

TOWN OF MAMMOTH LAKES

FIRST AMENDMENT TO FIXED BASE OPERATOR'S SERVICE CONTRACT

1. Parties and Date.

This First Amendment to Fixed Base Operator's Service Contract ("First Amendment") is made and entered into this 27th day of JUNE, 2012, by and between the Town of Mammoth Lakes, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 437 Old Mammoth Rd., Suite R, Mammoth Lakes, California, 93546 ("Town") and Hot Creek Aviation Management, LLC, a California limited liability company with its principal place of business at 1334 Airport Road, Mammoth Lakes, CA 93546 ("HCA"). Town and HCA are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. Recitals.

2.1 Town owns and operates the Mammoth-Yosemite Airport ("Airport"), a general and commercial aviation airport located adjacent to U.S. Highway 395, lying generally southeast of Mammoth Lakes, within Mono County.

2.2 HCA and Town are currently parties to that certain "Fixed Base Operator's Service Contract" dated September 30, 1998, originally entered into by and between Town and HCA's predecessor in interest, Hot Creek FBO Facilities Group, L.L.C. ("Agreement"), which Agreement is in full force and effect as of the date hereof.

2.3 Under the Agreement, HCA provides fixed base operator services to airport users, including fueling services, hangar rentals, airplane tie-downs, and other services.

2.4 Town and HCA each have asserted claims against the other regarding payments owed or obligations due under the Agreement.

2.5 Town has previously loaned HCA the sum of \$45,860 to help offset losses incurred during a previous temporary closure of the Airport ("Closure Loan"), pursuant to a "Service Contract Cooperation Agreement" dated May 29, 2008.

2.6 Due to changes in circumstances since the Agreement took effect, Town and HCA wish to substantially revise the terms under which HCA provides services at the Airport, settling all claims which may now exist between Town and HCA concerning the Agreement.

3. Term.

Notwithstanding the date of execution of this First Amendment, the effective date of this First Amendment shall be April 1, 2011.

4. Amendments to Agreement.

4.1 Section 1 of the Agreement is hereby amended to read as follows:

“Term. This service contract shall commence at midnight September 30, 1998 and terminate concurrently with the expiration (February 15, 2050) or termination of the “Lease Agreement for the Community Hangars at Mammoth Lakes Airport” dated August 21, 1997, entered into by and between Town and HCA’s predecessors in interest, Terrence E. Ballas and Hot Creek FBO Facilities Group, L.L.C., respectively, attached hereto as Exhibit “A” and incorporated herein by reference.”

4.2 Subsections (A), (B), (C), (E), and (F) of Section 3 of the Agreement are respectively amended to read as follows:

(A) Overnight Tie Down Fees – G.A. Ramp

Base \$0
Percentage payment starting with first dollar collected above base 0%

(B) Monthly Tie Down Fees – G.A. Ramp

Base \$0
Percentage payment starting with first dollar collected above base 0%

(C) Monthly Car Parking – Outdoor Lot

Base \$0
Percentage payment starting with first dollar collected above base 0%

(E) Part 135 Charter Ramp Fees, Pick-up and Drop-off of Passengers

Base \$0
Percentage payment starting with first dollar collected above base 0%

(F) Overnight (Transient) Indoor Rental – Third Parties Private Hangars

Base \$0

Percentage payment starting with first dollar collected above base 0%
Fee \$0

4.3 The first paragraph of Section 3 of the Agreement is hereby amended by replacing “sub-paragraph’s (A) – (F),” with “sub-paragraph (D),”.

4.4 The final three paragraphs of Section 3 of the Agreement, commencing with the paragraph beginning “Notwithstanding the above,” are hereby deleted.

5. Amendments to Other Agreements

5.1 The Parties acknowledge their mutual intent to enter into an amendment to the existing “HCA Hangar Agreement” between the Parties dated May 20, 2008, or a new hangar lease agreement, to increase the monthly rent paid to HCA by Town for “FBO Hangar #1” from \$3,000 to \$5,000. The Parties shall, as soon as is practicable after the execution of this First Amendment, execute such other documents as may be required to effectuate this increase in rent, provided that no such increase shall be valid or effective until and unless it is set forth in a written agreement signed by both Parties.

5.2 The Parties further acknowledge their mutual intent to enter into an amendment to the existing “Mammoth Lakes Airport Terminal Rental Agreement” between the Parties dated May 20, 2008, or a new lease agreement for the building currently occupied by HCA, to make the term of such lease concurrent with the term of the Agreement as modified by this First Amendment. The Parties shall, as soon as is practicable after the execution of this First Amendment, execute such other documents as may be required to effectuate this extension of lease term, provided that no such increase shall be valid or effective until and unless it is set forth in a written agreement signed by both Parties.

