Memo

To: Airport Board of Directors  
From: Patrick Dame, C.M. Executive Director  
Date: June 15, 2020  
Re: General Aviation Leasing Policy

After receiving the recommendations of Frasca & Associates and public comments, it was determined that a General Aviation (GA) Leasing Policy is needed to help ensure a level playing field for addressing lease agreements at the Rapid City Regional Airport. This will also assist management in applying a consistent answer for tenants for better understanding of the policies.

In May, we met with several existing lessees, one-on-one, to talk about the application of the Frasca recommendations. We discussed the rates and charges aspect along with the reversionary clause as both are a major part of the recommendations. We have also spoken with other GA members through the GA Committee meetings.

Throughout our conversations with tenants, they commonly believed they are entitled to new lease when the leases expire. The two main applicable clauses in the existing Airport lease agreements are as follows:

**Old Leases**
At the termination of this Lease, whether by expiration of its term, as may be extended by options, or termination for any reason, the parties shall negotiate a fair and reasonable price at which the Lessor may, at its sole option, purchase the hangar from Lessee. In the event the parties fail to reach a price through negotiation or if the Lessor does not desire to purchase the hangar, then in that event the hangar structure shall be removed from the premises and the area shall be restored to a condition acceptable to the Lessor. The cost of hangar removal and site restoration shall be the sole expense of the Lessee. (This is contained in the 14 oldest leases.)

**Newer Leases**
If this Agreement is not renewed or the Parties do not enter into a new 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 and reasonable wear and tear excepted. If Lessee does not remove said Improvements within 90 days, Lessor may do so at the risk, cost, and expense of Lessee. In lieu of removal, at Lessor's option, Lessee may transfer the ownership (or title) of the Improvements (specifically designated by Lessor) to Lessor. (This is contained in 18 leases.)
Under FAA Sponsor’s Assurance 5(a), Preserving Rights and Powers: [The airport sponsor] will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

Based on the FAA’s interpretation of Assurance 5a, as it relates to reversionary interests, an airport sponsor’s failure to include or exercise lease agreement reversion clauses contributes to forfeiting the sponsor’s rights and powers.

Continuous leasing practices, beyond the initial term of the lease, puts the Airport Board in a position for potential violation of their Sponsor’s Assurances and can jeopardize federal funding in the future.

Under the GA Leasing Policy, we provide the tenant several options to work with the Airport Board to assist the Airport in meeting the Sponsor’s Assurances and to conduct a transition plan. It is our goal to allow all future tenants to understand the requirements prior to construction of a facility and work to transition existing tenants over the next decade. The GA Leasing Policy provides six options for tenants with leases that will expire. Those options are as follow:

1. **Extension.** All Tenants with Agreements expiring between August 1, 2020 and December 31, 2026 shall be offered one (1) additional five (5) year lease. The new lease will be non-transferable.

2. **Remove Improvement.** Tenant shall remove the Improvements owned by the Tenant and return the affected portion(s) of the Leased Premises to its original condition.

3. **Transfer Ownership to Board.** If agreed to by the Board, in lieu of removal, at Tenant’s option, Tenant may transfer the ownership (or title) of the Improvements (specifically designated by the Board) to the Board at no cost to the Board.
   1. Provided the Tenant has been in good standing with the Board, the Board may offer a Right of First Lease to the Tenant at Fair Market Value. Lease rent shall include all ground, building and maintenance expenses.
   2. The Board will not purchase Improvements at the expiration of any agreement.

4. **Holdover.** Board may elect to continue the Agreement with the Tenant on a month-to-month basis (where holdover provisions allow).

5. **New Lease Agreement Capital Improvements.** Tenant may request a new lease Agreement with a pledge of Capital Improvements extending the life of the hangar, to include but not limited to replacing exterior siding (including on the door skin), roof, hangar door operator and other mechanical components. Lease terms will be determined by investment. The request for Capital Improvements must go to the Board, be approved and all work must be completed prior to the expiration of the Agreement.
6. **Lease Reversionary Deferral Option.** Tenant may also request a new Agreement without making Capital Improvements. Tenant would maintain ownership and be responsible for all taxes, maintenance and upkeep. Fair market value for ground and building rent would be required with up to a five (5) year term limit on the Agreement.

All new lease agreements will incorporate the clause of removal or reversion as the only options for lease end.

The GA Leasing Policy addresses the term versus investments. We considered $100 per square foot development costs, for common hangar sizes at RAP, to help set the investments and terms.

The value of hangar improvements lies in the length of the remaining term of the lease agreement. In the past, leases have been sold based on the perceived value of the improvements with few years remaining on the lease. The buyer then comes to the Airport for a new lease and the Airport is left in a position to approve or deny the lease after the fact. The GA Leasing Policy is intended to protect both the buyer, seller and Airport Board. Future leases will declare transfers without prior consent of the Board null and void. Sales in the final five (5) years of an agreement will require further consideration of the Airport Board.

