



RAPID CITY REGIONAL AIRPORT

ADVERTISEMENT FOR REQUEST FOR PROPOSALS (RFP)

FOR

Airport Contract Carrier Shuttle Service Concession

Key Dates:

October 1 & 8, 2022	RFP Advertised
October 13, 2022	Site Visit (2:00 PM MT)
October 19, 2022	Final Date for Written Questions (5:00 PM MT)
October 21, 2022	Answers to Written Questions Published on Website
November 1, 2022	Proposals Due (2:00 PM MT)
November 8, 2022	Airport Board Contract Award
January 1, 2023	Contract Commencement Date





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FOR

Airport Contract Carrier Shuttle Service Concession

Sealed proposals will be accepted until 2:00 PM MT, November 1, 2022, by the Rapid City Regional Airport Board (Board), 4550 Terminal Road, Suite 102, Rapid City, SD 57703, to operate an Airport Contract Carrier Shuttle Service Concession at the Rapid City Regional Airport in accordance with the conditions stated in the Request for Proposals (“RFP”) package.

RFP documents may be obtained by accessing the Airport website at <https://rapairport.com/category/projects/>.

Proposals may be submitted to the above address and are to be marked: “AIRPORT CONTRACT CARRIER SHUTTLE SERVICE CONCESSION PROPOSAL”.

The Board reserves the right to reject any and all proposals, award multiple contracts to more than one Proposer, to waive any minor irregularities in the process, to negotiate with any proposers, and to accept the proposal considered in the best interest of the Board.

The Rapid City Regional Airport is an Equal Employment Opportunity (EEO) organization which does not discriminate against any prospective Proposer on the basis of race, religion, color, sex, age, national origin, sexual orientation, or presence of any sensory, mental, or physical disability in the consideration of contract award. Successful Proposer will be required to comply with all EEO, federal, state, and local laws and regulations.

Since the Rapid City Regional Airport is a nonhub primary airport, it is required to have a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the US Department of Transportation 49 CFR Part 26. All DBE firms and small businesses qualifying under this solicitation are encouraged to submit proposals. Additional information on the DBE program is available upon request.

Publication Dates: October 1, 2022
 October 8, 2022



I. INTRODUCTION

The Rapid City Regional Airport Board (the “Board”) is soliciting Proposals for the right to enter into an Airport Contract Carrier Shuttle Concession Agreement through this public RFP process. This RFP provides the opportunity for all interested and qualified Shuttle Service operators to submit a Proposal to operate one (1) Airport Contract Carrier Shuttle Service Concession providing transportation shuttle services to and from the Rapid City Regional Airport (the “Airport”) to connect commercial airline passengers with downtown Rapid City, the Black Hills Area, and surrounding areas. This document outlines the prerequisites, selection process and documentation necessary to submit a Proposal for the requested services. Please carefully read the entire package before submitting your Proposal. If awarded, the Airport Contract Carrier Shuttle Service Concession will be conducted in accordance with the terms and conditions of an Agreement, which will be substantially similar in form to Exhibit A of this RFP.

The Board reserves the right to accept or reject any or all Proposals, award multiple contracts to more than one Proposer, to waive any informalities and irregularities in the Proposal submission process, to extend the date for submittal of responses, to request additional information from any or all Proposers, to supplement, amend or otherwise modify the RFP prior to the closing date and time, to cancel this request with or without the substitution of another RFP, to negotiate with any Proposers, to re-solicit or cancel the procurement process, or to accept a Proposal which is considered to be in the best interest of the Airport.

Sealed proposals, three (3) originals, and one electronic copy of the Proposal on a flash drive shall be submitted by 2:00 PM, MT, November 1, 2022, and delivered to:

Rapid City Regional Airport
Attn: Toni Broom, Deputy Airport Director Finance & Administration
4550 Terminal Road, Suite 102
Rapid City, SD 57703

All Proposals will be time-stamped upon receipt and any Proposals received after the time specified above will be returned unopened. In bold lettering, mark the sealed envelope with the following words: **“AIRPORT CONTRACT CARRIER SHUTTLE SERVICE CONCESSION PROPOSAL”**. Faxed or emailed copies will not be accepted. All responsive Proposals become the property of the Board and must be provided without cost to the Board. Except as otherwise provided for herein, Proposals which are incomplete or which are not in conformance with the law, may be rejected as non-responsive.

Proposals shall not be returned unless a written request to withdraw is received prior to 2:00 pm MT on November 1, 2022. Information that is considered by a Proposer to be proprietary is still subject to release as a component of an open records request subject to review by the City Attorney. Proprietary information should be clearly marked as “confidential” or “proprietary” on each page on which the information appears. Proposers should not expect the Board to seek confidentiality protection for any claimed privileged or proprietary information in the written Proposal just because the material is marked “confidential” or “proprietary.” For any essential information that



the Proposer reasonably believes can be defended as being exempt from disclosure under the South Dakota Open Records Act, the information must be capable of being separated or redacted from the Proposal, and should be clearly and specifically marked.

This RFP does not obligate the Board to enter into an Agreement or pay any costs incurred in the preparation of a Proposal pursuant to this RFP or incurred in subsequent negotiations. It is the intention of the Board to negotiate a Concession Agreement with the Proposer it deems most beneficial to the Airport.

Any Proposal submitted will be deemed to be valid for a period of up to 90 days following the closing date of the RFP. Timely Proposals received shall be subject to applicable laws and regulations governing public disclosure. Submission of a Proposal indicates acceptance by the Proposer of the conditions contained in this RFP, and the intent to enter an Agreement with the Board.

By submittal of a Proposal pursuant to this RFP, the Proposer certifies that no fee or commission, or any other thing of value, has been paid or agreed to be paid to any employee, agent, representative, official or current Proposer of the Board in order to procure the contract described in this RFP. The Proposer also certifies that the financial information in its proposal has been arrived at independently and without consultation, communication or agreement with the Board, or other Proposers, to restrict competition as to any matter relating to this RFP.

During the Proposals evaluation process, the Board may request additional information or clarification from Proposers.

Equal Employment Opportunity

Rapid City Regional Airport is an Equal Employment Opportunity (EEO) organization, which does not discriminate on the basis of race, religion, color, sex, age, marital status, national origin, sexual orientation, or the presence of any sensory, mental or physical disability in consideration of a contract award. The successful Proposer will be required to comply with all federal, state, and local laws and regulations.

Airport Concession Disadvantaged Business Enterprise (ACDBE) Eligibility

ACDBE firms are encouraged to submit a Proposal. Firms who propose to participate as a certified ACDBE must meet the experience and economic guidelines as set forth in 49 CFR Part 23 and 26. All Proposers, regardless of ACDBE certification status, must submit the ACDBE Commitment Acknowledgement, attached hereto as Exhibit D.

Prohibition Against Lobbying

The Proposer shall not lobby, either on an individual or collective basis, the Board (its associated City employees, or outside advisors) or any federal, state, or local elected or public officials or staff regarding this RFP or its written Proposal. Proposers, the Proposer's acquaintances, friends, family, outside advisors, agents, or other representatives shall not contact the Board (its associated City employees, or outside advisors) or any federal, state, or local elected or public officials or Airport staff to arrange meetings, visits, or presentations to influence the outcome of the selection



process. Violation of this provision, by or on behalf of a Proposer, intentionally or unintentionally, will result in disqualification of the Proposer and/or rejection of a written Proposal.

Questions, Inquiries and Contact with Airport Staff

The Board is committed to providing all interested parties with accurate and consistent information in order to ensure that no Proposer obtains an undue competitive advantage. To this end, from the date of this RFP through award of contract, the Board contact is:

Toni Broom, Deputy Airport Director for Finance & Administration
4550 Terminal Road, Suite 102
Rapid City, SD 57703
(605) 394-4195, ext. 8, then 2
E-mail: toni.broom@rcgov.org

The Airport's web site (www.rapairport.com) contains additional information which is available to assist Proposers in responding to this RFP.

All questions from Proposers must be submitted in writing, electronically, to toni.broom@rcgov.org by October 19, 2022, at 5:00 PM MT. It will be the sole responsibility of the Proposer to ensure questions are submitted in a timely manner. Answers to questions, other clarifications and/or addendums will be posted on the Airport's web site.

It shall be the Proposer's responsibility to monitor the Addendums that may be issued under and as a part of this RFP. Copies of this RFP, and any Addenda issued, are available for viewing at the following link: <https://rapairport.com/category/projects/>

Any Addendums so issued are to be considered a part of this RFP document. Therefore, receipt of all Addendums issued during this RFP must be acknowledged on the Addendum Acknowledgement Form (Attachment C) and included with your Proposal.

Pre-Proposal Briefing and Site Tour

A Pre-Proposal briefing and site tour will be held to discuss this RFP on October 13, 2022, at 2:00 p.m. MT. The meeting will be held in the Airport Board Room of the Rapid City Regional Airport terminal building at 4550 Terminal Road, Rapid City, SD 57703. Staff will be available to present a brief overview of the proposed Airport Shuttle Service Concession Agreement, which is included herein as Exhibit A and to answer questions about the scope and selection process. Attendance at the meeting is not mandatory, but is strongly encouraged. You must give at least forty-eight (48) hours advance notification to the Airport (Toni Broom 605-394-4195, ext 8; toni.broom@rcgov.org) of persons attending. A tour of the Airport facilities will be provided at the close of the meeting. The meeting and tour is anticipated to be no more than one hour in duration.

This pre-Proposal briefing will be the only opportunity afforded potential Proposers to discuss, as a group, the scope and requirements of this RFP and to be given a tour of the Airport and concession opportunity location.



Disclaimer

It is the responsibility of each Proposer to investigate and be satisfied as to the facts and conditions prior to submitting a Proposal. The Board makes no representation or warranties and accepts no responsibility for the accuracy or completeness of any information supplied. Proposers are responsible for obtaining their own independent financial, legal, accounting, and technical advice on all proposal matters. Any failure to become fully knowledgeable shall be at the Proposer's sole risk. The Board assumes no responsibility for any interpretations made by Proposers on the basis of information provided in this RFP or through any other source.

II. AIRPORT BACKGROUND

The Airport is owned by the City of Rapid City and governed by a semi-autonomous board which operates the Airport on behalf of the City. The Board is responsible for the general oversight of the Airport with the ability to sign contracts and authorize expenditures needed to operate the Airport.


The Airport serves as the gateway to Western South Dakota, the Black Hills and Mount Rushmore. The Airport is home to 27 businesses with an overall economic impact of over \$283 million annually to Rapid City and surrounding communities.

III. PASSENGER STATISTICS AND AIRLINE INFORMATION




Passenger traffic statistics include both enplaning and deplaning passengers:

Calendar Year	Enplaned Passengers	Deplaned Passengers	Total Passengers
2021	348,269	342,471	690,740
2020	185,592	188,487	374,079
2019	351,096	354,333	705,429
2018	310,810	315,108	625,918
2017	295,215	300,721	595,936
2016	279,558	281,554	561,102

The Airport is currently served by the following airlines and their partners. Current and seasonal departures are listed below. Note that these are subject to change.

<u>AIRLINE</u>	<u>DESTINATIONS</u>	<u>DAILY DEPARTURES</u>
	LAS VEGAS PHOENIX-MESA	Las Vegas & Mesa 2-4x Weekly (Yearly)



	CHARLOTTE CHICAGO DALLAS/FT. WORTH NEW YORK (LAGUARDIA) PHOENIX	1x Daily; (Summer/Shoulder) 2x Daily; (Summer/Shoulder) 1-3x Daily; (Yearly) 1x Saturday; (Summer) 1x Daily (Summer)
	MINNEAPOLIS SALT LAKE CITY	3-5x Daily; (Yearly) 1x Daily; (Summer)
	DENVER CHICAGO HOUSTON NEWARK	3-6x Daily; (Yearly) 1-2x Daily; (Summer/Shoulder) 1x Weekly; Saturday (Summer) 2x Weekly; Sat-Sun (Summer)

IV. AIRPORT SHUTTLE SERVICE PROGRAM DESCRIPTION AND GOALS

The successful Proposer will provide both scheduled and unscheduled shuttle service between the Airport and downtown Rapid City, the Black Hills area, and surrounding areas. The Airport may also enter into agreements with other providers of the same or similar services.

The Board expects each Proposer to offer a program that incorporates the following goals:

- Maximize concession revenue for the Airport and Concessionaire
- Provide safe, convenient and available transportation for the customer
- Provide enhanced quality and value to the customer
- Provide flexibility to the Airport in order to meet customer service requirements

V. EXISTING AIRPORT SHUTTLE SERVICE CONCESSION

The current contract is held by Airport Express Shuttle, Inc. Approximate concession sales over the past four years, as reported by Airport Express Shuttle, Inc. are shown below. This data is provided for information purposes only and is not intended as a guarantee of past or future business. The Board is not responsible for any inaccuracies or misinterpretations of data, and does not guarantee any minimum level of sales or rate of return to the successful Proposer.

2021	\$618,111
2020	\$239,690
2019	\$522,357
2018	\$517,855
2017	\$516,354

VI. SPACE PROVIDED

The selected Proposer will be leased (i) counter space within the terminal building to operate the concession, and (ii) an exclusive parking section on the Ground Transportation Island.

VII. FINANCIAL OBLIGATIONS OF CONCESSIONAIRE

Concession Fee

The Concession Fee is the total combined fees from the following: 1) the Percentage of Gross Revenues for Airport terminal and other direct passengers; and 2) the Per Trip fees for contracted “Common Carrier” shuttle services.

Percent of Gross Revenue

Proposers should provide their offer for the percentage of gross revenues for Airport terminal and other direct passengers on Attachment E.

