

## **SETTLEMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND DARREN HAAR**

This Settlement Agreement (the “Agreement”) is made and entered into on this 15th day of May, 2020, by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City,” and Darren Haar, in his official and personal capacities.

### **SECTION ONE: PURPOSE**

On December 10, 2019, Darren Haar, President of the Rapid City Regional Airport Board of Directors met with Alderman Lisa Modrick to discuss issues between the airport and her employer WestJet Air Center. In early January of 2020, Alderman Modrick requested a meeting with Mayor Steve Allender (the “Mayor”) and alleged that Mr. Haar threatened her during the December 10<sup>th</sup> meeting. When Mr. Haar was informed of the allegations he vehemently denied anything inappropriate occurred and informed the Mayor he had recorded the meeting. Mr. Haar’s attorney sent a follow-up letter reiterating Mr. Haar’s previous communication with the Mayor and further stating that Mr. Haar would not hesitate to pursue legal action against Ms. Modrick for defamation or any other appropriate claims. Ultimately, Mr. Haar filed a formal complaint with the City Attorney’s office alleging that Alderman Modrick had violated the City’s Code of Conduct for Elected Officials which resulted in the City Council removing Alderman Modrick from office. As a result of the claims made by Alderman Modrick, Mr. Haar incurred significant legal expenses.

### **SECTION TWO: TERMS OF THE AGREEMENT**

The City and Darren Haar, wish to resolve all matters, known and unknown, discovered or discoverable by them arising out of the interaction between Mr. Haar and Mrs. Modrick on December 10, 2019, any statements that were made about Mr. Haar regarding that meeting, and

any statements or submission which were a part of the subsequent Code of Conduct proceedings against Mrs. Modrick described in Section One. This settlement and release extends to the individual employees, elected officials, shareholders, officers, directors, agents, affiliates and assigns of the parties in their official and individual capacities as well as to their respective insurers. Each party specifically denies any liability whatsoever to each other on these claims, but specifically express their desire to settle all current disputes between them fully and finally. It is the intent of the parties that this Agreement shall release and discharge all claims that were brought, or that could have been brought, based on the above described complaint and subsequent proceedings thereon. It is not the intent of this Agreement to release any claims, demands, damages or causes of action for acts or omissions that occur after the date of this Agreement or for breaches of this Agreement or to release any claims unrelated to the above described complaints and proceedings.

In consideration of the mutual covenants set forth herein, the City will pay \$17,762.07 in legal fees incurred by Mr. Haar to defend himself from the claims made by Mrs. Modrick which were outlined above.

### **SECTION THREE: EFFECT OF AGREEMENT**

The parties agree and warrant that no promises, inducements, or representations have been made or offered except as herein set forth. The parties further agree that this Agreement is executed without reliance upon any statement or representation by any of the parties, their attorneys, or representatives, concerning the nature and extent of damages, or legal liability therefore, or the strength, weakness, or merit of any claims as part of this settlement. Both parties and their attorneys have made their own determination as to the law and facts and assume any and all risk in that regard. The consideration identified in this Agreement is not a mere recital.

All agreements and understandings between the parties are embodied and expressed in this Agreement or otherwise excluded.

Each party executing this Agreement represents that it has full legal authority to do so. Each party assumes the risk of any mistake of fact, whether the fact, or facts, be present, past, or future, including the extent of any injuries, damages, or losses that may have been incurred or may be incurred in the future. This Agreement shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors, and assigns. The parties hereby represent that they have carefully read the foregoing Agreement, have consulted with their attorneys, know the contents thereof, and sign this Agreement of their own volition.

The parties agree they will not make negative comments orally, in writing, on Facebook, Twitter, or via any other social media or network, on the internet, or by any other means, to any person or entity about each other related to the matters forming a basis for this Release. The parties agree that to the extent any such negative comments have been posted in writing or on any social media or internet website, each party will immediately take action to remove such negative information. Failure to abide by the terms of this provision shall be considered a material breach of this Release and shall relieve the other party from performing its duties and responsibilities hereunder.

#### **SECTION FOUR: CHOICE OF LAW AND VENUE**

The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

## **SECTION FIVE: WAIVER**

Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term, of this Agreement.

## **SECTION SIX: CONSTRUCTION, SEVERABILITY AND MERGER**

The parties acknowledge that they have each contributed to the making of this Agreement. The parties further acknowledges that they have had an adequate opportunity to consult with their own legal counsel in the negotiation and preparation of this Agreement. In the event of a dispute between the parties over interpretation of this Agreement, there will be no presumption about the drafting of this argument concerning said ambiguities. If any provision or term of this Agreement is held to be unconstitutional, invalid, or unenforceable by any court or tribunal having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and such invalidity shall not affect any other provision of this Agreement if the remaining sections or provisions can be given effect without the invalid section or provision. This document constitutes the entire agreement of the parties. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or intentionally omitted.

## **SECTION SEVEN: EXECUTION IN COUNTERPARTS**

This Agreement may be executed in one or more counterparts which, taken together, shall constitute but a single agreement. Signatures exchanged by facsimile or electronically shall be considered binding.

CITY OF RAPID CITY

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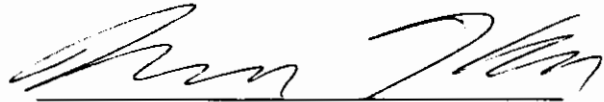
Steve Allender, Mayor

ATTEST:

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Pauline Sumption, Finance Officer

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Darren Haar, Individually and in His  
Official Capacity

State of South Dakota        )  
  ss.  
County of Pennington        )

On this the 15<sup>th</sup> day of May, 2020 before me, the undersigned officer,  
personally appeared Darren Haar, known to me or satisfactorily proven to be the person whose  
name is subscribed to the within instrument and acknowledged that he executed the foregoing  
instrument for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public, South Dakota

My Commission Expires:        My Commission Expires  
  July 23, 2021

(SEAL)

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