

Third Party Development
and
Ground Lease at The Williston Basin International Airport
Between
The City of Williston
And

Date: April 2019

THIRD PARTY DEVELOPMENT AND GROUND LEASE

This Third-Party Development and Ground Lease (the "Lease" or "Agreement") is made effective on _____, by and between the City of Williston as lessor ("City") and _____, as lessee (the "Lessee").

WITNESSETH:

WHEREAS, the City owns The Williston Basin International Airport (the "Airport"), located in Williams County, North Dakota;

WHEREAS, the Airport is governed by the City of Williston;

WHEREAS, Lessee is organized and existing under the laws of the State of _____ and is authorized to conduct business in the State of North Dakota;

WHEREAS, the parties hereto wish to enter into **this Third-Party Development Agreement and Ground Lease** for land on which Lessee shall construct a minimum of _____ (____) square feet of _____ and related improvements including vehicle parking areas for the aeronautical purpose of _____, as depicted on **Exhibit A** attached (the "Development");

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

Agreement:

1. Premises and Development Option: City hereby leases to the Lessee the land located and more particularly described in the attached and incorporated **Exhibit A** (the "Premises"). The Premises includes the site identified as _____ together with easements and access for ingress and egress. Lessee, in addition to the Premises, shall be entitled to the general use, in common with others, of all airport facilities made available for use to the general public. For purposes of this Lease, "airport facilities" shall include runways, taxiways, public ramps, roadways, sidewalks, navigation and terminal aids, lighting facilities, terminal facilities, or other public use facilities that have been constructed by the City and are the direct control of the City.

2. Base Term: This Lease shall be for a base term of _____ (XX) years commencing on _____ and expiring on _____.

3. Option Term: Upon the expiration of the Base Term of this Lease, this Lease shall automatically renew for an additional Option Term of _____ () years unless Lessee provides written notice to the City of its intent to terminate the Lease at the end of the Base Term a minimum of three hundred sixty five (365) days prior to the expiration date. Upon expiration or termination as called for herein, Lessee will vacate the Premises as called for in this Lease and the Premises will revert to the City with no further obligation by either party.

4. Construction Contingency: This Lease shall be subject to cancellation if construction of the development identified in Exhibit A is not commenced on or before _____. Commencement, for the purposes of this Paragraph shall include the submission of complete construction drawings to the City for review and permitting, the issuance of the appropriate building permits by the City, and the execution of a contract with the Lessee's contractor. In the event that the construction contingency is not satisfied in the timeframe identified and the City has not extended the deadline, at its sole discretion, this Lease shall terminate effective the date of the deadline and all rents received to date will be retained by the City.

5. **Improvements:** Lessee shall provide the City with "as built" drawings of all new construction within thirty (30) days following the issuance of a Certificate of Occupancy. City's representative will verify improved area and unimproved area dimensions of the Premises within thirty (30) days following notice from the Lessee of completion. In the event that the area is different than the area identified in this Lease, an amendment to the Lease will be issued and the invoicing corrected retroactive to the Commencement Date.

6. **Project Costs:** Lessee shall be solely responsible for all costs associated with any improvements on the Premises.

7. **Base Rent and Rental Adjustments:** Rent is due and payable on the first day of each calendar month of the Base Term and any Option Term as called for in this Agreement. Rent will be assessed in accordance with the square footage identified in **Exhibit A** annually and paid on a monthly basis. Rental payments shall be submitted to the following address, which address may be changed from time to time upon ten (10) days written notice by the City:

City of Williston
PO BOX 1306
Williston, ND 58802

Base Rent for the Premises for the period commencing on the Commencement Date will be [redacted] per square foot and payable **monthly/quarterly/yearly** in equal amounts. Base Rent will be adjusted each subsequent five (5) year period effective on the anniversary of the commencement date of this Agreement and thereafter for the Term and the exercised Option Term as stated within the Airport's General Aviation Leasing/Rents and Fees Policy.

8. **Agent:** The City appoints the Airport Director, or designee, as agent to receive all Rent, notices and reports under this Lease.

9. **Use of Premises:** Lessee shall use the Premises for the purposes as defined in this Paragraph and for no other purpose without the express prior written consent of the Airport Director. The improvements on the Premises shall be used for the aeronautical purposes associated with storage of aircraft, and related personal property, all within the confines of the building, which building shall be used only for that purpose and shall be used for no other purpose whatever except hereinafter provided. No personal property shall be stored on the exterior of the building at any time. The use of the Premises must, at all times, be in compliance with the City's Minimum Standards for General Aviation and Aeronautical Operations ("Minimum Standards") as adopted by the City and as may be amended from time to time and the FAA guidelines regarding allowable use of airport premises, as may be amended from time to time. The City and Lessee will cooperate in developing appropriate plans in the event a change in the Minimum Standards requires a change to the Premises. Aircraft maintenance conducted on the Premises shall be accomplished in accordance with Minimum Standards, City Building and Fire Codes, and adopted rules and regulations. Aircraft must be removed from any structure during fueling operations.