Trip Fees

The Trip Fees are established by the Airport Board of Directors and are applicable on any subcontract for shuttle services. (Examples would be a contract to provide regular shuttle services with a hotelier, offsite parking operator, specific businesses, etc.) The successful Proposer shall provide a list of all subcontracts for Airport shuttle services. A Per Trip fee shall be charged for each pick up and each drop off at the Airport. The rate is based on number of seats per vehicle, and for calendar year 2022, that rate is as follows:

1-8 Seats: \$2.00 per one way trip

9-16 Seats: \$4.00 per one way trip

Minimum Annual Guarantee

For each Contract Year throughout the Initial Term of the Agreement, the selected Proposer shall pay to the Board the greater of the Minimum Annual Guarantee (MAG) or the total of all Concession Fees on a monthly basis. Proposer should offer a Minimum Annual Guarantee (MAG) on Attachment E. Minimum MAG shall be established at \$30,000.00 for the first calendar year of the Agreement.

Prior to the end of each full calendar year following the commencement of the term, the Board will compare the total Concession Fees paid by the Proposer over the course of the calendar year to the Minimum Annual Guarantee. If the total Concession Fees paid over such year is less than the MAG, then the Board will invoice the Proposer for the difference, which must be remitted within 15 days. If the total MAG and Concession Fees paid over such year is greater than the total Concession Fees due, the Board will issue a credit memo to the Proposer.

The MAG will be adjusted each lease year during the initial term and any subsequent renewal terms. The total base MAG in the first lease year (Year One MAG) of the initial term will be determined based upon negotiations with the successful Proposer. Thereafter, the MAG will be adjusted to the greater of eighty percent (85%) of the total rent payments to the Board during the previous lease year, or the Year One MAG, whichever is greater.

Concession Fee & MAG Payments

The MAG is to be paid monthly on the first of each month. By the 10th of each month, the Proposer will submit a detailed report showing sales by location, and where applicable, sales by category within each location. An example monthly report is included herewith as Attachment F. These sales will be utilized to calculate the total monthly Concession Fees due and payable, and are to be remitted with the report. Successful Proposer will be required to provide monthly and annual sales reports in accordance with the Agreement.

ACDBE Participation, Reporting and Good Faith Efforts

It is the Airport's policy to ensure that Airport Concession Disadvantaged Business Enterprises (ACDBEs) have full opportunity to compete for and participate in concession opportunities at the Airport. The Airport's total ACDBE goal for the concession program (excluding car rental) for 2022 is 1.35%. The Concessionaire will be required to provide monthly and annual Gross Revenue reports, along with annual ACDBE reports, throughout the entire term of the Concession Agreement as provided in the Agreement. The Concessionaire may meet the ACDBE goal through the purchases of goods and services from qualified ACDBEs in the state of South Dakota. Good faith efforts are required to be made, documented, and provided to the Airport. A list of SD certified ACDBEs can be found at the following link: <https://apps.sd.gov/HC65SDEBS/SavedDocuments/DBE/DBEDirectory.pdf>.

VIII. REFERENCES, INFORMATION ABOUT THIS RFP AND THE CONCESSION AGREEMENT

This Section is provided for the purpose of directing Proposers' attention to important specific references and information about this RFP and the Concession Agreement. Full and complete details of this RFP, the selection process, and the Concession Agreement, as specimen, are set forth with particularity in relevant sections throughout this RFP and the appendices hereto, or as may be amended by Addendum. Proposers shall assume full responsibility to review and evaluate the entirety of this RFP, the appendices hereto and any Addendum which may be issued, and to become fully informed of the detailed instructions and requirements of this RFP and the future Agreement expectations. Each Proposer shall judge for itself all conditions and circumstances within this solicitation having relationship to its respective Proposal. Submission of a Proposal shall constitute an acknowledgment that the Proposer has thoroughly examined and is familiar with this RFP and Addendum which may be issued. The failure or neglect of a Proposer to receive or examine any RFP documents or Addendum shall in no way relieve Proposer from any obligation with respect to the Proposal or the obligations that result from submitting a successful Proposal. No claim based upon lack of knowledge or understanding of this RFP or its contents shall be allowed.

An example AIRPORT CONTRACT CARRIER SHUTTLE SERVICE CONCESSION AGREEMENT (referred to herein as the "Agreement") is attached hereto incorporated herein by reference as Exhibit A.

The purpose of the Agreement is to grant the non-exclusive right and privilege to the successful Proposer for the use and occupancy of certain premises on the Airport for the conduct of an Airport

Contract Carrier Shuttle Service Concession at the Rapid City Regional Airport. The provisions and terms of the Agreement may be revised or adjusted by the Board prior to final execution.

IX. MINIMUM SERVICES AND QUALIFICATIONS

Minimum Service Requirements

1. Shuttle service shall be prompt, courteous and efficient.
2. Successful Proposer shall employ at all times, a locally resident manager and sufficient number of personnel necessary to assure prompt service. Said manager shall be designated and fully authorized to represent and act on behalf of the successful Proposer in all matters pertaining to its business operation.
3. Concession operations shall be provided and staffed to serve the needs of the traveling public to and from all regularly scheduled flights.
4. All equipment (including any software) used in the shuttle operation shall be maintained and updated (as needed) to ensure an efficient and continuous operation with only minimal interruptions due only to circumstances outside the successful Proposer's control.
5. Responsible and professional conduct, demeanor and appearance (properly uniformed/identified) of the successful Proposer's officers, agents, employees, suppliers and representatives shall be observed at all times.
6. The Concession Premises and vehicles shall be kept in a clean, neat, businesslike and orderly condition at all times. Vehicles should be clearly marked with Concessionaire's name and the service provided.
7. Successful Proposer shall fully comply with all rules and regulations of the Airport, including the Commercial Ground Transportation Rules & Regulations (which may be changed from time to time), included herewith as Exhibit B.
8. Successful Proposer shall fully comply with the Department of Homeland Security (DHS), Transportation Security Administration (TSA) and Federal Aviation Administration (FAA) regulations, including security requirements and Airport Rules and Regulations. Specifics regarding requirements of federal regulations can be obtained by Proposers at www.faa.gov.

In order to be considered responsive to this RFP, Proposers must meet the qualifications specified in this Section; these qualifications are considered to be minimum qualifications. At the Board's sole discretion, satisfaction of these minimum Proposer qualifications is subject to investigation and validation. While these minimum Proposer qualifications are subject to investigation and validation to determine responsiveness to this RFP, qualifications submitted will not be evaluated on the basis of or for the purpose of relative rating, ranking, or selection.

The minimum Proposer qualifications are:

- 1) Submit a complete Proposal;
- 2) Possess five (5) or more years of continuous experience within the last seven (7) years in the ownership, management, or operation of a Shuttle Transportation Service;
- 3) Be financially capable of performing the Agreement in the sole determination of the Board;
- 4) Provide proof of authorization to conduct business in the State of South Dakota; and



- 5) Provide proof of possessing all applicable licenses, certificates, permits or other authorizations required by all governmental authorities having jurisdiction over Proposer's proposed operation.

If a joint venture, partnership or limited liability company (LLC) submits a Proposal, the entity holding a controlling interest in the joint venture, partnership, or LLC, (for example, majority voting rights in company decisions), must meet the Minimum Qualifications in order to be considered for award of the Agreement. If no single entity holds a controlling interest, then each entity in a group of entities comprising a controlling interest must meet all of the Minimum Qualifications for the joint venture, partnership, or LLC to be considered for award of the Agreement.

Proposers submitting a Proposal to operate a licensed or franchised facility or facilities must independently meet all requirements of the RFP and may not rely on the qualifications of the licensor/franchisor. Additionally, Proposers who are proposing to operate a licensed/franchised facility must provide a letter from the licensor(s)/franchisor(s) granting the rights to operate the license(s)/franchise(s) at the Airport, or stating that the terms of the license/franchise agreement(s) have been agreed upon pending award of the Concession. Upon award of the Concession, any Proposer proposing a licensed or franchised facility must provide the Board with an executed copy of the license or franchise agreement.

X. SUBMITTAL REQUIREMENTS

The following information shall be submitted in the Proposal, in the specific order outlined below. It is the Proposer's responsibility to incorporate all pertinent information to effectively present a Proposal that best communicates the Proposer's financial offer, qualifications and concession program plans. This is your opportunity to clearly define your experience and that of any other members of your team, your financial offer, and the other elements requested below. Please take the time to carefully read and understand the Proposal requirements. Format, organization and content are all important so that the Selection Committee can conduct an accurate and complete review of the Proposal.

Proposals shall be no more than **20 pages**, *excluding* all forms. (Ten (10) physical pages duplexed for a total of 20 pages of content.)

1) Executive Summary (2-page limit)

The executive summary will list important features of the Proposal and must include a statement demonstrating and certifying that the Proposer meets or exceeds the Minimum Qualifications of this RFP (set forth in Section IX, above). The Proposer should clearly communicate why it would be the best operator for the Contract Carrier Shuttle Service provider for the Airport. The Executive Summary should also provide a description of any equipment, power, data, or other reasonable needs of Proposer.

2) Designated Company Point of Contact for this Solicitation (Attachment A)



- 3) **Proposer Certification Form (Attachment B)**
- 4) **Addendum Acknowledgement Form (Attachment C)**
- 5) **ACDBE Commitment Acknowledgement Form (Attachment D)**

6) Management and Operations Plan

Describe how proposer will provide a first-class concession operation for Airport passengers, including a description of management and communication practices, employee training standards, and cleanliness and sanitation procedures and standards.

- a. Proposed Staffing - Illustrate proposed management plan:
 - 1) Organizational chart specific to Airport operations;
 - 2) Level of experience of the management team. Focus on individuals who will manage employees;
 - 3) Staffing schedule to illustrate coverage of operating hours;
 - 4) Staffing solutions in the event of delayed flights or flight anomalies after scheduled operating hours;
 - 5) Describe emergency contact procedures during hours when locations are not open; and
 - 6) Employee dress code.
- b. Labor and Training Practices - Please explain labor and training practices for new and existing employees.
- c. Maintenance Plan - Briefly explain your plan for how the concession premises, vehicles, and equipment will be physically maintained in order to ensure they remain fully functional and in like-new condition throughout the Term of the Agreement. Describe the proposed vehicle fleet for Airport shuttle services.
- d. Operating and Customer Service Plan - Briefly describe your operating and customer service plans, including, but not necessarily limited to, the following:
 - 1) Credit cards and debit cards that you will accept;
 - 2) Point of sale equipment and revenue management processes to be employed;
 - 3) The procedure/policy that you propose to implement at the Airport for handling customer complaints.
- e. ADA Passenger Accommodation Plan - Please explain how your company accommodates and handles passengers with disabilities. Include listing of ADA accessible vehicles, ADA training for employees, and how ADA requirements are met.

7) Financial Offer



The Proposer's proposed percent of Gross Revenue shall be shown on Attachment E. The minimum acceptable Concession Fee Percentage Rent proposed may be no less than five percent (5%) of gross revenue. The Minimum Annual Guarantee (MAG) proposed for the first year of operations may be no less than thirty thousand dollars (\$30,000).

8) Experience of the Proposer

Describe the Proposer's specific experience with the ownership, management and operation of a Contract Carrier Shuttle Service concession. Proposer's experience description must include (1) the period of time it has owned, managed or operated each such location, and (2) how it will meet the goals of this program. Provide a valid and current reference contact familiar with the Proposer's performance for each representative location. Further, please provide (1) a list of contracts where Proposer was terminated including an explanation why, and (2) a list of any past bankruptcies.

9) Describe ownership structure of the Proposer including franchise or other information.

10) Financial Background Information

Proposer is expected to have the financial ability to move forward with the work, however, proposer's financials will not be required as part of the Proposal. Upon inspection of the Proposals, Airport reserves the right to request any and all financial material it deems relevant in assessing the validity of the Proposal. Such materials may include, without limitation, an official bank statement, copies of account records certified by a CPA such as balance sheets, profit & loss statements, etc., or a letter of credit.

XI. EVALUATION OF PROPOSALS

A Selection Committee will evaluate Proposals and make a recommendation to the Board as to which Proposer(s) offers the best overall Proposal in its judgment. The Selection Committee and Board reserve the right to request additional information from Proposers to clarify the meaning of any portion of the written Proposal. Proposers may be required to be interviewed by and make presentations to the Selection Committee. Questions and interviews are at the sole discretion and option of the committee and may not be afforded to any or all Proposer(s).

After the Proposals are reviewed and interviews/presentations completed (if necessary), the Selection Committee will make its selection recommendation to the Board. After the recommendation is made, the Board will determine which Proposal(s), if any, will be accepted. The Board reserves the right to accept or reject any committee recommendation. Following the acceptance of a proposal, the selected Proposer and the Airport Board must execute a Concession Agreement prior to the start of any work for which the City or Airport would be obligated.

Proposals will be ranked from highest to lowest based on the total point scores received in each category as follows:

- 1) **Financial Strength & Ability, Expected Gross Sales, and Revenues to Board – 35 points**
Based on the proposed pricing schedule, including the sum total of the minimum monthly guarantees and concession fee percentages proposed for the term of the agreement, the reasonableness of the proposed operating statement, and the ability to sustain revenue.
- 2) **Management and Operations Strategy Plan – 35 points**
Based on proposed staffing plan, proposed labor and training practices, procedures for high quality customer service, procedures for maintaining vehicle fleet, ADA accommodations, and ability to meet the minimum service requirements outlined in Section IX.
- 3) **Experience, Qualifications and Past Performance - 20 points**
Based on Proposer's ability to meet the minimum qualifications set forth in Section IX, Proposer's level of experience in successfully running a similar operation, quality of Proposer's operating performance and compliance with operating requirements at other airports with similar levels of shuttle concession activity.
- 4) **Proposal Completeness - 10 points**
Based on the quality of proposal and adherence to instructions provided in the RFP, its overall organization and appearance, and how well it communicates the Submittal Requirements set forth in Article X.

