequate supply of aviation-related supplies and merchandise including but not limited to flight materials, pilots supplies, maps, charts, log books, headsets, flight computers, manuals, flight guides and other books and items which the County may reasonably request.
- B. General Aviation Maintenance Shop. Lessee shall provide these services in designated locations, performing 100 hour, annual, and progressive inspections on most light general aviation aircraft. Lessee does not intend to provide major engine overhaul or other specialty repairs in-house. For those items Lessee will remove, send out for repair, and re-install the items. Lessee will initially employ mechanics or may choose to subcontract these services to a third party who will operate on site.
- C. Flight Training. Lessee will contract with full-time flight instructors, and with other part-time instructors as needed to address training demand. The Lessee will have adequate fixed-wing and may have rotary-wing aircraft based on site and available for training. It will also utilize other training devices for instrument training in addition to the aircraft. Lessee will offer primary and advanced ratings. Any other aircraft needed for training for advanced ratings would be contracted, leased or purchased by Lessee when and as needed. Any rentals of Lessee's based aircraft to rated pilots who have not trained with Lessee will be subject to a complete and thorough check out. Lessee may choose to subcontract these services to a third party who will operate on site.
- D. Fixed-Wing Charter Flights. These services may be contracted out to others or provided by the Lessee under his 135 certificate. Lessee may have several operators pre-arranged for these flights, and will strictly be a pass through entity for these ops with a percentage of the charter paid to Lessee for use of facilities and for its commission. Lessee may choose to subcontract these services to a third party who will operate on site.
- E. Scenic Air Rides. The flights will be provided by Lessee based aircraft. These same aircraft can be used in the flight training operations. Lessee may choose to subcontract these services to a third party who will operate on site.
- F. Aircraft Sales. These services and transactions may be arranged through third parties.
- G. Administrative and Miscellaneous Support. This support will be provided by full-time employees of Lessee and by other part-time employees as needed. This staff would also fuel aircraft and provide other flight line support, as required in paragraphs H and I below.
- H. Fuel Sales and Handling. Lessee shall provide fueling services for all commercial, military and general aviation users of the Airport facilities that request those services. Lessee shall be responsible for the proper management, operation, inspections and maintenance of the existing bulk fuel storage facilities and for the proper quality control of all fuel products. Proper inventories shall be maintained for facilities testing.

1. Lessee shall supply an adequate number of qualified and trained personnel, in compliance with all applicable FAA fuel handling procedures, who shall be on duty during all hours the Airport is open to aircraft operations. These personnel will provide fuel sale and handling services for users of the Airport without any unreasonable delay. Lessee shall provide aircraft refueling of Jet A and 100LL fuels as a minimum during regular business hours seven days a week.

2. Lessee shall be responsible for managing, ordering, invoicing and inventory control of all fuel delivered into the County's fuel storage facilities, including billing and collections of fees. Lessee agrees to arrange for all purchases and deliveries of fuel in a timely manner to meet reasonable customer demands for fuel.

3. Lessee shall ensure the proper routine maintenance and operation of the fuel storage systems and dispensing equipment. It will maintain accurate records in accordance with vendor supplied Monthly Maintenance Operation Checklist. It will also maintain daily records of fuel inventory to ensure a balance of fuel pumped verses fuel remaining, which is needed for accounting purposes and to verify the integrity of underground fuel tanks.

I. Other Flight Line Services. Lessee will provide flight line services on an on-demand basis during normal business hours as approved by the County, which services include but are not limited to:

1. Meeting and directing all arriving and departing aircraft to and from appropriate locations;
2. Marshalling and parking of aircraft;
3. Tow-in and tow-out of aircraft;
4. Sale of oils, lubricants and other aircraft consumables;
5. Fuel service ground handling of general aviation and commercial aircraft as requested and in accordance with the most current FAA circular "Aircraft Ground Handling and Servicing"; and
6. Providing compressed air.

J. Ground Transportation. Lessee shall provide information regarding passenger ground transportation at the request of customers.

K. Aircraft Avionics Shop. Lessee shall use its best efforts to provide an on-site avionics repair shop that complies with all applicable laws and regulations, but is not legally mandated to provide these maintenance and repair services at the Airport.

L. Emergency Services. Lessee shall provide for emergency services for any disabled aircraft during all hours of operation of the Airport, and for the removal of disabled general aviation aircraft from Airport operating areas at the request of the aircraft owner or operator, or at the request of the County or its designated representative. Lessee shall ensure that its employees are instructed on compliance with the most current Airport emergency plan, which shall be designed to minimize the possibility and extent of personal injury and property damage on the Airport in any emergency.

