



City of Rapid City  
4550 Terminal Road, Suite 102  
Rapid City, South Dakota 57703  
(605) 394-4195

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# Commercial Lease and Use Agreement

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City of Rapid City

*Rapid City Regional Airport*



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# COMMERCIAL LEASE AND USE AGREEMENT

**Lease and Use Agreement**  
between  
City of Rapid City, South Dakota  
and  
**Lessee Name**

This Lease and Use Agreement ("Agreement") made and entered into this [redacted] day of [redacted], 2021, by and between the City of Rapid City, South Dakota ("City") by and through the Rapid City Regional Airport Board ("Lessor") and [redacted] ("Lessee"). Lessor and Lessee may hereinafter be referred to as the "Parties".

## 1. INTRODUCTION

### 1.1. Recitals

- 1.1.1. WHEREAS, the City is the owner and operator of the Rapid City Regional Airport ("Airport") which is governed by and through Lessor;
- 1.1.2. WHEREAS, Lessee desires to lease from Lessor and use certain Airport land and/or Improvements and engage in certain Commercial Aeronautical Activities at the Airport;
- 1.1.3. WHEREAS, Lessor desires to lease certain Airport land and/or Improvements to Lessee and allow Lessee to engage in certain Commercial Aeronautical Activities at the Airport; and
- 1.1.4. NOW, THEREFORE, for and in consideration of the rents, fees, other charges, covenants, conditions, obligations, and agreements contained herein, and for other good and valuable consideration, Lessor hereby leases the Leased Premises to Lessee and Lessee hereby leases the Leased Premises from Lessor and Parties agree as follows:

## 2. DEFINITIONS

- 2.1.1. The words or phrases defined (and identified by use of a capital letter) in the Airport's Primary Guiding Documents (including, but not limited to, General Provisions, General Aviation Leasing/Rents and Fees Policy, General Aviation Minimum Standards, and Rules and Regulations), whenever used in this Agreement, shall be construed as defined therein unless (from the context) a different meaning is intended or unless a different meaning is specifically defined and more particularly ascribed to the use of such words or phrases.

## 3. LEASED PREMISES

### 3.1. Description

- 3.1.1. The Leased Premises consists of approximately [redacted] square feet of Contiguous Land, more fully described on Exhibit A, attached hereto and incorporated by reference. Exhibits may be amended from time to time by mutual agreement of the Parties.
  - 3.1.1.1. The address of the Leased Premises is [redacted], Rapid City, SD 57703.
  - 3.1.1.2. A legal description of the Leased Premises is provided in Exhibit A, attached hereto, made part hereof, and incorporated by reference.



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- 3.1.2. The following Improvements, which are owned (and not being leased) by Lessee, were located (situated) on the Land at the time this Agreement was executed by the Parties: private hangar and pavements within the leased boundaries (Hangar).
- 3.1.3. Lessee warrants and represents that Lessee has carefully and completely examined and inspected the Leased Premises and that Lessee fully understands its responsibilities and obligations with respect to the Leased Premises and this Agreement.
- 3.1.4. Lessee accepts the Leased Premises in an "as is," "where is" condition without representation or warranties from Lessor as to the condition, suitability, or sufficiency of the Leased Premises for engaging in the Commercial Aeronautical Activity described or contemplated by this Agreement.

### **3.2. Use**

- 3.2.1. In addition to Lessor leasing the Leased Premises described in Exhibit A to Lessee and Lessee leasing the Leased Premises from Lessor, in accordance with the covenants, conditions, obligations, and agreements contained herein, this Agreement grants Lessee the right and privilege to use the Leased Premises to engage (on a non-exclusive basis) in certain Commercial Aeronautical Activities at the Airport, subject to, and in accordance with, the terms and conditions of Lessee's General Aviation Operator Permit (Permit).
  - 3.2.1.1. If Lessee does not fully comply with the terms and conditions of Lessee's Permit, Lessee's right to use the Leased Premises to engage in Commercial Aeronautical Activities at the Airport will be revoked.
- 3.2.2. Lessee agrees not to engage in any other Aeronautical Activities on the Leased Premises or at the Airport other than those Commercial Aeronautical Activities specifically permitted under this Agreement without the prior express written consent of Lessor. Lessee shall not use and/or occupy the Leased Premises for any other purpose or in any manner contrary to the Airport Master Plan, the Airport Layout Plan (ALP), any applicable Regulatory Measure.
- 3.2.3. In addition to the prohibited Aeronautical Activities outlined in the Airport's Primary Guiding Documents, the following products, services, and/or facilities (or uses, occupancy, and/or purposes) are expressly prohibited on the Leased Premises:
  - 3.2.3.1. The provision of non-aeronautical products, services, or facilities (or any non-aeronautical uses, occupancy, and/or purposes).
  - 3.2.3.2. The provision of any products, services, or facilities (or uses, occupancy, and/or purposes) prohibited by (or against the) law.
- 3.2.4. Required Products and Services
  - 3.2.4.1. Lessee shall provide, at minimum, the products and services outlined in the Airport's Minimum Standards for an Avionics Maintenance Operator.



## COMMERCIAL LEASE AND USE AGREEMENT

### 3.3. Compliance

- 3.3.1. Lessee's use of the Leased Premises and the Airport is subject to the following requirements:
- 3.3.1.1. As may be promulgated or amended from time to time, Lessee shall comply with all:
    - 3.3.1.1.1. Regulatory Measures,
    - 3.3.1.1.2. Airport Sponsor Assurances and all other federal (including FAA and TSA) regulations and/or directives,
    - 3.3.1.1.3. Airport Primary Guiding Documents
    - 3.3.1.1.4. Airport policies, standards, and directives, and
    - 3.3.1.1.5. zoning, building, fire, safety, and other codes, ordinances, statues, and measures of any government agencies having jurisdiction.
  - 3.3.1.2. If any provision of this Agreement is found to be in conflict with any existing or future Regulatory Measures, the Airport Sponsor Assurances or other federal regulations and/or directives, Airport Primary Guiding Documents, Airport policies, standards, or directives, or any zoning, building, fire, safety, or other codes:
    - 3.3.1.2.1. The provision that establishes the higher or stricter standard shall prevail, or
    - 3.3.1.2.2. Lessor may modify or terminate this Agreement, in whole or part, to resolve the conflict.
  - 3.3.1.3. In the event of an alleged violation of the preceding paragraphs (or a related investigation relating to same), Lessee shall immediately notify Lessor of the alleged violation and the action(s) being taken by Lessee to resolve it.
  - 3.3.1.4. Any violation of the preceding paragraphs (or failure to comply in any way or manner) by Lessee shall be construed as a default or breach of this Agreement authorizing the termination of this Agreement in accordance with Section 12. of this Agreement.
    - 3.3.1.4.1. Lessor may also deny access to the Airport or the Leased Premises to Lessee or its representatives, officers, employees, agents, guests, suppliers, vendors, invitees, and contactors (or any other entity) for any violation of the preceding paragraphs (or failure to comply in any way or manner).
  - 3.3.1.5. Lessee shall pay any penalties, fines, costs, and expenses for any violation of the preceding paragraphs (or failure to comply in any way or manner).
  - 3.3.1.6. If penalties or fines are levied against Lessor or costs or expenses are incurred by Lessor relating to Lessee's violation of the preceding paragraphs (or Lessee's failure to comply in any way or manner), Lessee shall pay Lessor the penalty, fine, cost, or expense.