6. Other Financial Provisions

6.1 Notwithstanding the repayment schedule and mechanism set forth in the 2008 Service Contract Cooperation Agreement, HCA shall, not later than five (5) days after the full execution of this First Amendment by the Parties hereto, tender to Town the sum of \$45,860 in full repayment of the Closure Loan.

6.2 Notwithstanding the amendments described above or any provision of the Agreement to the contrary, HCA shall, not later than five (5) days after the full execution of this First Amendment by the Parties hereto, tender to Town the sum of \$29,504.46 as settlement and payment in full for all amounts owed to Town under the Agreement (other than the Closure Loan) for the period from April 1, 2011 through April 30, 2012.

7. Meet and Confer Regarding Future Amendments

7.1 Not later than June 30, 2024, the Parties shall meet and confer regarding possible further amendments to the Agreement. The Parties shall discuss such amendments as may be of interest to either Party, including but not limited to changes to the duration of the Agreement, financial terms, services to be offered by HCA, facility maintenance, construction of new facilities, and operational issues. Neither Party shall be obligated to agree to any proposed amendments.

7.2 At any time after June 30, 2013, at the request of HCA, Town shall meet and confer with HCA to accommodate the potential expansion and ground lease modifications of the facilities known as the F3 and F4 hangar pads. HCA and Town believe it is the highest and best use of the site to develop a hangar that can accommodate the largest class of business jets (e.g., currently a Gulfstream IV). HCA may request such discussions at any time, and the Parties hereby affirm that they shall cooperatively work together to modify the Agreement to include the hangar expansion as described herein.

8. Settlement of Outstanding Claims

The Parties acknowledge and agree that the provisions of this First Amendment constitute a full and complete settlement of all claims which either Party may have against the other Party in connection with the Agreement. Except with respect to any claims arising out of any breach of the requirements of this First Amendment, HCA, for itself and its successors and assigns, hereby releases and forever discharges Town and its officers, employees, agents, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this First Amendment and arising out of the Agreement, which HCA has as of the date of execution of this First Amendment, . The Parties hereby specifically waive the provisions of section 1542 of the California Civil Code (“Section 1542”) and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

The Parties hereby specifically acknowledges that each Party has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of the consideration provided to each other Party under this First Amendment.

HCA RF

Town _____

9. General Provisions

9.1 Except as modified by this First Amendment, the Agreement shall remain in full force and effect.

9.2 The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

9.3 If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

9.4 This First Amendment, along with the Agreement as modified herein, contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This First Amendment and the Agreement may only be modified by a writing signed by both parties.

9.5 This First Amendment shall be governed by the laws of the State of California. Venue shall be in Mono County.

9.6 Time is of the essence for each and every provision of this First Amendment.

9.7 This Agreement shall be binding on the successors and assigns of the parties.

9.8 Since the Parties or their agents have participated fully in the preparation of this First Amendment, the language of this First Amendment shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to HCA include all personnel and employees of HCA, except as otherwise specified in this First Amendment. All references to Town include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this First Amendment. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this First Amendment.

9.9 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

9.10 There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

9.11 If any portion of this First Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

9.12 HCA has all requisite power and authority to conduct its business and to execute, deliver, and perform this First Amendment. Each Party warrants that the individuals who have signed this First Amendment have the legal power, right, and authority to make this First Amendment and bind each respective Party.

9.13 This First Amendment may be signed in counterparts, each of which shall constitute an original.

[signatures on following page]

**SIGNATURE PAGE TO FIRST AMENDMENT TO
FIXED BASE OPERATOR'S SERVICE CONTRACT**

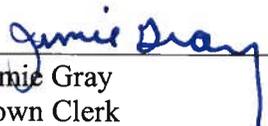
TOWN OF MAMMOTH LAKES

By: 
Dave Wilbrecht, Town Manager

**HOT CREEK
AVIATION MANAGEMENT, LLC**

By: 
Pat Foster, General Manager and
Senior Vice President

Attest:

By: 
Jamie Gray
Town Clerk

By: _____

EXHIBIT "A"

**LEASE AGREEMENT FOR THE COMMUNITY HANGARS
AT MAMMOTH LAKES AIRPORT**

[ATTACHED ON FOLLOWING PAGES]