10. **Parking:** The Premises may be used for vehicle parking of automobiles, trucks, or vans, when the Lessee is utilizing aircraft stored in the Premises. Parking or storage of vehicles, boats, trailers, or other similar units in the Premises is strictly prohibited unless approved in writing by the Airport Director.

11. **Signs:** Lessee may install Airport Development Standard compliant signs or other corporate identification on the Premises at its sole cost, provided, however, that the Lessee or its designee has obtained the Airport Director's prior written approval as to the size, type, design and location of these signs or other corporate identification prior to installation.

12. Right to Amend: If the Federal Aviation Administration (“FAA”) or its successor, requires modifications or changes in this Lease as a condition precedent to granting funds for improvements, Lessee agrees to consent to the amendments, modifications, or changes of this Lease as may be reasonably required and to incorporate such required changes into an amendment to this Agreement; however, Lessee will not be required to pay increased Rent or change the use of the Premises or accept a relocation or reduction in size of the Premises until Lessee and the City have fully executed an amendment to this Lease that is mutually satisfactory to all parties.

13. Subordination to U.S.A./FAA Requirements: This Lease is subordinate to the provisions of any existing or future agreement between City and the United States of America relating to the operation or maintenance of the Airport.

14. Development of Improvements: All plans and specifications for Lessee's improvements and all renovations, remodeling, refurbishing and construction upon the Premises must meet all fire, building, and other applicable city, state and federal regulations and code requirements. Lessee shall be responsible for obtaining required building permits and for paying all permit fees associated with the development. The improvements of the Premises must, at all times, be in compliance with the City's Development Standards for General Aviation and Aeronautical Operations (“Development Standards”) as adopted by the City and as may be amended from time to time and the FAA guidelines regarding allowable development of airport premises, as may be amended from time to time. Upon final completion and acceptance of the improvements by the City, Lessee must provide one set of mylar as-built plans and one electronic copy of the record documents to the Airport Director, who will keep one set of plans on file at the Airport Director's office.

Lessee must include in all construction contracts entered into, a provision requiring the contractor, or in the alternative, Lessee, to indemnify, hold harmless, defend and insure City, including its officers, agents, elected officials, and employees, against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the contractor's or its agents' presence on the Premises or the Airport and performance of any or all of the construction work thereon, whether the claims and demands made are just or unjust, unless same are caused by the negligence or willful act of City, its officers, agents, or employees. Lessee must furnish or require the contractor to furnish insurance as required herein.

Lessee will be responsible for arranging and paying for, at its sole cost all utility connections to the site. Utility usage will be billed directly to the Lessee and payment will be the sole responsibility of the Lessee.

The Lessee and contractor will coordinate placement of the facility, design, and construction with the City.

Lessee shall be responsible for causing the Premises and adjacent properties to be maintained in good order and condition during construction and upon completion of the improvements in accordance with commercially reasonable standards at no cost to the City.

Lessee, at its sole expense, shall obtain all licenses and permits required prior to performing any maintenance, repairs, construction on, or use of the Premises. The costs of developing all plans and specifications as provided herein and the construction of improvements and facilities upon the Premises shall be paid solely by the Lessee, without any cost or expense to City whatsoever.

During the construction of the improvements, the Airport Director or designee may enter upon the Premises during normal business hours and make inspections as may be necessary to ensure that the construction of the improvements is performed in accordance with the requirements of this Lease and in accordance with the submitted plans and specifications.

After completing construction of improvements on the Premises, Lessee must certify to the Airport Director that the improvements were completed according to the approved plans and specifications and that Lessee has complied with all applicable federal, state, and local laws, and regulations.

Lessee shall be solely responsible for the payment of all utility charges and assessments related to the Premises and the performance and funding of maintenance required to maintain the Premises in a first-class condition, normal wear and tear excepted, through the Base Term and the Option Term, if executed. Lessee shall also be responsible for arranging for and funding all the required insurance coverages as identified in this Lease and must include the City as an additional insured under the policies.