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### 4. TERM

#### 4.1. Original

4.1.1. The original term of this Agreement shall commence on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ("Commencement Date") and shall end on \_\_\_\_\_. ("Original Term") unless sooner terminated in accordance with this Agreement.

4.1.1.1. Upon termination of this Agreement, Lessee shall remove the Improvements owned by Lessee and return the effected portion(s) of the Leased Premises to its original condition and character, ordinary wear and tear excepted.

4.1.1.1.1. If Lessee does not remove said Improvements within 90 days, Lessor may do so at the risk, cost, and expense of Lessee.

4.1.1.2. If Lessee or Lessor does not remove the Improvements in accordance with Section 4.1.1.1, the Improvements shall revert to the ownership of the Board. Upon such reversion, Lessee shall perform all tasks to effectuate the transfer of ownership or title of the Improvements to Lessor at no cost to Lessor.

#### 4.2. Transition

4.2.1. If the Leased Premises are currently being used and/or occupied by others (existing Operator), upon execution of this Agreement, Lessee shall deliver a comprehensive transition plan to Lessor. Within 30 days of execution of this Agreement, Lessee shall complete its transition. Lessee shall work closely (and in a cooperative fashion) with the existing Operator to complete its transition while also ensuring that there is no interruption of the provision of products, services, and facilities at the Airport.

4.2.2. Upon termination or expiration of this Agreement, if another entity enters into an agreement with Lessor to use and/or occupy the Leased Premises, Lessee shall work closely (and in a cooperative fashion) with the other entity to complete a transition while also ensuring that there is no interruption of the provision of products, services, and facilities at the Airport.

### 5. RENTS AND FEES

#### 5.1. Rent

##### 5.1.1. Land

5.1.1.1. The annual rent for land for the first year of the Original Term of this Agreement is stipulated in Exhibit B. Rent.

##### 5.1.2. Adjustments

###### 5.1.1.2. Market Rent

5.1.2.1.1. Rent shall be adjusted to Market Value, based on the findings of a Rent Study, five years from the date of execution of the Agreement, and every five years thereafter. If the Airport has not obtained a Rent Study before the five year term for market value adjustment has



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passed, then the rent shall be adjusted to Market Value in the next calendar month after a Rent Study is obtained.

### Consumer Price Index (CPI)

5.1.2.1.2. Annual rent adjustments shall be made based on the percentage change (each year) in CPI. The term "CPI" as used herein shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for the Midwest Region, published monthly by the United States Department of Labor, Bureau of Labor Statistics (1982-84=100).

5.1.2.1.3. If CPI is discontinued or modified during the duration of this Agreement, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if CPI had not been discontinued or modified.

## 5.2. Fees and Other Charges

5.2.1. Lessee shall pay the fees and other charges identified in the Airport's Rates and Charges Schedule, which is subject to change from time to time, to Lessor when due and owing.

## 5.3. Payments

5.3.1. Payment of rents, fees, and other charges shall be made promptly without notice or demand, in legal tender of the United States of America. Payments shall be made by check or money order, payable to the Rapid City Regional Airport, and delivered or mailed to the Airport Administration office (attention accounts receivable) located at the Rapid City Regional Airport, 4550 Terminal Road, Suite 102, Rapid City, South Dakota, 57703 or to such other location as may be directed in writing by Lessor. Payments shall be absolutely net to Lessor and shall be made without any abatement, deductions, reductions, setoffs, or counterclaims of any kind.

5.3.1.1. Payment of rent shall be made by Lessee to Lessor annually (equal to the annual rent), quarterly (in installments equal to  $\frac{1}{4}$  of the annual rent), or monthly (in installments equal to  $\frac{1}{12}$  of the annual rent). Payment shall be made in advance on or before the 1<sup>st</sup> day of the year (if paid annually), the 1<sup>st</sup> day of the quarter (if paid quarterly), or the 1<sup>st</sup> day of each month (if paid monthly). The rent for any partial month shall be prorated.

5.3.1.2. Payment of fees shall be made by Lessee to Lessor monthly on or before the 10<sup>th</sup> day of each month for the previous month.

## 5.4. Late Charges

5.4.1. If rents, fees, or other charges are not received by Lessor by the close of business 30 days after due and owing, Lessor shall be entitled to collect interest on the past due amount in accordance with the Airport's Rates and Charges Schedule. Lessor shall also be entitled to recover all costs associated with collection of past due amounts, including without limitation, attorneys' fees and expenses and court cost. Interest and other fees and expenses associated with





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the collection of past due amounts shall become part of the rents, fees, and other charges due and owing to Lessor.

### 6. IMPROVEMENTS

- 6.1.1. Lessee shall not make any Improvements (including any changes or modifications, additions, or deletions) to the Leased Premises without the prior express written consent of Lessor.
  - 6.1.1.1. Prior to making any Improvements, Lessee shall submit to Lessor for its review and approval detailed plans, designs, and specifications, including cost estimates, a project schedule, and a list of the contractors selected by Lessee to make the approved Improvements. If applicable, Lessee shall complete and include Federal Aviation Administration 7460-1 Notice of Proposed Construction Alterations form.
- 6.1.2. The approved Improvements shall comply with all applicable federal, state, and local Regulatory Measures including, but not limited to, CFR Title 14 Part 77 Safe, Efficient Use, and Preservation of the Navigable Airspace. Lessee shall procure all building, fire, safety, and other permits necessary in connection with the approved Improvements from federal, state, and local agencies having jurisdiction.
- 6.1.3. Within 30 days after notification by the Lessor of its approval, Lessee shall commence work on the approved Improvements to the Leased Premises in accordance with the conditions of the Lessor's approval. Lessee shall be fully liable to the Lessor for any damage resulting from the work on or associated with the approved Improvements. All deliveries of materials and supplies shall be made through the access points and via routes designated by the Lessor.
- 6.1.4. All work completed shall be at Lessee's sole cost and expense, free and clear of liens for labor and material, and Lessee shall indemnify Lessor, as required by the General Aviation Minimum Standards.
- 6.1.5. Lessee shall furnish its Performance Bond in the form acceptable to Lessor in the amount of 100% of its total construction costs to guarantee completion of the Improvements.
- 6.1.6. Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, material men, and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with the performance of any work on or associated with the approved Improvements, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them. Lessee shall also pay all liens held by subcontractors and provide proof of payment of excise tax.
- 6.1.7. During the term of this Agreement, Lessee, at its sole cost and expense, shall maintain, replace, and keep in good repair and operating condition all Improvements.

### 7. LESSEE'S RIGHTS AND PRIVILEGES

#### 7.1. *Use of the Airport*

- 7.1.1. Lessee is allowed to use the Airport and its appurtenances together with all public use areas and facilities, in common with others, on a non-exclusive basis,



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and subject to Section 3.3 of this Agreement, for the purposes authorized in Sections 3.2 of this Agreement.

- 7.1.2. Lessee shall be solely liable for and shall reimburse Lessor for all costs and expenses incurred by Lessor, for the repair of any damage caused by Lessee to the Airport and its appurtenances and/or public areas or facilities at the Airport, excluding ordinary and reasonable wear and tear.

