LEASE AGREEMENT
BETWEEN
STATE OF SOUTH DAKOTA
DEPARTMENT OF THE MILITARY
AND
RAPID CITY REGIONAL AIRPORT BOARD

THIS LEASE, made and entered into this _______ day of January 2020, by and between the RAPID CITY REGIONAL AIRPORT BOARD, located at 4550 Terminal Rd, Rapid City, SD 57703 (hereinafter referred to as “AIRPORT”) and the SOUTH DAKOTA DEPARTMENT OF THE MILITARY, located at 2823 West Main Street, Rapid City, SD 57702-8186 (hereinafter referred to as “DOM”).

W I T N E S S E T H:

1. Purpose. The purpose of this Lease is to provide DOM an area at the Rapid City Airport to be used for private vehicle parking of approximately 30 vehicles by the State of South Dakota, Department of the Military, its employees and their guests, and by the employees and soldiers of the South Dakota Army National Guard and their guests (hereinafter collectively the “Users”) during the construction of the Aviation Readiness Center. The lease is entered into pursuant to the provisions of SDCL chs. 33-3, 33-11 and 9-12-5.

2. Leased Premises. AIRPORT warrants that it is the owner of the below described leased premises and that it is authorized to lease the property to DOM to be used by DOM for the purposes provided herein. AIRPORT hereby leases to DOM, and DOM hereby leases from AIRPORT, subject to all the terms, conditions and provisions herein set forth, the following premises: That approximately 88 foot by 187 foot portion of the unpaved southeast parking area identified on Exhibit “A” attached hereto and included herein by reference located at 4550 Terminal Road, Rapid City,
South Dakota 57703 (hereinafter the “Leased Premises”). In addition to the Leased Premises, DOM shall have access to and may use all sidewalks, walkways, the Circulation Road identified on Exhibit A and other public and private roads and drives accessing the Leased Premises. AIRPORT shall have the right to adopt and promulgate reasonable nondiscriminatory rules and regulations, from time to time; regarding access to common areas and the Leased Premises.

3. **Term.** DOM shall have and hold the above described Leased Premises for the original term of fifteen (15) months from and after February 1, 2020 and terminating April 30, 2021, with the option to extend this Lease, on a month to month basis, upon submission of a written request by DOM subject to approval by AIRPORT. However, the Lease does not include the period of August 1, 2020 to August 20, 2020 to allow AIRPORT to use the Leased Premises for parking associated with the Annual Sturgis Motorcycle Rally. DOM may terminate this Lease at any time with ten (10) days prior written notice.

4. **Use of the Leased Premises.** Except as provided in section 6, DOM shall have use of the Leased Premises for the parking of personal (non-military) vehicles, twenty-four hours a day, by Users in connection with use of DOM facilities located at 4750 Guard Road. Users may not use the lot for parking in connection with commercial airline travel through the terminal. No military vehicles may be parked on the Leased Premises. Any other use of the Leased Premises will require written approval from AIRPORT, which approval shall not be unreasonably withheld. DOM shall conduct its business in accordance with the requirements of local, state and federal ordinances and statutes.

5. **Vehicle Searches.** All vehicles entering AIRPORT property, including the
Leased Premises, may be subject to search by AIRPORT authorities pursuant to the Airport Security Plan. DOM will be responsible for informing its employees and the employees and Soldiers of the ARNG of the terms and conditions for use of the Leased Premises.

6. **Rental.** DOM agrees to pay AIRPORT as rental the sum of $10.00 per month for each parking space, or a total of $300.00 per month. Unless sooner terminated under the terms of this Lease, AIRPORT shall submit invoices to DOM for payment as follows: AIRPORT will submit an invoice by July 31, 2020 for the period of February 1, 2020 to July 31, 2020 with payment due by August 31, 2020; AIRPORT will submit an invoice by January 31, 2021 for the period of August 1, 2020 to January 31, 2021 with payment due by February 28, 2021; AIRPORT will submit an invoice by April 30, 2021, for the period of February 1, 2021 to April 30, 2021 with payment due by May 31, 2021. No rent shall be charged to DOM for the period from August 1, 2020 through August 20, 2020 during which time DOM will not have use of the Leased Premises. All invoices shall be submitted by mail to: South Dakota Department of the Military, ATTN: CFMO Planning & Programming, 2823 West Main Street, Rapid City, SD 57702 and rent payments shall be sent by mail to: Rapid City Regional Airport, ATTN: Executive Director, Rapid City Regional Airport, 4550 Terminal Road, Rapid City, SD 57703. In the event that this Lease is terminated, rent shall be prorated based upon the number of days remaining in the month of termination.

7. **Alterations.** During the term of this Lease, DOM may not make any alterations to the Leased Premises without the prior written consent of AIRPORT. Except to the extent permitted by AIRPORT, DOM shall not erect or install any signs or advertising media without AIRPORT’s prior written consent. DOM shall pay the cost
of removal of all signs and shall pay the cost to repair any damage to the Leased Premises caused by such removal.

