

**RESOLUTION 11-33      Passed April 25, 2011**

**AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO SIGN A BRANDING AGREEMENT WITH WESTERN PETROLEUM COMPANY FOR AVIATION FUELS BRAND DISPLAY AT THE DEKALB TAYLOR MUNICIPAL AIRPORT.**

**BE IT RESOLVED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, as follows:

**Section 1.** That the Mayor of the City of DeKalb be authorized and directed to execute a Branding Agreement with Western Petroleum Company for the display of aviation fuels brand identification at DeKalb Taylor Municipal Airport (DTMA), a copy of which is attached hereto and made a part hereof as Exhibit "A."

**Section 2.** That the initial term of said agreement commences on May 1, 2011 and continues through April 30, 2014.

**Section 3.** That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, at a regular meeting thereof held on the 25<sup>th</sup> day of April, 2011 and approved by me as Mayor on the same day. Passed on omnibus roll call vote: 6-0-1. Aye: Teresinski, Verbic, Gallagher, Naylor, Baker, Kammes. Nay: None. Abstain: Simpson.

**ATTEST:**

  
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**STEVEN C KAPITAN**, City Clerk

  
\_\_\_\_\_  
**KRIS POVLSSEN**, Mayor

EXHIBIT A

**ExxonMobil**  
Aviation

**BRANDING AGREEMENT**

May 1st, 2011

CITY CLERK FILES:  
Number: RES 11-33  
Date: 4/25/11

**City of DeKalb**  
3232 Pleasant St.  
DeKalb, Illinois 60115

Re: ExxonMobil Oil Corporation ("Company")

To Whom It May Concern:

In connection with the fuel supply agreement between CITY OF DEKALB ("Customer") and WESTERN PETROLEUM COMPANY ("Western") dated May 1st, 2011, ("Fuel Supply Agreement") which provides for Customer's purchase of aviation fuels and other petroleum products from Western for resale at Customer's retail outlet City of DeKalb at 3232 Pleasant St. in DeKalb, Illinois 60115 ("Customer's Location"), Customer is hereby authorized to sell, at Customer's Location, products of Company ("Company's Products") under the brands and signs, and under the trade names, trademarks, trade addresses, brand names, labels, insignias, symbols and imprints owned by Company or used by Company in its business and authorized by Western and Company from time to time (collectively "Company's Marks"), subject to the following terms and conditions:

1. Company's Marks.

- (a) As approved by Western from time to time, Customer is authorized to display, on a non-exclusive basis, Company identification and/or Company's Marks in connection with the sale of Company's Products at Customer's Location solely for the purpose of designating the origin of said products. Customer is not a licensee of Company's Marks.
- (b) Each of the following petroleum products shall be continuously stocked and offered for sale at Customer's Location in such quantities as are necessary to meet the demand therefore: Company's Aviation Gasoline 100LL and Company's Jet A Turbine Fuel. Customer shall cause the dispensing equipment, displays and advertisements for Company's Products and brands to be as prominent and in as convenient positions as those for any other products offered for sale at Customer's Location.
- (c) If there shall be posted, mounted, or otherwise displayed on or in connection with Customer or Customer's Location any sign, poster, placard, plate, device or form of advertising matter, whether or not received from Western, consisting in whole or in part of the name of Company or any of Company's Marks, Customer agrees that it shall at all times display same properly in accordance with Company's requirements, and all such signage or identification will be obtained by Customer at Customer's expense only from Western approved sources. Customer shall discontinue the posting, mounting, or display of same immediately upon

Customer's ceasing to sell Company's Products or in any event upon demand by Western, and Customer shall take no action which will diminish or dilute the value of Company's Marks.