### **7.2. Ingress and Egress**

- 7.2.1. Lessee, its representatives, officers, employees, agents, guests, suppliers, vendors, invitees, and contactors shall have the right of ingress and egress to and from the Leased Premises. However, if the privileges granted by this provision adversely affect or conflict with others, Lessor shall have the right to restrict and/or limit the hours of and/or the manner in which such ingress and/or egress may be exercised.

### **7.3. Quiet Enjoyment**

- 7.3.1. Subject to Lessee's payment of rents, fees, and other charges when due and owing and the performance of the covenants, conditions, obligations, and agreements to be observed and performed by Lessee, Lessee shall peacefully and quietly have, hold, and enjoy the Leased Premises for the term of this Agreement free from hindrance or interruption by Lessor. Lessee agrees temporary inconveniences such as noise, disturbances, traffic detours and the like, resulting from, caused by, arising out of, or connected (or associated) with the construction of Airport Improvements, or other Airport events, shall not constitute a breach of quiet enjoyment of the Leased Premises.

### **7.4. Fixtures and Equipment**

- 7.4.1. Lessee may use such fixtures, Equipment, tools, machinery, or other items of personal Property as it deems necessary in connection with Lessee's use of the Leased Premises, as authorized in this Agreement. Lessee shall retain title to Lessee's personal Property.
- 7.4.2. Lessor shall have no liability or responsibility for any theft, misappropriation, or damage to any personal Property belonging to Lessee or others.
- 7.4.3. Lessee shall be entitled to remove from the Leased Premises any fixtures, Equipment, tools, machinery, or other items of personal Property located thereon; provided, however, that the items removed are not required by the Airport's General Aviation Minimum Standards in order to engage in the authorized Commercial Aeronautical Activities. If a facility or building is damaged from removal of personal Property, it shall be restored by Lessee to the same condition that existed before the installation or placement of the personal Property.
- 7.4.4. Lessee shall remove all fixtures, Equipment, tools, machinery, and other items of personal Property from the Leased Premises upon termination or expiration of this Agreement. If Lessee fails to remove such Property from the Leased Premises upon termination or expiration of this Agreement, then Lessor retains the right to remove or cause to be removed, at Lessee's sole risk, cost, and expense and without any liability to Lessor for resulting damage, all fixtures, Equipment, tools, machinery, and other items of personal Property and Lessee



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agrees to pay Lessor for such costs and expenses incurred by Lessor within 15 days after receipt of an invoice from Lessor. Lessor may dispose of any fixtures, Equipment, tools, machinery, and other items of personal Property removed from the Leased Premises in accordance with the Airport's Primary Guiding Documents and/or Regulatory Measures.

### 8. LESSOR'S RIGHTS AND PRIVILEGES

#### 8.1. *Performance of Acts*

8.1.1. All acts performable under this Agreement by Lessor may, at the option of Lessor and without right of objection by Lessee, be performed by a representative of Lessor.

#### 8.2. *Access to the Leased Premises*

8.2.1. Lessor shall have the right to enter the Leased Premises (including all buildings, structures, and Improvements located thereon) at any time and for any purpose connected with the performance of Lessee and/or Lessor's obligations under this Agreement. Lessor shall provide 48 hours advanced notice (and a reason) prior to entering the Leased Premises except when Lessor determines emergency circumstances require immediate entry without prior notice. Lessor shall provide notice to Lessee in accordance with Section 37 of this Agreement.

#### 8.3. *Exercising Rights*

8.3.1. No exercise of any rights reserved by Lessor shall be deemed or construed as an eviction of Lessee or others nor shall such exercise be grounds for any abatement of rents, fees, or other charges nor serve as the basis for any claim or demand for damages of any nature whatsoever.

### 9. LESSEE'S OBLIGATIONS

#### 9.1. *On-Going Commercial Aeronautical Activity*

9.1.1. Lessee shall maintain an on-going Commercial Aeronautical Activity authorized in this Agreement at the Leased Premises throughout the term of this Agreement.

#### 9.2. *Conduct*

9.2.1. Lessee shall be responsible for the conduct, demeanor, and appearance of its representatives, officers, employees, agents, guests, suppliers, vendors, invitees, and contractors. Upon receipt of a complaint, Lessee shall take all reasonable steps to immediately resolve the complaint.

9.2.2. Lessee's personnel shall cooperate with Lessor or its representatives as well as representatives of government agencies or entities including police, fire, and other emergency services personnel, the military, and others (e.g., lessees, sublessees, and users of the Airport) in dealing with emergencies at the Airport and on the Leased Premises.

#### 9.3. *Disturbance*

9.3.1. Lessee shall conduct its Commercial Aeronautical Activities in an orderly and proper manner so as to not annoy, disturb, or interfere with (or be a nuisance or menace to) others. Lessee agrees it will not in any manner interfere with the landing and taking off of Aircraft at the Airport or otherwise constitute or allow a hazard to Aircraft or others to exist.



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- 9.3.2. Lessee agrees that it will not disturb others by creating or permitting any disturbance or any unusual or excessive noise, vibration, electromagnetic emission, or other undesirable condition.
- 9.3.3. Lessee shall not cause or permit to be caused by any act or practice, by negligence, omission, or otherwise that would adversely affect the environment or do anything or permit others to do anything on the Leased Premises that would violate any Regulatory Measure. Lessee shall prevent escape of hazardous fumes, odors, smoke, gas, or other hazardous substances from the Leased Premises.

### **9.4. Taxes, Assessments, and Fees**

- 9.4.1. Lessee shall pay and discharge all taxes, assessments, and other fees without offset or abatement, whether general or special, ordinary or extraordinary, charged by any government or quasi-governmental entity relating to the Leased Premises and/or the Improvements thereto or located (situated) thereon and/or the activities taking place on the Leased Premises including, but not limited to, leasehold or possessory interest tax, personal Property, income, excise, or any other tax, assessment, or fee that is (or may be) levied, exacted, or imposed (or become due and owing) during the term of this Agreement.

### **9.5. Utilities**

- 9.5.1. Lessee shall pay all fees and charges due and owing for all utilities (including connections) serving the Leased Premises. Such services shall include, but not be limited to: water, gas, electricity, sanitary sewer, telephone, Internet, etc.

### **9.6. Costs, Expenses, and Other Charges**

- 9.6.1. Lessee shall pay all costs, expenses, and other charges of every kind and nature whatsoever relating to the Leased Premises, the Improvements thereto or located (situated) thereon, and/or the activities taking place on the Leased Premises which may arise or become due and owing during the term of this Agreement.

### **9.7. Maintenance**

- 9.7.1. Lessee shall, at its sole risk, cost, and expense, diligently, properly, and promptly maintain, repair or restore (or replace), and clean (in a good and workmanlike manner) the Leased Premises, the Improvements thereto or located (or situated) thereon including pavements and utilities, and its personal Property (fixtures, Equipment, tools, and machinery) including ordinary or extraordinary, minor or major, structural or non-structural, aesthetic or nonesthetic, etc., in good repair and serviceable condition and in a clean, neat, and orderly state. Lessee is responsible for all maintenance of landscaping, lawn, pavement upkeep, snow removal, and trash removal on the Leased Premises.
  - 9.7.1.1. In the event Lessee fails to diligently, properly, and promptly maintain, repair or restore (or replace), or clean (in a good and workmanlike manner) the Leased Premises and the Improvements thereto or located (or situated) thereon including pavements and utilities, Lessor shall notify Lessee and if Lessee fails to correct the condition within 30 days of Lessor's written notice, Lessor may enter



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the Leased Premises and the Improvements thereto or located (or situated) thereon and perform the necessary maintenance, repair or restoration (or replacement), or cleaning services and Lessee shall pay Lessor such costs and expenses within 15 days upon receipt of an invoice. Nothing in this Agreement shall be construed, in any way, that Lessor has an obligation or is required to perform any maintenance, make any repair or restoration (or replacement), or clean any portion of the Leased Premises or the Improvements thereto or located (or situated) thereon including pavements and utilities.