We further addressed the need to preserve apron frontage in an effort to foster competition at the Airport. Apron is costly to construct and finite in the amount we can develop. The Policy allows the Airport Board to seek further justification as to why a tenant needs apron access and to further scrutinize requests from those who have existing apron frontage.

We believe this GA Leasing Policy is a good start to ensure that we have a roadmap for future development and procedures, in print, for those who are users of the airport today.

**STAFF RECOMMENDATION:** Staff recommends Airport Board approval of the General Aviation Lease Policy.
General Aviation Leasing Policy
Draft – Revisions Made 6/15/2020

City of Rapid City

Rapid City Regional Airport
General Aviation Leasing Policy

LEASING POLICY
This Policy provides a framework governing leasing and rental decisions as they relate to development of general aviation and new leasing agreements.

DEFINITIONS
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 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.

GENERAL Description
The Rapid City Regional Airport Board (“Board”), as Operator of Rapid City Regional Airport (“Airport”) does hereby establish the following Leasing Policy for the Airport:

- The Leasing Policy is intended to provide potential and current Tenants an understanding of the policies, processes, and rates used by the Board when leasing property at the Airport.
- The Leasing Policy was developed taking into consideration: the role and continued development of the Airport; the range, level, and quality of aeronautical products, services, and facilities currently being provided at the Airport; the future prospects for, and the anticipated development of, the Airport and the community, and; the promotion of fair competition at the Airport.

The Policy sets forth the parameters for leasing Airport buildings and/or land and has been established for the following purposes:

- To foster a spirit of partnership with its Tenants, while fulfilling duties as steward of vital public assets and resources;
- To make Airport property available on fair and reasonable terms without unjust discrimination;
- To retain effective management controls over the use of scarce Airport assets, ensure land is developed at its highest and best use, and seek to remove obstacles to such controls when opportunities arise;
- To maintain a rent and fee structure with the goal of financial self-sustainability per the FAA Grant Assurances and Rates and Charges Policy;
- To ensure that leased parcels are actually developed for use and not leased for anticompetitive reasons to prevent development;
- To ensure that available capacity neither materially exceeds, nor materially falls short of the reasonable needs of the community served by the Airport;
• To ensure compliance with applicable laws, regulations, policies, executives orders, guidelines, and requirements.

Administration and Policy Oversight
While the Board has the ultimate policy-making authority in this regard, the Airport’s Executive Director or his/her designee shall interpret and enforce this Leasing Policy.

This Leasing Policy is not intended to, and does not, waive, modify or in any way limit or preclude the exercise of any rights the Board may have under existing law and/or Agreements, and all such rights are and shall be expressly reserved.

Variances and Deviations
The Board reserves the right to authorize variances or deviations from this Leasing Policy. Such variances or deviations may include waiving or modifying certain criteria or requiring Tenants or Operators to meet additional criteria. All requests for variances or deviations shall be made in writing in a form described by the Board.

Lease Agreement
The Board requires all Persons to obtain an Agreement, in a form approved by the Board, prior to engaging in any business, commercial and/or private development activity on the Airport. All commercial activities must be authorized by the Board pursuant to an approved Operator Permit.

Additionally, to ensure the Airport’s financial sustainability, it is also the Board’s policy to establish market value land and facility rental rates and make amendments to the rates at periodic intervals, in order to assure the Airport rental rates reflect inflation or other market driven changes.

All Agreements shall be prepared by the Board’s staff and legal counsel and shall include customary provisions included in the Board’s other similar Agreements.

Fees and Rents
The fees and rents (see Exhibit A) hereinafter set forth shall be used in developing new written Agreements (see Exhibit C) and shall also apply, to the extent possible, to all Tenants and users of Airport facilities, subject to periodic adjustment under existing leases and other Agreements.

Maintenance and Improvements
Tenants are required to maintain their lease improvements at all times over the course of the lease agreement. Major improvements may be conducted to the hangar and in an effort to assist in capitalizing on those improvements, the Tenant may negotiate a lease term extension. The Airport Board may grant the lease term extension if they deem it appropriate.
REQUIREMENTS FOR LEASE EXTENSIONS ON EXISTING IMPROVEMENTS

Upon the expiration of the Original Term and any granted extensions, unless sooner terminated in accordance with the Agreement, the Tenant has the following options, unless otherwise indicated within the existing Agreement:

1. **Extension.** All Tenants with Agreements expiring between August 1, 2020 and December 31, 2026 shall be offered one (1) additional final five (5) year lease. The new lease will be non-transferable.

2. **Remove Improvements.** Tenant shall remove the Improvements owned by the Tenant and return the affected portion(s) of the Leased Premises to its original condition.

