MEMORANDUM

TO:        Airport Board
FROM:      Patrick Dame, C.M., Executive Director
DATE:      June 14, 2022
RE:        Peer-To-Peer Vehicle Sharing Concession Agreement with Turo, Inc.

As part of the overall Ground Transportation Program, staff has been working with Turo Inc for a vehicle sharing concession agreement. Attached is their Operator Permit application along with the associated concession agreement.

The term of the agreement will be from July 14, 2022, through July 13, 2023. This will allow both the Operator and the Airport to evaluate the success of the program. The agreement allows for either party to cancel for convenience upon thirty (30) days written notice.

**STAFF RECOMMENDATION:** Staff recommends approval of the Peer-To-Peer Vehicle Sharing Concession Agreement with Turo Inc.
PEER-TO-PEER VEHICLE SHARING
CONCESSION AGREEMENT

BETWEEN
CITY OF RAPID CITY

AND
TURO INC.
PEER-TO-PEER VEHICLE SHARING CONCESSION AGREEMENT BETWEEN CITY OF RAPID CITY AND TURO INC.

This Peer-to-Peer Vehicle Sharing Concession Agreement between City of Rapid City and Turo Inc. ("Agreement") is made as of July 1, 2022, by and between the City of Rapid City, a South Dakota municipal corporation, by and through the Rapid City Regional Airport Board, 4550 Terminal Road, Suite 102, Rapid City, SD 57703 (hereinafter referred to as "Board") and Turo Inc., a corporation organized under the laws of Delaware, and having a principal address of 111 Sutter Street, 12th Floor, San Francisco, California 94104 ("Operator"). The Board and Operator may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

The Parties recite and declare that:

A. The City of Rapid City is the owner and operator of an airport known as the Rapid City Regional Airport in Rapid City, South Dakota. The Rapid City Regional Airport Board is empowered and authorized to grant concessions at the Airport.

B. By operation of the Rapid City Municipal Code Section 13.28.070, the sale of goods and services at the Airport requires prior approval of the Rapid City Regional Airport Board.

C. Operator owns and operates a Peer-to-Peer Vehicle Sharing business by which vehicle owners ("Hosts") provide vehicles for use by Airport passengers ("Guests") through the Operator's proprietary digital network and Operator's facilitation of the vehicle sharing transaction and associated services.

D. The Board is authorized to impose rates and charges for its costs to accommodate commercial businesses operating at the Airport and for the privilege of conducting business at the Airport and finds that it is proper to impose rates and charges on Peer-to-Peer Vehicle Sharing businesses, including Operator.

E. The Board desires to make Peer-to-Peer Vehicle Sharing services available at the Airport on an exploratory basis, and the Operator is prepared to provide Peer-to-Peer Vehicle Sharing services at the Airport upon the terms and conditions set forth herein.

F. Peer-to-Peer Vehicle Sharing businesses are a separate and distinct class of ground transportation business that is significantly different than shuttles, taxicabs, and limousines, Transportation Network Companies, and on-airport and off-airport car rental companies.
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Agreement, the Parties agree as follows:

1. DEFINITIONS

The following terms and phrases shall have the following meanings for purposes of this Agreement:

A. “Airport” as used herein shall mean, the Rapid City Regional Airport located in the City of Rapid City, Pennington County, South Dakota.

B. “Director” as used herein shall mean, the Executive Director of the Airport, as may be designated from time to time by the Board.

C. “Gross Revenues” as used herein shall mean the total amount of monies paid to Operator, earned by Operator, or received by Operator from a Guest who selects delivery at or to the Airport, including:

   i. All trip fee time and mileage charges for Vehicles; and

   ii. All protection plan charges for coverage offered incidental to a Peer-to-Peer Vehicle Sharing agreement including but not limited to accident and personal effects insurance; and

   iii. The amount charged to Guests at the commencement of a Peer-to-Peer Vehicle Sharing agreement for the cost of furnishing and/or replacing fuel provided by a Host; and

   iv. Any delivery fee charges to pick-up and drop off a Vehicle; and

   v. Any young driver fee charges by Operator; and

   vi. Any amount charged by Operator as a pass-through fee to its Guests; and

   vii. All extra additional charges not expressly excluded under this provision, such as add-ons for GPS, child carriers, ski or bicycle rooftop carriers, or travel accessories.