9.7.1.1.1. In an emergency, Lessor may enter the Leased Premises and the Improvements thereto or located (or situated) thereon, without notice, and perform the necessary maintenance, repair or restoration (or replacement), or cleaning services.

### **9.8. Non-Discrimination**

9.8.1. Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious opinion or affiliation, race, creed, color, national origin, sex, age, or disability and further, Lessee shall include a similar clause in all subcontracts.

9.8.1.1. Lessee agrees Lessor has the right to take such action against Lessee as the government may direct to enforce Section 9.8.1.

### **9.9. Based Aircraft Report**

9.9.1. Lessee shall maintain and furnish on or before the 10<sup>th</sup> of January each year (or upon request of Lessor) a report identifying all Based Aircraft on the Leased Premises. The report shall identify the Leased Premises (including billing address) and the number and type (or category) of Aircraft (single-engine piston, multi-engine piston, turboprop, jet, helicopter, gliders, military, ultra-light, etc.) stored or based with Lessee on the Leased Premises. Lessee shall provide written notice to Lessor within 30 days of any changes to the Based Aircraft report.

### **9.10. Ownership Status**

9.10.1. Lessee shall provide Lessor with necessary documentation to reflect ownership of Lessee at the time of execution of this Lease Agreement. Lessee shall timely notify Lessor of changes in Lessee's ownership or management, or as requested by Lessor.

### **9.11. Operational Status**

9.11.1. Lessee shall notify Lessor immediately of any changes or modifications to Lessee's operational status.

### **9.12. Signage and Lighting**

9.12.1. Lessee shall not erect, paint upon, attach, exhibit or display in, on, or about the Leased Premises any sign (or install or operate any exterior light or lighting on the Leased Premises) without obtaining the: (1) appropriate permits and approvals from agencies having jurisdiction and (2) the prior express written consent of the Airport Executive Director.





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### 9.13. *Special Events*

- 9.13.1. Lessee shall not conduct or hold special events at the Airport without obtaining: (1) appropriate permits and approvals from agencies having jurisdiction and (2) the prior express written consent of the Airport Executive Director.

## 10. REQUIRED FAA CLAUSES

### 10.1. *Non-exclusive Use*

- 10.1.1. Lessor hereby grants Lessee the non-exclusive use of the Airport (together with all Improvements, runways, ramps, conveniences and appurtenances thereunto) in common with Lessor and other present and future lessees of Lessor, except such Improvements specifically leased herein and as may be leased by Lessor to other lessees presently or in the future.
- 10.1.2. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States Government during the time of war or national emergency.
- 10.1.2.1. If any such agreement is executed, the provisions of this instrument shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States Government, relative to the maintenance, operation or development of the Airport.
- 10.1.3. It is clearly understood by Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating Aircraft on the Airport from performing any services on its own Aircraft with its own regular Employees (including but not limited to, maintenance and repair) that it may choose to perform.

### 10.2. *Non-Discrimination*

- 10.2.1. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event Improvements are constructed, maintained, or otherwise operated on the Leased Premises described in this Agreement for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such Improvements in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Regulations may be amended.
- 10.2.2. Notwithstanding any other provision of this Agreement, during the performance of this Agreement, Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration of this Agreement does hereby covenant and agree, as a covenant running with the land, that: (1) No person on the grounds of race, color, religion, sex, familial status or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Leased Premises; (2) In the construction of any Improvements on, over or under the Leased Premises, and the furnishing of services therein or thereon, no person



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on the grounds of race, color, religion, sex, familial status or national origin shall be excluded from participation in, or denied the benefits of, such activities, or otherwise be subjected to discrimination; (3) In the breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Agreement and to reenter and repossess the Leased Premises and hold the same as if this Agreement had never made or issued. This provision does not become effective until the procedures of 49 C.F.R. Part 21 have been followed and completed, including expiration of appeal rights; (4) Lessee for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event Improvements are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such Improvements and services in compliance with all other requirements imposed pursuant to 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as said Regulations may be amended.

- 10.2.3. Lessee assures it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Lessee or its transferee for the period during which Federal assistance is to provide, or is in the form of personal Property or real Property or interest therein or structures or Improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods:
- 10.2.3.1. the period during which the Property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits, or
  - 10.2.3.2. the period during which Lessor or any transferee retains ownership or possession of the Property.
- 10.2.4. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.
- 10.2.5. Lessee agrees it will practice non-discrimination in its activities and will provide Disadvantaged Business Enterprise (DBE) participation as required by the sponsor, in order to meet Lessor's goals, or required by the FAA in order to obtain an exemption from the prohibition against long-term exclusive leases.

### 10.3. **Reservations**

- 10.3.1. Lessor reserves the following rights:
- 10.3.1.1. Nothing contained within this Agreement shall be construed to limit the use of any area of the Airport by Lessor or to prevent any FAA, Department of Homeland Security, Transportation Security Administration, Police Department, other law enforcement officers, code enforcement officers, or Airport Emergency Services personnel from acting in official capacities.



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- 10.3.1.2. Lessor reserves the right for the use of the Airport by others who may desire to use the same pursuant to applicable Regulatory Measures pertaining to the Airport and such use.
- 10.3.1.3. Lessor reserves the right to designate specific Airport areas for activities in accordance with the currently adopted Airport Layout Plan (ALP). Such designation shall give consideration to the nature and extent of current and/or future activities and the land and/or Improvements that may be available and/or used for specific activities and shall be consistent with the safe, secure, orderly, and efficient use of the Airport.
- 10.3.1.4. It is the policy of Lessor that any occupancy, use, and/or development (construction or modification) of land and/or Improvements which is inconsistent with the ALP is undesirable. Any development that is substantially different than that depicted on the ALP could adversely affect the safe, secure, orderly, or efficient use of the Airport. Nothing contained in this Agreement shall require or obligate Lessor to apply to the FAA for approval of the revision of the ALP on behalf of a current or prospective Operator, Lessee, Sublessee, or user of the Airport.
- 10.3.4.5. Lessor reserves the right to develop and make any Improvements and/or repairs on, at, or to the Airport it deems necessary. Lessor will provide advance notice of the date and time to impacted parties that such development, improvements, and/or repairs will be made. Lessor shall not be obligated to reimburse or compensate any Operator, Lessee, Sublessee, or other entity for any cost and/or expense incurred, loss of revenue, or inconvenience that may result from such development, improvement, and/or repair.
- 10.3.4.6. Lessor (and its representatives, officers, officials, employees, agents, guests, suppliers, vendors, invitees, contractors and volunteers) shall not be responsible for loss, injury, or damage to persons or Property at the Airport related in any way to any natural disaster or illegal activity.
- 10.3.4.7. Lessor reserves the right to prohibit any entity from using the Airport or engaging in activities at the Airport (and/or Lessor may suspend and/or revoke any privileges granted to any entity) upon determination by Lessor that such entity has not complied with the Airport's Primary Guiding Documents, applicable Regulatory Measures, directives issued by Lessor, or has otherwise jeopardized the safety or security of entities utilizing the Airport or the land and/or Improvements located at the Airport.
- 10.3.1.8. During time of war or national emergency, Lessor shall have the right to enter into an agreement with the United States Government for military use of part or all of the landing area, the publicly owned air navigation facilities, and/or other areas or facilities of the Airport. If any such agreement is executed, any agreement between Lessor and an Operator or Lessee, insofar as it is inconsistent with the





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agreement between Lessor and the United States Government, shall be suspended, without any liability on the part of Lessor to the Operator or Lessee.

