

FIRST AMENDMENT TO THE AIRPORT LEASE AGREEMENT

This First Amendment to the Airport Lease Agreement dated November 14th, 2000 (“Lease”), is entered into this day of _____, 2019 by and between the CITY OF FLAGSTAFF, a municipal corporation organized and existing under the laws of the State of Arizona (the “City”) and Peabody Western Coal Company, a Delaware corporation qualified to conduct business in the State of Arizona (the “Lessee”).

The Lease, is amended as follows (additions are shown as capitalized, underlined text, deletions are shown as stricken).

Article IV, Section 4.1, is amended as follows:

4.1 Rental and Fees.

The Lessees agrees to pay the City, for the use and enjoyment of the Premises, Public Airport Facilities, rights, licenses, service and privileges granted hereunder the following rentals, fees, and charges.

4.1.1 Ground Rental

LESSEE SHALL PAY TO THE CITY GROUND RENTAL, PLUS ANY APPLICABLE TRANSACTION PRIVILEGE TAXES. RENT IS DUE ANNUALLY IN ADVANCE. AS OF NOVEMBER 14, 2019 RENT WILL BE THE SUM OF TWENTY-FIVE THOUSAND ELEVEN DOLLARS AND 80 CENTS (\$25,011.80), OR APPROXIMATELY \$.291 PER SQUARE FOOT. RENT WILL INCREASE BY 2% ANNUALLY ON THE LEASE ANNIVERSARY DATE.

~~Lessee agrees to pay to the City as ground rental the sum of \$.224 per square of the Premises per year, totaling Nineteen Thousand Two Hundred Twenty one and no/100 Dollars (\$19,221.00.00) per year, until March 1, 2009 at which time the ground rental shall be based upon the then current Airport market rate for the Premises. Ground rental payable by the Lessee to the City shall be adjusted at the commencement of each four (4) year period by the same percentage as that represented by the change, if any, in the Consumer Price Index for all Urban Consumers (“CPI”) most recently published by the Bureau of Labor Statistics, United States Department of Commerce (or such other index that the Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index) at that time, as compared with the CPI most recently published four (4) years prior. Commencing with the 2010 calendar year, the ground rental rate shall be adjusted annually by the same percentage as that represented by the change, if any, in the CPI most recently published by the Bureau of Labor Statistics, United States Department of Commerce (or such other index that the Bureau of Labor Statistics may later publish in lieu of the Consumer Price Index) at that time, as compared with the CPI most recently published one (1) year prior.~~

4.1.2 Fuel Supply Farm

The Lessee may construct, maintain, and operate a fuel supply farm on the Premises. However, the privilege to construct, maintain, and operate a fuel supply farm on the Premises is personal to the original Lessee and shall not be assigned or transferred should the original Lessee assign or transfer the Lessee’s interest in this Lease or sublet any portion of the Premises.

NOTWITHSTANDING THIS SECTION 4.1.2 AND SECTION 20.1 RELATING TO ASSIGNMENT AND SUBLETTING, THE CITY WILL CONSENT TO THE ASSIGNMENT OF THE EXISTING FUEL FARM ON THE PREMISES TO WISEMAN AVIATION, INC. ("WISEMAN"), SUBJECT TO TERMS AND CONDITIONS SET FORTH IN THE CITY'S SEPARATE CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE, AND PROVIDED THAT NO FURTHER ASSIGNMENT OR TRANSFER SHALL BE PERMITTED, SUCH CONSENT BEING PERSONAL TO WISEMAN. WISEMAN AS THE NEW LESSEE SHALL MAINTAIN AND OPERATE THE EXISTING FUEL FARM IN GOOD CONDITION AND MAY NOT CONSTRUCT A NEW FUEL FARM.

4.1.3 Fuel Flowage Fees.

THE FUEL FLOWAGE FEES PER GALLON AS OF NOVEMBER 14, 2019 ARE:

<u>1-100,000 GALLONS:</u>	<u>\$0.1345</u>
<u>100,001-150,000 GALLONS:</u>	<u>\$0.1207</u>
<u>150,001-200,000 GALLONS:</u>	<u>\$0.1072</u>
<u>200,001- ABOVE GALLONS:</u>	<u>\$0.0940</u>

Lessee shall pay the following fuel flowage fees on a cumulative basis to the City during the City's fiscal year for each year Lessee conducts operations pursuant to this Lease based on the ~~Lessee's bid: Commencing March 1, 2009, \$.12/gallon~~ or current rate at the time.
FUEL FLOWAGE FEES WILL NOT BE COMBINED WITH ANY OTHER LEASE.

Lessee shall pay all fuel flowage fees within thirty (30) days following receipt of the City's monthly invoice respecting the same.