M. Collection of Airport Use Fees. Lessee agrees to monitor and record all aircraft parking and to collect all applicable Airport use fees for transient and locally based aircraft. Lessee shall recommend a schedule of Airport use fees from time to time to the County listing the cost of the

public to use Airport facilities, which proposal the County shall then review, and, if found to be reasonable, approve, based on direct on-going discussions with Lessee. The County shall furnish Lessee with that approved fee schedule from time to time during the term of this Agreement. Lessee shall obtain cash payments for, or render billings as necessary to collect, Airport use fees from individual aircraft owners and operators.

N. Employee Training. Lessee shall provide all required, necessary and appropriate initial and recurrent training of all its employees, including but not limited to training and fuel safety as well as fire, crash, snow removal and other emergency procedures. Lessee will maintain records of training and assure that no untrained employees provided services that they are untrained in.

O. Shared Custodial Responsibilities. Snow Removal and Mowing. Lessee shall be responsible for cleaning and custodial maintenance of the existing Airport improvements and related facilities, including, public restrooms, ramp areas and parking lots, Lessee shall also be responsible and pay for snow removal at the remainder of the Airport, including the aircraft parking apron, taxiways, ramps and runways at the Airport. The County may provide the equipment for snow removal, and Lessee will manage and coordinate all snow removal services provided by third parties. Lessee will also mow the grass and weed whack around signs and fences on the Airport during the growing season with County and Lessee's equipment, which shall be maintained and fueled by Lessee. Lessee shall also be responsible to patrol the Airport grounds and parking apron surfaces to identify and remove all foreign objects or other debris. Lessee shall have general responsibility for keeping all operational areas on the Airport in a clean and proper operating condition at all times, and further provide and maintain heated waiting rooms and restrooms for the benefit of the public. It is understood that Lessee will perform all routine maintenance and repairs to the demised premises. County shall be responsible for all major repairs or capital improvements.

P. Unicom. Lessee will utilize a Unicom radio system to communicate with inbound and departing aircraft. The County shall be the FCC licensee. Lessee covenants and agrees that it shall provide, maintain and operate a Unicom Station.

Q. Security. In all areas within its sole control, Lessee shall comply with all requirements of Federal Aviation Regulation Part 107, Airport Security, and any rules, regulations, resolutions or other policies pertaining to security as adopted by the County.

R. Safety. Lessee shall comply with all requirements applicable to safe operation of the Airport and all of the rules, regulations, resolutions or policies pertaining to safety as adopted by the County.

S. Violations. After ten (10) days written notice from the County to Lessee of any repeated or serious violations of requirements in Exhibit A, B or C on performance by Lessee, its servants, agents, contractors, employees or other individuals or corporations under its control, and Lessee's continuing failure to cure the violations, the violations shall then be grounds for the County's immediate termination of this Agreement.

T. Lessee shall remain open for and conduct business during such hours of the day and on such days of the week as shall properly serve the needs of the public, approved in writing by County. Lessee shall, at all times, keep in stock and have ready for sale a sufficient supply of all merchandise offered for sale and sufficient facilities for service to meet the demands or the

patrons of the airport and of the public, and all merchandise sold or offered for sale by Lessee, and all services rendered by Lessee shall be as represented as to kind, quality and quantity.

Exhibit "C"

**Wilkes-Barre Wyoming Valley Airport
FBO Service Standards and Procedures**

- I. Lessee and its employees, agents, subcontractors shall:
- A. Provide prompt, efficient and professional services in a manner that reflects favorably on the County and the Airport. Lessee shall at all times maintain an adequate inventory of products, supplies and equipment at the Airport to satisfy the reasonable demands of Airport tenants and users, including the general public, military and civilian aircraft and commercial air carriers, if any, which use the services of Lessee from time-to-time at the Airport.
 - B. Comply with all applicable rules, regulations, resolutions, directives and advisories adopted by the County for the care, operation, maintenance and protection of the Airport and the users of Airport facilities.
 - C. Comply with all statutes, laws, ordinances, orders, directives, rules, regulations and other requirements of the federal, state and local governments, including those of all governmental agencies, departments and bureaus which have jurisdiction over the Airport and its operations.
 - D. Provide a sufficient number of qualified and trained personnel with the skills, training (both initial and recurring), licenses and certificates appropriate for the performance of services to be provided under this Agreement.
 - E. Ensure that all of Lessee's personnel are neat, clean, and courteous and conduct Airport business in a highly professional manner consistent with good business practices. Lessee and the County shall agree to any changes or modifications to staffing levels or schedules before implementing any changes.
 - F. Assure that all of Lessee's employees and agents rendering services authorized by this Agreement shall at all times be appropriately attired and equipped for the duties that they perform.