Only the following shall be excluded from the term “Gross Revenues”:

   i. Any Federal, State, County, or City sales or other similar taxes or Surcharges separately stated to and collected from Guests; and

   ii. Any amounts received as insurance proceeds or otherwise for damage to Vehicles, or for loss, conversion, or abandonment of such vehicle; and

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iii. Any amounts received for any cancellation fees;

iv. Amounts received as payment for and administration on behalf of Guest and/or Hosts of red light tickets, parking tickets, tolls, tows, and impound fee.

v. Amounts received by Operator from Guests which are fully passed through to Hosts such as post-trip reimbursements, smoking fees, etc.

D. “Guest” as used herein shall mean an Airport passenger authorized to use a Host’s vehicle through Operator’s Peer-to-Peer Vehicle Sharing services in accordance with a contract or agreement between Operator and Guest.

E. “Host” as used herein shall mean the owner of a Vehicle providing the Vehicle for use by Guests through Operator’s Peer-to-Peer Vehicle Sharing services in accordance with a contract or agreement between Operator and Host.

F. “Peer-to-Peer Vehicle Sharing” as used herein shall mean a commercial transaction whereby a Host allows a Guest to use the Host’s vehicle for a fee pursuant to a reservation made through Operator’s website, mobile application, or similar digital platform. A transaction shall be considered Peer-to-Peer Vehicle Sharing covered by this Agreement, and associated revenues shall be considered Gross Revenues hereunder, whenever the Host’s vehicle is picked up or dropped off at the Airport by a Guest, or the Guest is picked up or dropped off at the Airport and transported to an off-Airport location to pick up or drop off the Host’s vehicle.

G. “Terminal” as used herein is the passenger Terminal Building at the Airport, as it now exists or as may be hereafter altered or expanded.

H. “Vehicle” as used herein shall mean a motor vehicle designed and intended for private use, including but not limited to cars, vans, minivans, SUVs, trucks, pickup trucks, camper vans, autocycles or motorcycles and capable to be parked entirely within a single space or stall configured and/or striped for passenger vehicles. This Agreement shall not apply to, and Operator shall not be permitted to offer for shared use at the Airport, any vehicles not included within this definition (including, but not limited to, commercial vehicles and recreational vehicles such as motorhomes, trailers, ATVs, and similar vehicles).

2. CONCESSION RIGHTS GRANTED

A. The Board hereby grants to Operator a non-exclusive revocable right to access the Airport for the purpose of engaging in Peer-to-Peer Vehicle Sharing services at the Airport, subject to and conditioned upon all the terms and conditions included or referred to in this Agreement and in accordance with Airport Rules and Regulations, policies, and procedures, as established by the Board and as may be amended from time to time.

B. Without limiting the generality of the foregoing, the specific rights conferred by this Agreement include the following:
i. The right on the part of Operator to advertise the availability of Vehicles at the Airport for use in accordance with a reservation made on Operator’s website, mobile application or similar digital platform.

ii. The right on the part of Hosts to use the public roadways and passenger loading and unloading areas adjacent to the Terminal, in common with other users thereof, in connection with Peer-to-Peer Vehicle Sharing services.

iii. The right on the part of Hosts to temporarily store Vehicles in the public parking areas of the Airport, in common with other users thereof, in anticipation of use by a Guest, and the right on the part of Guests to park vehicles in the public parking areas of the Airport upon completion of shared use.

C. Operator and Hosts are precluded from engaging in commercial activities not explicitly granted herein, except such activities as are necessary or ancillary to the permitted uses hereunder even if not explicitly identified.

D. Operator shall require, by contract or other agreement, that Hosts providing Peer-to-Peer Vehicle Sharing services at the Airport comply with the operating conditions of this Agreement; all Airport Rules and Regulations, as the same may be amended during the Term; any applicable Commercial Ground Transportation Rules and Regulations, as the same may be amended during the Term; and the directives of the Director concerning the safe, secure and efficient use of the Airport. Should a Host violate an operating condition of this Agreement or a requirement of the Airport Rules and Regulations, Operator shall undertake reasonable efforts to address the issue and prevent its recurrence. The Board reserves the right to suspend a Host from conducting Peer-to-Peer Vehicle Sharing services at the Airport, should circumstances warrant. In such event, the Board will notify Operator of such suspension, and Operator will take reasonable steps to preclude the Host from using Operator’s digital platform to conduct Peer-to-Peer Vehicle Sharing services at the Airport. Operator’s persistent failure to preclude suspended Hosts from conducting Peer-to-Peer Vehicle Sharing services at the Airport shall constitute an event of default and be grounds for cancellation of this Agreement.