- 10.3.1.9. Lessor will not relinquish the right to take any action Lessor considers necessary to protect the aerial approaches of the Airport against obstruction or to prevent a person from erecting or permitting to be erected any facility or other structure which might limit the usefulness of the Airport or constitute a hazard to Aircraft.
- 10.3.1.10. Lessor will not waive any sovereign, governmental, or other immunity to which Lessor may be entitled nor shall any provision of any Agreement be so construed.
- 10.3.1.11. Lessor will not submit to the laws of any state other than those of the State of South Dakota.
- 10.3.1.12. Lessor is under no obligation to provide financing and/or make any improvements to Airport land and/or Improvements to facilitate any development or consummate any Agreement proposed by a current or prospective Operator, Lessee, or Sublessee.
  - 10.3.1.12.1. Lessor is under no obligation to: (a) pursue federal, state, or other available funds to contribute to such development or (b) provide matching funds to secure such funding.
- 10.3.1.13. Lessor reserves the right to take such actions as it may deem necessary, appropriate, and/or in the best interest of Lessor including preserving the assets of Lessor and the Airport, protecting the safety and security of the people who work at and/or use the Airport, and maintaining the integrity of Lessor's and/or Airport's mission, vision, and values.

## 11. DEFAULTS AND REMEDIES

### 11.1. *Default*

- 11.1.1. In addition to the defaults and breaches identified in this Agreement, the occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Lessee.
  - 11.1.1.1. The filing by Lessee of a voluntary petition in bankruptcy.
  - 11.1.1.2. The assignment of substantially all of Lessee's assets for the benefit of Lessee's creditors.
  - 11.1.1.3. A court making or entering any decree or order:
    - 11.1.1.3.1. adjudging Lessee to be bankrupt or insolvent.
    - 11.1.1.3.2. approving a properly filed petition seeking reorganization of Lessee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof.
    - 11.1.1.3.3. appointing a receiver, trustee or assignee of Lessee in bankruptcy or insolvency or for its Property, or



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- 11.1.1.3.4. directing the winding up or liquidation of Lessee and such decree or order shall continue for a period of 60 days.
- 11.1.1.4. The filing of any lien against the Leased Premises resulting from any act or omission of Lessee which is not discharged or contested in good faith as determined by Lessor by proper legal proceedings within 30 days of receipt of actual notice by Lessee, unless Lessee posts a bond within this time period equal to the amount of the lien.
- 11.1.1.5. The voluntary abandonment by Lessee of the Leased Premises or Lessee's failure to maintain the on-going Commercial Aeronautical Activity authorized in this Agreement at the Leased Premises for a period of 30 days or more.
- 11.1.1.6. The transfer of Lessee's interest herein by other operation of law.
- 11.1.1.7. Lessee becomes in arrears in the payment of the whole or any part of the amount(s) agreed to be paid for a period of 30 days after the time such payments become due and owing.
- 11.1.1.8. The falsification by Lessee of any of its records so as to deprive Lessor of any of its rights, privileges, rents, fees, or other charges under this Agreement or any other agreement between the Parties.
- 11.1.1.9. The failure by Lessee to perform any of the covenants, conditions, obligations, and agreements contained herein or in any other agreement between the Parties where the failure continues for a period of 30 days after written notice from Lessor.
- 11.1.1.10. A sale of stock in Lessee's corporation which divests the present stockholders of controlling interest.
- 11.1.1.11. The sale, assignment or transfer or the attempted sale, assignment or transfer of this Agreement by Lessee. Negotiations by Lessee for the sale, assignment or transfer of this Agreement shall not be construed as "attempted transfer".

### 11.2. Remedies

- 11.2.1. In the event a default or breach of this Agreement by Lessee is not cured within 30 days of receiving notice from Lessor, Lessor may, in addition to any other remedies available to Lessor, terminate this Agreement, in whole or in part.
  - 11.2.1.1. If the default or breach concerns a failure to make payments to Lessor, however, no written or other notice of default or breach shall be required. If payments to Lessor are in arrears for a period of 60 days after the payments become due and owing, then Lessee shall be in default under this Agreement.
  - 11.2.1.2. If the default or breach concerns a failure to comply with Section 3.2. (Use) and Lessee has not cured the default or breach within 15 days of receiving notice from Lessor, Lessee shall be in default or breach under this Agreement and Lessor may obtain injunction against Lessee or may terminate this Agreement.
- 11.2.2. If this Agreement is terminated for any default or breach by Lessee, any payments made to Lessor shall be forfeited to Lessor and Lessee shall have no



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right to recover any other payments. This forfeiture shall not diminish nor limit Lessor's right to recover such damages resulting from the default or breach by Lessee.

- 11.2.2.1. If this Agreement is terminated for any default or breach by Lessor (in accordance with Section 12 of this Agreement), any payments made to Lessor shall be prorated.
- 11.2.3. Notwithstanding the foregoing, no failure to perform or delay in performance which is caused by any war, national emergency, act of nature, or natural disaster shall be deemed an event of default or breach.
- 11.2.4. In addition to the termination and forfeiture right described in the preceding paragraph, Lessor shall have the following rights and remedies upon default or breach by Lessee:
  - 11.2.4.1. the recovery of any unpaid rent, fees, and other charges due and owing at the time of termination, plus any unpaid rent, fees, or other charges that would have been earned or made if Lessee had not defaulted or breached this Agreement;
  - 11.2.4.2. the recovery of any damages, costs, fees, and expenses incurred by Lessor as a result of the default or breach of this Agreement by Lessee, including attorneys' and court fees, costs, and expenses.
  - 11.2.4.3. the removal, storage, and/or disposal of fixtures, Equipment, tools, machinery or other items of personal Property from the Leased Premises, at Lessee's sole risk, cost, and expense and without liability to Lessor for resulting damage in which case Lessee shall pay Lessor the costs and expenses thereof within 15 days upon receipt of an invoice;
  - 11.2.4.4. placing a lien on (or against) the Leased Premises; and
  - 11.2.4.5. any other right or remedy, legal or equitable, that Lessor is entitled to under applicable law including, but not limited to, injunctive relief.
- 11.2.5. No termination shall relieve Lessee of the obligation to deliver and perform all outstanding obligations and requirements prior to the effective date of the termination and Lessee's liabilities under this Agreement shall continue.
- 11.2.6. In the event of any such termination as above enumerated, Lessor shall have the right at once and without further notice to Lessee to enter and take full possession of the Leased Premises and any and all Improvements thereto or located (or situated) thereon including pavements and utilities. Upon the termination of this Agreement for any reason, Lessee shall surrender the Leased Premises and any and all Improvements thereto or located (or situated) thereon including pavements and utilities to Lessor in the same condition as when received, with the exception of ordinary and reasonable wear and tear.
- 11.2.7. All of the rights and remedies given to Lessor in this Agreement are cumulative and no one is exclusive of any other. Lessor shall have the right to pursue any or all remedies provided by any applicable Regulatory Measures, whether legal or equitable in nature, whether stated in this Agreement or not.