- (d) Western desires to maintain the quality of Company's Products sold hereunder. Accordingly, Customer will not in any manner mix, commingle, adulterate, blend, dilute or otherwise change the composition of any of Company's Products purchased from Western hereunder and resold by Customer under Company's Marks unless mutually agreed by both parties pursuant to a site specific co-mingling agreement.
- (e) Customer agrees that, upon its ceasing to sell Company's Products or upon termination of this agreement, Customer shall promptly return to Western any advertising material that uses Company's Marks and shall relinquish possession of and cease use of any of Company's and/or Western's equipment which may have been leased to Customer for the purpose of advertising, storage, handling, dispensing, selling or using Company's Products purchased hereunder.
- (f) Customer agrees that Company, at its sole election, may enforce Customer's agreements and obligations as required in this agreement. Customer further agrees that Company is authorized at Company's sole discretion to commence and conduct legal proceedings in Western's name for the purpose of enforcing Customer's obligations in connection with this agreement.
- (g) If Customer offers for sale products purchased on an unbranded basis or under a brand name other than Company's, Customer shall refrain from all use of Company's Marks on or in connection with the sale of such products. Customer further agrees to protect the identity of Company's products and Company's Marks by all reasonable means that would prevent customer confusion or misinformation, including, but not limited to, compliance with any guidelines issued by Western and/or Company to prevent such confusion. In addition, Customer agrees to comply with any additional requirements of any applicable law, ordinance, or regulation regarding the labeling of petroleum products.
- (h) All signs supplied to Customer by Western advertising Company's Products or which are in the colors used by Company to identify its products or the places at which its products are sold and all rights therein are, and shall continue to be, the property of Company. No other signs shall be placed on a sign pole containing a sign advertising Company's Products. During the life of this agreement and within a reasonable period thereafter, either Company or Western may, upon notice to Customer, remove or obliterate such signs, and repaint so much of the premises as it elects, in a color or colors selected by it. If Company or Western removes or obliterates any signs or repaints any of the premises, neither Company nor Western need restore any pre-existing signs or paint schemes of the premises. Customer shall not use other signs to advertise Company's Products without Western's prior written consent. Upon termination of this agreement, Customer shall immediately discontinue any and all use of such insignia and shall obliterate such insignia from all real or personal property utilized by Customer. Customer likewise shall obliterate such insignia from any of Customer's real or personal property before selling any such property to a third party.

2. Inspection and Measurement.

- (a) The quantity and quality of products sold hereunder shall for all purposes be deemed to be the quantity and quality set forth in Western's documents of delivery. As specified herein, Customer shall be responsible for conducting an inspection by an appropriately trained representative at Customer's sole risk and expense. Customer shall be responsible for any delay in delivery caused by the inspection and such inspection shall be noted on the associated delivery paperwork. If Customer fails to inspect Company's Products altogether or fails to inspect it in such a manner as designated herein, Customer does so at its own risk and agrees to indemnify and hold Western harmless against all consequences of such failure. Prior to Western delivering, or causing to be delivered, product to Customer's Location, Customer shall certify and confirm that its personnel are competent to inspect and handle product upon delivery in accordance with the requirements herein and any other standards required by Western and/or Company from time to time.
- (b) Any claim for defect or variance in quality or shortages of quantity in respect of the Company's Products sold hereunder shall be made, and Western shall be notified as soon as possible and given an opportunity to inspect, at the time of delivery and, in any event, no later than five days after discovery by Customer, so long as Customer could reasonably discover such defect, variance or shortage during the course of the inspection described herein. Any claims made after the five day period shall be deemed waived. Customer shall also be deemed to have waived any claim if the products which are the subject of Customer's claim have been co-mingled with other products and such co-mingling has not been approved in writing by Western. No claim of any kind, whether as to goods delivered or for non-delivery of goods, and whether or not based on negligence, shall render Western liable for any loss of profit, special, incidental, consequential, punitive or exemplary damages.
- (c) Customer shall provide and maintain storage and dispensing equipment as follows:
  - (i) To maintain the quality of Company's Products sold hereunder, Customer will, during all periods of this agreement, continuously and without interruption, furnish storage and dispensing equipment, either owned or leased by Customer, which is deemed by Western and/or Company to be suitable for receiving, storing, advertising, handling, dispensing and using of the Company's Products. Before Western makes an initial delivery to Customer, Western and/or Company shall inspect the storage and dispensing equipment at Customer's Location and will advise Customer in writing of the suitability or non-suitability of such equipment. Western will give Customer adequate notice of such an inspection.
  - (ii) Western will inspect the storage and dispensing equipment of Customer at all locations into which it makes deliveries of Company's Products on a semi-annual basis after Western and/or Company has made the initial inspection referred to above. Western shall conduct such inspection in accordance with certain standards to be provided to Western by Company.