E. Operator must conduct its trust and safety screening on all Hosts that will engage in Peer-to-Peer Vehicle Sharing services at the Airport. If the Host is flagged for potential fraudulent or criminal activity, then Operator’s trust and safety team will perform a criminal background search and public records search, and lock down the Host’s account until the Host clears the background check.

F. If the Board acquires or develops a technology solution to enable the Board to monitor and audit compliance by Operator with the terms and conditions of this Agreement, Operator will work with the Board in good faith on implementation of such technology solution. The Board agrees to provide Operator with a fair and reasonable
amount of time, subject to Operators’ consent, not to be unreasonably withheld, to implement the technology solution. Operator shall provide Board with data in a timely manner to ensure compliance with all reporting requirements found in this agreement. Data may include, but are not limited to, electronic identification of all Peer-to-Peer Vehicle Sharing transactions at the Airport. Failure to provide complete and accurate data and reports on a timely basis if not cured within thirty (30) days of notice thereof from Board to Operator, may be considered a material breach of this Agreement and subject to any remedies in law or equity including the termination of this Agreement.

G. Within ten (10) business days of execution of this Agreement, Operator will provide the Board with the name, address, telephone number(s), and email address for at least one (1) qualified representative authorized to represent and act for Operator in matters pertaining to its business and operation under this Agreement. Operator will notify the Board, in writing, if such person changes or if such person’s required information changes. If the qualified representative changes, Operator will provide the Board with the required information for the new qualified representative.

3. TERM

A. The term of this Agreement shall commence thirty (30) days after the execution date of this Agreement, first written above, and expire one (1) year after the commencement, unless sooner terminated or canceled as hereinafter provided.

B. Upon the expiration of this Agreement, the Board intends to evaluate the state of commercial ground transportation, including Peer-to-Peer Vehicle Sharing; Operator’s and Host’s compliance with this Agreement; and whether this Agreement served the interests of the Board and the Airport. The Board reserves all rights to regulate and accommodate commercial ground transportation as circumstances warrant.

C. This Agreement is not subject to hold-over. The Board reserves all rights to take action against Operator and/or Hosts for trespass or otherwise should Operator and Hosts continue to conduct Peer-to-Peer Vehicle Sharing transactions upon the expiration or earlier termination or cancellation of this Agreement.

4. DESIGNATED AREAS

The Board reserves the right to designate specific parking spaces at the Airport for the temporary storage of Host vehicles in connection with Peer-to-Peer Vehicle Sharing Services and to impose a fee for use of the designated parking spaces. The Board further reserves the right to designate specific areas near the Terminal for the pick-up or drop-off of Guests in connection with Peer-to-Peer Vehicle Sharing services. The Board shall be responsible to mark any designated parking spaces or areas near the Terminal for use in connection with Peer-to-Peer Vehicle Sharing services. Any such designation shall be made after consultation with Operator. Upon the Board’s notification to Operator of such designation, Hosts shall be required to utilize such designated areas, so long as such areas are not fully occupied by other Hosts.

5. CONCESSION FEE
A. Concession Fee – Operator shall pay monthly to the Board a Concession Fee, as compensation for the rights granted to it pursuant to this Agreement, in an amount equal to eight percent (8%) of Operator’s Gross Revenues.

B. Due Date – Operator shall pay the monthly Concession Fee in arrears by the twentieth (20th) day of the month for the preceding month. If the 20th day of the month is a Saturday, Sunday or Federal holiday, payment shall be due on the following business day.

C. Monthly Reports – The payment of a Concession Fee shall be accompanied by a statement of Gross Revenues for the preceding month, in a form with detail satisfactory to the Board or on a form as may be provided by the Board, to include the following information:

   i. Details of Gross Revenues for the prior calendar month;

   ii. Any exclusions from Gross Revenues;

   iii. The number of Peer-to-Peer Vehicle Sharing transactions, number of Vehicle shared use days and average Peer-to-Peer Vehicle Sharing price during the preceding month;

   iv. The signature of an authorized official of Operator

D. Place of Payment – Any and all payments due to the Board and paid by check by Operator shall be remitted to the following address: Rapid City Regional Airport, 4550 Terminal Road, Suite 102, Rapid City, SD 57703.

