

Lumanair Amended and Restated Lease Dot Point

- 9 separate parcels make up the leased property
 - Parcel 5 (existing fuel farm) will be amended and removed when construction of the new aboveground fuel farm takes place, new fuel farm parcel will be substituted in.
- Ground rent will be \$0.385 per square foot
 - Ground rent is abated for 7 years (the entire initial term (5 years) and the first 2 years of the first renewable 5 years term)
- Additional rent is 1.5% of gross receipts
 - Defined as all revenue received by Lumanair from their business activities, but excludes:
 - State and federal excise and sales taxes
 - Fuel flow charged by City on fuel sales
 - Proceeds from the sale of aircrafts
 - Any mail order business
 - Any revenue derived from service, work, or fuel sales made to aircraft owned by Tenant (Tenant required to provide documentation to prove)
- 30 year lease (initial term is for 5 years with five renewable terms each for 5 years)
 - Lease will not extend beyond July 31, 2050
- Use of Premises is the same for each FBO Airport tenant
- Building Construction requirements
 - Lumanair must submit building permits aboveground fuel farm to City for approval
 - If City requires, Lumanair must submit copies of contractors and subcontractors
- Non-Discrimination and Use of Airport Facilities are identical for each FBO Airport tenant
- Care of Lease Premises will all be provided and maintained all by Lumanair
 - At termination of lease Lumanair will surrender all buildings and site improvements to City in good condition
 - Buildings and improvements will be sole property of the City and free of any liens or mortgages
- Insurance requirements include Lumanair maintaining \$4,000,000 commercial general liability insurance. The City will be named as an additional insured.
 - Since 1982 Lumanair was only required to have \$1,000,000 liability insurance
- Assessments would be the same for each FBO Airport tenant, but would only vary based on their individual square footage

- Subordination:
 - Standard state and federal law application clause, which is identical for each FBO Airport tenant
 - Local ordinance
 - Lease is subject and subordinate to all City ordinances and Minimum Standards
 - City cannot increase fuel flow charge (\$.05 per gallon) for initial term
 - As soon as practical (but must be completed by August 1, 2022) Lumanair will construct and install the aboveground fuel farm
 - This will require the City and Lumanair to enter into an Environmental Indemnity agreement, similar to the other FBO Airport tenant
 - Lumanair will be required to maintain \$2,000,000 pollution legal liability insurance, which will also be required of the other FBO Airport tenant
 - Contrary to Minimum Standards, Lumanair is not required to deliver an irrevocable letter of credit
 - This letter of credit was not required of the other FBO tenant
- Condemnation, City has power to condemn
- Right to Access, the City has the right to enter Lumanair's leased property to inspect to determine compliance with lease and require compliance
- Storage of Damaged Aircraft is not allowed in view of the general public
- Lumanair's personnel, like other FBO Airport tenant, must be schooled, trained, competent and of good moral character
- Examination and Audits requires Lumanair to maintain accurate books and records and must provide those to the City for examination and audit.
 - Annually, Lumanair will provide City with Financial Statements (balance sheet and statement of profit and loss)
 - City will take reasonable steps to protect confidentiality of financial records
 - If records are subject to a FOIA request, City will notify Lumanair. If Lumanair objects to releasing documents they shall indemnify and hold the City harmless
 - Lumanair agreed not to claim depreciation or an investment credit on any leased property
- Delays in Enforcement do not constitute waiver, which is consistent with other FBO Airport tenant.

- Assignment of lease for any portion of the property leased to Lumanair must have prior written approval of the City, which will not be unreasonably withheld. This is consistent with other FBO Airport tenant
- Notice provides names and address of all parties
- Successors and Assigns are bound by terms of the lease, which is consistent with other FBO Airport tenant.
- Interpretation of these clauses is standard and consistent with almost all Airport tenants.
- Leasehold Mortgage allows Lumanair to mortgage their interest under the lease subject to the following terms
 - Mortgage is subject to City's review and approval, which will not be unreasonably withheld
 - Memorandum of lease shall be executed and recorded
 - Lumanair cannot make any changes to the lease without Mortgagee's prior written approval
 - Mortgagee will have the right to cure any defaults on the part of Lumanair
 - Mortgagee can foreclose on Lumanair, but would still be liable for rent payments but not any other previous defaults
 - If Mortgagee forecloses:
 - City agrees not to terminate the lease during foreclosure proceedings as long as monetary payments owed to the City are made
 - Mortgagee's assignee or sublease will have same rights as Lumanair under the lease
 - Mortgagee will have the right to share in hazard insurance
- Indemnity requires Lumanair to save City from any claims or demands in connection with any injury or damage caused by Lumanair or anyone connected to Lumanair.
- Default provides definitions of what is considered a default and how defaults can be cured under the lease including:
 - Lumanair vacating or abandoning property for more than 30 days
 - Lumanair fails to use leased property for permitted purposes after City has given notice that use is not permitted
 - Lumanair declares bankruptcy, dissolves, or ceases doing business
 - Lumanair failed to pay ground rent or additional rent and City has demanded payment
- Right to Cure Defaults allows City to cure any defaults after giving notice to Lumanair
- Relationship of Parties is not one of a principal and agent, partnership, joint venture of any other relationship beside landlord and tenant