Lessee shall perform all services stated in this Agreement in accordance with these standards, and where there may be a conflict or inconsistency, the most stringent requirement shall apply.

- II. Lessee shall not act, permit anyone else to act or refrain from doing any act that in any manner:
- A. Tends to create or permit any waste or nuisance at the Airport;
 - B. Tends to disturb tenants, users and any other party present at the Airport;
 - C. Conflicts with or invalidates any fire insurance or other insurance policies covering the Airport; or
 - D. Increases the premium or rating under fire insurance covering the Airport or property located at the Airport, over the rate currently in effect.

III. Lessee agrees:

A. To remove snow from the runway, taxiways and T-hangar areas, within 48 hours or as required by FAA Regulations with equipment supplied by the County; and

B. To maintain, in good repair and tenable condition the County supplied snow removal equipment and the demised premises; and

C. To provide a primary Fixed Based Operation consisting of: Fuel and Oil Sales and Line Service. In conducting aviation fuel and oil sales and line service on the Airport and the Lessee shall provide as a minimum:

1. Hard surface ramp space accessible by taxiway for the refueling area.

2. Routine maintenance of the fueling facility that shall conform to DEP Storage Tank Requirements, NFPA safety requirements, fuel company requirements, and FAA AC 150/5230-4 Aircraft Fuel Storage, Handling and Dispensing on Airports (Latest Edition).

3. Properly trained line personnel on duty seven (7) days a week, at least eight 8 hours per day during such hours of the day and on such days of the week as shall properly serve the needs of the public as reasonably determined by Lessee and approved in writing by County, and on call by reasonably accessible telephone at other hours. Lessee may partially comply with this paragraph by the approved installation of a 24-hour self-service, credit card fuel dispenser or other self-service fueling arrangement, meeting Federal, State, and Local Laws, Regulations, Ordinances and Codes.

5. Line personnel shall provide all fueling services in accordance with the requirements of the latest addition of NFPA 407, OSHA and the FAA.

6. Proper equipment for repair and inflating aircraft tires, servicing oleo struts, changing engine oil, washing aircraft and aircraft windows and windshields, and for recharging or energizing discharged aircraft batteries and starters.

7. A minimum of 900 square feet of conveniently located heated and air conditioned space for an office, pilot flight planning area, lounge or waiting rooms for passengers, and airplane crews of itinerant aircraft, together with sanitary rest rooms and public telephone.

8. Adequate towing equipment and parking and tie-down areas to safely and efficiently move aircraft and store them in all reasonable expected weather conditions.

9. Adequate inventory of at least two brands of generally accepted grades of aviation engine oil and lubricants.

10. Maintain NFPA approved bonding facilities at fueling locations to control the hazard of static electric and shall provide NFPA approved types of fire extinguishers or other equipment commensurate with the hazard involved in refueling and servicing aircraft.

D. County agrees to pay for airport appurtenances and to make all repairs necessary to the runway lights, rotating beacon or other air navigational aids erected or to be erected at the airport. Lessee shall provide routine bulb changes for the airport navigational aids and reasonably notify the County when any airport navigational aids require structural repair.

Exhibit "D"

**Wilkes-Barre Wyoming Valley Airport
Equipment and Vehicles Specifically Authorized for Use by the Lessee**

Description

1. 2002 GMC C6500 single axle dump truck with TENCO plow
2. New Holland TV145 with Snow Brush

Exhibit "E"

Wilkes-Barre Wyoming Valley Airport
Approved Schedule of Fees, Policies and Changes

	<u>Description</u>	<u>Cost</u>
A.	Monthly T-Hangar Fee	\$225
B.	Monthly Paved Surface Tie-down Fee	\$75
C.	Monthly Turf Tie-down Fee	\$50
D.	Main Hangar Fee	\$225
E.	Jet A Differential Fee (O&P)	\$0.85 per gallon maximum
F.	100LL Differential Fee (O&P)	\$0.85 per gallon maximum
G.	*Commercial Landing Fee	\$15 Single \$30 Multi
H.	*Overnight Apron Fee	\$10 Single \$20 Twin
I.	*Overnight Hangar Fee	\$30 Single \$50 Twin

*May be waiver upon purchase of fuel