Company may, in its sole discretion, revise such standards from time to time.

- (iii) If Western or Company, in its sole discretion, determines that any storage or dispensing equipment is not suitable to ensure product quality in accordance with this agreement, regardless of whether that equipment is owned or leased by Customer, Western may refrain from or otherwise cease making deliveries of Company's Products to Customer until Western is satisfied that the subject equipment has been made suitable for the storage and handling of products sold hereunder. In the event Company determines that Customer's equipment is not suitable for ensuring product quality, then Western, at the written request of Customer, will furnish Customer a copy of the written notice of non-suitability; provided, however, Customer shall be responsible for ensuring that it maintains suitable equipment and Western shall have no obligation to Customer in the event Customer's equipment is deemed not suitable by Company or Western.
- (d) In furtherance of Customer's obligations, Customer shall perform, or cause to be performed, the procedures set forth in this section 2 to ensure the maintenance of the quality of the Company's Products sold to Customer hereunder. Customer further agrees that it will (i) comply with such product quality procedures in connection with the handling, storage and reselling of Company's Products under Company's Marks; (ii) permit Company and/or Western to inspect Customer's facilities and equipment at any time during this agreement; and (iii) notify Western immediately in the event Customer fails to comply with any of the product quality procedures set forth in this section 2. Customer shall have a representative present at Customer's Location at the time of delivery to Customer who will visually inspect Company's Products to ensure that the product received is clear, bright, and free from sediment or other foreign materials and is of the proper and unadulterated color and that it is received into the proper storage or dispenser for each grade of product and that the storage or dispenser is properly marked for that grade of product. For each delivery Customer shall sign a delivery control log. If Customer fails to have a representative present at the time of delivery at Customer's delivery location, no delivery will be made.
- (e) Customer shall perform the following procedures after Customer has taken delivery of Company's Products from Western:

  - (i) Immediately after each receipt of fuel into Customer's storage tanks, allow tank contents to settle at least one hour per foot of liquid height for turbine fuel and fifteen (15) minutes per foot of liquid height for aviation gasoline, and withdraw any water from storage before withdrawing fuel from storage.
  - (ii) Daily, and immediately after each inclement weather occurrence, visually inspect fuel at the dispensing point to ensure that the product is clear, bright, and free from sediment or other foreign materials and is of the proper and unadulterated color. Clean clear bottles and/or white porcelain containers shall be used for this procedure.

- (iii) At all times, keep all hatches and openings secured against intentional or accidental inducement of adulterating substances and keep dispensing nozzle dust covers in proper position when not in use.
  - (iv) Daily, immediately after each receipt of fuel into storage and immediately after each inclement weather occurrence, manually drain accumulated moisture and sediment from all tankage, filter, or other collection sumps or points.
  - (v) Monthly, operate automatic drain devices (if any) to ensure proper operating condition.
  - (vi) Prior to and during each delivery of fuel to Customer and each dispensing of fuel when atmospheric temperatures are below 40 degrees F., check all sump heaters (if any) for proper functioning.
  - (vii) Observe filter pressure drop during each delivery of fuel to ensure that neither abnormally high nor low readings occur, and take remedial steps if any such abnormal readings do occur.
  - (viii) Remove and clean all screens on pumps, lines and dispensing nozzles weekly and when significant accumulations of debris and sediment are noted.
  - (ix) Notify Western of any observation of Company's Products or system checks that indicate product quality is not being maintained and cease using equipment and dispensing product until such condition is corrected.
  - (x) Perform daily, monthly, quarterly, semi-annual and annual inspections of fixed and mobile fueling equipment in accordance with ATA 103 fueling vehicle and fixed fueling equipment check forms or in accordance with a similar inspection program as agreed to in writing by Western. Maintain a file of completed and executed ATA 103 forms for fueling vehicles and fixed fueling equipment (or mutually agreeable alternative but equivalent forms) for a minimum of four (4) years in accordance with applicable laws and regulations.
- (f) Customer shall purchase Company's Products from Western on a regular basis to ensure product quality. Customer shall purchase Company branded Turbine Fuel Jet A at a frequency of no more than 180 calendar days between deliveries, and Customer shall purchase Aviation Gasoline at a frequency of no more than 180 calendar days between deliveries. Should Customer exceed either the 180 day Turbine Fuel Jet A frequency or the 180 day Aviation Gasoline delivery frequency, then Customer at its sole expense shall be responsible for obtaining a representative one gallon sample of the aged product within 5 business days. Customer shall arrange for transportation of the sample(s) to a Company approved laboratory to verify compliance with specific quality tests in accordance with the latest revisions of ASTM D-1655 (for Turbine Fuel Jet A) or ASTM D-910 (for Aviation Gasoline). Upon notification by the lab of any failed test