- Entire Agreement, this lease is the entire agreement between Lumanair and the City, waiver or modification or cancellation of lease is only valid if in writing and signed by Lumanair and City
 - Invalidity or unenforceability of any provision will not affect or impair rest of lease
 - Captions are for convenience

Cost of Living Adjustment Rider

- Provides definitions and terms for how ground rent will be calculated and increased on a yearly basis

Construction and Capital Improvement Rider

- Lumanair must make a minimum of \$1,200,000 in capital improvements
 - Includes construction aboveground fuel farm and removal of underground fuel tanks
 - \$1,000,000 must be spent in first year of lease
 - Remaining \$200,000 spent before the end of the initial lease term
- Lease will not be renewable if these terms are not completed to City's satisfaction
- Aboveground fuel farm must be completed, installed, and fully utilized by August 1, 2022

TO: Mayor Irvin and City Council

FROM: Carmen Forte & Patrick Collins, Special Counsel

DATE: July 13, 2020

SUBJECT:

Consideration of a proposed amended and restated lease between the City of Aurora and Lumanair, Inc. for certain real property located at Aurora Regional Airport.

PURPOSE:

To enter into a comprehensive lease agreement with an existing airport tenant that is consistent with terms offered to its competitors, embraces modern standards, and resolves ongoing litigation.

BACKGROUND:

Lumanair, Inc. has been a tenant at the City's airport since 1982 and operates as one of the airports two fixed-base operators (FBO), providing, among other things, fuel service to the airport's general aviation customers. The City and Lumanair have amended their original lease several times since 1982 to include additional facilities at the airport.

Lumanair utilizes underground fuel tanks which is not consistent with the minimum standards for FBOs operating at the airport as established by the City. Lumanair's continued use of those tanks in violation of the minimum standards led to several years of litigation between the City with each side accusing the other of violations of the lease agreement. The litigation is still ongoing.

Despite the litigation, Lumanair has repeatedly expressed a desire to remain at the airport. While there is some uncertainty as to whether Lumanair successfully renewed its existing lease in 2018 (which would further broaden the scope of the litigation) it has remained current in its rent payments to the City.

The proposed lease would amend and restate the existing agreements between the City and Lumanair for as long as thirty (30) years. The lease requires Lumanair to promptly remove its underground storage tanks, construct a new, above ground fuel farm, and make significant improvements to its facilities. The lease includes an original five (5) year term and five (5) renewable five (5) year terms. Lumanair may not exercise its right to renew unless it has completed the improvements required to conform to the airport's minimum standards.

The City used its existing lease with the airport's other FBO as a template for its negotiations with Lumanair. Because FAA grant assurance regulations require the City to treat its FBOs equally, use of a common lease platform will help reduce the likelihood of successful complaints to the FAA.

DISCUSSION:

The benefits to the community include having two competitive FBO tenants at the airport, each able to provide aircraft maintenance and storage, charter aircraft services, operation of a flight school with aircraft rental, the sale of retail aviation fuel, and the sale of aircraft.

The enhancements required by the lease will benefit the overall look and appeal of the Airport and its facilities, which Lumanair will be required to maintain. Additionally, at the end of Lumanair's all buildings and structures revert back to the City.

Financial considerations include payment of ground rent on a price per square foot basis and additional rent based on tenant's gross receipts, with some exclusions including mail order business, aircraft sales, fuel sales.

Approval of the lease will also render moot the ongoing litigation between the City and Lumanair which has been pending since 2015.

IMPACT STATEMENT:

The proposed requires Lumanair to promptly construct an above ground fuel farm, remove the underground fuel tanks, and undertake some renovations/beautifications to Lumanair's existing structures, interior, exterior, and parking facilities. Plans for those improvements and constructions projects must be submitted and approved by the City.

RECOMMENDATIONS:

That the Council approve the lease.

cc: Planning, Zoning, and Economic Development Committee



CITY OF AURORA, ILLINOIS

RESOLUTION NO. _____
DATE OF PASSAGE _____

A Resolution approving a lease agreement with Lumanair, Inc. for certain real property located at the Aurora Municipal Airport.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the City of Aurora is the owner and operator of the Aurora Municipal Airport (airport); and

WHEREAS, Lumanair, Inc. has leased certain property at the airport from the City since 1982 and serves a fixed-base operator at the airport; and

WHEREAS, City and Lumanair, Inc. have negotiated a restated lease for certain real property located at the airport, as more fully set forth in Exhibit A to this Resolution; and

WHEREAS, the City finds the execution of the lease as set forth in Exhibit A is in the best interest of the City, its residents, and the airport.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows: that the amended and restated lease between the City and Lumanair, Inc. as set forth in Exhibit A shall be and hereby is approved; and further

BE IT RESOLVED, that the Mayor shall be and hereby is directed to execute the lease in substantially the same form as set forth in Exhibit A on behalf of the City; and further

BE IT RESOLVED, that the Airport Manager shall be and hereby is directed to administer the lease on behalf of the City consistent with the purpose and intention of the lease and this Resolution.

