MEMORANDUM

TO: Airport Board
FROM: Patrick Dame, C.M., Executive Director
DATE: February 11, 2020
RE: SDDOT AP0048-2019 Agreement
    Fuel Tax Funds for Master Plan Update

On November 12, 2019, the Airport Board approved Task Order 2019-9 with Kadrmas, Lee & Jackson to update the current Master Plan contingent upon approval from the SDDOT Aeronautics Commission to use RAP fuel tax funds. The Commission approved the request and the State Financial Assistance Agreement is attached in the amount of $500,000.00.

STAFF’S RECOMMENDATION: Authorize the Airport Executive Director to sign the SDDOT State Financial Assistance Agreement for State Project AP0048-2019 in an amount not to exceed $500,000.00.
STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
DIVISION OF SECRETARIAT
OFFICE OF AIR, RAIL, AND TRANSIT
BECKER-HANSEN BUILDING
PIERRE, SOUTH DAKOTA
FOR
PROJECT NO. AP0048-2019

This Agreement is made and entered into by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the “STATE,” and the city of Rapid City, South Dakota, referred to in this Agreement as the “SPONSOR.”

BACKGROUND:

A. The STATE and the SPONSOR have entered into an Agency Agreement for the purpose of establishing, constructing, and maintaining an airport on a portion of Sections Eight (8), Seventeen (17), Twenty (20) and Twenty-one (21), Township One North (1N), Range Nine East (9E), Black Hills Prime Meridian, Pennington County, South Dakota, referred to in this Agreement as the “Airport.”

B. The SPONSOR requested financial assistance from the STATE for the development of the Airport.

C. The SPONSOR acquired satisfactory title to the property on which the Airport will be located and indicated the SPONSOR’S desire to use the same for an Airport.

D. The SPONSOR proposes the development of the Airport will consist of the following described items, referred to in this Agreement as the “Project”:

   Update Master Plan

E. The total estimated cost of the Project is shown on the Engineer’s Estimate, entitled “Summary of Project Costs,” attached to this Agreement as Exhibit A.

NOW, THEREFORE, in consideration of these facts and the mutual covenants contained in this Agreement, the Parties agree as follows:

Section 1. Payment

Pursuant to and for the purposes of carrying out the provisions of SDCL 50-7-15, the STATE will share in the cost of the Project in the amount of one hundred percent (100%) of the total eligible Project costs, but in no event will the STATE’S TOTAL SHARE exceed the amount of Five Hundred Thousand Dollars and No Cents ($500,000.00). The STATE will pay the STATE’S share of the eligible Project costs from the SPONSOR’S allocated fuel tax account.

Section 2. Termination

1. For Convenience. The STATE may, with the concurrence of the SPONSOR, terminate and cancel this Agreement if both parties agree in writing that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds.

2. For Cause. The STATE may, by written notice to the SPONSOR, terminate the Project and cancel this Agreement for any of the following reasons:

   (a) The SPONSOR takes any action pertaining to this Agreement without the STATE’S approval when, under the terms of this Agreement, the STATE’S approval is required.
(b) The commencement, prosecution, or timely completion of the Project by the SPONSOR is, for any reason, rendered improbable, impossible, or illegal.

(c) The SPONSOR is in default under any provision of this Agreement.

Section 3. SPONSOR Assurances

1. The SPONSOR will operate the Airport as such for the use and benefit of the public. The SPONSOR will operate and maintain the Airport as a public use facility for a minimum of twenty (20) years from the date of this Agreement.

2. The SPONSOR will not exercise, grant, or permit any exclusive right for the use of the Airport. This provision will not be construed to prohibit the granting or exercising of an exclusive right for the furnishing of non-aviation products and supplies or any services of a non-aeronautical nature.

3. The SPONSOR will suitably operate and maintain the Airport and all facilities on or connected with which are necessary for airport purposes. The SPONSOR will not allow facilities on Airport property which would interfere with the SPONSOR’S use for aeronautical purposes in a safe manner. Essential facilities, including night lighting systems, when installed, will be operated in such a manner as to assure their availability to all users of the Airport.

