



TOWN OF JACKSON TOWN COUNCIL AGENDA DOCUMENTATION

PREPARATION DATE: July 30, 2018
MEETING DATE: August 6, 2018

SUBMITTING DEPARTMENT: Legal
DEPARTMENT DIRECTOR: Audrey Cohen-Davis
PRESENTER: Audrey Cohen-Davis

SUBJECT: Lease Agreement between Town of Jackson and Jackson Hole Airport Board for the Ride-to-Fly Program Services to the Jackson Hole Airport

STATEMENT/PURPOSE

The Jackson Hole Airport approached the Town because it does not have sufficient public parking to meet peak demand at the Airport. The Jackson Hole Airport Board (the "Board") therefore desires to lease parking spaces in the Town's Parking Structure at market rates. Under the proposed Lease of Parking Spaces for Airport Purposes (the "Lease") the Board would lease 141 Spaces on Levels 3 and 4 from November 15 through the following April 15, and 71 Spaces on Level 4 from April 16 through November 14. Airport passengers would then be taken to the Airport via the Ride-to-Fly shuttle service.

BACKGROUND/ALTERNATIVES

Under the 1983 Agreement by which the Airport operates in Grand Teton National Park, the passenger terminal building, public and employee parking, rental car facilities, and FBO facilities must all be located in a limited 28-acre development subzone. As a result, it is the Airport's position that parking facilities on the Airport are at times not adequate to meet the demand of Airport passengers or employees.

The Town has constructed and owns a parking structure containing approximately 283 parking spaces on four floors, which is located at the corner of Millward Street and Simpson Avenue in the Town of Jackson (the "Parking Structure"). The Parking Structure is used by the general public and also by patrons of the Center for the Arts. Portions of the Parking Structure are also used for parking by Airport passengers who then utilize the Ride-to-Fly shuttle service.

However, while the Center for the Arts pays the Town for use of the Parking Structure by its patrons, no contract now exists between the Town and Board for such use. The Airport desires to enter into a Lease with the Town for use of a certain parking spaces in the Parking Structure to ensure that adequate Airport parking exists.

The Airport is a recipient of FAA grant funds, and the Town and Board have contractually agreed with FAA that airport revenue will be used only for the capital and operating costs of the Airport or other facilities directly and substantially related to air transportation, as required by 49 USC §47107(b). The Town and County have also agreed with FAA that Airport revenue will not be used for payments which exceed the fair and reasonable value of services and facilities provided to the Airport.

A proposed form of Lease is attached. Under the proposed Lease, the described parking spaces will be for exclusive use of Airport passengers and employees. The rental rates are the same as the Town charges to Center for the Arts for its similar use of the Parking Structure. Accordingly, the Town and Board believe the rates do not exceed the fair and reasonable value of the services and facilities provided to the Airport. The Board will pay the Town \$46.34 per Space per month, which will result in payments of \$6,532.00, per month

December through March, and \$3,290 per month April through November, for a total 12-month rental of \$55,699.

The term of the Lease is 32 months, commencing on September 1, 2018 and terminating on April 30, 2021. Either party may terminate the Lease on six (6) months' notice. The Board may also terminate the Lease on Thirty (30) days' notice if any provision is determined by FAA to constitute a violation of any grant assurance to which the Board and Town are bound.

LEGAL ANALYSIS

Under Wyo. Stat. § 15-1-103(a)(iv), the Town may sell, convey and lease any property it owns, and under Wyo. Stat. § 15-1-103(a)(v), it may perform all acts in relation to Town property as necessary to the exercise of its corporate powers. Under Wyoming Statute §10-5-101, *et seq.* and Town of Jackson Ordinances 109, the Town Council is authorized to lease property for Airport purposes.

FISCAL IMPACT

The Town will receive \$55,699 per year for a 12-month rental period over the term of the Lease.

STAFF IMPACT

The impact on Town Staff has been in negotiating and evaluating the terms of the Lease, and for the Town Attorney time negotiating, revising and finalizing the attached Lease in collaboration with the Airport attorney.

RECOMMENDATION

It is recommended that the Mayor & Council approve and authorize execution of the attached Lease.

ATTACHMENTS

Lease of Parking Spaces for Airport Purposes

LEGAL REVIEW

Complete

SUGGESTED MOTION

I move to approve the attached Lease of Parking Spaces for Airport Purposes in the form presented, and authorize the Mayor to execute the same on behalf of the Town of Jackson.

LEASE OF PARKING SPACES FOR AIRPORT PURPOSES

This Lease of Parking Spaces for Airport Purposes (the "Lease"), dated effective September 1, 2018, is by and between the Town of Jackson ("the Town") and the Jackson Hole Airport Board ("the Board"). The Town and Board may each be referred to herein as a "party" or collectively as the "Parties."