E. Adjustments to Concession Fee – No more than sixty (60) days after the expiration or earlier termination of this Agreement, Operator shall submit to the Board a statement certified as complete and correct by an independent Certified Public Accountant or the chief financial officer of Operator and prepared in accordance with generally accepted accounting principles showing the amount of Gross Revenues for the term of this Agreement. In the event the amount of payments made exceeds the total of payments due, the excess payment will be returned to Operator within thirty (30) days after the Board’s acceptance of the final certified statement described in this section. Conversely, Operator shall, within thirty (30) days, pay the Board any additional amounts owed. This provision is intended to survive expiration or earlier termination of this Agreement.

F. Delinquency – No demand for the Concession Fee need at any time be given. In the event Operator fails to pay the Concession Fee as required under the provisions of this Agreement after the payments become due, 1.5% per month (18% APR) interest shall be assessed on any past due balances that are more than 30 days overdue. The implementation of this provision shall not preclude the Board from terminating this Agreement for default in the payment of rents, fees or charges, or from
enforcing any other provisions contained herein or pursuing any other remedy allowed by law and/or equity.

G. Parking Fees – Hosts and Guests shall be responsible for the payment of any and all parking fees associated with the temporary storage of Vehicles in the public parking areas of the Airport, provided that such fees shall be those applicable to the public at large. Parking fees shall not be considered Gross Revenues.

6. RECORDS AND AUDIT

A. Records of Operator – Operator shall keep and maintain for a period of not less than thirty-six (36) months after the expiration or termination of this Agreement true and accurate records, accounts, books and data accounting for all business conducted at the Airport.

B. Audit – The Board reserves the right, at the Board’s expense, to inspect all Operator’s financial records for the purpose of verifying Gross Revenues. The Board shall give Operator fourteen (14) days written notice of said inspection of records. Further, the Board reserves the right to demand an independent audit conducted in accordance with generally accepted auditing standards of all Operator’s financial records, including, but not limited to, those maintained in Rapid City, South Dakota. If, as a result of said audit, it is determined that Operator has understated the Gross Revenues by three percent (3%) or more, the entire expense of said audit shall be borne by Operator. Any additional Concession Fee due shall be paid by Operator to the Board with interest thereon at 18% per annum, from the date such additional fees became due which is the day underreporting commenced.

7. INDEMNITY

Operator shall indemnify, hold harmless and defend the Board, its elected officials, appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of whatever nature, including attorney’s fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Operator’s conduct of business or from any activity or other things done, permitted, or suffered by Operator in, or about the Airport or other act or failure to act, excluding only claims or actions arising out of the sole negligence of the Board, its elected officials, appointed officials, agents and employees, provided that the Board shall give Operator prompt notice of any such claim or actions made or filed against it.

8. INSURANCE

A. Operator shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below, and insurance shall be placed with companies or underwriters authorized to do business in the State of South Dakota and carry a Best’s rating no lower
than A-. Failure to obtain and maintain such insurance shall constitute a default under this Agreement. The insurance policy(ies) shall be standard commercial general liability covering all operations of Operator at the Airport and shall include, but not be limited to, general commercial liability; automobile including owned, non-owned, leased and hired; contractual coverage, including the indemnification obligations of this Agreement; and independent contractors' coverage. The Board, its elected officials, appointed officials, agents and employees, shall be included as additional insureds with respect to Operator's use of the Airport. Operator shall, promptly after execution of this Agreement, furnish to the Board appropriate certificates of insurance evidencing coverage effected and to be maintained for the term of this Agreement. The coverage shall not be less than One Million Dollars ($1,000,000) for bodily injury and property damage with respect to each occurrence, which can be satisfied with a combination of primary and excess coverage.

B. The insurance policies shall not be subject to cancellation or material change except after notice to the Board at least thirty (30) days prior to the date of such cancellation or material change. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written notice of renewal shall be furnished to the Board at least thirty (30) days prior to expiration of any policy during the term of this Agreement. Upon written request by the Board, Operator shall permit the Board to inspect the originals of all applicable policies. The Board, its elected officials, appointed officials, agents and employees, shall be included as additional insureds with respect to Operator's use of the Airport.