During this Lease, Lessee shall, subject to the terms and conditions of this Lease, have the continuing right to remodel, renovate and refurbish the Premises subject to the submission of a written request and a complete set of plans to the City and after obtaining the prior written consent of the City and the appropriate permits. Lessee must provide one set of mylar "as-built" plans and one electronic copy of all record documents showing any alteration in excess of twenty-five thousand dollars (\$25,000) to the Premises during the term of this Lease to the Airport Director, which plans are to be attached to this Lease. No substantial changes or alterations shall be made to said plans or specifications after initial approval by the City without further written approval by Airport Director.

In the event a lien is attached to the Premises or Lessee's leasehold interest, Lessee shall satisfy and remove any such lien within fourteen (14) calendar days of notice of such lien. Lessee shall notify the City in writing immediately upon the receipt of such notice of a lien being filed and within twenty-four (24) hours of the removal of such lien.

In the event of any foreclosure by any lender, financing agency, or guarantor of its lien or liens on the improvements constructed by Lessee, fixtures, or trade fixtures located on the Premises, said lender, financing agency, or guarantor succeeds hereunder to all rights, privileges, and duties of Lessee, including without limitation paying Rent, as if said lender was originally named Lessee herein, and said lender, financing agency, or guarantor will have a reasonable time after the date of foreclosure (not less than three hundred sixty five (365) days) to sublease any available improvements. Lessee covenants that all construction, including all workmanship and materials, will be of first-class quality. As used herein, the term "first-class quality" means of the same quality as materials used to construct other buildings used for the same or similar purposes already constructed on the Airport property.

15. Repair and Maintenance: Lessee, at its sole expense, shall make, or cause to be made, any and all structural repairs, general repairs, and replacements necessary to keep the Premises in a commercially reasonable first-class condition. Lessee shall provide maintenance at its sole expense to keep the interior and exterior of the Premises in a clean and sanitary condition at all times.

16. Hazardous Substances: Lessee shall comply, and shall require any sublessee to comply with, all environmental laws, rules, regulations, orders and permits applicable to the use of the Premises, including but not limited to, required National Pollutant Discharge Elimination System Permits and all applicable laws relating to the use, storage, generation, treatment, transportation, or disposal of hazardous or regulated substances. Except for the Hazardous Substances governed by and transported in full compliance with the transportation laws of the state or federal government, Lessee must not knowingly use, store, generate, treat, transport, or dispose of any hazardous or regulated substances or waste on or near the Premises without first obtaining all required permits and approvals from all authorities having jurisdiction over the operations conducted on the Premises.

If Lessee determines that a threat to the environment, including but not limited to a release, discharge, spill or deposit of a hazardous or regulated substance, has occurred or is occurring which affects or threatens to affect the Premises, or the persons, structures, equipment, or other property thereon, Lessee must notify immediately by oral report, in person or by telephone, to be promptly confirmed in writing

within twenty four (24) hours to the Airport Director as required by law or regulation.

Lessee or its designee shall keep a readily accessible file of Materials Safety Data Sheets (“MSDS”) for each Hazardous Substance on site or transported, in accordance with federal and state transportation laws, which file must be posted and immediately available to any City employee or Airport tenant who responds to report of a discharge of a Hazardous Substance on the Premises.

Lessee will cause prompt remediation and the payment of all costs associated with any action or inaction of Lessee that directly or indirectly prevents the Airport from materially conforming to all then applicable environmental laws, rules, regulations, orders, or permits. In the event Lessee fails to fulfill this obligation following written notice and a reasonable cure period, City may perform any such remediation and the direct and indirect cost of such action shall be invoiced to the Lessee plus a fifteen percent (15%) administrative fee. Payment of such charges are due and payable upon demand and may not be contested. The rights and obligations set forth in this Paragraph shall survive the earlier expiration or termination of this Lease.

17. Nondiscrimination/Affirmative Action:

A. Nondiscrimination – General- Lessee for itself, and as a requirement for any sublessee, their personal representatives, successors in interest, and assigns, as a part of the consideration hereof covenants that: (1) no person on the grounds of race, creed, color, religion, sex, age, national origin, sexual orientation, marital status, disability, or political belief or affiliation will be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination in the use of the Premises; (2) in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, age, national origin, sexual orientation, marital status, disability, or political belief or affiliation will be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination.

B. Nondiscrimination - Business Owner - This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Lessee for itself, and as a requirement for any sublessee, agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award of performance or any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

C. Remedy for Breach – If Lessee is found by a final verdict of a court of competent jurisdiction to have deliberately breached a non-discrimination covenant, or to have permitted any sublessee to deliberately breach a non-discrimination covenant, the City may immediately enforce the remedies directed by the Court’s decision, which may include the City’s right to reenter the Premises, retake possession thereof and terminate the Lease. This provision is not effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are completed, including exercise of any rights to appeal.