4. Insofar as is within the SPONSOR’S powers, the SPONSOR will prevent the use of any land either within or outside the boundaries of Airport in any manner, including construction, which would create a hazard to the landing, taking-off, or maneuvering of aircraft at the Airport, or otherwise limit the usefulness of the Airport. The SPONSOR will notify the STATE as soon as any information is known which may cause or create such hazards to the Airport.

5. The SPONSOR will not enter into any transaction which would operate to deprive the SPONSOR of any of the rights and powers necessary to perform any or all of the covenants made in this Agreement, unless by such transaction the obligation to perform all such covenants is assumed by another public agency. If an arrangement is made for management or operation of Airport by an agency or person other than the SPONSOR or an employee of the SPONSOR, the SPONSOR will reserve sufficient powers and authority to insure that the Airport will be operated and maintained in accordance with these covenants.

Section 4. Special Conditions

1. The SPONSOR will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the STATE, and to provide insurance coverage for the benefit of the STATE in a manner consistent with this Agreement. The SPONSOR will cause its subcontractors, agents, and employees to comply with applicable federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. Failure to comply with federal requirements related to right-of-way, environmental clearances, utilities, contract provisions, and the bid letting process could jeopardize future federal funding.

2. The SPONSOR will pay subcontractors or suppliers within fifteen (15) days of receiving payment for work that is submitted for progress payment by the STATE. If the SPONSOR withholds payment beyond this time period, the SPONSOR will submit written justification to the STATE, upon request. If it is determined that a subcontractor or supplier has not received payment due without just cause, the STATE may withhold future estimated payments or may direct the SPONSOR to make such payment to the subcontractor or supplier.

3. The SPONSOR must submit any proposed change affecting the Project to the STATE in writing for the STATE’S approval prior to any change.
4. This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement, and be signed by an authorized representative of each of the parties to this Agreement.

5. The SPONSOR will maintain an accurate cost accounting system for all costs incurred under this Agreement with costs clearly identified with activities performed under this Agreement. All Project charges will be subject to audit in accordance with the STATE'S current procedures and 2 CFR Part 200.

6. Upon reasonable notice, the SPONSOR will allow the STATE or U.S. Department of Transportation representatives to examine all records of the SPONSOR related to this Agreement during the SPONSOR'S normal business hours. The SPONSOR will keep all such records for a period of three (3) years after the date of final payment by the STATE under this Agreement and all other pending matters are closed.

7. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, the Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

8. The SPONSOR will provide services in compliance with the American with Disabilities Act of 1990, and any amendments.

9. The SPONSOR certifies, by signing this Agreement, that neither the SPONSOR nor the SPONSOR'S principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal department or agency.

10. The SPONSOR will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceeding which may arise as a result of the SPONSOR performing services under this Agreement. This section does not require the SPONSOR to be responsible for or defend against claims or damages arising solely from acts or omissions of the STATE, its officer, agents, or employees.

11. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the SPONSOR is encouraged to:

   A. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work for or on behalf of the federal government, including work relating to a grant or subgrant.

   B. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:

      i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

      ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

12. The SPONSOR has designated its Airport Executive Director as the SPONSOR'S authorized representative and has empowered the Airport Executive Director with the authority to sign this Agreement on behalf of the SPONSOR. A copy of the SPONSOR'S Commission minutes or resolution authorizing the execution of this Agreement by the Airport Executive Director as the SPONSOR'S authorized representative is attached to this Agreement as Exhibit B.

13. The effective date of this Agreement is November 21, 2019.
This Agreement has been executed by the STATE and the SPONSOR, acting by and through their duly authorized representatives.

City of Rapid City, South Dakota

By: ________________

Its: Airport Executive Director

Date: ________________

Attest:

______________________________________________________________

Airport Deputy Director Finance

(State of South Dakota)

Department of Transportation

By: ________________

Its: Program Manager

Office of Air, Rail, and Transit

Date: ________________

(City Seal)
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CERTIFICATION:
DATE: PREPARED BY:

SCOPE: Update Master Plan