PROPOSAL ATTACHMENTS AND RFP EXHIBITS:

Attachments to the Proposal to the Proposal (to be returned with Proposal)

Attachment A..... Designated Company Point of Contact for this Solicitation
Attachment B..... Proposer Certification Form
Attachment C..... Acknowledgement of Addendum
Attachment D..... Commitment Acknowledgement (ACDBE)
Attachment E..... Proposal of Concession Fees Percentage Rent and MAG
Attachment F..... Example Monthly Activity Report

RFP Exhibits – For Information Only (Not to be returned with Proposal)

Exhibit A..... Sample Concession Agreement
Exhibit B..... Commercial Ground Transportation Rules and Regulations



ATTACHMENT A

To be returned with Proposal

Proposer Name: _____

DESIGNATED COMPANY POINT OF CONTACT FOR THIS SOLICITATION

The person or persons listed below should include those designated by the Proposer as being the authorized company point(s) of contact. The person or persons listed below should be qualified and authorized to provide, or arrange to be provided, any additional information which may be requested, or answer any questions regarding the Proposal submittals.

Name _____

Title _____

Company _____

Phone Number(s) _____

Mailing/Parcel Delivery
Address

Email Address _____



ATTACHMENT B

To be returned with Proposal

Proposer Name: _____

PROPOSER CERTIFICATION FORM

The Proposer hereby acknowledges that it has received, examined and is familiar with the Request for Proposals and attached specimen Agreement, documents, forms and addendum.

The person signing this document hereby certifies that he or she has the full authority to bind the company to all terms and conditions and is duly authorized and designated to execute this Proposal and other documents required pursuant to this solicitation.

Proposer Entity: _____

By: _____

Title: _____

Name: (Typed or printed) _____

Dated: _____



ATTACHMENT C

To be returned with Proposal

Proposer Name: _____

ACKNOWLEDGMENT OF ADDENDA

This form shall be completed and included in the proposal.

Failure to acknowledge receipt of all addenda, if any, may cause the proposal to be considered non-responsive.

The undersigned acknowledges receipt of the following Addenda to the documents:

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Authorized Signature: _____

Printed Name & Title: _____

Date Signed: _____



ATTACHMENT D

To be returned with Proposal

Proposer Name: _____

COMMITMENT ACKNOWLEDGEMENT FOR ACDBE

Proposers wishing to receive consideration for ACDBE participation shall include in this section the name and address of each ACDBE participant, the participant's proposed level and method of participation in performance of the Concession Lease, and the dollar amount of estimated sales for each ACDBE participant. The selected Proposer shall agree to perform Good Faith Effort to assist the Airport in reaching its goals. The current noncar rental concession ACDBE goal is 1.31%.

Proposer is a SDDOT Certified ACDBE: _____ YES _____ NO

Please provide the following:

- 1) Names and address of ACDBE firms and suppliers that will participate in the concession:
- 2) A description of the work that each ACDBE will perform; and
- 3) The dollar amount of the participation of each ACDBE firm participating; and

In order to be considered, the ACDBE must be certified in the State of South Dakota. A current list can be found at: <http://www.sddot.com/business/contractors/docs/DBEDirectory.pdf>.

Name & Address of ACDBE Firm	Description of Work	Dollar Amount of Participation



ATTACHMENT E

To be returned with Proposal

Proposer Name: _____

PROPOSAL OF CONCESSION FEES PERCENTAGE RENT BASED ON GROSS REVENUES:

Category	Minimum Requirement	Concession Fees Offer
Shuttle Services	8%	

PROPOSAL OF MINIMUM MONTHLY GUARANTEE (MMG):

Minimum MAG	Concession MAG Offer
Year 1 - \$30,000	
Year 2 and thereafter – 85% of previous year's Percentage Rent	

CURRENT TRIPS CHARGES FOR SHUTTLE SERVICES AS ESTABLISHED BY AIRPORT BOARD RATES & CHARGES ANNUALLY:

Annual Permit Fee:	\$200.00
Per Trip Drop Off Fee Per Number of Seats:	1-8 Seats - \$2.00 9-15 Seats - \$4.00
Per Trip Pick Up Fee Per Number of Seats:	1-8 Seats - \$2.00 9-15 Seats - \$4.00



ATTACHMENT F

**MONTHLY ACTIVITY REPORT
EXAMPLE**

Business Name: _____

Month of: _____

Service	Quantity	Amount
Airport Terminal Passengers	60	\$50,000.00
10% of Sales:		\$5,000.00

Common Carrier	Quantity		Amount
	1-6 Pax \$2.00/trip	7-15 Pax \$4.00/trip	
ABC Hotel	10 trip		\$20.00
Durango Motel		20 trips	\$80.00
Total	10	20	\$100.00

Total Percent Sales: \$50,000 **Amount owed to Airport:** \$5,000.00

Total Common Carrier Trips: 30 **Amount owed to Airport:** \$ 100.00

Total Due to Airport: \$5,100.00



EXHIBIT A

CONTRACT CARRIER SHUTTLE SERVICE CONCESSION AGREEMENT

This **CONTRACT CARRIER SHUTTLE SERVICE CONCESSION AGREEMENT** ("Agreement") is made and entered into as of this ____ day of _____, 202_, by and between the **CITY OF RAPID CITY, SOUTH DAKOTA** (the "City"), by and through the **RAPID CITY REGIONAL AIRPORT BOARD** (the "Board"); and **[CONCESSIONAIRE ENTITY]** qualified to transact business in the State of South Dakota (the "Concessionaire"). The Board and Concessionaire together shall be referred to as the "Parties".

WHEREAS, the Board owns and operates the Rapid City Regional Airport (the "Airport") for the use and benefit of the public; and

WHEREAS, the Board is empowered and authorized to grant concession agreements on behalf of the City; and

WHEREAS, the Board wishes to accommodate businesses engaged in the provision of shuttle services to Airport passengers seeking regional transportation services to and from the Airport (the "Services"); and

WHEREAS, Concessionaire is engaged in the business of operating shuttle services, and represents that it has the requisite experience, financial capacity and human resources necessary to provide passenger shuttle services at the Airport in a first-class manner; and

WHEREAS, the Board has selected Concessionaire to conduct the permitted uses hereunder, and Concessionaire is prepared to conduct the permitted uses and otherwise comply with the terms and conditions of this Agreement.

NOW, THEREFORE, in recognition and reliance on the foregoing, and in consideration of the mutual covenants and promises herein contained, and other valuable consideration, the Board and Concessionaire agree as follows:

ARTICLE I PREMISES

Section 101. Demised Premises.

The Board hereby leases and demises to Concessionaire and Concessionaire hereby hires and takes from the Board the exclusive possession of those areas of the Airport Terminal and Ground Transportation Island as depicted on **Exhibit A** and incorporated herein by reference (hereinafter the "Premises"). The Premises are leased to Concessionaire subject to the terms and conditions of this Agreement and the reservations specified in Section 106 hereof.

Section 102. Access by Concessionaire.

Concessionaire shall have the right of ingress to, egress from and access to the Premises to perform the uses permitted in Article III, for it and its employees, agents and invitees, and its equipment

EXHIBIT A

and vehicles and other property over aprons, drives, foot walks, ramps and roadways now or hereafter in existence, provided that Concessionaire's ingress to, egress from and access to the Premises do not materially interfere with the safe, secure and efficient operations of the Airport and the Terminal.

Section 103. Employee Parking.

The Board shall make ground vehicle parking for Concessionaire's owners and employees available at the published rate for employee parking, as may be adjusted by the Board from time to time.

Section 104. Access by the Board.

The Board and its authorized officers, employees, agents, contractors, and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is reasonably practicable) to enter upon and in the Premises for the following purposes:

- A. To inspect the Premises to determine whether Concessionaire has complied and is complying with the terms and conditions of this Agreement.
- B. To perform maintenance and make repairs pursuant to Section 706, and in any case where Concessionaire is obligated to perform maintenance or repairs, but has failed to do so, after the Board has given Concessionaire notice to do so, in which event Concessionaire shall reimburse the Board for the cost thereof plus a charge of 15% for overhead promptly upon demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport and the Terminal for the purpose of inspecting, maintaining and repairing such systems.
- D. To gain access to the Premises to consider Concessionaire's compliance with any Safety Management System or Environmental Management System as may be adopted by the Board for the Airport to include the Premises.

Section 105. Condition of the Premises; Continued Operation of Airport.

Concessionaire has made such investigations and inspections of the Premises as it deems necessary and accepts the Premises in "as-is" condition except as otherwise specified herein. The Board is not required to alter or improve the Premises, except to the extent of latent defects later discovered or as otherwise specified. Notwithstanding the foregoing, the Board warrants and represents that Concessionaire's intended and permitted use does not contravene any applicable building code and that there are no facts known to the Board which materially affect the intended use of the Premises or which have not been disclosed to Concessionaire. The Board shall maintain and keep in operation and repair the landing area of the Airport and all publicly owned facilities of the Airport, it being understood that the continued operation of the Airport is a material inducement to Concessionaire entering into this Agreement.

EXHIBIT A

Section 106. Reservations.

- A. The Board reserves the right to maintain and keep in repair the landing area of the Airport and all Board-owned facilities of the Airport, together with the right to direct and control operations on or about the Airport.
- B. The Board reserves the right to further develop or improve the landing area and all Board-owned air navigation facilities of the Airport as it sees fit, regardless of the desires or views of Concessionaire, and without interference or hindrance of or by Concessionaire.
- C. The Board reserves the right to take any action considered necessary to protect the aerial approaches of the Airport against obstruction or hazard, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Airport which in the opinion of the Board or the Federal Aviation Administration would limit the usefulness of the Airport or constitute a hazard to air navigation.
- D. During time of war or national emergency, the Board shall have the right to enter into an agreement with the United States government for military use of all or part of the landing area, the Board-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the federal government, shall be suspended during the duration of such war or national emergency and for a reasonable time thereafter.
- E. It is understood and agreed that the rights granted by this Agreement will not be construed, interpreted, or exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or further development, expansion or extension of the Airport.
- F. There is hereby reserved to the Board, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise, vibration, smoke, fumes, glare, dust, fuel, particles and all other impacts as may be inherent in the operation of aircraft, now known or hereinafter developed and used for navigation of or flight in the air, using said airspace for landing at, taking off from, or operating on or about the Airport.
- G. This Agreement shall be subordinate to provisions of any existing or future agreement between the Board and the United States of America or any agency thereof relative to the improvement, expansion, extension, operation, development or maintenance of the Airport. Should the Board receive a determination or order from the Federal Aviation Administration or a court of competent jurisdiction concluding that any provision of this Agreement is inconsistent with any such agreement between the Board and the United States, the Parties shall amend this Agreement as necessary to resolve the inconsistency. If the Parties are unable to agree on the required amendments, the Board shall have the right to unilaterally amend this Agreement to resolve the inconsistency.

EXHIBIT A

- H. The Board reserves the right to remove and replace any or all portions of the Premises to substitute areas of the Terminal comparable in size and utility for the permitted uses hereunder. The Board shall provide Concessionaire no less than sixty (60) days prior written notice of the relocation, except if earlier relocation is required to comply with the regulations or directives of the Transportation Security Administration or Federal Aviation Administration. The Parties thereafter shall modify Exhibit A as necessary to reflect the substituted area. Board shall be responsible for Concessionaire's unamortized costs to improve the area withdrawn from the Premises, to be calculated as a credit to the Concession Fee owed by Concessionaire in accordance with Article IV. Board shall not otherwise be liable or responsible for any inconvenience or loss by Concessionaire of revenue resulting from the relocation provided that the Board takes all commercially reasonable efforts to prevent or minimize such inconvenience or loss. Concessionaire shall have the right to reject the substituted area and terminate this Agreement, provided that the Board shall have no liability or responsibility to compensate Concessionaire in such event.
- I. The Airport Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport or Terminal, and Concessionaire hereby releases and discharges the Board from any and all claims or causes of action arising out of the closing of any right-of-way, the Airport or Terminal.

ARTICLE II TERM

Section 201. Term.

- A. The term of this Agreement shall commence on January 1, 2023 (the "Commencement Date") and shall end on December 31, 2028 (the "Initial Term").
- B. The Board shall have the right, in its sole discretion, to extend this Agreement for one (1) additional five (5) year period. The extension option shall be exercised by the Board providing notice thereof in writing to Concessionaire no later than one hundred and twenty (120) days before the last day of the Initial Term.

Section 202. Holdover.

- A. The Board may permit Concessionaire to hold over beyond the expiration of this Agreement in order for the Board to conclude a solicitation process or to prepare for a follow-on concession tenancy either with Concessionaire or another business or businesses selected by the Board. The Board will notify Concessionaire in writing of the Board's offer of a holdover tenancy. Within thirty (30) days of receipt of the Board's notice, Concessionaire shall notify the Board in writing as to Concessionaire's acceptance of said holdover tenancy. If Concessionaire fails to so notify the Board in writing within said thirty-day period, Concessionaire shall be deemed to have rejected the Board's offer of holdover tenancy.

EXHIBIT A

- B. If the Board permits Concessionaire to holdover, such a holding over shall not be deemed a renewal or extension of this Agreement but shall create a month-to-month tenancy on the same terms and conditions of this Agreement in effect immediately prior to the commencement of the holding over. The Board may terminate the holdover upon thirty (30) days' written notice to Concessionaire. Other than as specified in this section, Concessionaire may not otherwise remain on the Premises for any reason beyond expiration of the Term.

Section 204. Surrender of Possession and Restoration of Premises.

Concessionaire shall, on the expiration date of the Term, or upon the earlier termination hereof, peaceably surrender possession of the Premises, free and clear of all liens and encumbrances, other than those, if any, permitted under this Agreement or otherwise created or consented to by the Board. Concessionaire shall remove any and all of Concessionaire's tangible movable personal property, except those specifically identified by the Board to be retained, and will return the Premises in "broom clean" condition, capable to be relet by Board without significant repair, excepting only reasonable wear and tear. All such costs of removal and restoration shall be borne by Concessionaire, without contribution by the Board.