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### 12. TERMINATION BY LESSEE

- 12.1.1. Lessee, if current and not in default or breach of this Agreement (in good standing) and subject to providing written notice to Lessor, Lessee may terminate this Agreement after the occurrence of one or more of the following events:
- 12.1.1.1. permanent abandonment or closure of the Airport.
  - 12.1.1.2. the lawful assumption by the United States Government, or any authorized Agency thereof of the operation, control, use, or occupancy of the Airport, or any substantial part or parts thereof, in such manner as to substantially restrict Lessee's Commercial Aeronautical Activities at the Airport for a period of at least 90 days.
  - 12.1.1.3. the default by Lessor in the performance of any covenants, conditions, obligations, and agreements contained herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of 30 days after receipt from Lessee of written notice to remedy same.
- 12.1.2. Upon termination by Lessee, Lessee shall remove the Improvements owned by Lessee and return of the effected portion(s) of the Leased Premises to its original condition and character, ordinary and reasonable wear and tear excepted.

### 13. CONDEMNATION OR EMINENT DOMAIN

#### 13.1. General

- 13.1.1. In the event of the acquisition by condemnation or the exercise of the power of eminent domain (by any governmental or other permitted Agency to take property for public use) of any interest in all or a portion of the Leased Premises, Lessee shall not institute any action or proceeding or assert any claim against Lessor for Compensation or consideration of any nature whatsoever, and any provision herein contained contrary to the provisions of this Section shall have no force or effect.
- 13.1.2. All Compensation awarded or paid upon a total or partial acquisition of the Leased Premises (which for these purposes shall not include Compensation from Lessor) shall belong to and be the Property of Lessor without any participation by Lessee.
- 13.1.2.1. Nothing contained herein shall be construed or preclude Lessee from recovering directly from the condemning Agency the value of any claim, as may exist, for loss of business, or depreciation, damage, or cost of removal, or for the value of Lessee's Property.

#### 13.2. Total

- 13.2.1. In the event of the acquisition by condemnation or eminent domain of all interest in the Leased Premises, Lessee's obligation to pay rent and the leasehold estate created shall cease and terminate as of the date title of the Leased Premises is transferred to the governmental or other permitted Agency taking the Leased Premises for public use.



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### 13.3. *Substantial and Partial*

13.3.1. In the event of the acquisition by condemnation or eminent domain of a portion of interest in the Leased Premises, Lessee's obligation to pay rent shall cease and terminate as it pertains to the specific portion of the Leased Premises taken as of the date title of the Leased Premises is transferred to the governmental or other permitted Agency taking the Leased Premises for public use.

13.3.1.1. In the event of substantial condemnation or eminent domain which prevents or substantially impairs the conduct of Lessee's Activities and equates to 30% or more of the total Leased Premises, Lessee may, at Lessee's option, terminate this Agreement. If terminating this Agreement, Lessee shall notify Lessor of termination within 30 days of notice to acquire a portion of the Leased Premises.

13.3.1.1.1. If Lessee does not notify Lessor of termination, the condemnation or eminent domain shall be considered a partial acquisition.

13.3.1.2. In the event of partial condemnation or eminent domain, Exhibit B. Rent by Component Table shall be adjusted as applicable.

### 14. **FORCE MAJEURE**

14.1.1. If either party hereto shall be delayed, hindered in, or prevented from, the performance of its obligations under this Agreement by reason of war, national emergency, natural disaster or other similar reason, or not the fault of such party ("Permitted Delay"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay.

14.1.2. Notwithstanding the foregoing, any extension of time sought by Lessee for a Permitted Delay shall be conditioned upon it providing written notice of such Permitted Delay to Lessor within 10 days of the event causing the Permitted Delay.

14.1.3. In no event shall Lessee be relieved of its obligations to pay Lessor the rents, fees, or other charges due and owing, as set forth in this Agreement.

### 15. **NO WAIVER**

15.1.1. No failure on the part of Lessor to enforce any of the covenants, conditions, obligations, and agreements contained herein shall be construed as or deemed to be a waiver of the right to enforce such covenants, conditions, obligations, and provisions.

15.1.2. The acceptance by Lessor of any rent, fee, or other payment shall not be construed as or deemed to be a waiver by Lessor of any breach by Lessee of any covenant, condition, obligation, or agreement contained herein and shall not be deemed a waiver of Lessor's right to terminate this Agreement.

15.1.3. Lessee waives any claims against Lessor for loss of anticipated profit in any suit or proceeding involving this Agreement or any part thereof.

### 16. **LICENSES, CERTIFICATES, AND PERMITS**

16.1.1. At Lessee's own cost and expense, Lessee shall obtain any and all licenses, certificates, and permits from all agencies having jurisdiction that may be



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necessary to construct, use, and/or occupy Improvements on the Leased Premises.

- 16.1.2. Lessee shall not do or permit others to do anything on the Leased Premises which is in violation of, or prohibited by any, license, certificate, or permit.
- 16.1.3. If the attention of Lessee is called to any such violation, Lessee will immediately notify Lessor and cease and desist from and immediately cause to be corrected such violation. Lessee shall pay all penalties, fines, or costs associated with any such violation.

### 17. INSURANCE

- 17.1.1. Lessee shall, at its sole risk, cost, and expense, procure, keep, and maintain all insurance required by Regulatory Measures and the Airport's Primary Guiding Documents.
- 17.1.2. Such insurance shall be kept in full force and effect at all times during the term of this Agreement.
- 17.1.3. Such insurance shall name Lessor as additional insured.
- 17.1.4. Current certificates of insurance shall be provided to Lessor to this effect.
- 17.1.5. Liability policies shall contain, or be endorsed to contain, the following provisions.
  - 17.1.5.1. "City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, and its representatives, officers, officials, employees, agents, guests, suppliers, vendors, invitees, contractors and volunteers are to be covered as additional insured with respect to: liability arising out of activities performed by or on behalf of entity; premises owned, leased, occupied, or used by entity; or vehicles, equipment, or aircraft owned, leased, hired, borrowed, or operated by entity. Such insurance shall provide primary coverage and shall not seek any contribution from any insurance or self-insurance carried by Agent or the City of Rapid City."
  - 17.1.5.2. "Such insurance, as to the interest of the City only, shall not be invalidated by any act or neglect or breach of contract of entity. Any failure to comply with reporting or other provisions of the policies, including any breach of warranty, shall not affect coverage provided to City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, and their representatives, officers, officials, employees, agents, guests, suppliers, vendors, invitees, contractors and volunteers. Entity's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability."
  - 17.1.5.3. "Coverage shall not be suspended, voided, or cancelled by either party or reduced in coverage or in limits except after 30 days prior written notice, 10 days prior written notice for cancellation for non-payment of premium, by certified mail, return receipt requested, has been given to Board."