results, Customer shall immediately cease dispensing product to third parties and contact Western. Customer shall provide Western with results of all quality assurance tests within 10 business days of sampling. If Western and/or Company agrees that the results of the quality assurance tests meet ASTM specifications then Customer may continue to dispense product. Re-testing of aged product is to continue every 60 calendar days until Customer purchases a fresh transport load of product from Western of Company branded fuel. If the results of any quality assurance test do not meet ASTM specifications, then Customer agrees to cease the dispensing of the aged product. Customer shall be responsible for the removal and proper disposal of any product that does not meet ASTM specifications. With written approval from Western and/or Company, Customer may purchase additional product to mix with the aged, marginally off spec product and repeat the quality assurance tests. If Customer fails to conduct quality assurance tests on aged product at the specified frequency or if Customer fails to cease the dispensing of aged product which does not meet ASTM specifications, then Western may at its option cancel and terminate this agreement.

- (g) Western and/or Company is hereby given the right to examine at any time and from time to time, the contents of Customer's tanks, containers and equipment in which Company's Products purchased hereunder are advertised, stored, handled, dispensed, sold or used and to take samples therefrom. Customer shall provide to Western and/or Company suitable evidence of such right of Company and/or Western (i) to examine at any time and from time to time as deemed necessary by Western, to ensure compliance with the provisions in this agreement, the contents of Customer's tanks, containers and equipment in which Company's Products sold to Customer hereunder are advertised, stored, handled, dispensed, sold or used by Customer under Company's Marks, and (ii) to take samples therefrom. If in the opinion of Western and/or Company (i) any samples taken from Customer are not products originally delivered from Western to Customer hereunder, or (ii) otherwise are not in the condition in which delivered from Western to Customer, then Western and/or Company, at its sole option, may revoke trademark authorization for Customer's Location and Customer shall cease dispensing product to third parties.
- (h) In order to maintain the quality of the Company's Products sold by Customer, Customer shall comply fully with all quality control guides and such other guides and such procedures as may be prescribed by Company or Western from time to time regarding the handling of aviation fuels. Customer shall immediately report to Western and Company any accident or unusual incident involving a fueled aircraft.

3. Indemnity and Reimbursement for Liabilities.

- (a) To the extent Customer has incurred liability described under the following indemnity and as a result has paid or is obligated to pay sums in respect of third party liabilities, Western, in relation to Company's Products only, shall reimburse the Customer as follows:
  - (i) Product Quality: Liability for bodily injury or death or for loss of or damage to property resulting from an aircraft accident caused directly by

the adverse product quality of aviation fuels purchased under the terms and conditions of this agreement and the Fuel Supply Agreement;

- (ii) Aircraft Fueling: Liability for bodily injury or death or for loss of or damage to property arising out of Customer's on-airport operations as an authorized aviation fuels dealer for Company, but only during aircraft fueling while using aviation fuels purchased under the terms and conditions of this agreement and the Fuel Supply Agreement. Aircraft fueling is defined as commencing upon insertion/connection of the fueling nozzle and terminating upon removal/disconnection of the fueling nozzle.

(b) The following are the limits of reimbursement:

- (i) Agent: In circumstances where Customer, as an authorized Company aviation dealer for Company, is conducting on-airport operations required to fuel aircraft (as described above) on behalf of Company for its approved airline customers and for which operations Company pays Customer an into-plane service fee, the maximum level of reimbursement shall be \$75,000,000 for bodily injury and property damage (combined) per occurrence.