8. **Maintenance and Repair.** AIRPORT agrees to maintain and repair the Leased Premises and any driveways, roadways, sidewalks, and other access to the Leased Premises including, but not limited to maintaining the gravel and paved areas, maintenance of adequate drainage and management of weeds. Snow removal from the Leased Premises as shall be determined necessary by DOM shall be the responsibility of DOM. DOM may place snow in the area indicated on Exhibit A; however, an alternative location for the storage of snow may be used with the written concurrence of the AIRPORT and DOM.

9. **Access.** Users shall enter and exit the Leased Premises at the intersection of Terminal Road and the Rtr Road as shown on the attached Exhibit A. Users shall display a placard on the front dashboard of the User’s vehicle so as to be visible from the exterior of the vehicle at all times while parked on the Leased Premises. The placards shall be provided by DOM and approved as to form by AIRPORT.

10. **Inspection.** With permission of DOM, which shall not be unreasonably withheld, AIRPORT or AIRPORT’s agents shall be allowed to inspect or examine the Leased Premises at any reasonable time, and to make such repairs or improvements to the Leased Premises which AIRPORT may deem desirable or necessary and which DOM has not covenanted herein to do and has failed so to do. DOM’s rent shall be prorated to the extent that any work prevents use of a parking space unless the repair was DOM’s responsibility.

11. **Catastrophe.** If the Leased Premises shall be so injured by fire or otherwise so as to be rendered unfit for occupancy by DOM, then this Lease may be
canceled at the option of either AIRPORT or DOM and rent shall be payable only to the date of such injury. In connection with the foregoing, it is agreed that DOM's decision shall be controlling as to whether or not the Leased Premises are fit or unfit for occupancy by it; however, AIRPORT is under no obligation to repair or rebuild should the injury be of great extent.

12. **Quiet Enjoyment.** AIRPORT agrees that upon compliance with the terms and conditions of this Lease, DOM shall and may peacefully and quietly have, hold and enjoy the Leased Premises for the term of this Lease and any extension of said term.

13. **Waiver of Subrogation.** AIRPORT and DOM hereby agree that neither shall be liable to the other for loss arising out of damage to or destruction of the demised premises or the contents thereof, when such loss is caused by any of the perils included within the standard form of fire and extended coverage insurance. This agreement shall be binding whether or not such damage or destruction shall be caused by the negligence of either AIRPORT or DOM, or their agents, servants, or employees, and further, any and all right of subrogation by any insurance carrier is hereby waived. The parties hereto will sign any and all documents necessary to implement this provision.

14. **Indemnification.** Nothing in this Lease shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property loss or damage or death or personal injury arising out of and during performance of this Lease related to the use, care, or operation of the Lease Premises. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons,
arising out of and during the performance of this Lease shall be determined according to applicable law. DOM is self-insured and covered by the Federal Tort Claims Act [FTCA, 28 U.S.C. § 2671, et seq.]. AIRPORT is insured by Traveler’s Indemnity Company.

15. **Surrender.** At the expiration of said term or any extension thereof, DOM will quit and surrender the Leased Premises in as good a state and condition as reasonable use and wear thereof will permit, damage by the elements, fire and other casualty excepted. Any holding over by DOM shall not operate, except by written agreement, to extend or renew this Lease, and no tenancy of any duration shall be created thereby.

16. **Funding Out.** AIRPORT agrees that the continued rental of the hereinbefore described Leased Premises for the term hereinbefore specified by DOM is dependent upon receipt of both funds and expenditure authority from the state and federal government for this purpose. In the event, that the state or federal government does not provide said funds or expenditure authority for any fiscal year, then and in such event this lease is null and void and said lease shall expire at the end of the fiscal year in which the last funding shall be made available for DOM. AIRPORT agrees that termination because of lack of funds or expenditure authority will not result in a claim against DOM, the State of South Dakota, or any officer or employee of the State.

17. **No Third Party Rights.** This Lease is intended to only govern the rights and interest of the Parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.
18. **Communication.** Any notice or other communication required under this Lease shall be in writing and sent to the address set forth above. Notices shall be given by and to Construction and Facilities Management Officer, on behalf of DOM and by and to Executive Director, Rapid City Regional Airport, on behalf of AIRPORT, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. **Entire Agreement.** This Lease contains the entire agreement of the parties, and no representations, inducements, promises or agreements, oral or otherwise, not embodied herein, shall be of any force or effect.

20. **Amendment and Assignment.** This Lease cannot be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto. This Lease cannot be assigned without the prior written approval of the other party.

21. **Severability.** In the event that any court of competent jurisdiction shall hold any provision of this Lease unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

    IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year first above written.

    RAPID CITY REGIONAL AIRPORT BOARD

    ______________________________
    DARREN HAAR
Chairperson

SOUTH DAKOTA DEPARTMENT OF THE MILITARY

____________________________
JEFFREY P. MARLETTE
Major General (SD), SDNG
The Adjutant General/Secretary
Exhibit A

Disclaimers

This GIS Data is provided "as is" without warranty of any representation of accuracy, timeliness, or completeness. The user acknowledges and accepts the limitations of the Data, including the fact that the Data is dynamic and is in a constant state of maintenance, correction, and update.

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