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- 17.1.6. Companies issuing the insurance policy or policies shall have no recourse against Lessor for payment of premiums or assessments for any deductibles that are the sole responsibility and risk of Lessee.
- 17.1.7. Lessee and Lessor each waives any and all rights of recovery against the other, or against the representatives, officers, officials, employees, agents, guests, suppliers, vendors, invitees, contractors and volunteers of the other, for the loss of or damage to such waiving party or its Property of others under its control, where such loss or damage is insured against under any Property insurance policy in force at the time of such loss or damage. Lessee and Lessor shall give notice to their respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the lease.

### 18. DAMAGE

- 18.1.1. If any part of the Leased Premises, the Airport, or associated Property is damaged or destroyed by Lessee, its representatives, officers, employees, agents, guests, suppliers, vendors, invitees, and contractors, Lessee shall diligently, properly, and promptly repair or restore (or replace) to the condition and character of the Leased Premises, the Airport, or associated Property immediately prior to damage.
- 18.1.2. If Lessee fails to diligently, properly, and promptly repair or restore (or replace) the damaged or destroyed part of the Leased Premises, the Airport, or the associated property, Lessee shall pay to Lessor, upon demand, the amount that Lessor determines is necessary to properly repair or restore (or replace) the damaged or destroyed part of the Leased Premises, the Airport, or associated property and upon receipt of said payment, Lessor will repair or restore (or replace) the damaged or destroyed part of the Leased Premises, the Airport, or associated property.
- 18.1.3. If any part of the Leased Premises is damaged or destroyed during the term of this Agreement, Lessor shall be under no obligation to repair or restore (or replace) the damaged or destroyed portion of the Leased Premises unless Lessor is responsible for such damage or destruction.

### 19. INDEMNIFICATION

- 19.1.1. Lessee shall defend, indemnify, save, protect, and hold harmless Lessor and its representatives, officers, officials, employees, agents, guests, suppliers, vendors, invitees, contractors, and volunteers from any and all claims, demands, damages, fines, obligations, suits, judgments, penalties, causes of action, losses, liabilities, administrative proceedings, arbitration, or costs (or expenses) at any time received, incurred, or accrued by Lessor as a result of, or arising out of Lessee's Activities, actions, or inactions. In the event a party indemnified hereunder is in part responsible for the loss, the indemnitor shall not be relieved of the obligation to indemnify; however, in such a case, liability shall be shared in accordance with South Dakota principles of comparative fault.
- 19.1.2. Lessee shall accept total responsibility (and shall defend, indemnify, save, protect, and hold harmless Lessor and its representatives, officers, officials, employees, agents, guests, suppliers, vendors, invitees, contractors, and volunteers) for any environmental contaminating accident or incident at the



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Airport resulting from, arising out of, or connected (or associated) with Lessee's activities.

- 19.1.3. Nothing herein shall constitute a waiver of any protection available to Lessor under South Dakota governmental immunity or similar statutory provisions.

### **20. SUBLEASE AND SUBCONTRACTS**

- 20.1.1. Lessee shall not Sublease the Leased Premises (or any part of the Leased Premises) or subcontract any product, service, or facility Lessee provides or is permitted to provide under this Agreement, without the express written consent of the Lessor.
- 20.1.2. Prior to giving such consent, Lessee shall submit the written agreement between Lessee and subcontractor to the Lessor for approval. In addition, Lessor may require an application be completed and all relevant and applicable information relating to the requested subcontract be provided to the Lessor.
- 20.1.3. A contract made contrary to the requirements of this Section shall be null and void. Unless otherwise stated in the written consent, a subcontract is subject to all of the covenants, conditions, obligations, and provisions of this Agreement.
- 20.1.4. A Sublessee may not occupy the Leased Premises before the Lessor consents to the Sublease in writing.

### **21. SALE, ASSIGNMENT OR TRANSFER**

- 21.1.1. Lessee shall not sell, assign, or transfer its interest in the Leased Premises or this Agreement, in whole or in part, without the prior express written consent of Lessor.
- 21.1.1.1. Any such sale, assignment, or transfer without Lessor's prior express written consent shall be null and void and, at Lessor's option, shall constitute a default or breach of this Agreement.
- 21.1.2. Written consent of Lessor will not be provided if Lessee is not current and not in default or breach of this Agreement (i.e., not in good standing) and the Improvements are not in good repair and serviceable condition.
- 21.1.3. Written consent will not be provided unless Lessee agrees to remain liable to Lessor for the remainder of the term of this Agreement including paying to Lessor any portion of rents, fees, and/or other charges not paid by the assignee when due and owing.
- 21.1.4. Any assignee of Lessee shall be bound by the covenants, conditions, obligations, and agreements contained herein and the assignee shall not sell, assign, or transfer its interest in the Leased Premises or this Agreement without the prior express written consent of Lessor.
- 21.1.4.1. Any sale, assignment, or transfer shall include these stipulations which shall be acknowledged by assignee.

### **22. ENCUMBRANCES**

- 22.1.1. Lessee shall have no authority, express or implied, to create (or consent to the creation of) any lien, claim, charge or encumbrance upon the Leased Premises and Lessee shall not permit the Leased Premises or any part thereof, any Improvements thereto or located (or situated) thereon, or any other part of the Airport to be or become subject to any lien (including mechanic's liens), charge,





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claim, or encumbrance whatsoever without the prior express written consent of the Lessor.

### **23. MORTGAGE**

23.1.1. Lessee shall not mortgage, pledge, assign as collateral, voluntarily or otherwise, its interest in the Leased Premises or this Agreement without the prior express written consent of Lessor.

### **24. RELOCATION**

24.1.1. Lessee understands Lessor has the right to replace the Leased Premises, in whole or part, with equivalent premises similarly situated at the Airport. If the change is solely for the benefit of Lessor, Lessor agrees to pay all reasonable relocation costs and expenses associated with relocating Lessee.

### **25. BOOKS AND RECORDS**

#### 25.1.1. Lessee Obligations

25.1.1.1. Lessee shall maintain complete books and records containing the accounting and other financial records of Lessee's activities on the Leased Premises including rents, fees, and/or other charges paid by Lessee for the current year and previous 5 years.

25.1.1.2. All books and records shall be kept by Lessee in accordance with generally accepted accounting principles and shall reflect all amounts due and owing to the Lessor.

25.1.2. In the event of an audit, Lessee shall provide the auditor access to and shall furnish the auditor with information, records, reports, or other documentation regarding financial transactions, conduct of Activities on the Leased Premises and at the Airport or any other information, records, reports, or other documentation that relates to the Activities being conducted by Lessee on the Leased Premises and at the Airport. Lessee shall also provide access for the auditor to inspect all Property, facilities, Vehicles, Equipment, and Aircraft used by Lessee on the Leased Premises and at the Airport.

#### 25.1.3. Lessor's Rights Under This Section

25.1.3.1. Lessor may, at all reasonable times, audit records to enable verification/confirmation of the amount of rents, fees, and other charges due and owing to Lessor.

25.1.3.2. If Lessor is not satisfied with the findings of any audit conducted by Lessor, Lessor shall serve notice to Lessee of its dissatisfaction.