ARTICLE III USE OF PREMISES

Section 301. Permitted Uses.

The Board hereby grants to Concessionaire, subject to all the terms, covenants and conditions of this Agreement, the right, license and privilege, to the extent allowed by law, to operate ground transportation shuttle services within, to, and from the Premises. All services provided by Concessionaire shall be provided in accordance with the Airport's Commercial Ground Transportation Rules and Regulations and the Airport's Rules and Regulations, as the same may be amended by the Board from time to time.

Section 302. Prohibited Uses.

- A. Concessionaire shall have no right to perform any service or offer for sale any goods or services or to engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement.
- B. Concessionaire shall neither use nor occupy the Premises or any part thereof for any unlawful or hazardous business purposes, nor operate or conduct its business in a manner constituting a public or private nuisance.

Section 303. No Exclusivity to Conduct Concession Activities.

Concessionaire acknowledges and agrees that nothing specified in this Agreement, and no statements or representations made by the Board or any person, commission or other authority, independently or on behalf of the Board, prior to or contemporaneously with the execution of this

EXHIBIT A

Agreement, shall be deemed to grant or imply an exclusive right or privilege to conduct concession activities at the Airport on an exclusive basis. The Board reserves the authority to grant the right to provide similar or related concession services to any other entity, except that, subject to the terms and provisions contained in this Agreement, Concessionaire shall have the exclusive right to possession of the Premises.

ARTICLE IV FINANCIAL OBLIGATIONS

Section 401. Obligation to Pay Concession Fee and Charges.

Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the fees set forth in this Article IV, without demand, during and throughout the Term.

Section 402. Concession Fee.

- A. Concessionaire shall pay the Board monthly for the rights and privileges granted to it herein, for each Agreement Year, the greater of (a) the Concession Fee; or (b) the Minimum Annual Guarantee (MAG).
- B. The Concession Fee is the sum of the following: 1) the Percent of Gross Revenues for individual passengers; and 2) the Per Trip fees for institutional client "Common Carrier" shuttle services.
- C. The Percent of Gross Revenues for Airport terminal and other individual passengers shall be ____%.
- D. The Board's portion of Trip Fees for institutional clients (the "Common Carriers") shall be a flat, per trip fee (the "Common Carrier Fee") as prescribed by the Airport's current published Rates and Charges. Concessionaire agrees to provide a current listing to the Board of all Common Carrier Agreements and provide updates to the listing as they occur.
- E. The MAG for Agreement Year One, "Base MAG", shall be \$_____, which MAG is based on an Agreement Year from January to December, and shall be payable in 12 equal monthly installments on or before the first day of each month.
 - a. The MAG for each year thereafter shall be equal to the greater of (i) eighty percent (85%) of the prior Agreement Year's Percentage Fees, or (ii) the Year One MAG, whichever is greater. In no event shall the MAG for the forthcoming Agreement Year be less than the Year One MAG.
- F. In the event Lessee's cumulative payments for an Agreement Year equal or exceed the MAG, Lessee shall be relieved from its obligation to pay one-twelfth (1/12) of the MAG on or before the first of each month and shall only be obligated to make its Concession Fee

EXHIBIT A

payment, which shall be made on or before the tenth of each month for the remainder of that Agreement Year.

- G. For purposes of this Agreement the term “Gross Receipts” shall mean all revenue certified by a Certified Public Accountant as received by the Concessionaire whether by cash or credit derived from all shuttle trips. Notwithstanding the above, the following shall be excluded from gross revenues:
 - i) Any federal, state, or municipal sales or other similar taxes separately stated and collected from customers of Concessionaire.
 - ii) Amounts received from the disposition of used equipment, vehicles, and personal property of the Concessionaire.
- H. No deductions shall be allowed from gross revenue for the payment of franchise taxes or taxes levied on concession activities, facilities, equipment, or real or personal property of Concessionaire.

Section 403. Payment of Concession Fee.

- A. By the tenth (10th) day of each month Concessionaire shall pay the Board the Percentage Fee. Concessionaire shall submit a Monthly Sales Report in the form set forth in **Exhibit B** with each Percentage Rent payment.
- B. Payment of fees and all other charges shall be delinquent if not paid prior to the tenth (10th) day of the month in which they are due
- C. At the end of each full calendar year, the Board shall compare Concessionaire’s Percentage Fee payments over the year to the MAG. If the total Percentage Fee paid over such year is less than the MAG, the Board shall invoice Concessionaire for the difference, which amount must be remitted to the Board within fifteen (15) calendar days. If the total MAG and Percentage Fee paid over such year is more than the total Percentage Fee owed and paid, the Board shall issue a credit memo to the Concessionaire for the difference.

Section 404. MAG Adjustment

- A. At the beginning of each lease year during the Initial Term and any subsequent Renewal Term(s), the MAG shall adjust to the greater of (i) eighty percent (85%) of the total Rent payments to the Board during the previous lease year, or (ii) the MAG set forth in Section 402(A). Under no circumstances shall the MAG be less than the Base MAG set forth in Section 402(A).
- B. As an exception to the foregoing, Concessionaire may petition the Board to waive MAG if, for any reason during the Term, the number of enplaned passengers at the Airport during any Agreement Year shall be less than seventy-five percent (75%) of the number of enplaned passengers (in accordance with such traffic records as are maintained by the Board) in the calendar year period of the preceding year; and the Concessionaire

EXHIBIT A

satisfactorily demonstrates to the Board that, through no fault of its own, the operations of the Concessionaire's business have been materially impacted by such decrease in enplaned passengers. Such petitions will be considered by the Board on a case-by-case basis, provided that Concessionaire continues to operate all concession locations in accordance with this Agreement, including but not limited to Article V (Performance and Operating Standards).

Section 405. Recording of Gross Revenue.

Concessionaire agrees to provide for the collection of all monies and provide accounting, audit and reports of Gross Revenue as required by this Article IV. These records are to be retained by Concessionaire and may be examined upon request of Director.

Section 406. Annual Audit.

- A. Concessionaire shall perform, at its sole cost and expense, an audit of Gross Revenues in each new calendar year throughout the Term. The audit will be performed by an independent Certified Public Accountant licensed to do business within the State of South Dakota. The audit reports shall be provided to Board prior to the end of January and at a minimum certify the accuracy of (i) reported total accumulated Gross Revenue, (ii) accumulated Gross Revenue separated into the three (3) Percentage Rent product categories, (iii) the calculation of the total amount payable to Board based upon accumulated Gross Revenue for the calendar year, the product categories and the Percentage Rent, and (iv) the dollar value of ACDBE participation. The audit reports shall also include a schedule showing the total of actual payments to Board during the calendar year and shall state an opinion as to the correctness of the computation of Gross Revenue without exception.
- B. If through such audit report, it is established that additional fees are due Board, Concessionaire shall pay such additional fees to Board no later than fifteen (15) days after completion of such audit and receipt of written notice from the Director. If it is established that Concessionaire has overpaid the Board, then such overpayment from Concessionaire shall be credited to the Concession Fee next thereafter due from Concessionaire.
- C. At the time of submission of the audit report, Concessionaire shall provide Board with an estimate of projected monthly Gross Revenue for the subsequent calendar year by product category as set out above.

Section 407. Charges.

Concessionaire shall pay the following fees, charges and taxes (singularly, a "Charge" and collectively the "Charges") to the appropriate vendor or taxing authority, as the case may be:

- A. If applicable, all Charges for occupational or business licenses and permits, security badges, and other licenses and permits necessary in the operation of the business to be

EXHIBIT A

conducted by Concessionaire upon the Premises, all of which Concessionaire agrees to keep current and in force;

- B. The telephone system in the Passenger Terminal Facility is owned by the Board and is provided to the Concessionaire for use in conducting its business operations. No other telephone system may be installed or operated by the Concessionaire without the express written consent of the Board. Concessionaire agrees to pay for the usage of the telephone system as per the Board's current rates and charges. The Board will maintain the telephone system and associated equipment in good working condition and Concessionaire will be responsible for any damage to the same caused by Concessionaire. Concessionaire agrees to contact the Board for any desired changes to or issues with telephone system or associated equipment; and
- C. If applicable, all sales and use taxes due as a result of business conducted by Concessionaire on the Premises, and personal property taxes, if any, assessed against Concessionaire's personal property situated thereon, as well as any and all state, Board and local taxes payable during the Term arising with respect to Concessionaire's use of the including but not limited to real property taxes and leasehold improvement taxes, or the conduct of Concessionaire's operations from the Premises.

Section 408. Unpaid Concession Fees and Charges.

Concessionaire covenants and agrees that all sums Concessionaire is to pay to the Board as Concession Fees or Charges under this Agreement, if not paid within ten (10) days of the date when due, shall bear interest from the date when due on the unpaid portion thereof at a rate of eighteen percent (18%) per annum or at the highest rate legally chargeable, or as set by the Airport Board of Directors through its annual published Rates and Charges, whichever is lower.

Section 409. Security Deposit.

In the event Concessionaire fails to timely pay a monthly installment of the Concession Fee when due two (2) or more times during the Term, the Board shall have the right to demand that Concessionaire deposit with the Board an amount equal to twice the monthly MAG then payable hereunder as a security deposit to be held by the Board and applied to any damage, Concession Fee or Charge due to the Board from Concessionaire with respect to the Premises which are not paid when due, subject to any notice and cure periods specified herein (hereinafter the "Security Deposit"). If the Board applies all or part of the Security Deposit, Concessionaire shall within ten (10) days after demand from the Board to Concessionaire replenish the portion of the Security Deposit so applied. If the Board does not use the Security Deposit and if Concessionaire substantially complies with all provisions contained in this Agreement, the Board shall return the Security Deposit, without interest, to Concessionaire upon the expiration or earlier termination of the Agreement and vacation by Concessionaire of the Premises.

Section 410. Mechanics' and Materialmen's Liens.

EXHIBIT A

Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be recorded against the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 411. Accounting Records and Reports.

Concessionaire will, during the term hereof, make available in Rapid City true, accurate, complete and auditable records of all business conducted by it at the Airport. Concessionaire will make same records available to the Board for one year following the termination of this Agreement. These records will be accessible during usual business hours to the Board or its duly appointed agents or auditors.

Section 412. Contest of Charges.

Concessionaire shall have the right to contest the amount or validity of any Charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving Concessionaire of its covenant to pay any such Charge or any applicable penalties, costs and interest related thereto. Concessionaire shall not be in default hereunder in respect to the payment of any tax or assessment which Concessionaire is in good faith contesting if contest of such tax or assessment without payment is permitted by law. Board shall execute such documents as may be requested by Concessionaire from time-to-time for the purpose of receiving notices of reassessment, tax bills and the like or making tax-related claims.

Section 413. Notice, Place and Manner of Payment.

Payments will be made at the Office of the Airport Director, 4550 Terminal Road, Suite 102, Rapid City, South Dakota 57703-8706, or such other location as the Board may hereafter notify Concessionaire and will be made by check.

ARTICLE V OPERATING AND PERFORMANCE STANDARDS

Section 501. First-Class Concession.

Concessionaire shall furnish the services to Airport passengers and users in a first-class manner, consistent with the highest quality delivery of services in like settings. Concessionaire shall offer prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Concessionaire and the Board. Concessionaire shall equip, organize, and manage the Premises so as to provide service within an attractive and pleasant atmosphere. Concessionaire shall operate and maintain the Premises in satisfaction of all public health and safety standards and maintain the highest standards of cleanliness.

Section 502. Service Requirements.

EXHIBIT A

- A. Concession operations shall be provided and staffed to serve the needs of the traveling public to and from all regularly scheduled flights.
- B. All equipment (including any software) used in the shuttle operation shall be maintained and updated (as needed) to ensure an efficient and continuous operation with only minimal interruptions due only to circumstances outside Concessionaire's control.
- C. The Services shall be performed in a prompt and efficient manner.

Section 503. Fleet Management

Concessionaire shall provide at its own expense, a minimum of ___ service vehicles approved by the Board. Said vehicles shall be, and at all times remain, the property of Concessionaire and shall be used solely for the Services. Vehicles shall be maintained consistent with the Commercial Ground Transportation Rules and Regulations, as the same may be amended by the Board from time to time.

Section 504. Business Management.

- A. Concessionaire shall at all times retain a local manager who shall manage and supervise the operations at the Premises and represent and act for Concessionaire. The manager shall ordinarily be available during regular business hours.
- B. Concessionaire's local manager shall attend monthly tenant management meetings conducted by the Board to discuss any relevant issues which may affect Concessionaire's operation or other operations at the Airport. Concessionaire shall also be available for meetings at other times reasonably required by the Airport Director.
- C. Concessionaire shall be responsible for notifying the Airport Director of any problem which reduces service levels or in any way impairs Concessionaire's operation. The Board will undertake, in its sole discretion, reasonable efforts to assist in eliminating such problems.

Section 505. Personnel.

- A. Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms, and all of its employees to wear badges indicating company trade name and employee's first name. Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the course of providing shuttle services, and information related thereto. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Concessionaire shall prohibit and restrain its employees, vendors, and agents from loud, noisy, boisterous or otherwise objectionable behavior. Upon notice from the Airport Director concerning the conduct or

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appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

- B. Concessionaire agrees to provide staff in reasonable numbers adequate to provide a high level of service and maximize sales but commercially reasonable when considering, among other things, the number of expected customers.
- C. Concessionaire assumes responsibility to recover any Airport-issued security badge or similar credential and any keys for Airport doors or locks from personnel that no longer are employed by Concessionaire. Concessionaire shall take all reasonable efforts to recover credentials and keys from any such employee immediately upon termination or separation.

Section 506. Operation.

- A. Concessionaire shall be responsible for all aspects of the management and operation of the concession. Further, Concessionaire will provide employees and necessary components of the operation, including inventory, fixtures, equipment and supplies, except as otherwise provided in this Agreement.
- B. The Board shall not be responsible for the security of any goods, merchandise or equipment used, maintained or stored at the Premises, nor will it be responsible for damage to such goods or merchandise resulting from flood, fire, explosion, vandalism or other causes outside the control of Board.