3. **Transfer Ownership to Board.** If agreed to by the Board, in lieu of removal, at Tenant’s option, Tenant may transfer the ownership (or title) of the Improvements (specifically designated by the Board) to the Board at no cost to the Board.
   3.1. Provided the Tenant has been in good standing with the Board, the Board may offer a Right of First Lease to the Tenant at Fair Market Value. Lease rent shall include all ground, building and maintenance expenses.
   3.2. The Board will not purchase Improvements at the expiration of any Agreement.

4. **Holdover.** Board may elect to continue the Agreement with the Tenant on a month-to-month basis (where holdover provisions allow).

5. **New Lease Agreement Capital Improvements.** Tenant may request a new lease Agreement with a pledge of Capital Improvements extending the life of the hangar, to include but not limited to replacing exterior siding (including on the door skin), roof, hangar door operator and other mechanical components. Lease terms will be determined by investment. The request for Capital Improvements must go to the Board, be approved and all work must be completed prior to the expiration of the Agreement.

6. **Lease Reversionary Deferral Option.** Tenant may also request a new Agreement without making Capital Improvements. Tenant would maintain ownership and be responsible for all taxes, maintenance and upkeep. Fair market value for ground and building rent would be required with up to a five (5) year term limit on the Agreement.

**REQUIREMENTS FOR NEW DEVELOPMENT**

The term (length) of a new Agreement for new development shall be established considering the amount of Tenant investment in physical/fixed improvements on the Airport. Subject to any applicable Regulatory Measures, the maximum term for a ground lease will be as follows:
Table 3-1 Agreement Term Investment Schedule*

<table>
<thead>
<tr>
<th>Aeronautical Related Facility</th>
<th>Total Years Including Extensions</th>
</tr>
</thead>
<tbody>
<tr>
<td>$150K</td>
<td>25</td>
</tr>
<tr>
<td>$300K</td>
<td>30</td>
</tr>
<tr>
<td>$600K</td>
<td>35</td>
</tr>
<tr>
<td>$1.2M or More</td>
<td>40</td>
</tr>
</tbody>
</table>

*Amounts based on construction costs of $100 per square foot for new hangar construction.

Leasehold Development with Apron Access
Due to the cost and limited availability of aircraft parking aprons at the Airport, the goal of the Airport is to provide access to a publicly funded apron frontage to only those businesses that require the use of an apron and that provide aeronautical services to the public.

All leaseholds located along publically-funded aircraft parking aprons shall be subject to additional review. Any new lease with public apron access or projected to have public apron access will be required to demonstrate both the need for the publicly-available apron and the aeronautical services they will provide for the public. A determination shall be made by the Board that apron access is absolutely necessary and that no other options are available for construction. Tenants requesting additional apron space for construction will be required to prove to the Board why construction off apron is not an option.

The associated Lease shall define the use and shall include a termination clause, for cause, in the event Tenant changes the use to something that no longer requires apron access.

At no time will Tenants be allowed to reserve apron space for future development.

All buildings constructed along aprons shall be fifty (50’) feet back from the publically funded apron and that setback space shall be part of the leasehold, subject to additional restrictions, and maintained by the Tenant. New connections from the structure to the aircraft parking apron may be funded by the Airport, and the Improvements shall be special assessed back to the Tenant over a twenty (20) year period.

REQUIREMENTS FOR ALL LEASES
The following requirements are applicable to all General Aviation Lease Agreements.

End of Lease
Ground Agreements shall provide that, when the terms with current Tenants expire, the Improvements shall be removed or they will revert to the Board. If the Board elects to continue leasing the property after expiration, it may solicit proposals or negotiate a new Agreement; in either case calling for rent at the then Market Rate for both the ground and any Improvements on the leasehold and incorporating other terms consistent with this Policy.
Tenant Responsibilities
All new Agreements shall require the Tenant to be responsible for, including but not limited to: insurance, taxes, janitorial, landscaping, lawn maintenance, pavement upkeep, snow removal, trash removal, all other maintenance, utility costs, etc.

Rental Rates
All rental rates established in Airport Agreements shall be Market Value as determined by Airport staff or a professional appraisal. All appropriate factors, including comparable terms of other similar facilities on the Airport and/or other similar facilities at other comparable Airports in the region, shall be taken into account in establishing Market Value.

Rent Adjustments
All rents shall be adjusted to Market Value rent every five (5) years throughout the Original Term of all Agreements and any Renewal Terms. In the intervening years, rent shall be annually adjusted based on the percentage change in the Consumer Price Index (CPI) (see Exhibit B).

Sublease and Assignments
Certain approved Commercial Aeronautical Operators may sublease any portion of their leased space, but only with the prior written consent of the Board through a Board approved Operator Permit. Tenants may not assign their Agreements, whether by operation of law or otherwise, without the prior written consent of the Board. 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 their Agreement.