RECITALS

WHEREAS, pursuant to Wyo. Stat. § 15-1-103(a)(iv), the Town may sell, convey and lease any estate owned and make any orders respecting it which is deemed to be in its best interest, and pursuant to Wyo. Stat. § 15-1-103(a)(v), may perform all acts in relation to the property and concerns of the Town necessary to the exercise of its corporate powers;

WHEREAS, the Town has constructed and owns a parking structure containing approximately 283 parking spaces on four floors, which is located at the corner of Millward Street and Simpson Avenue in the Town of Jackson (the "Parking Structure");

WHEREAS, the Board is the operator and proprietor of the Jackson Hole Airport (the "Airport") and is authorized to lease property for Airport purposes pursuant to Wyo. Stat. §10-5-101, through §10-5-204;

WHEREAS, the Airport is a recipient of FAA grant funds, and the Town and Board have contractually agreed with FAA that airport revenue will be used only for the capital and operating costs of the Airport or other facilities directly and substantially related to air transportation, as required by 49 USC §47107(b), and Airport revenue will not be used for payments which exceed the fair and reasonable value of services and facilities provided to the Airport;

WHEREAS, under the 1983 Agreement by which the Airport operates in Grand Teton National Park, the passenger terminal building, public and employee parking, rental car facilities, and FBO facilities must all be located in a limited 28-acre development subzone, and as a result, parking facilities on the Airport are, at some times, not adequate to meet the demand of Airport passengers or employees; and,

WHEREAS, the lease of parking spaces in the Parking Structure, for the exclusive use of Airport passengers and employees, on the terms set forth herein, is substantially related to air transportation, and the rental rates set forth herein for such spaces does not exceed the fair and reasonable value of the services and facilities provided to the Airport.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties incorporate the above recitals and agree as follows:

AGREEMENT

1. Lease of the Parking Spaces. The Board hereby leases from the Town certain parking spaces located in the Parking Structure (the "Spaces"). The Board shall lease 141 Spaces on Levels 3 and 4 from November 15 through the following April 15, and 71 Spaces on Level 4 from April 16 through November 14 in each year during the term of this Lease. The Spaces to be leased are more fully described on the diagram attached hereto as **Exhibit A**. The Board and airport passengers utilizing the Spaces shall have the right of ingress and egress in the Parking Structure to and from the Spaces over routes designated by the Town from time to time.

2. Rental Payments.

2.1. The Board will pay the Town rental in the amount of \$46.34 per Space per month for each Space rented, which shall result in payments due in arrears on the 15th day of each month following the months of December through April in the amount of \$6,532.00, and on the 15th day of each month following May through November in the amount of \$3,290.00, for a total twelve (12) month rental due of \$55,699.

2.2. Rentals shall be made payable to the Town of Jackson, Wyoming and delivered to 150 E. Pearl Avenue, Post Office Box 1687, Jackson, WY 83001.

2.3. If the rent is not received by the Town by the 30th day of the month in which the rental is due, the Board shall pay the Town a late charge of \$500.00. Acceptance of the late charge by the Town is not a waiver of the Board's default of this Lease based on late payment of rent.

3. Term. The term of this Lease shall be thirty-two (32) months, commencing on September 1, 2018 and terminating on April 30, 2021. Notwithstanding the term, either party may terminate this Lease by delivered to the other party a notice of termination at least sixty (60) days prior to the specified termination date, for any cause or no cause.

4. Condition, Maintenance and Use of Parking Structure.

4.1 The Board agrees to lease the Spaces on an as-is, where-is basis. The Board has inspected the Spaces and agrees that they are suitable for its use.

4.2 The Town shall have sole responsibility for the operation, cleaning, maintenance and utilities associated with the Parking Structure, including the payment of all costs and expenses in connection therewith.

4.3 The Board shall have exclusive use of the Spaces for its airport passengers and employees, and shall be deemed the operator of such Spaces. Upon approval of the Town, which shall not be unreasonably withheld, the Board may, but is not required to, (a) place signage in the Parking Structure, subject to prior approval by the Town Public Works department, to direct passengers and employees to the Spaces, and/or on or near the Spaces indicating that they are reserved for the exclusive use of Airport passengers or employees, and (b) place a kiosk and/ or devices in the Parking Structure to ensure the proper and efficient use of the Spaces. The Board may institute a system (i) requiring airport passengers or employees to place materials on their dash board identifying the vehicle as belonging to an airport passenger or employee and indicating the date of parking, and (ii) limiting the duration of permissible parking. The Board may, but is not required to, charge a reasonable fee for parking in the Spaces, provided that the cost of collection of any such fee shall be at the sole cost and responsibility of the Board.

4.4 The Board's use of the Spaces shall be subject to such rules and/or ordinances adopted by the Town, which are applicable to the Parking Structure generally, and which relate to the movement of traffic, size of vehicles permitted, and safety related prohibitions.

5. Termination by Board. In addition to the other provisions of this Lease, the Board shall have the right, upon written notice to Town, to terminate this Lease upon thirty

(30) days' notice, upon the happening of one (1) or more of the following events, if said event or events shall then be continuing:

5.1. the issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use by the Board of all or any substantial part of the Spaces;

5.2. if Town shall default or breach in fulfilling any of the terms, covenants or conditions to be fulfilled by it under this Lease and shall fail to cure said default within sixty (60) days following receipt of written demand from Board to do so;

5.3. permanent abandonment or closure of the Parking Structure; or

5.4. if any provision of this Lease is determined by the Federal Aviation Administration to constitute a violation of any grant assurance to which the Board and/or Town are bound, or by any court of competent jurisdiction that this Lease is contrary to law.