Section 507. Airport Concession Disadvantaged Business Enterprises.

- A. This Agreement concerns an airport concession and therefore is subject to the requirements of 49 C.F.R. Part 23 (Participation of Disadvantaged Business Enterprise in Airport Concessions) ("Part 23") and, by reference in Part 23, certain requirements of 49 C.F.R. Part 26 (Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs). This Agreement further is subject to the requirements of the Board's ACDBE Program, as may be adopted and amended by the Board from time to time.
- B. The terms used in this section shall have the meaning set forth in Part 23. For purposes of this Agreement, "ACDBE" shall mean a business that meets the requirements set forth in 49 C.F.R. Section 23.3 and that has been certified by the South Dakota Department of Transportation
- C. The Board has established a total goal of 1.35% ACDBE participation for FFY ending 2022 for all non-car rental concession activities at the Airport. Concessionaire shall make and document good faith efforts to ensure participation of certified ACDBEs to assist the Board in reaching its goal. ACDBE participation towards this goal shall be counted in the manner set forth in 49 C.F.R. Section 23.55.

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- D. Concessionaire shall make good faith efforts to replace any ACDBE subtenant, subcontractor, joint venture partner or vendor that is terminated, withdraws, or otherwise ceases to participate in the concession activity with another ACDBE to participate at the same or similar level. The Parties agree and acknowledge that, to the extent this Agreement constitutes a long-term, exclusive agreement pursuant to 49 C.F.R. Section 23.75, Concessionaire shall comply with requirements of Section 23.75 and the applicable policies of the Federal Aviation Administration in replacing any ACDBE subtenant, subcontractor, joint venture partner or vendor.
- E. Failure by Concessionaire to carry out the requirements of this section will constitute a material breach of this Agreement and may result in termination.

Section 508. Americans With Disabilities Act.

- A. Concessionaire agrees that it shall develop, manage, use, and occupy the Premises in accordance with the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. (hereafter collectively the "ADA"), including, without limitation, modifying the Concessionaire's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons.
- B. The Concessionaire acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to disabled persons. The Concessionaire shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state, or Board disability rights legislation. The Concessionaire agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Concessionaire shall constitute a material breach of this Agreement.

ARTICLE VI IMPROVEMENTS

Section 601. Improvements.

The Parties do not contemplate making any improvements to the Premises during the Term. Should either Party determine that improvements are necessary or desirable, the Parties shall meet and confer on the nature, extent and design of any such improvements.

Section 602. Title to Premises.

Fee simple title to the Premises shall at all times remain in the Board, subject to Concessionaire's rights arising under and pursuant to this Agreement.

Section 603. Signs.

- A. Concessionaire shall not erect, maintain or display any signs on the Premises without the

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prior written approval of the Director, which approval shall not be unreasonably withheld. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of concession activities on the Premises as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Terminal.

- B. Concessionaire shall be responsible for the cost of any modifications to the Airport directory and other signs. All modifications to these signs must be approved by the Airport Director and are subject to all applicable requirements of this Section 603.
- C. Prior to the erection, construction or placing of any sign, Concessionaire shall submit to the Airport Director for approval, drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as agreed in writing shall become conditions of this Agreement.
- D. Concessionaire shall not obstruct its counter space with advertising matter, displays or other literature not directly pertaining to its concession activities. Concessionaire shall not place any signs outside of the Premises.

ARTICLE VII USE AND MAINTENANCE OF PREMISES

Section 701. Compliance with Laws and Regulations.

- A. Concessionaire shall comply with statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements (hereinafter collectively referred to as "Laws") of federal, state and local governmental authorities which are applicable to the Services, Premises, and the Airport or to any adjoining public ways, or to the manner of use or the condition of the Premises and the Airport or of adjoining public ways; provided that nothing herein contained shall be construed as estopping or preventing Concessionaire from contesting in good faith the validity or applicability to the operations of Concessionaire hereunder of any Laws, including without limitation the exhaustion of all appeal rights.
- B. Concessionaire's use of the Airport and the Premises shall be subject to the Airport Rules and Regulations and such other similar rules and directives of the Airport Director, each as may be adopted and amended from time to time.
- C. Concessionaire shall comply with all applicable health, safety and sanitary laws, regulations and inspections concerning its operations. Concessionaire shall keep applicable licenses and permits displayed on the Premises, as may be required by law.

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Section 702. Interference with Air Navigation.

No obstructions or hazards to air navigation, as such are defined from time to time by application of the criteria contained in 14 C.F.R. Part 77, as amended, or subsequent and additional regulations of the FAA, will be constructed or permitted to remain on the Premises. Any such obstructions and hazards erected by Concessionaire shall be removed by Concessionaire at its expense within a time period reasonably established under the circumstances by the Airport Director. Concessionaire shall not install any structures, objects, machinery or equipment that interfere with the operation of navigation aids or the safe operation of the Airport, or the operations of other tenants and users of the Airport.

Section 703. Property of Concessionaire.

Any trade FFE and other personal property owned by Concessionaire which are brought, installed or placed in, on or about the Premises shall be and remain the property of Concessionaire, except as otherwise herein provided. Concessionaire shall have the right at any time during the Term to remove any or all of its property, subject to the obligation of Concessionaire to substantially repair all damage to the real property and the improvements thereon, if any, resulting from such removal.

Section 704. Disposition of Concessionaire's Property at End of Agreement Term.

All such trade fixtures, equipment and other personal property of Concessionaire shall be removed by Concessionaire from the Premises by not later than the expiration or earlier termination of the Term, provided that Concessionaire is not then in default under the Agreement. Any such trade fixtures, equipment and personal property remaining after the expiration or earlier termination of the Term may be removed at the election of the Board and the Board shall not be liable for damages or otherwise for such property's removal, breakage, damage or disposal, and provided further that Concessionaire shall reimburse the Board for all of its expenses incurred in such removal and disposal.

Section 705. Board Maintenance Obligations.

Concessionaire will provide and pay for all repairs and maintenance of the Premises, except the following, which shall be the responsibility of the Board:

- A. The structural components of the Terminal in which the Premises are located.
- B. The utility system up to Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.
- C. The washing of the exterior of windows in the Terminal.

Section 706. Concessionaire Maintenance Obligations.

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Concessionaire agrees to perform the following functions as part of its responsibilities in the repair and maintenance of the Premises. The following list includes certain functions but Concessionaire's responsibilities are not limited to those functions:

- A. Perform custodial and cleaning services daily, and as necessary during hours of operation, to maintain a continuous sanitary environment including, but not necessarily limited to the following: mopping and sweeping of floors; vacuuming of carpets; cleaning surfaces of counters, trash receptacles, tables, windows, equipment, signs and chairs; polishing brass; dusting and polishing wood surfaces and other surfaces where dust accumulates; and emptying trash receptacles.
- B. Keep Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- C. Repair all damage to the Premises and Terminal, when such damage results from the careless or negligent acts of Concessionaire or Concessionaire's employees, agents, guests, patrons and invitees.
- D. Store and dispose of all waste matter in a manner satisfactory to the Director. Concessionaire agrees to arrange for the timely disposal, at its own expense, of all waste material.
- E. Confine all handling and holding of Concessionaire's property to the Premises.
- F. No storage will be permitted on the exterior areas of the Premises nor on the Terminal perimeter. Ground level storage may be leased from the Board at its current rates and charges dependent upon space availability.

Section 707. Security.

- A. The Board is required by Transportation Security Regulations, 49 C.F.R. Part 1542, as amended, to adopt and implement a security program which provides for the safety and security of persons and aircraft operating in air transportation, including procedures designed to prevent and deter persons and vehicles from unauthorized access to air operation areas (hereinafter "AOA") and other secured areas. The Board represents that it has satisfied the security program requirements by developing an Airport Security Plan (hereinafter the "ASP") for the Airport. The Board shall deliver to Concessionaire a copy of those portions of the ASP, as amended, relevant to the operations of Concessionaire at the Airport, and upon receipt thereof Concessionaire agrees to comply during the term hereof with the requirements of the ASP in connection with the exercise by Concessionaire of the rights granted to Concessionaire under this Agreement. Concessionaire shall prepare and submit for approval by the Airport Director plans proposed by Concessionaire to prevent and deter persons and vehicles from unauthorized access to the AOA and other restricted areas in the Airport from and through the Premises in accordance with the provisions contained in the portion of the ASP delivered to Concessionaire and applicable laws and regulations, as amended. The Parties acknowledge that portions of the ASP are deemed Sensitive Security Information ("SSI") in accordance with 49 C.F.R. Part 1520

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and that Concessionaire may be unable to view those portions of the ASP deemed SSI and/or may be required to comply with handling and protecting those portions deemed SSI if it is determined that Concessionaire has a need to know the information.

- B. Concessionaire shall reimburse the Board for any civil penalties or fines assessed against the Board by the Transportation Security Administration for violation of 49 C.F.R. Part 1542 or the Airport Security Plan that are caused by, or directly attributable to, the action or omissions of Concessionaire.
- C. Concessionaire and its employees shall submit to a Criminal History Records Check and any other background inquiries necessary to obtain a security badge or similar credential. Concessionaire or its employees shall pay all associated fees in connection with securing badging.

Section 708. Damage and Destruction.

The Board shall be responsible to repair or replace the Premises upon the occurrence of any casualty, except as may be caused by the acts or omissions of Concessionaire. The Board shall repair or replace any and all improvements to the condition existing immediately prior to the casualty event, provided that Concessionaire shall be responsible to repair or replace any furniture, fixtures and equipment that it owns damaged or destroyed during the casualty event. The Board shall abate any Concession Fee during any period in which the Premises are closed to the public as a result of the casualty event, provided that the Board shall not otherwise be responsible to Concessionaire for lost revenue, lost profit or any other injury, loss or inconvenience suffered by Concessionaire attributable to the casualty event or to share in any insurance proceeds received by the Board.

ARTICLE VIII INSURANCE

Section 801. Insurance Coverage.

- A. Concessionaire agrees to procure and maintain throughout the Term insurance coverage conforming to the minimum requirements as stated below. Concessionaire shall provide to the Board a standard Acord Certificate(s) of Insurance as proof of insurance. Except for worker's compensation liability insurance, all policies shall include the "City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, and its representatives, officers, officials, employees, agents and volunteers" as additional insureds.
- B. All policies of insurance required under this Agreement shall provide Board no less than thirty (30) days advance written notice of any material change, cancellation or non-renewal.
- C. All coverage required by this Agreement shall be provided by insurance companies authorized to transact business under the laws of the State of South Dakota, and acceptable

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to the Board. The insurance companies providing coverage shall have a Best's Policyholder's Rating of "A" or better, and a Financial Rating of not less than "VII." Board shall have the right to approve the amount of any policy deductible or retention.

- D. Commercial General Liability coverage shall be on an occurrence form providing the following coverage: Premises/Operations, Products/Completed Operations, Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Fire Legal Liability, Personal Injury and Medical Expense.
- E. Limits for Commercial General Liability, including Bodily Injury, shall be no less than FIVE MILLION DOLLARS (\$5,000,000) combined single limit per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate. Fire Legal Liability shall have a limit of no less than \$500,000. Medical Payments coverage shall have a limit of not less than \$5,000 per person. Limits for Commercial General Liability, including Bodily Injury, shall increase to no less than \$5,000,000 combined single limit per occurrence and in the aggregate.
- F. Business Automobile Liability coverage shall be afforded on all owned, non-owned and hired vehicles whether private passenger or other than private passenger, and shall include Uninsured and Underinsured motorists. Limits for the Automobile Liability, Uninsured and Underinsured Motorist coverages, shall be no less than \$5,000,000 combined single limit for Bodily Injury and Property Damage.
- G. Workers' Compensation coverage shall be afforded for all operations conducted under this Agreement as required by State of South Dakota statute. Employer's Liability coverage shall be provided for not less than \$500,000 each accident, \$500,000 disease-policy limit, and \$500,000 disease-each employee.
- H. "All Risk" property insurance, including Earthquake coverage, shall be afforded on Concessionaire's business personal property, build-outs, improvements and betterments, and alterations. Coverage shall be sufficient to provide for the full replacement of Concessionaire's property as well as any "business interruption" expense incurred by Concessionaire in order to remain "open for business," or to resume normal business operations in a manner and timeframe acceptable to Board.
- I. The amounts of insurance required in this section may be satisfied by multiple policies which, when combined together, provide the total limits of insurance specified.
- J. The insurance amounts and types of insurance set forth in this Section 801 shall be reviewed from time to time by the Board and may be adjusted by the Board if the Board reasonably determines such adjustments are necessary to protect the Board's interests.

Section 802. Review of Requirements.

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These insurance requirements shall be subject to annual review by the Board, and may be modified at any time due to changes in Concessionaire's operations or exposures, or due to changes in legal requirements or insurance industry standard coverages, or if the Board reasonable determines such adjustments are necessary to protect the Board's interests.

Section 803. Adjustment of Claims.

Concessionaire shall provide for the prompt and efficient handling of all claims arising out of activities of Concessionaire under this Agreement.

Section 804. Right of Board to Obtain Insurance.

If Concessionaire shall fail to obtain and keep in force the insurance as required herein, the Board may, but shall not be under any obligation, to affect such insurance by taking out policies in one or more companies satisfactory to the Board. The amount of the premium or premiums paid for such insurance by the Board shall be payable by Concessionaire to the Board as a Charge under the terms of this Agreement.

ARTICLE IX INDEMNIFICATION

Section 901. Indemnification.