C. Operator shall also maintain workers compensation insurance to the extent and in the amounts required by law.

D. The insurance requirements of this Article shall be subject to periodic adjustments by the Board.

9. TAXES

Operator shall be liable for and pay when due all taxes and assessments of every kind and nature that may arise by virtue of the execution of this Agreement. Operator shall be responsible for payment of any statutory tax or other fiscal obligations imposed by applicable, local, state or federal laws with respect to Operator's agents, employees, or Operator's property, occupancy of, or other activities on the Airport. Nothing herein shall prevent Operator from protesting through due process, any taxes levied.

10. RIGHTS OF THE BOARD

A. The Board reserves the right to direct, in its sole discretion, all activities of Operator, Hosts and Guests at the Airport in the event of an emergency.

B. The Board reserves the right to direct, at its discretion, Operator's and Host's operations in the event that Operator's and Host's operations are unreasonably
interfering with the use by others of the Airport; including to restrict the use of roadways, curbs, and sidewalks in favor of the traveling public.

C. The Board reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, including existing vehicle and pedestrian traffic patterns, as the Board deems appropriate without interference or hindrance by Operator, and the Board shall have no liability hereunder to Operator by reason of any interruption to Operator’s operations occasioned by such Board activities.

D. The Board reserves the right to establish and enforce rules and regulations for the conduct of activities and uses permitted herein.

E. The Board reserves the right, for itself and local law enforcement officers, to inspect Host’s vehicles as to passenger access, registration, Host’s license, license tag, insurance, and other matters pertaining to the legal, efficient and safe operation of the Host and Vehicle at the Airport.

11. GOVERNMENT RESERVATIONS AND RESTRICTIONS

The rights granted by this Agreement shall be subject to all enforced reservations and restrictions, including but not limited to, the following:

A. During time of war or national emergency, the Board shall have the right to lease the landing area or any part thereof to the United States government for military or naval use and, if such lease agreement is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the agreement or lease with the Government shall be suspended.

B. This Agreement shall be subordinate to the provisions of any other existing or future agreement between the United States Government and the Board relative to the use, operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport, by the provisions of the Airport Improvement Program, and as the program may be amended, or any other federal act, deed, grant agreement or program affecting the operation, maintenance of the Airport now or in the future.

12. ADDITIONAL OBLIGATIONS OF OPERATOR AND HOSTS

Operator hereby covenants and agrees:

A. That Operator will evaluate the safety of Vehicles used by Hosts by checking Vehicle Identification Numbers for safety recalls and determining whether the title is branded.

B. That the Vehicles used by Hosts at the Airport shall be maintained in good, safe and operative order, free from mechanical defects, and in a clear, neat and attractive condition, inside and outside.
C. That Hosts performing Peer-to-Peer Vehicle Sharing services at the Airport shall not conduct business in a loud, noisy, boisterous, offensive, or objectionable manner, or solicit business at the Airport in any manner whatsoever.

D. That, if Operator adopts a uniform requirement in the United States, voluntarily or by operation of law, to mark shared Vehicles with Operator’s name and/or logo, Operator shall require the same of each Host conducting Peer-to-Peer Vehicle Sharing services at the Airport.

E. That Operator and Hosts shall observe and comply with any and all applicable Airport, federal, state and local laws, statutes, ordinances, regulations and standards and shall abide by and be subject to all rules and regulations which are now, or may, from time to time, be promulgated by the Board concerning management, operation or use of the Airport. This obligation shall include, without limitation, the adoption and imposition by the State of South Dakota of any law or regulation concerning Peer-to-Peer Vehicle Sharing within the state.

F. That Operator shall meet all expenses in connection with its operation at the Airport, and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon Operator, and that it will secure all such permits and licenses.

G. The Board shall be the sole and final judge of the quality and the adequacy of the services furnished by Operator as specified herein. In the event the Board determines that Operator has failed to comply with the requirements hereunder with respect to the quality and adequacy of its services, the Board may, upon thirty (30) days written notice, exercise its right to terminate this Agreement. However, the Board may, in its sole discretion, extend the time for compliance if, in its opinion, Operator is making progress in complying with the requirements of this Agreement.