25.1.3.3. If Lessee agrees with Lessor's audit findings, Lessee shall, within 30 days after receipt of notice, make known Lessee's agreement with Lessor's findings in writing and pay 125% of all monies due and owing to Lessor. If Lessee does not agree with Lessor's findings, Lessee shall, within 60 days after receipt of notice from Lessor, furnish to Lessor, at Lessee's sole cost and expense, an audit made by an Independent Certified Public Accountant mutually agreeable to both parties.

25.1.3.4. All costs and/or expenses of Lessor's audit shall be paid by Lessee if the report of the Independent Certified Public Accountant certifies



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Lessor's audit contained a finding prejudicial to Lessor's receipt of rents, fees, and/or other charges as heretofore described, in an amount equal to or greater than two percent of the amount of rents, fees, and/or other charges reported by Lessee.

25.1.3.5. The final audit of the Independent Certified Public Accountant made under this Section shall be conclusive upon the parties and Lessee shall pay to Lessor, within 15 days after a copy of the Certified Public Accountant's final report has been delivered to Lessee, the amount due, if any, identified as due and owing to Lessor plus interest in accordance with the Lessor's current Rates and Charges. The failure of Lessee to make payment within this 15 day period shall constitute a default under this Agreement and shall give cause to Lessor for immediate termination of this Agreement.

25.1.3.6. Any information, records, reports, or other documentation provided to or obtained by Lessor, or which Lessor otherwise comes into possession of pursuant to this Agreement, shall be subject to the provisions of the Freedom of Information Act.

### **26. HOLDOVER POSSESSION**

26.1.1. In the event Lessee should hold over and remain in possession of the Leased Premises after the expiration of the term of this Agreement or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement, but shall, instead, create a month-to-month tenancy which may be terminated at any time by Lessor or Lessee by providing not less than 30 days written notice. The rents, fees, and other charges paid during the holding over period shall be equal to the monthly rents, fees, and other charges that were being charged by Lessor at the time this Agreement expired. The holdover period shall not exceed 180 days after which time, this Agreement shall be terminated.

### **27. INDEPENDENT ENTITIES**

27.1.1. Nothing in this Agreement is intended to nor shall it be construed in any way as creating or establishing the relationship of partners between the Parties or as constituting Lessee as the representative, officer, official, employee, agent, or volunteer of Lessor for any purpose or in any manner whatsoever.

### **28. BINDING EFFECT**

28.1.1. This Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of the Parties hereto. Whenever a reference is made to either party, such reference shall be deemed to include, wherever applicable, a reference to the heirs, successors, and assigns of such party, as if in every case so expressed.

### **29. SUBORDINATION**

29.1.1. This Agreement is subject and subordinate to the provisions of any existing or future agreements between the City and the United States, the State of South Dakota, or any other entity pertaining to the planning, development, operation (including maintenance and repair), and management of the Airport.



## COMMERCIAL LEASE AND USE AGREEMENT

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### 30. GOVERNING LAW

30.1.1. This Agreement shall be deemed to have been made in, and shall be construed in, accordance with the laws of the State of South Dakota without regard to conflicts of law principles.

### 31. DISPUTES

31.1.1. For any dispute that cannot be resolved in accordance with Section 1.21 Disputes in the General Provisions, the 7<sup>th</sup> Judicial Circuit Court Pennington County shall have exclusive jurisdiction and venue with respect to any disagreement, actions, and/or proceedings arising from or under the Agreement, regardless of the nature or basis of the disagreement, action, and/or proceeding.

31.1.2. Lessee consents to the jurisdiction and venue of the aforesaid Court and waives personal service of any and all process upon Lessee in all such actions or proceedings, and consents that all such service or process shall be made by certified mail, return receipt requested, directed to Lessee at the address herein stated, and service so made shall be completed two days after the same shall have been posted as aforesaid.

31.1.3. If any legal action is brought about by either party to enforce this Agreement or any part thereof, the prevailing party shall be entitled to recover attorney and court fees, costs, and expenses.

### 32. PARAGRAPH HEADINGS

32.1.1. All section, paragraph, and subparagraph headings contained in this Agreement are inserted only as a matter of convenience of reference only, and are not intended to define or limit the scope of this Agreement or any provision therein.

### 33. SEVERABILITY

33.1.1. If any provision in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provisions in this Agreement, provided that the invalidity of any such provision does not materially prejudice either party with regard to their respective rights and obligations contained in the valid provisions of this Agreement.

### 34. COUNTERPARTS

34.1.1. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

### 35. MODIFICATION

35.1.1. Any change or modification to this Agreement shall not be valid unless made in writing, agreed to, and signed by both parties.

### 36. ENTIRE AGREEMENT

This Agreement contains and embodies the entire understanding and agreement between the Parties and supersedes and replaces any and all prior understandings and agreements, written or oral, expressed or implied, relating to this Agreement.



**COMMERCIAL LEASE AND USE AGREEMENT**

**37. NOTICES**

37.1.1. Whenever any notice is required by this Agreement to be made, given, or transmitted to the Parties, such notice shall be emailed, hand delivered or sent by standard mail, USPS, addressed to:

Lessor  
Rapid City Regional Airport  
4550 Terminal Rd., #102  
Rapid City, SD 57703  
airportweb@rcgov.org

with a copy to:  
None

Lessee

with a copy to:

[Redacted area containing Lessee name and contact information]

37.1.2. The date of service of notice shall be the date such notice is actually delivered to the intended recipient or the date delivery is refused by the intended recipient.

37.1.3. The Parties may, from time to time, designate to each other in writing a different address or different entity or entities to which all such notices, communications, or payments shall be given or made.

**38. REPRESENTATIONS AND WARRANTIES OF LESSEE**

38.1.1. Lessee represents and warrants to Lessor that:

38.1.1.1. It is duly organized and validly existing under the laws of its jurisdiction, incorporation or establishment;

38.1.1.2. It has the power and the authority to enter into and perform its obligations under this Agreement and to pay any rents, fees, or other payments required under this Agreement;

38.1.1.3. This Agreement has been duly authorized, executed, and delivered by it and, assuming the due authorization, execution and delivery hereof by the other parties hereto, constitutes a legal, valid, and binding obligation of it enforceable against it in accordance with the covenants, conditions, obligations, and agreements contained herein, subject to applicable bankruptcy, insolvency, and similar laws affecting creditor's rights generally, and subject, as to enforceability, to general principles of equity regardless of whether enforcement is sought in a proceeding in equity or at law;

38.1.1.4. Its execution and delivery of this Agreement and its performance of its obligations hereunder do not and will not constitute or result in a default under, a breach or violation of, or the creation of any lien or encumbrance on any of its Property under, its charter or by-laws (or equivalent organizational documents), or any other agreement, instrument, law, ordinance, regulation, judgment, injunction, or order applicable to it or any of its Property;





**39. EXHIBITS**

*Exhibit A – Description of Leased Premises*

*Exhibit B – Rent*





**EXHIBIT B – Rent**

Annual Rent for the first year of the Term of this Agreement is:

**Base Rent: 8,941 sq ft @ \$.30695 = \$2,698.53**

**Example of CPI Adjustment For Future Years:**

CPI for Current Period	136.0
Less CPI for Previous Period	129.9
Equals Index Points Change	6.1
Divided by Previous Period CPI	129.9
Equals	.047
Results Multiplied by 100	.047 x 100
Equals Percent Change	4.7%
Next Year Rent =	Base Rent (____/sq ft) X Percent Change in CPI-U Index (4.7%)