- A. Concessionaire shall indemnify and hold harmless the Board and its respective officers, directors, agents and employees, and its successors and assigns, individually or collectively, from and against all claims, damages, expenses, or losses for injury to or death of any person or loss of damage to any property arising out of or incident to the conduct of Concessionaire's business in connection with this Agreement and/or the use or occupancy of the Premises and caused by the acts or omissions of Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, guests or invitees, whether occurring on the Premises or on the Airport to the extent resulting from:
 - i. A failure by Concessionaire to perform any of the terms or conditions of this Agreement;
 - ii. Any occurrence, personal injury or property damage happening on or about the Premises or appurtenances resulting from the condition, maintenance, construction or operation of or upon the Premises that are under Concessionaire's care, custody or control;
 - iii. Any occurrence, personal injury or property damage happening on or about the Premises or appurtenances resulting from any act or omission to act on the part of Concessionaire's agents, employees, invitees or guests, whether sustained by Concessionaire or its servants, employees, agents, licensees, guests or invitees;
 - iv. A failure by Concessionaire to comply with any law, ordinance, rule or regulation of any governmental authority, or any department or agency thereof,

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including but not limited to any and all health and sanitation, environmental, or other such provisions;

- v. Any mechanic's lien or security interest filed against the Premises or any fixtures, equipment, or personalty therein or appurtenant thereto; or
- vi. Any construction, work, alterations or improvements to or on the Premises or appurtenant thereto.

Section 902. Notice; Defense or Settlement; Cooperation; Approval of Counsel.

Board shall provide Concessionaire with at least 60 days' notice of any claim or occurrence that is likely to give rise to a claim that will fall within the scope of the foregoing indemnity. The Board will provide Concessionaire an opportunity to defend or settle any such claim and will cooperate with Concessionaire in any such defense or settlement. In carrying out its defense obligations under Section 902, Concessionaire shall not use counsel to which the Board has made reasonable written objections prior to the date on which Concessionaire retains such counsel.

Section 903. Survival of Indemnification.

The indemnification provisions of this Article IX shall survive the expiration or earlier termination of this Agreement.

ARTICLE X ENVIRONMENTAL COMPLIANCE

Section 1001. Environmental Requirements.

Concessionaire, in conducting any activity within the Premises or in any other areas of the Airport, shall comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations, now or hereafter in effect relating to the regulation and protection of human health, safety, the environment and natural resources. Environmental Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 (2003), et. seq.), as amended; Resources Conservation and Recovery Act (42 U.S.C. Section 6901 (2003), et. seq., as amended; the Federal Water Pollution Control Act (33 U.S.C. Section 1251 (2003), et. seq., as amended; the Hazardous Materials Transportation Act of 1990 (49 U.S.C. Section 1801 (2003), et. seq., as amended; the Toxic Substance Control Act of 1976 (15 U.S.C. Section 2601 (2003), et. seq.), as amended; and the Clean Air Act of 1970 (42 U.S.C. Section 7401 (2003), et. seq.), as amended.

Section 1002. Hazardous Materials and Substances.

Concessionaire shall act with due care and consistent with industry practices in connection with materials and substances used by Concessionaire at the Airport, even if such materials and substances are not regulated by law, so as not to pose a hazard to the health or safety of Airport users or other tenants. Concessionaire further agrees to execute and deliver to the Board any

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documents reasonably required by the Board in connection with any environmental matter, including disposal.

Without limiting the generality of the foregoing, Concessionaire shall not cause any Toxic or Hazardous Substance to be improperly used, stored, discharged, released, or disposed of on the Premises or the Airport. "Toxic or Hazardous Substances" shall be interpreted broadly to include, but not be limited to, any material or substance that is defined or classified as (i) a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 Section 101, 42 U.S.C. Section 9601(14) (2003), as amended, and pursuant to the Federal Water Pollution Control Act Amendments of 1972 Section 311(b)(2)(A), 33 U.S.C. Section 1321(b)(2)(A) (2003), as amended; (ii) a "hazardous waste" pursuant to the Resources Conservation and Recovery Act Sections 1004 and 3001, 42 U.S.C. Sections 6903(5) and 6921 (2003), as amended; (iii) a "toxic pollutant" pursuant to the Federal Water Pollution Control Act Section 307(a)(1), 33 U.S.C. Section 1317(a)(1) (2003), as amended; (iv) a "hazardous air pollutant" pursuant to the Clean Air Act of 1970 Section 112(a)(6), 42 U.S.C. Section 7412 (2003), as amended; (v) toxic or hazardous pursuant to regulations promulgated now or hereafter under the Environmental Laws; and (vi) asbestos, polychlorinated biphenyls, petroleum and petroleum derivatives, urea formaldehyde, or any perfluoroalkyl or polyfluoroalkyl substance.

Section 1003. Release Response.

In the case of any release or discharge of Toxic or Hazardous Substances as a result of Concessionaire's construction, operation or maintenance activities, Concessionaire shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Concessionaire shall indemnify, defend, and hold harmless the Board for any penalties and all cost and expense, including without limitation attorney's fees, incurred by the Board as a result of the release or discharge by Concessionaire of any Toxic or Hazardous Substances on the Airport.

Section 1004. Due Diligence.

Concessionaire understands and agrees that the Board has not performed any environmental assessments or studies of the Premises as of the Commencement Date, and Concessionaire accepts the Premises "as is."

ARTICLE XI ASSIGNMENT AND SUBLETTING

Section 1101. Assignment and Subletting by Concessionaire.

Concessionaire may not assign this Agreement or let or sublet the whole or any part of the Premises without the prior written approval of the Board. Notwithstanding the foregoing, Concessionaire shall have the right to (i) assign the Agreement or sublease the Premises or any portion thereof to any subsidiary or affiliate of Concessionaire (however, Concessionaire shall provide written notice thereof along with a true and complete copy of the sublease or assignment document no later than ten (10) days prior to the effective date of such sublease or assignment) and/or (ii) assign the

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Agreement or sublease the Premises in the event of a merger or a sale of all or substantially all of Concessionaire's assets, and in any event shall notify the Board in writing within ten (10) days prior to the effective date of such assignment or sublease. For the purposes hereof, "affiliate" shall mean an entity that controls, is controlled by or is under the common control with, Concessionaire. Concessionaire shall remain liable under the terms of this Agreement if Concessionaire exercises its rights under this Section 1101, but if Concessionaire is not the surviving entity in any merger or acquisition, the surviving entity shall be bound as Concessionaire hereunder.

Section 1102. Assignment and Subletting by Board.

The Board, and its successors, reserve the right to assign this Agreement. Until notice of such assignment shall be given to Concessionaire, Concessionaire shall look to the Board or the last identified assignee for performance of the obligations on the part of the Board to be performed under this Agreement.

ARTICLE XII EVENTS OF DEFAULT AND TERMINATION

Section 1201. Board's Right to Terminate.

The Board, acting by and through the Airport Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1203 hereof, upon the happening of any one or more of the following events. By example, but not by way of limitation, the following acts or omissions shall constitute a default:

- A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay or any part thereof, shall be unpaid after the date the same shall become due; provided, however, that Concessionaire shall be given written notice of this failure to pay and shall have twenty (20) days thereafter to cure such failure to pay.
- B. If, during the term of this Agreement, Concessionaire shall:
 - 1. Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
 - 2. File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
 - 3. Make a general assignment for the benefit of creditors without the approval of the Board;
 - 4. File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
 - 5. File an answer admitting the material allegations of a petition filed against any said assignee or sublessee of a substantial portion of this lease in any bankruptcy,

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reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Concessionaire a bankrupt or insolvent, or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days;

6. Fail to maintain the quality of services to the reasonable satisfaction of the Airport Director as required hereunder; provided, however, that Concessionaire shall be given written notice of this failure and shall have twenty (20) days thereafter to cure such failure;
7. Fail to prevent cessation or deterioration of service for a period which, in the reasonable opinion of the Airport Director, materially and adversely affects the overall performance of Concessionaire under this Agreement; provided, however, that Concessionaire shall be given written notice of this failure and shall have ten (10) days thereafter to cure such failure;
8. Suffer to file any lien against Concessionaire or the Premises, equipment or furnishings therein because of or resulting from any act or omission of Concessionaire and is not removed or enjoined within sixty (60) days of written notice from the Airport Director;
9. Willingly desert, vacate or discontinue all or a portion of its operation of the Premises which, in the reasonable opinion of the Airport Director, results in a failure to provide the public and others the service contemplated hereunder; provided, however, that Concessionaire shall be given written notice of this failure and shall have ten (10) days thereafter to cure such failure;
10. Fail in the performance of any terms, covenants, or condition herein required to be performed by Concessionaire; provided, however, that Concessionaire shall be given written notice of this failure and shall have twenty (20) days thereafter to cure such failure.

Section 1202. Concessionaire's Right to Terminate.

Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1203 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the Board preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.
- B. If the Board shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

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- C. If the Board shall have failed in the performance of any specific covenant within the control of the Board and required by this Agreement to be performed by the Board.

Section 1203. Procedures for Termination.

No termination declared by either party shall be effective unless and until such defaulting party has had an opportunity to cure such deficiency in the period for cure as set forth herein. If such period is not indicated herein, such period for cure shall be not less than thirty (30) days. Any notice of termination given hereunder shall specify the date and cause for termination, the period to cure and the date of termination of this Agreement should such deficiency not be cured within the applicable cure period.

In the event that suit shall be instituted by the Board upon the default of payment of charges and fees as provided herein, then Concessionaire agrees also to pay reasonable attorneys' fees including costs of collection thereof.

Section 1204. Rights Cumulative.

It is understood and agreed that the rights and remedies of the Board and Concessionaire specified in this Article XII are not intended to be, and shall not be, exclusive of one another or exclusive of any common law right of either of the parties hereto.

ARTICLE XIII NON-DISCRIMINATION

Section 1301.

Concessionaire 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 Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as Concessionaire. This provision obligates Concessionaire for the period during which the Premises is used or possessed by Concessionaire 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.

Section 1302.

During the performance of this Agreement, Concessionaire 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);

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- 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.).

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Section 1303.

Concessionaire, 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 Concessionaire will use the Premises in compliance with all other requirements imposed by or pursuant to the list of non-discrimination acts and authorities, as enumerated in the preceding subsection. In the event of 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.

Section 1304.

During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest, agrees as follows:

- A. Nondiscrimination: Concessionaire, 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 Agreements of equipment. Concessionaire 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 Concessionaire 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 Concessionaire of contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities.
- C. Information and Reports: Concessionaire 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, Concessionaire will so certify to the Board or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

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- D. **Sanctions for Noncompliance:** In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, 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:** Concessionaire 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. Concessionaire 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 Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request the Board to enter into any litigation to protect the interests of the Board. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

ARTICLE XIV MISCELLANEOUS PROVISIONS

Section 1401. No Personal Liability.

No member, director, officer, employee or other agent of either party shall be personally liable under or in connection with this Agreement absent a tortious act by such person or the express written undertaking of such person to the contrary. Each of the Parties acknowledges and agrees that in entering into this Agreement, and the documents referred to herein, such party does not rely on, and shall have no remedy with respect to, any statement, representation, warranty or understanding (whether intentionally, negligently or innocently made) of any person (whether a party to this Agreement or not) other than as expressly specified in this Agreement.

Section 1402. Binding Effect.

This Agreement and the terms, conditions, covenants and obligations contained herein shall be for the benefit of and shall be binding upon the Board and Concessionaire, and their respective permitted successors and assigns.

Section 1403. Severability.

Except to the extent otherwise specified herein, each covenant and agreement contained in this Agreement shall be for all purposes construed as separate and independent covenants and agreements, and the breach of any covenant or agreement contained herein by either party shall not discharge or relieve the other party from its obligation to perform each and every covenant and agreement contained herein.

Section 1404. Partial Invalidity.

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If any covenant, term or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant, term or condition of this Agreement, shall be valid and enforceable to the fullest extent permitted by law.

Section 1405. Applicable Law.

This Agreement shall be deemed to have been made in the State of South Dakota and shall be governed by and construed in accordance with the laws of the State of South Dakota, notwithstanding the applicable choice of law provisions or the place of execution hereof, nor the performance of the acts in connection herewith or hereunder occurring in any other jurisdiction. Venue for any action relating to this Agreement shall be in the Circuit Court of Pennington County, South Dakota, and the Parties hereby agree to submit to the jurisdiction of said court.

Section 1406. Time of the Essence.

Time is of the essence with respect to all provisions contained in this Agreement.

Section 1407. Paragraph Headings.

The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions contained herein.

Section 1408. Entire Agreement.

This Agreement and the exhibits attached hereto or referred to herein shall constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the execution hereof shall not be binding upon either party except to the extent incorporated in this Agreement.

Section 1409. Modification of Agreement.

Any modification to this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party.

Section 1410. Relationship of the Parties.

This Agreement shall not be construed as creating any relationship hereunder other than that of lessor and lessee. No other relationships, such as one of partnership, joint venture or otherwise, shall arise by reason hereof. Except as expressly specified in this Agreement, nothing contained herein shall be construed as authorizing either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

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Section 1411. Force Majeure.

Neither the Board nor Concessionaire shall be deemed to be in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, terrorism, sabotage or any other circumstances for which it is not responsible or which are not within its reasonable control, provided that nothing herein shall excuse Concessionaire from satisfying the financial obligations set forth in Article IV.

Section 1412. Previous Agreements.

The terms and obligations of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between Board and Concessionaire.

Section 1413. Construction of Agreement.

Words of any gender in this Agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural when the context requires. Whenever used herein, the word "Concessionaire" shall be deemed to include its approved successors, sublessees and assigns; and the word "Board" shall be deemed to include its successors and assigns, unless the context excludes such construction. Each party acknowledges that both Parties participated equally in drafting this Agreement and, accordingly, no court construing this Agreement shall construe it more stringently against one party.

Section 1414. Waiver.

No waiver of a default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement shall not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies herein provided are cumulative and, unless otherwise provided herein, are not exclusive of any rights or remedies provided by law.

Section 1415. Brokerage Fees, Commissions.