13. **TERMINATION FOR CONVENIENCE**

This Agreement may be terminated by the Board, without cause, upon thirty (30) days’ written notice to Operator. This Agreement may be terminated by Operator, without cause, if Operator is not in default of any terms of this Agreement or in the payment of the Concession Fee and any charges to the Board, upon thirty (30) days’ written notice to the Board. In the event any such notice of termination is given, the termination of this Agreement will be effective thirty (30) calendar days from the date of the notice or such date set forth in the notice of termination if greater than thirty (30) days.

14. **BOARD’S RIGHT OF CANCELLATION**

In addition to any conditions as specified herein and all other remedies available to the Board, this Agreement shall be subject to cancellation by the Board should any one or more of the following occur:

A. If Operator shall file a voluntary petition in bankruptcy, or proceedings
in bankruptcy shall be instituted against Operator and Operator is thereafter adjudicated a bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of Operator and its assets pursuant to proceeding brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a Receiver for Operator’s assets is appointed, or if Operator shall be divested of its rights, powers and privileges under this Agreement by other operation of law and such proceeding is not dismissed within sixty (60) days of filing.

B. If Operator shall vacate, abandon, or discontinue for thirty (30) consecutive days the conduct and operation of Peer-to-Peer Vehicle Sharing services at the Airport, except when such abandonment is caused by fire, earthquake, war, strike or other calamity beyond Operator’s control.

C. If Operator shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Agreement, or the Board has a reasonable basis to believe Operator will fail in the same, or Operator engages in conduct or activity detrimental to the operations of the Airport, provided that upon the happening of any contingency recited in this Article or a reasonable basis to believe any such contingency will happen, Operator shall be given written notice to correct or cure such default, failure to perform or breach. If, within thirty (30) days from the date of such notice, the default, breach or complaint has not been corrected in a manner satisfactory to the Board, then and in such event, this Agreement and all of Operator’s rights under this Agreement shall automatically terminate. The Board shall extend the time period to correct the default, if, in its sole opinion, due diligence is shown by Operator in curing the default.

D. The discovery by the Board that any financial or background information or statement provided to the Board by Operator, or any agent, representative, successor, grantee, or assign of Operator, was materially false.

15. OPERATOR’S RIGHT OF CANCELLATION

In addition to all other remedies available to Operator, this Agreement shall be subject to cancellation by Operator should any one or more of the following occur:

A. The permanent abandonment of the Airport.

B. The issuance of any order, rule or regulation by the Federal Aviation Administration or its successor federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport for scheduled air transportation.

C. The breach by the Board of any covenants, terms or conditions of this Agreement to be kept, performed and observed by the Board and the failure to remedy such breach for a period of sixty (60) days after written notice from Operator of the existence of such breach.
D. The assumption of the United States government, or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such manner as to substantially restrict Operator from conducting its business, if such restriction be continued for a period of ninety (90) continuous days or more.

16. ASSIGNMENT AND SUBCONTRACTING

Operator shall not assign or transfer this Agreement or any interest herein, nor shall this Agreement, nor any interest therein, be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of the Board. Such consent shall provide that the assignment or transfer is in compliance with this Agreement, and provided further that any assignee shall possess sufficient experience and financial capacity to insure compliance with all of the terms and conditions of this Agreement.

17. SEVERABILITY

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18. LEGAL CLAIMS AND ATTORNEY FEES

A. Each Party shall promptly report to the other any claim or suit against it arising out of or in connection with Operator’s operation at the Airport. The Board and Operator shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. Operator is an independent contractor in every respect, and not the agent of the Board.

B. In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of any concession Fee or other charge payable by Operator, this Agreement or the breach of any covenant or condition of this Agreement, the prevailing party will be entitled to reasonable attorneys’ fees, consultants’ fees, witness fees and other costs, both at trial and on appeal.

19. RECITALS

The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth as agreements of the parties.

20. PERFORMANCE BY BOARD

If Operator should fail to do anything required to be done under the terms and conditions of this Agreement, except for the payment of the Concession Fee and other
charges, the Board may, at its sole option and after giving written notice to Operator, perform such act on behalf of Operator. Upon notification to Operator of the cost thereof by the Board, Operator shall promptly pay the Board the amount due.