D. Affirmative Action - Lessee shall cause to be implemented an affirmative action program as required by 14 CFR Part 152, Subpart E, to provide (i) that no person on the grounds of race, creed, color, religion, sex, age, national origin, disability, or political belief or affiliation is excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E; (ii) that no person will be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by that Subpart; (iii) that third parties otherwise retained by Lessee or its designee shall provide similar assurances to Lessee or its designee to undertake affirmative action programs and to require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E. Lessee or its designee at no expense to the City shall comply with any applicable requirements of the Americans with Disabilities (ADA) as it may be amended, with respect to the Premises.

18. Compliance with Laws:

A. General - Lessee covenants to promptly observe, comply with, and execute, and shall cause any sublessee to promptly observe, comply with, and execute, the provisions of any and all present and future governmental laws, ordinances, rules, regulations, requirements, orders and directions applicable to the use and occupancy of the Premises. A material breach of this covenant, which is not remedied following written notice and a reasonable cure period, may be cause for City's exercising its rights under **Paragraph 19** of the Lease. During any period of Lessee's or any sublessee's good faith challenge to any such laws, ordinances, rules, regulations, requirements, orders and directions in a court of competent jurisdiction shall not be deemed a breach of this Lease.

B. Federal - Lessee shall comply and shall require any sublessee to comply with all applicable Federal laws, rules, and regulations, including without limitation the Drug Free Workplace Act, the Violence in the Workplace Act, the Americans with Disabilities Act, and any other acts that the U.S. Congress passes that apply to the uses and operations at the Premises.

C. State - Lessee shall comply with all applicable state laws, rules, and regulations of the State of North Dakota.

D. Local - Lessee shall comply with all applicable City ordinances, and rules and regulations promulgated by the City.

19. Termination:

A. Termination By Lessee - Without limiting any other rights and remedies to which Lessee may be entitled by common law, statutory law, or as elsewhere provided in this Lease, this Lease may be terminated by Lessee at any time after the happening, and during the existence, of one of more of the following events:

1. The City's permanent abandonment of the Premises at the Airport;
2. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, that substantially restricts any lessee from operating for at least one hundred fifty (150) days;
3. The issuance by any court of competent jurisdiction of an injunction that prevents or restrains the use of the Airport or the Premises, that continues for at least one hundred fifty (150) days; or
4. The default by the City in the performance of any covenant or obligation on the part of the City to be performed, and the failure of the City to remedy the default for sixty (60) days after receipt from Lessee of written notice to remedy the same.

B. Termination by City- Without limiting any other rights and remedies to which City may be entitled at common law, statutory law, or as elsewhere provided in this Lease, this Lease may be terminated by City if Lessee:

1. Is in arrears in paying the Rent, fees, or other charges due under this Lease for thirty (30) calendar days after written notice, or such other time as may be provided herein;
2. Makes a general assignment for the benefit of creditors;

3. Abandons the Premises (“abandon” shall mean failing to occupy the Premises for a period in excess of one (1) year);
4. Otherwise defaults in the performance of any of other material covenant of this Lease and continues the default for thirty (30) calendar days, or such other time as may be provided herein, after receipt of written notice from the City of the default. If the default cannot reasonably be cured within said thirty (30) calendar days or within any other time as set out in the notice of default, Lessee shall be deemed to have cured the default if it commences the remedy process within the applicable period and thereafter diligently prosecutes the same to completion.

C. City's Right to Entry Upon Termination - If City terminates this Lease or if Lessee abandons the Premises, the City may enter upon the Premises.

In the event of termination by the City, the Airport Director or its designee may enter onto the Premises to remove any and all persons or property from the Premises and place any property in storage for the account of and at the expense of Lessee. **All property on the Premises is hereby subjected to a contractual landlord's lien to secure payment of delinquent Rent and other sums due and unpaid under this Lease, any and all exemption laws are hereby expressly waived in favor of said landlord's lien; and it is agreed that said landlord's lien is not a waiver of any statutory or other lien given or which may be given to City but is in addition thereto.**

In the case of default, if Lessee fails to remove any of its property on the Premises within thirty (30) calendar days following the written notice of default, City may sell the property found on the Premises at a public or private sale with proceeds of the sale applied first to the cost of the sale, then to the cost of storage of the property, if any, and then to the indebtedness of Lessee, with the surplus, if any, to be mailed to Lessee at the address herein designated. If City terminates the Lease and re-enters the Premises, the City may relet the Premises and if a sufficient sum is not realized, after paying expenses of the reletting, to pay the Rent and other sums agreed to be paid by Lessee, Lessee agrees to pay any deficiency within thirty (30) days after City's written demand therefore. Lessee further agrees to hold harmless and indemnify City including its officers, agents, elected officials, and employees against, from any loss or damage or claim arising out of City's action in collecting monies owed to it under this paragraph, except for any loss, damage, or claim caused by the negligence or willful misconduct of City or its employees.