The Board and Concessionaire mutually represent that there are no finders, consultants, agents or brokers involved in this transaction and that neither the Board nor Concessionaire has agreed to pay a commission or fee to any finder, consultant, agent or broker in connection with this Agreement. Each party agrees to indemnify and hold harmless the other party from any liability arising from any claim for any such commission or fee alleged to be payable because of any statement, act or omission of the indemnifying party in connection with this transaction, including

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without limitation reasonable attorney's fees and costs actually incurred in connection with defending said party from any such claim.

Section 1416. Survival of Covenants.

Any covenant or obligation imposed on the Board or Concessionaire by the terms of this Agreement which requires any performance on the part of Board or Concessionaire, as the case may be, after the expiration or earlier termination of this Agreement shall be deemed to survive such expiration or earlier termination.

Section 1417. Debt Instruments.

This Agreement and all rights under this Agreement shall be subordinate to any bond ordinance, indenture or covenant made by the Board with respect to the Airport during the Term and, in the event of a conflict, the requirements of the ordinance, indenture or covenant shall control.

Section 1418. Notice.

Any notice, demand or other communication required or desired under this Agreement shall be sufficiently given or delivered (i) when deposited with a reputable courier or overnight delivery service directed for next business day delivery; provided that the recipient shall have an additional one (1) business day from the date of deposit to respond or otherwise take action as permitted under this Agreement; (ii) on the date of deposit in the United States mail, registered or certified, postage prepaid, return receipt requested; provided that the recipient shall have an additional three (3) business days from the date of the postmark to respond or otherwise take action as permitted under this Agreement; or (iii) on the date of submission of a facsimile or email transmission which is confirmed; provided that such notice, demand or other communication is also deposited with a reputable courier or overnight delivery service or in the United States mail, registered or certified, postage prepaid, on the same date as the facsimile or email transmission is submitted, as follows:

If to Board:

Rapid City Regional Airport
Attn: Airport Director
4550 Terminal Road, Suite 102
Rapid City, South Dakota 57703-8706
Telephone: 605-394-4195

If to Concessionaire:

The Parties may change the address for notices hereunder by notifying the other party in writing as specified herein.

Section 1419. Counterparts.

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts shall together constitute and be one and the same instrument.

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Section 1420. Quiet Enjoyment.

Upon substantial compliance by Concessionaire with the provisions contained in this Agreement, Concessionaire shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by the Board or any other person or persons. Board warrants that it has good and marketable title to the Airport and the Premises and that there are no liens, charges, encumbrances, or rights of third parties that have a prior right to the interest of Concessionaire under this Agreement.

Section 1421. Authority.

The persons executing this Agreement on behalf of the Board and on behalf of Concessionaire have the requisite power and authority to do so and to bind the Parties in the performance of the respective obligations hereunder. Each party has full power and authority to enter into this Agreement and to perform the transactions contemplated herein without the consent or approval of any other person or party whatsoever.

Section 1422. Consents; Approvals.

Any consent or approval required by a party or such party's representative or agent shall, to the extent not otherwise expressly stated, not be unreasonably withheld, delayed or conditioned.

Section 1423. Payment of Less than Full Amount.

Notwithstanding any other provision of this Agreement to the contrary, if one party makes a payment to the other party for an amount owing under this Agreement in an amount less than the full amount then due and payable, the unpaid balance shall remain due and payable, whether or not such unpaid amount is in dispute and whether or not the party making such payment has placed a "Payment in Full" or similar legend on the instrument by which payment is made, unless the Parties have executed and delivered a separate written agreement settling the amount owed (a "Settlement Agreement"). The party receiving value for such partial payment shall not be deemed to have waived its right to receive the balance of the remaining amount due unless such party has executed and delivered a Settlement Agreement waiving its claim to such balance.

Section 1424. No Third-Party Beneficiary.

This Agreement is for the benefit of the Parties and will not be construed as conferring any rights to any third party.

IN WITNESS WHEREOF, the Parties hereto for themselves, their successors and assigns, have executed this Agreement as of the day and year first above written.

"The Board"

THE CITY OF RAPID CITY, SOUTH DAKOTA through THE RAPID CITY REGIONAL AIRPORT BOARD

EXHIBIT A

By: _____
Name: _____
Its: _____

“Concessionaire”

[CONCESSIONAIRE ENTITY]

By: _____
Name: _____
Its: _____

DRAFT



City of Rapid City
4550 Terminal Road, Suite 102
Rapid City, South Dakota 57703
605-394-4195, ext. 8

Commercial Ground Transportation Rules and Regulations

City of Rapid City
Rapid City Regional Airport (RAP)



EXHIBIT B

COMMERCIAL GROUND TRANSPORTATION RULES AND REGULATIONS

1. Commercial Ground Transportation General Authority

- 1.1. Rapid City Regional Airport (RAP) has established ground transportation operating procedures for all Commercial Ground Transportation Operators (GTO) operating at the Airport. These operating procedures are to ensure the most fair and consistent ground transportation service. They will provide the public with safe and convenient passenger movement. Anyone providing ground transportation services (both Permitted and non-permitted) shall comply with these rules and regulations.
- 1.2. It is imperative that all GTO abide by the terms of the Airport Operator Agreement and all Airport Rules and Regulations. All GTO are subject to on site supervision and direction by any personnel designated by the Airport Executive Director (AED). Any person who violates any RAP rules and regulations will, at the discretion of the AED or his/her Designee, be denied use of the Airport and its facilities.
- 1.3. The commercial ground transportation rules and regulations contained herein supersede and cancel all other previous ground transportation rules and regulations set forth by RAP and its facilities.
- 1.4. Any person or entity proposing to provide commercial ground transportation services at RAP must obtain an Operator Permit from RAP prior to providing any ground transportation service to the public at the Airport. Issuance of a permit shall convey the right and privilege of operating a ground transportation service at the Airport, and the use of certain Airport premises associated with such services.
- 1.5. Issuance of an Operator Permit shall not be construed as authorization for GTO to operate any ground transportation service other than the service for which that Permit is granted. Following issuance of any Permit, the Airport shall retain the right to grant to persons other than that GTO the same rights and privileges, as well as the right to grant to other persons the right and privilege to provide ground transportation service different in nature from the GTO's. RAP reserves the right to grant an exclusive operating agreement with a Common Carrier who is a tenant of RAP, the term of which will be established for a period set by RAP with annual review of services and issuance of annual Operator Permit.
 - 1.5.1. Operator Permits are non-transferrable.
- 1.6. All GTO shall comply with all federal, state, and local laws and regulations including Rapid City Municipal Code Chapter 5.60 Transportation Services.



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COMMERCIAL GROUND TRANSPORTATION RULES AND REGULATIONS

2. Commercial Ground Transportation Provider Insurance Requirements

- 2.1. Before commencing ground transportation operations at the Airport, GTO shall submit to RAP an original certificate of motor vehicle insurance with a reputable insurance company or companies evidencing at least minimum state-mandated policy limits and which names RAP as the certificate holder. RAP shall be notified 30 days prior to cancellation or non-renewal of said endorsement.
- 2.2. Vehicle insurance shall cover all automobiles owned, leased, hired, rented, borrowed or otherwise used by or on behalf of the GTO.
- 2.3. With respect to liability arising out of: activities performed by, or on behalf of, the GTO including automobiles owned, leased, hired, or borrowed by the GTO, additional insured shall be the "City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, and its representatives, officers, officials, employees, agents and volunteers." Additional insured shall be to the full limits of liability purchased by the GTO even if those limits of liability are in excess of those required by permit.
- 2.4. Proof of insurance shall be available in each vehicle and provided when requested.
- 2.5. All GTO shall hold harmless the City of Rapid City and the Rapid City Regional Airport, their owners, officials, agents and employees from and against any and all claims, demands, actions, judgements, costs and expense, including attorney's fees, asserted by any person or persons, including GTO, its officials, agents and employees, by reason of the death of or injury to persons, and loss or damage to property resulting from GTO's operations, or sustained in or upon Airport property resulting from GTO's operations, or sustained in or upon Airport premises as the result of any action or omission of GTO, its agents or employees.

3. Conditions of Commercial Ground Transportation Provider

- 3.1. All GTO vehicles shall be properly identifiable with company name logo or trade address visible on the vehicle to enable passengers to identify the company name and address.
- 3.2. All GTO vehicles shall be validly registered in any U.S. state and must be able to produce proof of registration upon request.
- 3.3. All GTO vehicles serving the Airport shall be properly maintained and operated in a clean, safe, and businesslike manner at the sole discretion of the AED or his/her Designee. Every vehicle shall be of high quality,



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structurally sound, maintained in an excellent state of repair, operated in a clean, undamaged condition, and presenting a favorable appearance as to provide for the safety of the public. Vehicles are subject to inspection by AED, or his/her Designee.

- 3.4. The interior shall not contain offensive odors. No smoking is allowed in the vehicles at any time.
- 3.5. Air conditioners must be operational and will be operated at all times when temperatures reach 85 degrees Fahrenheit or upon passenger request.
- 3.6. Heaters must be operational and will be operated upon passenger request and sufficiently heat the interior of the vehicle.
- 3.7. Vehicle shall be free of any sheet metal damage. Vehicle shall be free of dirt, trash, and debris. Exterior paint shall be maintained free of oxidation and rust.
- 3.8. All vehicles must be free from leakage of engine fluids, excessive discharge of exhaust gasses and excessive exhaust noise.
- 3.9. Matching wheel covers (hubcaps) shall be mounted on all wheels at all times unless the vehicle is equipped with custom wheels.
- 3.10. The interior of each vehicle in service, including the trunk, shall be maintained in a condition so as to be free of grease, dirt and trash. Interior seat fabrics must not be ripped.
- 3.11. No repairs, maintenance, or vehicle cleaning may be performed on any vehicles on Airport property.

4. Commercial Ground Transportation Provider Vehicle Driver Requirements

- 4.1. All Drivers shall meet all Federal, State, City, and RAP requirements. Drivers shall possess a valid state issued Driver's license, knowledge of the area and streets, and the ability to speak, read, and understand the English language.
- 4.2. All Drivers operating GTO vehicles must display or present valid company identification upon request.
- 4.3. Drivers are not allowed to smoke on the Ground Transportation Island at any time. Smoking by Drivers is only allowed in the designated employee smoking area on the east side of the terminal.
- 4.4. Drivers shall be clean and neat in their personal appearance and at all times, shall be courteous, professional and informative when interacting with



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passengers, the AED or his/her Designee, RAP staff, and other Drivers. Customer complaints relating to a Driver's failure to meet the foregoing standards of conduct may provide grounds for the termination of the Driver's operating privileges at the Airport.

- 4.5. Drivers shall not harass or confront the general public in any attempt to deter the public's use of any other GTO. Drivers are prohibited from attempting to interfere with the efforts of other GTOs in performing their services and will refrain from making contact with Drivers of other GTOs.
- 4.6. Drivers shall not engage in any physical fighting or loud, boisterous verbal disputes while on the Airport. If a dispute develops between a Driver and a passenger, or another Driver, the Driver should immediately contact the AED or his/her Designee of the specific incident.
- 4.7. Drivers are prohibited from confronting the public, or employees of the same or another GTO in an effort to enforce any of these Rules and Regulations. GTO are not authorized to direct traffic or vehicles of either the general public or other GTO. In the event a GTO feels any other GTO has violated a specific rule or regulation, the GTO may notify the AED, or his/her Designee, of the specific incident.
 - 4.7.1. Drivers will contact their own employer about any complaints received regarding other Drivers of their employer.
- 4.8. Driver's Airport operating privileges may be revoked at the discretion of the AED, or his/her Designee.

5. Regulations and Licenses

- 5.1. The GTO shall comply with all applicable local, state and federal regulations and abide by RAP's Primary Guiding Documents including all Rules and Regulations now in effect, or that may be promulgated from time to time, including but not limited to the utilization of loading zones, queuing areas, and other such traffic control arrangements as designated by RAP. The GTO will provide RAP with current copies of all applicable licenses from state or local authorities for areas the GTO proposes to serve.
- 5.2. The GTO shall secure and pay the costs of all required licenses, supplementary equipment, permits, franchises, both of its employees and vehicles. The GTO will pay all taxes, fees, licenses, and moneys required by the federal, state, or local governments for its operations at the Airport.
- 5.3. The GTO shall maintain and operate its service in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, and Part 21



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COMMERCIAL GROUND TRANSPORTATION RULES AND REGULATIONS

Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title 6 of the Civil Rights Act of 1964, as said regulations may be amended.

- 5.4. No GTO shall engage in the business of picking up passengers at the Airport terminal, the FBO terminal, or any other Airport location without first obtaining an Operating Permit from the Airport. An Operator Permit shall not be issued until the owner has completed an application form provided by RAP and enters into an Airport Operator Agreement.
- 5.5. Any GTO not licensed through the Airport and that attempts to pick-up or drop-off passengers on any area of the Airport are subject to eviction without loading/unloading their client and may face criminal trespass charges.
- 5.6. GTO shall renew its Operator Permit and pay a license fee on an annual basis to RAP as per its current published Rates and Charges.

6. User Fees and Monthly Reporting

- 6.1. It is the policy of RAP to establish and assess appropriate fees and charges to be paid by GTO. Such fees are intended to be fair, non-discriminatory and reasonably related to costs of administration of ground transportation at RAP.
- 6.2. All GTO shall pay RAP User Fees in accordance with the Airport Board's annual published Rates and Charges, which may be adjusted from time to time at the Board's discretion.
- 6.3. Monthly Activity Reports are due to RAP by the 10th day of the month following the month passengers were transported, along with all applicable User Fees. The Monthly Activity Report shall be on a form provided by or approved by RAP.