- (ii) Dealer: In circumstances where Customer, as an authorized Company aviation dealer, is conducting on-airport aircraft fueling operations (as described above), and reselling for its own account and for its on-airport aircraft fueling operations (as described above) for which the airline or aircraft operator pays the Customer an applicable into-plane service fee, the maximum level of reimbursement shall be \$20,000,000 for bodily injury and property damage (combined) per occurrence.

(c) Western's obligation to pay Customer hereunder shall only apply in the event that Customer's claims, expenses, and/or liabilities covered by the indemnity in this section are in excess of \$1,000,000. This indemnity will not provide protection for liabilities up to \$1,000,000 per occurrence. Customer must rely on its own insurance coverage for amounts less than \$1,000,000. If a loss is excluded or otherwise denied by Customer's insurer or by Western's insurer for any reason, Customer is ineligible for any reimbursement under this section. Western shall not have any obligation to pay and this indemnity shall not operate in the event that Customer does not have the insurance coverage referred to in the Fuel Supply Agreement.

(d) This indemnity specifically excludes the following:

- (i) liability for claims related to or arising out of pollution of the environment, including, but not limited to any damages caused by spills or leakages of petroleum products into or upon soil, water, or air;
- (ii) liability for claims caused by or arising out of, directly or indirectly, the gross negligence or willful misconduct of the Customer or its officers, directors, employees, agents, customers and/or independent contractors;




- (iii) liability for claims related to or arising out of acts of war and/or terrorism; and
  - (iv) liability for claims caused by a breach of this agreement, the Fuel Supply Agreement, or any equipment lease executed by Customer.
- (e) Subject to the limitations and exclusions contained in this section, Western and Customer shall indemnify, defend, and hold each other harmless from claims, demands, and causes of action asserted against the indemnitee (including reasonable attorney's fees) by any person including, without limitation, Customer's and Western's employees, for personal injury or death or for loss of or damage to property and resulting from the indemnitor's active or passive negligence or willful misconduct, or from a violation of law or a breach of this agreement by the indemnitor. Where personal injury, death, or loss of or damage to property is the result of the joint active or passive negligence or willful misconduct of Western and Customer, the indemnitor's duty of indemnification shall be in proportion to its allocable share of joint active or passive negligence or willful misconduct. If Western and/or Company is strictly liable under law, Customer's duty of indemnification shall be in the same proportion that the active or passive negligent acts or omissions or willful misconduct of Customer contributed to the personal injury, death, or loss of or damage to property for which Western and/or Company is strictly liable. Further, Customer shall indemnify and hold Western, its successors and assigns, harmless against all losses, claims, causes of action and liabilities on account of damage to property or injury to or death of persons arising out of Customer's failure to comply with any of the requirements set forth in the Fuel Supply Agreement and any other provisions of this agreement, and such failure by Customer shall entitle Western to cancel this agreement immediately. Customer understands and hereby acknowledges that, but for the agreement of indemnity set forth in this Section 3, Western would not have agreed to sell to Customer the Company's Products described herein and in the Fuel Supply Agreement.
- (f) Notwithstanding anything to the contrary contained herein, Western shall have no duty of indemnity to the Customer to the extent that Company or Western's insurer has not paid or is not obligated to pay to Western those amounts which are to be paid by Western to customer under this section 3.
4. Term: This agreement shall have the same term as the Fuel Supply Agreement and shall terminate when the Fuel Supply Agreement terminates, except that:
- (a) if Customer fails to comply with the requirements of this agreement, Western shall have the right to cease delivery of Company's Products to Customer and terminate this agreement; and
  - (b) if a new branding agreement is substituted for this branding agreement pursuant to the terms of the Fuel Supply Agreement, this agreement shall terminate.

5. Miscellaneous. The terms and provisions of the section of the Fuel Supply Agreement entitled "Miscellaneous" also shall apply to this agreement.

If you are in agreement with the foregoing, please execute and return a copy of this Branding Agreement.

Very truly yours,

WESTERN PETROLEUM COMPANY

By:   
D. G. Jewett  
Vice President

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The undersigned agrees to the above terms and conditions this 1st day of May, 2011.




CITY OF DEKALB

By: 

Name: KRIS PVLSEN

Title: Mayor

ATTEST:

  
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STEVE KAPITAN  
CITY CLERK