6. Termination by Town. In addition to the other provisions of this Lease, the Town shall have the right, upon written notice to Board, to terminate this Lease upon thirty (30) days' notice, upon the happening of one (1) or more of the following events, if said event or events shall then be continuing:

6.1 breach by the Board on its payment obligations under this Lease, or any amendment or addendum hereto, and failure of the Board to cure such breach within fifteen (15) days after delivery of written notice to the Board;

6.2 default in the performance of any covenant or agreement in this Lease required to be performed by the Board other than the occurrence of the events described above in this section, and the failure of the Board to remedy such default for a period of sixty (60) days after receipt from Town of written notice to remedy the same; or

6.3 if all or a material part of the Spaces are destroyed by any fire, explosion or any other casualty not caused by the negligent or willful act or omission of Town, and Town determines in its discretion not to repair or replace the Spaces.

7. Loss. In the event the Parking Structure is damaged or destroyed, and the Town forthwith commences to repair the Parking Structure, this Agreement shall remain in full force and effect and the Board's obligations hereunder shall remain in effect. Provided, however, that rentals due from the Board shall abate pro-rata for the period and with respect to the Spaces which have been rendered unusable by virtue of the damage or destruction.

8. Notices. Any notices required hereunder shall be in writing and delivered to the parties at the addresses below. Notices shall be deemed to be given when delivered, if delivered personally, or three (3) business days after deposit in the United States mail.

Town of Jackson
Attn.: Larry Pardee
Town Manager
P. O. Box 1687
Jackson, WY 83001

Jackson Hole Airport Board
Attn: Executive Director
1250 East Airport Road
P. O. Box 159
Jackson, WY 83001

9. Assignment. The Board shall not assign, trade, mortgage, pledge, or encumber this Lease or any interest herein, nor sublet the whole or any part of its interest herein, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law or by any process or proceeding or any course, or otherwise, without the prior written consent of the Town, which consent may be subject to such conditions as the Town may deem appropriate, in its sole discretion.

10. Miscellaneous Provisions.

10.1. Headings. The section headings contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provision.

10.2. Time of Essence. It is mutually agreed by the Parties that time is of the essence in the performance of the terms and conditions to be kept and performed under this Lease.

10.3. Interpretations. In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

10.4. Non-Waiver. Waiver by either party of one or more term or condition of this Lease or any default or breach of a term or condition of this Lease shall not be construed as a waiver of any other term or condition of this Lease or subsequent default or breach. The subsequent acceptance by such party of the performance of any term or condition of this Lease by the other party shall not be deemed to be a waiver of any term or condition of this Lease.

10.5. Limitation of Benefit. This Lease does not create in or bestow upon any other person or entity not a party to this Lease any right, privilege or benefit unless expressly provided in this Lease. This Lease does not in any way represent, nor should it be deemed to imply, any standard of conduct to which the parties expect to conform their operations in relation to any person or entity not a party.

10.6. Severability. If any provision in this Lease is held to be illegal, invalid, or unenforceable in full or in part, for any reason, by any court of competent jurisdiction, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid, and enforceable. The illegality, invalidity, or unenforceability of any such provision shall in no way affect any other provisions in this Lease, provided that the illegality, invalidity, or unenforceability of any such provision does not materially prejudice either party with regard to the respective rights and obligations of each Party contained in the valid terms and conditions of this Lease.

10.7. Effect of Lease. All covenants, conditions and provisions in this Lease shall extend to and bind the successors of either Party, the assigns of Town and the

permitted assigns of Board. There is no intention to create any third party beneficiaries to this Lease.

10.8. Entire Lease. This Lease contains the entire agreement of the parties hereto and any and no prior oral or written agreement, understanding, representation, warranty, promise or statement shall be effective or binding for any reason. This Lease may be amended only in writing, signed by both parties and specifically designated as an amendment to this Lease. This Lease shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Lease.

10.9. Choice of Law. The laws of the State of Wyoming shall govern this Lease. Venue under this Lease shall be the Ninth Judicial District, Teton County, Wyoming.

10.10. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the Parties. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of landlord and tenant.

10.11. No Officials Liable. No Board member, Council Member or employee of the Town or the Board shall be personally liable for any default or liability under this Lease.

10.12. Council Finding. The Town Council and Mayor of the Town specifically find that this Lease is in the public interest.

10.13. Governmental Immunity. The Town of Jackson nor the Board waives sovereign or governmental immunity by entering into this Lease, and fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Lease.

IN WITNESS WHEREOF, the Parties have executed this Lease effective as of the day and year first above written.

JACKSON HOLE AIRPORT BOARD

Attest:

By: _____
Jerry Blann, President

By: _____
John Eastman, Secretary

TOWN OF JACKSON, WYOMING

Attest:

By: _____
Pete Muldoon, Mayor

By: _____
Sandra P. Birdyshaw, Town Clerk