7. Access and Parking

- 7.1. All GTO Drivers shall operate their vehicles in a safe manner while operating on Airport property. Excessive speed and / or reckless driving are strictly prohibited. Drivers will refrain from blocking crosswalks or thru lanes at all times.
 - 7.1.1. All GTO Drivers are prohibited from driving between curb cuts and pedestrian crossings.
- 7.2. All GTO Drivers desiring to drop off passengers shall be permitted to use the designated passenger loading/unloading zone of the Airport terminal curbside for active unloading of passengers and their baggage. Any GTO vehicles not having a valid Ground Transportation Operator Permit and Operator



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Agreement with RAP are authorized to enter Airport property to discharge passengers only in accordance with this paragraph.

- 7.3. Any GTO with Pre-Arranged Transportation from a passenger awaiting pick up may stage in the designated Ground Transportation Parking Lot (GTPL) to await their client. When picking up a pre-arranged passenger, GTO may pick up their client at the terminal curbside provided the passenger is ready to immediately load.
- 7.4. No parking or waiting at the Airport terminal curbside is allowed. Vehicles not leaving immediately after drop off will be subject to fines, penalties and/or towing.
- 7.5. Drivers are not permitted to leave their vehicle unattended at the Airport terminal curbside at any time. Unattended vehicles will be subject to fines, penalties, and/or towing.
 - 7.5.1. Permitted Common Carrier GTOs may leave up to a maximum of two (2) vehicles on the GTI unattended; or additional vehicles may be parked if approved by AED, or his/her Designee, during off season months or as otherwise needed.
- 7.6. Ground Transportation Island (GTI) – Only licensed GTO may utilize the GTI for the loading/unloading of passengers. No private or non-Permitted parking is allowed in this area.
 - 7.6.1 The GTI operates on a first come, first serve basis for all queuing areas of the island. Each vehicle should move to the front space of its respective area as it becomes available. If a vehicle leaves the area, it shall proceed to the rear of the line if available, or stage in the GTPL until a space becomes available. There are three designated queuing areas on the GTI for:
 1. Shuttles
 2. Taxicabs
 3. Limos, Buses, Other

Shuttles – The Shuttle Queue has four available spaces. Passenger pick up by Permitted Shuttle GTOs is allowed only in this area of the GTI. A Permitted Shuttle GTO may have a maximum of two vehicles in this area awaiting pickup. All other shuttle vehicles must stage in the Airport designated GTPL until space in the Shuttle Queue is available.

Taxis – The Taxi Queue has three available spaces. Passenger pick



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up by Permitted Taxi GTOs is allowed only in this area of the GTI. All other taxis must stage in the Airport designated GTPL until space in the Taxi Queue is available.

Limos, Buses, Other – The Limo/Bus Queue has two available spaces for buses and limos. Passenger pick up by Permitted Limo GTOs and Bus GTOs is allowed only in this area of the GTI. All other limos and buses must stage in the Airport designated GTPL until space in the Limo/Bus Queue is available.

Any other non-designated Permitted GTO may utilize this section of the GTI.

7.6.2. There shall be no unattended vehicles parked in any queuing area on the GTI. Vehicle Drivers shall remain within 25 feet of their respective vehicles.

7.6.3. If asked to move by the AED or his/her Designee, vehicle Driver(s) must immediately comply.

7.7. Transportation Network Company (TNC) vehicles, and any other similarly situated businesses, may stage only in the Airport GTPL. When matched with a client ready to pick up, TNC vehicles may then proceed to the Airport terminal curbside for loading. TNCs are prohibited from standing or waiting at the curbside or the GTI for clients.

7.7.1. TNC Drivers may not accept any street hails, solicit rides, or pick-up passengers other than by prearrangement through a TNC digital platform.

7.7.2. TNC Drivers must keep their ride-sharing app on at all times while on Airport property. Turning the app off and on and cruising the Airport property is strictly prohibited.

7.8. Peer-to-Peer Vehicles must be parked in the Airport's passenger parking lot. Drivers leaving the parking lot must pay the full price for using the parking lot. No driver to driver exchanges are allowed at the terminal's curbside or Ground Transportation Island.

8. Taxi Soliciting/Hailing

8.1. The authorized solicitation of passengers by a licensed Taxi Operator shall only be conducted by the first Driver in line in the designated Taxi Queue Area of the GTI. Taxicab Drivers may not refuse transportation of a passenger based on the length of transport. Driver and passenger communication shall



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be conducted in a courteous and professional manner. Drivers shall not make any misrepresentation of their service. Drivers shall not be loud and boisterous with/or in the presence of potential customers.

- 8.2. Soliciting passengers contrary to these rules and regulations is an offense that may result in the loss of GTO Operator Permits. Drivers soliciting passengers or in any manner offering to transport passengers in non-designated areas may be subject to a Notice of Violation. Drivers are not allowed in the terminal.
- 8.3. Off duty Drivers are not allowed to loiter on Airport premises. Any off-duty Driver using a GTO vehicle for personal use at the Airport shall utilize the public parking facilities and shall not load passengers.

9. Miscellaneous Provisions

- 9.1. The GTO shall repair promptly, and at no cost to RAP, any damages to property of the Airport, which the Operator or its representatives have caused.
- 9.2. No signs, posters or similar devices shall be erected, displayed, or maintained by the GTO on Airport premises without prior written approval of the AED, or his/her Designee.
- 9.3. Solicitation of business in any manner whatsoever upon Airport property is strictly prohibited. Cruising is specifically prohibited.
- 9.4. The AED or its representatives shall have the right to restrict Drivers or vehicles from operating at RAP in noncompliance with RAP Primary Guiding Documents and all Airport Rules and Regulations.
- 9.5. It is the Airport's intention to use an app-based tracking system for its Ground Transportation Program. As it becomes available, all GTO may be required to utilize that system for doing business at the Airport.
- 9.6. Common Carriers are required to lease floor space at RAP.
- 9.7. Any violation of these Rules and Regulations can result in the immediate revocation of a service provider's privilege of drop-off and pick-up at the Airport and/or its Airport Operating Permit.

10. Penalties

GTO are responsible for the conduct and actions of their Drivers, including compliance with all operating procedures, rules and regulations. In considering any fine, suspension or revocation of operating privilege, RAP may consider actions taken by the GTO to act



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COMMERCIAL GROUND TRANSPORTATION RULES AND REGULATIONS

responsibly, take disciplinary measures, mitigate damage, or otherwise take appropriate corrective action. Nevertheless, GTO are ultimately accountable for the action of their employees and Drivers as it relates to this Commercial Ground Transportation Policy. The AED, or his/her Designee, may impose suspension or revocation upon any GTO Operator or Driver of any commercial vehicle who, after due investigation, is found to have violated any of the procedures contained herein.

10.1. Violation of Permit.

Any violation of the Commercial Ground Transportation Rules and Regulations contained herein, will be considered a violation of the terms of the permit issued by RAP and a Notice of Violation will be issued.

10.2 Suspension.

In addition of all remedies provided by law, suspension may be imposed for a period of between one (1) and one hundred eighty (180) days and may be imposed for any of the following violations:

- i. Non-compliance with laws, regulations, ordinances or rules.
- ii. Failure to obtain/maintain required permits and licenses.
- iii. Failure to obey instructions of RAP's representatives or agents or law enforcement personnel.
- iv. Loading/unloading in unauthorized locations.
- v. Solicitation or stationing unauthorized persons on the Airport.
- vi. Failure to pay Permit Fees, Trip Fees, or non-sufficient funds.
- vii. Failure to maintain any required insurance.
- viii. Unattended vehicles on the Ground Transportation Island or loading/unloading zone of the airport.
- ix. Unauthorized parking.
- x. Cruising.
- xi. Refusal of fares, except under authorized conditions.
- xii. Unprofessional or discourteous conduct and or use of profane language.
- xiii. Providing misleading information about other GTO Services.
- xiv. Operators causing damage to any RAP property or equipment.
- xv. Littering.
- xvi. Unsafe vehicle operation.
- xvii. Driving in an unsafe manner, including without limitation, speeding, and improper backing of vehicle in the lanes on the Ground Transportation Island, or lanes in front of the terminal facility, or stopping in crosswalks to load or unload or failure to yield to pedestrians.
- xviii. Continuing to conduct Commercial Ground Transportation Operations when privileges have been suspended.
- xix. Any other violation of the policy, the Rules and Regulation, laws, statues or ordinances of any government agency.



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10.3. Revocation.

Revocation of operating privileges is for an indefinite period of time – specified at the time of revocation – and may be imposed for any of the following violations:

- i. Failure to pay required fees within 30 days of suspension.
- ii. Conducting illegal activities at the Airport, which result in a misdemeanor or felony conviction.
- iii. Any violations of the Rules and Regulations after two (2) suspensions have been imposed within a twelve (12) month period.

10.4 Imposition and Review of Suspension and Revocations.

Upon the imposition of an suspension or the revocation of an operating privilege, the GTO may dispute the imposition of the administrative action or revocation of the operating privilege in writing to the President of the Airport Board of Directors, or his/her Designee, provided that notice of such dispute is provided within three (3) business days of the imposition of the suspension or revocation. The Board President, or his/her Designee, will advise the Operator or Driver of the time, date and place of the review, will review any matters submitted by the Operator or Driver and will thereafter provide notice to the Operator or Driver of any action taken after the review, which may include a decision not to impose any suspension, imposition of a lesser suspension or other action appropriate under the circumstances. The determination of the Airport Board President shall constitute the final decision of RAP.

11. Definitions

“AED” means the Rapid City Regional Airport’s Executive Director or his/her Designee.

“AED Designee” means any RAP employee that is authorized by the AED to act on his behalf.

“Airport” means the Rapid City Regional Airport which is owned and operated by the City of Rapid City. It means the entire property including all improvements and appurtenances contained thereon.

“Airport Operator Agreement” means the agreement between RAP and a Permitted GTO that formalizes the financial and management rights and responsibilities between the two entities.

“Bus” means a vehicle with a capacity of not less than sixteen (16) passengers, authorized to transport passengers for hire over public roads. This type vehicle can also be identified as a trolley coach or motor coach.

“Commercial Ground Transportation Service” means taxicab, off-airport limousine, shuttle/van, bus, courtesy vehicle, common for-hire carrier, common carrier, or contract



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carrier services provided to the public to or from Rapid City Regional Airport (RAP), by or on behalf of an operator of such a business.

“Common Carrier” means any operator who provides or proposes to provide transportation of property or passengers by motor vehicle for compensation as provided in a written contract between the carrier and a specific company.

“Contract Carrier” of passengers means any operator who provides or proposes to provide on demand for hire motor vehicle transportation for compensation over regular and/or irregular routes. Contract Carrier will be required to lease floor space at RAP.

“Cruising” means any commercial vehicle driving on, over or along the streets and around the Airport soliciting passengers for hire or parking for the purpose of soliciting fares.

“Driver” includes the GTO, as well as GTO’s employees and/or agents who drive any vehicle for commercial hire coming on the Airport.

“Ground Transportation Island” (GTI) means the area designated by the Airport for the pickup and drop off of passengers by Permitted Ground Transportation Operators.

“Ground Transportation Operator” (GTO) means any commercial entity which provides for ground transportation services from one location to another. It includes any entity that either provides the service itself, or contracts for service on its behalf. This includes but is not limited to the following: hotel courtesy shuttles, tour operators, off-site parking operators, etc.

“Ground Transportation Parking Lot” (GTPL) means any area designated by the AED for the parking of all ground transportation vehicles including but not limited to shuttle vehicles, taxicabs, limousines, and buses, with respect to times when such vehicles are not engaged in loading or unloading passengers. The GTPL Areas shall be identified by RAP on a diagram, and that diagram (and any update or change) shall be made available to each appropriate GTO.

“Limousine” means any motor vehicle except a taxicab or sedan designed or constructed to accommodate and transport passengers for hire, with an extended wheel base and expanded seating capacity designed for the transport of persons. This vehicle will have additional rear seating capacity and comforts; and shall be designed to transport not more than fourteen (14) in number, exclusive of the Driver.

“Loading/Unloading Zone” means, when possible, any Airport premises designated for the parking of vehicles when such vehicles are actively engaged in loading or unloading passengers or baggage, or where vehicles are parked in anticipation of such activities. The Loading/Unloading Zone shall be identified by RAP on a diagram, and that diagram (and any update or change) shall be made available to each Operator.

“Minivan” means any motor vehicle used by a Provider to provide on-demand, for hire, for



EXHIBIT B

COMMERCIAL GROUND TRANSPORTATION RULES AND REGULATIONS

profit, transportation with a seating capacity of six, exclusive of the Driver.

“Monthly Activity Report” means the summary of activities performed by the GTO at RAP over a given period of time.

“Notice of Violation” means the official written notification informing a GTO of a violation of any of the rules and regulations of the Airport.

“Operator Permit” means the Permit issued by RAP authorizing a GTO to operate at the Airport. An Airport Operator Agreement between the Permittee and RAP must be executed upon approval of the Operator Permit.

“Permitted” means a GTO who is authorized by RAP to provide ground transportation services or contract for said services and possesses a Ground Transportation.

“Pre-Arranged Transportation” means a passenger, or a group of passengers from an organization, that has hired a GTO for a particular trip, whether such hiring occurs prior to the passenger’s arrival at the Airport or by telephone after arrival.

“RAP” means Rapid City Regional Airport.

“Rates and Charges” means the published official rates and charges for the Airport.

“Shuttle” means any motor vehicle designed or constructed to accommodate and transport passengers for hire, not more than fifteen (15) in number, exclusive of the Driver.

“Taxi” or “Taxicab” means a motor vehicle except a limousine, or sedan, designed or constructed to accommodate and transport passengers for hire, not more than nine (9) in number, exclusive of the Driver, and the principal operation of which is confined to the area within the corporate limits of cities and suburban territory adjacent thereto, and not operated on a fixed route or schedule.

“Terminal” means the passenger terminal building at Rapid City Regional Airport.

“User Fees” means the sum of money paid as a necessary condition to participate as a GTO at RAP.