21. **CIVIL RIGHTS NONDISCRIMINATION AND OTHER FEDERAL REQUIREMENTS**

Operator shall comply with all obligations imposed by the Federal government as set forth in Exhibit “A,” including such non-discrimination obligations.

22. **ENTIRE AGREEMENT; AMENDMENTS**

This Agreement embodies the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and agreements whether written or oral. This Agreement may not be altered, modified or changed in any manner except by a writing signed by both parties.

23. **RELATIONSHIP OF THE BOARD AND OPERATOR**

Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners. No provision contained in this Agreement nor any acts of Operator and the Board shall be deemed to create any relationship other than that of Operator and the Board.

24. **NON-WAIVER OF BREACH**

The waiving of any of the covenants of this Agreement by either Party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by the Board to any act by Operator requiring Board’s consent shall not be deemed to waive consent to any subsequent similar act by Operator.

25. **SURVIVAL OF INDEMNITIES**

All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Operator shall, at the Board’s option, defend the Board at Operator’s expense by counsel satisfactory to the Board.

26. **APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY**

This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of South Dakota. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in either the Seventh Judicial Circuit of the State of South Dakota, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for the purposes of determining such action and waive any right to assert a claim for inconvenient forum. In any action on or related to the terms of this Agreement, the
Parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

27. NOTICES

All payments, demands and notices required herein shall be deemed to be properly served if personally delivered, or if sent by overnight courier or certified mail, to the last address furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

BOARD: Executive Director
Rapid City Regional Airport
4550 Terminal Road, Suite 102
Rapid City, SD 57703

OPERATOR: Turo Inc.
Attn: Legal, Airports
111 Sutter Street, 12th Floor
San Francisco, CA 94104

The date of service of such notice shall be upon personal delivery, one (1) day after such notice is deposited with reliable overnight courier, or three (3) days after such notice is deposited in a Post Office of the U.S. Post Office Department.

28. TIME OF ESSENCE

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

29. PARAGRAPH HEADINGS

Paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any provisions of this Agreement.

30. AUTHORITY OF OPERATOR’S REPRESENTATIVE

As an inducement to the Board to execute this Agreement, the undersigned representative of Operator represents that he/she is expressly authorized to execute this Agreement and to bind Operator to the terms and conditions hereof and acknowledge that the Board is relying upon this representation, authorization and execution.

31. CONSTRUCTION

The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any Party. The Parties agree that each Party has reviewed this Agreement and has had the opportunity to have
its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

32. **CHOICE OF LAW**

This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

Dated this _____ day of ___________________, 2022.

CITY OF RAPID CITY
RAPID CITY REGIONAL AIRPORT BOARD

By: ________________________________
   Rod Pettigrew, Board President

Attest:

By: ________________________________
   Shawn Gab, Board Secretary
   Robert Hall,
Dated this 20th day of May, 2022.

TURO INC.

By: Alex Benn, President
EXHIBIT ‘A’

CIVIL RIGHTS NON-DISCRIMINATION

1. Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Operator transfers its obligation to another, the transferee is obligated in the same manner as Operator. This provision obligates Operator for the period during which the property is used or possessed by Operator and the Airport remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2. During the performance of this Agreement, Operator for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities:

   A. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

   B. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964);

   C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

   D. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.); as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

   E. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);

   F. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

   G. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
H. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

I. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

L. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

3. Operator, including personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Operator will use the premises in compliance with all other requirements imposed by or pursuant to the list of nondiscrimination acts and authorities, as enumerated in the preceding subsection. In the event of a breach of any of the above nondiscrimination covenants, the Board will have the right to terminate this Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the Agreement had never been made or issued.

4. During the performance of this Agreement, Operator, for itself, its assignees, and successors in interest, agrees as follows:
A. Nondiscrimination: Operator with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Operator will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

B. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Operator of contractor’s obligations under this Agreement and the Nondiscrimination Acts and Authorities.

C. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Board or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Operator will so certify to the Board or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

D. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions in this Agreement, the Board will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to, cancelling, terminating, or suspending this Agreement, in whole or in part.

E. Incorporation of Provisions: Operator will include the provisions of this subsection in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Operator will take action with respect to any subcontract or procurement as the Board or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Operator may request the Board to enter into any litigation to protect the interest of the Board. In addition, Operator may request the United States to enter into the litigation to protect the interest of the United States.
Audit Trail

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