Leasehold Mortgages
Tenants may not grant leasehold mortgages without prior written approval of the Board, and approval may be granted, conditioned, delayed, or denied at the Board’s discretion. If the Board consents, the leasehold mortgage may secure only the indebtedness which is invested in improvements to the leasehold and may not burden the real property.

Development, Improvements, Construction and Alterations
Tenant shall not make any Improvements (including any changes or modifications, additions, or deletions) to the Leased Premises without the prior express written consent of the Board.

Tenants will be required to comply with Development Guidelines, including guidelines regarding signage, and to obtain all required development and construction permits and approvals, including those of the Board as described in the Agreement.

All Tenant-constructed alterations, improvements and/or deletions, including but not limited to, offices, hangars, access roads, access taxiways, vehicle parking areas and Aircraft parking areas, shall be in accordance with Development Guidelines established by the Board and in accordance with applicable federal, state and local codes, ordinances, laws, rules and regulations. Tenant shall not be permitted to proceed with any construction or remodeling on
the premises leased/assigned without first obtaining advance written approval of plans and specifications for such work from all applicable agencies, including the Airport’s Executive Director.

1. **Notice of Proposed Construction Alteration Form.** Prior to making any Improvements, the Tenant shall submit to the Board for its review and approval detailed plans, designs, and specifications, including cost estimates, a project schedule, and a list of the contractors selected by Tenant to make the approved Improvements. If applicable, the Tenant shall complete and include Federal Aviation Administration 7460-1 Notice of Proposed Construction Alterations form.

2. **Regulatory Compliance.** The approved Improvements shall comply with applicable Regulatory Measures including, but not limited to, CFR Title 14 Part 77 Safe, Efficient Use, and Preservation of the Navigable Airspace. The Tenant shall procure all building, fire, safety, and other permits necessary in connection with the approved Improvements from federal, state, and local agencies having jurisdiction.

3. **Leasehold Development Requirements.** Within 30 days after notification by the Board of its approval, the Tenant shall commence work on the approved Improvements to the Leased Premises in accordance with the conditions of the Board’s approval. The Tenant shall be fully liable to the Board 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 Board. In the event the Tenant does not commence work on the Improvements within the allotted time or does not complete improvements within a six (6) month period, the Board may elect to revoke approval and the Leasehold and associated improvements will revert to the Board.

4. **Liens for Improvement Cost and Expenses.** All work completed shall be at the Tenant’s sole cost and expense, free and clear of liens for labor and material, and the Tenant shall indemnify the Board, as required by the General Aviation Minimum Standards.

5. **Performance Bond.** The Tenant shall furnish its Performance Bond in the form acceptable to the Board in the amount of 100% of its total construction costs to guarantee completion of the Improvements.

6. **Claims.** The Tenant 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. The Tenant shall also pay all liens held by subcontractors and provide Airport with proof of payment of excise tax.

**No Unauthorized Use**
All Commercial uses and certain Non-Commercial uses of Airport properties shall be permitted only pursuant to an Agreement in accordance with this Policy, consistent with applicable rents, charges, or revenue formulas established by the Board.
Tenants may not use their facilities for Commercial Activities unless pursuant to an Operator Permit with the Board.

**Prohibited Activities**
Airport land or Improvements shall not be occupied or used for any activity that, in the sole discretion of the Executive Director, is contrary to the safe and efficient operation of the Airport including any activity that jeopardizes the safety of the public, Aircraft, or property located at the Airport.

“Through-the-Fence” activities are prohibited.

**REQUIREMENTS FOR AIRPORT OWNED STRUCTURES**
The following requirements are applicable to Airport owned structures that are leased.

**New Agreements**
All new Agreements for hangars, buildings, or other facilities owned by the Board shall require the Board to be responsible for insurance, landscaping, lawn maintenance, parking lot upkeep, snow removal, and all other maintenance, and utility costs.

**Rental Rates**
All rental rates established in Airport Agreements shall be Market Value as determined by Airport staff or a professional appraisal. All appropriate factors, including comparable terms of other similar facilities on the Airport and/or other similar facilities at other comparable Airports in the region, shall be taken into account in establishing Market Value.

**Rent Adjustments**
Rent may be adjusted by the Board periodically under consideration of current market rates, Consumer Price Index (CPI), and current Airport rates and charges.

**Sublease and Assignments**
Tenants may not sublease or assign an Agreement.

**Commercial Activities**
Tenants may not use their facilities for Commercial Activities unless pursuant to an Operator Permit with the Board.
EXHIBIT B – Rent Adjustment Example

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

5,700 sq ft @ .30 = 1,710.00

Example of CPI Adjustment:

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 (.30/sq ft) X Percent Change in CPI-U Index (4.7%)

Next Year Rent = .30 X 4.7% = .31

5,700 sq ft @ .31 = 1,790.37