MEMORANDUM

TO: Airport Board
FROM: Patrick Dame, C.M., Executive Director
DATE: September 8, 2020
RE: Supplemental Lease Agreement #1 – US Dept of Agriculture Forest Service

On August 11, 2020, the Board approved the attached Supplemental Lease Agreement #1 with the US Department of Agriculture Forest Service for the tank base located here on the Airport.

Subsequent to that approval, the Forest Service provided us with General Clauses related to recently mandated telecommunications prohibitions. They now require these to be incorporated into any lease amendment and have thereby been added to the agreement. No other changes to the agreement were made.

STAFF RECOMMENDATION: Staff recommends Board Approval of Supplemental Lease Agreement #1 between the US Department of Agriculture Forest Service and Rapid City Regional Airport to extend the term for 10 years with an annual payment of $2,100.00 per year, including the General Clauses attached as Exhibit A.
SUPPLEMENTAL LEASE AGREEMENT #1
US DEPARTMENT OF AGRICULTURE FOREST SERVICE AND RAPID CITY REGIONAL AIRPORT LEASE FOR AIR OPERATIONS BASE

The Rapid City Regional Airport Board City of Rapid City (Board) and the United States Department of Agriculture Forest Service (Lessee) (collectively, the Parties) entered into a lease agreement for an air operations base for a 25-year period commencing on December 12, 1995 and expiring on December 31, 2020 with an option for a 10-year renewal (Lease Agreement). Lessee internal lease number for this Lease Agreement was formerly 57-82X9-5-95006 and is hereby acknowledged as changed to 1282X995L3110. The Parties agree that the Lease Agreement remains in full force and effect, except as specifically modified by this Supplemental Lease Agreement. The Parties further agree that to date, each has substantially fulfilled all requirements of the Lease Agreement.

WHEREAS, Paragraph 5 of the Lease Agreement provides for renewal of the lease at the option of the Lessee for a period of 10 years at the rate of $2,100.00 per year to be paid in lump sum form; and

WHEREAS, the Lessee has provided timely written notice of its desire to exercise the option described in Paragraph 5 of the Lease Agreement; and

WHEREAS, the Lessee has requested an annual payment of $2,100.00 per year, instead of payment as a lump sum described in Paragraph 5 of the Lease Agreement.

NOW THEREFORE, be it agreed by the Parties as follows:

1. Renewal. The Lease Agreement is extended for 10 years with a termination date of December 31, 2030 (hereinafter, the “Option Term”).

2. Rent. The rent for the Option Term will be $2,100.00 paid on annual basis. This provision amends the provision in Paragraph 5 of the Lease Agreement requiring the Lessee to pay the rent for the Option Term in a lump sum form. Lessee will pay this rent during the Option Term by January 31st of each calendar year for the previous year’s rent according to the following schedule:

<table>
<thead>
<tr>
<th>Service Year</th>
<th>Payment Due Date</th>
<th>Service Year</th>
<th>Payment Due Date</th>
</tr>
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<tbody>
<tr>
<td>Year 1-2021</td>
<td>January 31, 2022</td>
<td>Year 6-2026</td>
<td>January 31, 2027</td>
</tr>
<tr>
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<td>Year 4-2024</td>
<td>January 31, 2025</td>
<td>Year 9-2029</td>
<td>January 31, 2030</td>
</tr>
<tr>
<td>Year 5-2025</td>
<td>January 31, 2026</td>
<td>Year 10-2030</td>
<td>January 31, 2031</td>
</tr>
</tbody>
</table>

If the Lease Agreement (as modified by this Supplemental Lease Agreement) is terminated prior to December 31, 2030, the annual rent for the Option Term shall be prorated on a per diem basis for the number of days of the Lessee’s tenancy prior to
the termination date. The Lessee shall pay the prorated amount within 60 days of the termination date.

3. Except as specifically modified by this Supplemental Lease Agreement, all other terms of the Lease Agreement shall remain the same and continue in full force and effect.

4. During the performance of this contract, the Parties agree to the Federal General Clauses attached and incorporated herein as Exhibit A.

    IN WITNESS WHEREOF, the Parties execute this Supplemental Lease Agreement this 8th day of September, 2020.