All rates agreed upon by the parties relative to fuel flowage fee shall be subject to escalation based upon the annual rise in the cost of living for Flagstaff, Arizona, based on the National Consumer Price Index, published by the United States Bureau of Labor Statistics.

IF THE CITY AIRPORT COMMISSION APPROVES A FLAT FUEL FLOWAGE FEE, THE PARTIES MAY AMEND THIS LEASE TO REFLECT THE FLAT FEE.

Article V, is amended by deleting sections 5.1 and 5.2, as construction was completed, and Section 5.5 is amended as follows:

5.5 Ownership of Improvements.

The Lessee shall own the Improvements ~~constructed by Lessee~~ until the expiration of the lease term or termination of this Lease for any reason, at which time the Lessee shall convey all Improvements, specifically all buildings, and fixtures, but no personal property, to the City by bill of sale at no cost to the City. IF THE LEASE IS ASSIGNED OR TRANSFERRED, THE LESSEE SHALL CONVEY ALL IMPROVEMENTS TO THE SUCCESSOR-IN-INTEREST, FREE AND CLEAR OF ANY ENCUMBRANCE, LIEN, TAX OR ASSESSMENT.

Article VII, Section 7.2, is amended as follows:

7.2 Maintenance by Lessee.

The Lessee shall be responsible for providing all maintenance and repair of the Premises, and all such maintenance shall be commensurate with the level of maintenance provided for by the City in similarly situated circumstances. With respect to the Improvements ~~constructed by Lessee on the Premises~~, Lessee shall, at its own expense, maintain all such Improvements and appurtenances thereto in a good condition and equal in appearance and character to other similar improvements at the Airport. The City shall have the right to take over all of the maintenance activities for all areas of the Premises inclusive of any Improvement located thereon which are exposed to public view in accordance it the notice and increased rental conditions set forth above in section 7.1 of this Lease.

Article X, Section 10.1 is amended as follows:

10.1 Indemnity.

The Lessee does hereby covenant and agree to indemnify, defend and hold the City harmless from any and all fines, suits, claims, demands, actions and/or causes of actions of any kind and nature for personal injury or death or property damage arising out of or in connection with any activity or operation of the Lessee on the Premises or in connection with its use of the Premises; ~~provided, however, that the Lessee shall not be liable for any injury, damage or loss occasioned by the negligence or willful misconduct of the City, its agents or employees.~~ The City shall give to the Lessee prompt and timely notice of any claim or suits instituted which in any way, directly or indirectly, contingently or otherwise, affect or might affect the Lessee.

The Lessee further agrees to and shall indemnify, defend and hold the City harmless from and against all liability, loss, damage, costs or expenses (including reasonable attorney fees and court costs) arising from or in any way related to Worker's Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of Lessee and/or its contractors and subcontractors or claims under similar such laws and obligations.

Article VII, Section 12.14, is amended as follows:

12.14 Federal Grant Assurances.

This Agreement shall be subject to all federal requirements set forth in the document entitled "Assurances Airport Sponsors" ~~(9-99)~~ attached hereto as Exhibit "B", AS MAY BE AMENDED BY THE FAA FROM TIME TO TIME.

Article XX, Section 20.1 is amended per Section 4.1.2 to allow assignment of the fuel supply farm to Wiseman Aviation, Inc.

Article XXI, Section 21.1, is amended as follows:

21.1 Lessee's Use of Fuel Storage Facilities

As a condition to Lessee's use of fuel storage facilities in connection with Lessee's into-plane activities, Lessee agrees to be bound by the requirements of NFPA 407, FAR Part

139, and FAA Advisory Circular ~~150-5230-4~~ 150-5230-48 which include but are not limited to the following items: [Remainder of text remains unchanged]

All other terms and conditions of the Lease remain unchanged.

LESSEE: Peabody Western Coal Company, a Delaware corporation

By: _____

Title: _____

Its authorized representative

ACKNOWLEDGMENT. On this ____ day of _____, 2019, before me, a Notary Public, personally appeared _____, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of Peabody Western Coal Company, for the purposes therein contained.

Notary Public

My Commission Expires:

LESSOR: CITY OF FLAGSTAFF

By: _____

Coral Evans, Mayor

STATE OF ARIZONA }
 } ss.
County of Coconino }

ACKNOWLEDGMENT. On this ____ day of _____, 2019, before me, a Notary Public, personally appeared Coral Evans, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same on behalf of the City of Flagstaff, for the purposes therein contained.

Notary Public

My Commission Expires:

Attest:

By: _____
Stacy Saltzburg, City Clerk

Approved as to form:

By: _____
City Attorney's Office

Attachments:

Exhibit B Assurances Airport Sponsors

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