RAPID CITY REGIONAL AIRPORT BOARD       UNITED STATES OF AMERICA

_____________________________             ______________________________
Darren Haar, Board President             Angela S Drudik, Realty Specialist

ATTEST: ______________________________
Shawn Gab, Secretary
4. **MAINTENANCE OF THE PROPERTY, RIGHT TO INSPECT (SIMPLIFIED) (APR 2015)**

The Lessor shall maintain the Property, including the Building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this Lease, in good repair and tenantable condition. Upon request of the Lease Contracting Officer (LCO), the Lessor shall provide written documentation that building systems have been properly maintained, tested, and are operational within manufacturer’s warranted operating standards. The Lessor shall maintain the Premises in a safe and healthful condition according to applicable OSHA standards, including standards governing indoor air quality, existence of mold and other biological hazards, presence of hazardous materials, etc. The Government shall have the right, at any time after the Lease is signed and during the term of the Lease, to inspect all areas of the Property to which access is necessary for the purpose of determining the Lessor’s compliance with this clause.

2. If the building is partially or totally destroyed or damaged by fire or other casualty so that the leased space is untenantable as determined by the Government, the Government may terminate the lease upon 15 calendar days written notice to the Lessor and no further rental will be due.

3. The Lessor shall maintain the demised premises, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and tenantable condition. Upon request of the Contracting Officer, the Lessor shall provide written documentation that building systems have been maintained, tested, and are operational.

4. **DEFAULT BY LESSOR (APR 2012)**

A. The following conditions shall constitute default by the Lessor, and shall give rise to the following rights and remedies for the Government:

1. **Prior to Acceptance of the Premises.** Failure by the Lessor to diligently perform all obligations required for Acceptance of the Premises within the times specified, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, and provision of a reasonable opportunity for the Lessor to cure its default, the Government may terminate the Lease on account of the Lessor’s default.

2. **After Acceptance of the Premises.** Failure by the Lessor to perform any service, to provide any item, or satisfy any requirement of this Lease, without excuse, shall constitute a default by the Lessor. Subject to provision of notice of default to the Lessor, provision of a reasonable opportunity for the Lessor to cure its default, the Government may perform the service, provide the item, or obtain satisfaction of the requirement by its own employees or contractors. If the Government elects to take such action, the Government may deduct from rental payments its costs incurred in connection with taking the action. Alternatively, the Government may reduce the rent by an amount reasonably calculated to approximate the cost or value of the service not performed, item not provided, or requirement not satisfied, such reduction effective as of the date of the commencement of the default condition.

(3) **Grounds for Termination.** The Government may terminate the Lease if:
(i) The Lessor’s default persists notwithstanding provision of notice and reasonable opportunity to cure by the Government, or

(ii) The Lessor fails to take such actions as are necessary to prevent the recurrence of default conditions,

and such conditions (i) or (ii) substantially impair the safe and healthful occupancy of the Premises, or render the Space unusable for its intended purposes.

(4) Excuse. Failure by the Lessor to timely deliver the Space or perform any service, provide any item, or satisfy any requirement of this Lease shall not be excused if its failure in performance arises from:

(i) Circumstances within the Lessor’s control;

(ii) Circumstances about which the Lessor had actual or constructive knowledge prior to the Lease Award Date that could reasonably be expected to affect the Lessor’s capability to perform, regardless of the Government’s knowledge of such matters;

(iii) The condition of the Property;

(iv) The acts or omissions of the Lessor, its employees, agents or contractors;

(v) The Lessor’s inability to obtain sufficient financial resources to perform its obligations.

(5) The rights and remedies specified in this clause are in addition to any and all remedies to which the Government may be entitled as a matter of law.

5. INTEGRATED AGREEMENT (JUN 2012)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease. Except as expressly attached to and made part of the Lease, neither the Request for Lease Proposals nor any pre-award communications by either party shall be incorporated in the Lease.

6. CHANGES (SIMPLIFIED) (SEP 2011)

A. The LCO may at any time, by written order, direct changes to the TIs within the Space, Building Security Requirements, or the services required under the Lease.

B. If any such change causes an increase or decrease in Lessor’s costs or time required for performance of its obligations under this Lease, whether or not changed by the order, the Lessor shall be entitled to an amendment to the Lease providing for one or more of the following:

1. An adjustment of the delivery date;
2. An equitable adjustment in the rental rate; or
3. A lump sum equitable adjustment.

C. The Lessor shall assert its right to an amendment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to
agree to any adjustment shall be a dispute under the Disputes clause. However, the
pendency of an adjustment or existence of a dispute shall not excuse the Lessor from
proceeding with the change, except the Lessor shall not be obligated to comply with such
order or direction if the adjustment to which it is entitled causes the annual rent (net of
operating costs) to exceed the Simplified Lease Acquisition Threshold established under
GSAR 570.102.

D Absent a written change order from the LCO, or from a Government official to whom the LCO
has explicitly delegated in writing the authority to direct changes, the Government shall not be
liable to Lessor under this clause.

7. COMPLIANCE WITH APPLICABLE LAW (JAN 2011)

Lessor shall comply with all Federal, state and local laws applicable to its ownership and leasing of
the Property, including, without limitation, laws applicable to the construction, ownership, alteration
or operation of all Buildings, structures, and facilities located thereon, and obtain all necessary
permits, licenses and similar items at its own expense. The Government will comply with all
Federal, state and local laws applicable to and enforceable against it as a tenant under this Lease,
provided that nothing in this Lease shall be construed as a waiver of the sovereign immunity of the
Government. This Lease shall be governed by Federal law.

8. 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND
VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020)

(a) Definitions. As used in this clause—

*Backhaul* means intermediate links between the core network, or backbone network, and the small
subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone
network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People’s Republic of China.

*Covered telecommunications equipment or services* means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE
Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance
of critical infrastructure, and other national security purposes, video surveillance and telecommunications
equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology
Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such
equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an
entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the
Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled
by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—
(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

   (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

   (ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or


*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunications equipment or services are covered by a waiver described in FAR 4.2104.
(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunications equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at https://dibnet.dod.mil. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at https://dibnet.dod.mil.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

9. 52.252-2  CLAUSES INCORPORATED BY REFERENCE (VARIATION) (DEC 2003)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make the full text available, or the full text may be found at http://www.acquisition.gov.
The following clauses are incorporated by reference:

FAR 52.204-10, REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020) (Applicable if over $30,000 total contract value.)

FAR 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)

FAR 52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014).

FAR 52.209-6 PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 2020) (Applicable to leases over $35,000 total contract value.)

FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011) (Applicable when cost or pricing data are required for work or services over $750,000.)

FAR 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (JUN 2020) (Applicable when the clause at FAR 52.215-10 is applicable.)

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUN 2020) ALTERNATE III (JUN 2020) (Applicable to Leases over $700,000 total contract value.)

FAR 52.219-16 LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999) (Applicable to leases over $700,000 total contract value.)

FAR 52.219-28 POST-AWARD SMALL BUSINESS REREPRESENTATION (MAY 2020) (Applicable to leases exceeding the micro-purchase threshold)

FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)

FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020) (Applicable to leases $150,000 or more, total contract value. Full text may be found at http://www.acquisition.gov)

FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020) (Applicable to leases over $15,000 total contract value. Full text may be found at http://www.acquisition.gov)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020) (Applicable to leases $150,000 or more, total contract value.)

FAR 52.223-6 DRUG-FREE WORKPLACE (MAY 2001) (Applicable to Leases over the Simplified Lease Acquisition Threshold as well as to any Leases of any value awarded to an individual)

FAR 52.232–23 ASSIGNMENT OF CLAIMS (MAY 2014) (Applicable to leases over the micro-purchase threshold.)

FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER - SYSTEM FOR AWARD MANAGEMENT (OCT 2018)

FAR 52.233-1 DISPUTES (MAY 2014)

GSAR 552.215-70 EXAMINATION OF RECORDS BY GSA (JUL 2016)
11. GSAR 552.270-33 SYSTEM FOR AWARD MANAGEMENT – LEASING (FEB 2020)
(a) Definitions. As used in this provision—
“Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.
“Registered in the System for Award Management (SAM)” means that—
(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14) into SAM
(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;
(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
(4) The Government has marked the record “Active”.
“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.
(b) 
(1) An Offeror is required to be registered in SAM prior to award, and shall continue to be registered during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.
(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:
(1) Company legal business name.
(2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
(3) Company physical street address, city, state, and Zip Code.
(4) Company mailing address, city, state, and Zip Code (if separate from physical).
(5) Company telephone number.
(6) Date the company was started.
(7) Number of employees at your location.
(8) Chief executive officer/key manager.
(9) Line of business (industry).
(10) Company headquarters name and address (reporting relationship within your entity).
(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
(e) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See https://www.sam.gov for information on registration.

The information collection requirements contained in this solicitation/contract, that are not required by regulation, have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned the OMB Control No. 3090-0163.