D. Notice of Termination - If an event of material default occurs, and after due written notice identifying the default, the defaulting party has failed to cure or failed to commence to cure as called for in the notice of default, the complaining party may at any time after the expiration of any such cure period terminate this Lease by providing written notice of termination to the defaulting party. The Lease will be terminated on the date specified in the notice but not sooner than thirty (30) calendar days after the postmarked date of the notice.

E. Partial Destruction - If the Lessee's Premises or facilities are partially damaged, due to acts of God or other acts outside the control of the Lessee or City, to the extent that Lessee cannot use the Premises for its intended use, then, at Lessee's option, this Lease may be terminated or instead may be suspended until the damage is repaired. If the Lease is suspended, Lessee and City will mutually agree on a time period for Lessee to repair the damages to the Premises or Improvements. If the Lease is terminated, as provided for herein, the Rent will be abated from the date of the casualty; provided however, Lessee as the case may be, must use its insurance proceeds to either replace the improvements or remove all traces of the improvements and return the Premises to a state of raw land. All remaining insurance proceeds will be paid to Lessee, as the case may be. The Airport Director is the sole judge of the extent of damage to the Airport.

20. Property Rights upon Expiration or Termination:

A. The parties agree and acknowledge that any improvements existing on the Leased Premises constructed by the Lessee are the property and responsibility of the Lessee, subject to the terms of this Agreement. Within sixty (60) days of the expiration or any earlier termination or cancellation of the Agreement, the Lessee shall remove all of its improvements, including the Initial Improvements, and return the Leased Premises to its original condition unless the City gives its written permission to Lessee to leave the improvements on the Leased Premises. All City property damaged by, or as a result of, the removal of Lessee's property shall be restored by the Lessee at its sole expense to the condition existing prior to the construction of the improvements. Should the Lessee fail to remove the improvements within the sixty (60) day period, the City may proceed to effect such removal at the expense of the Lessee, and the Lessee agrees to pay the City for such expense upon receipt of an invoice therefore. If the Lessee, with the written permission of the City, leaves the improvements on the Leased Premises, the improvements shall become the property of the City and the Lessee shall remove all of its personal property from the Leased Premises and surrender entire possession of its rights at the Airport to the City.

B. **Removal of Equipment** - Upon the expiration or earlier termination or expiration of this Lease as called for herein, City shall, by written notice to the Lessee, permit any Lessee to remove all removable furniture, fixtures and equipment and other personal property installed or furnished by the Lessee, so long as it removes same within the time period set forth in the notice, but in no event less than seven (7) calendar days after termination or expiration of the Lease. The City may require any damage to the Premises caused by any Lessee's removal of its property to be repaired at the Lessee's expense within fifteen (15) calendar days after termination or expiration of the Lease. Such repairs must be made to the reasonable satisfaction of the Airport Director or designee, normal wear and tear excepted. Any fuel storage facilities installed by Lessee **must** be removed and any required remediation completed prior to vacating the Premises, regardless of circumstances. In the event Lessee does not perform such removal and remediation in compliance with this Agreement, City may contract for such removal and remediation and the direct and indirect cost of such, plus a fifteen percent (15%) administrative fee, will be the sole responsibility of the Lessee and shall be due and payable upon demand.

Notwithstanding the foregoing, if any Lessee fails to remove its removable furniture, fixtures and equipment within thirty (30) days after the date determined in the notice, then the City, may at its option, take title to the said property and sell, lease or salvage the same, as permitted by law. Any net expense City incurs in disposing any of the Lessee's personal property shall be billed to the Lessee. The City will provide a written itemized breakdown of the costs recaptured, if any, by the sale, lease or salvage of the property, and the balance due, which is expected to be paid by the Lessee upon receipt of said itemized breakdown.

C. **New Lease - Do Not Remove Equipment** - If City and Lessee negotiate a new Lease after the expiration or earlier termination of this Lease, there shall be no requirement to remove its furniture, fixtures and equipment from the Premises.

D. **Holdover** - Any holding over by Lessee of the Premises after the expiration or other earlier termination of this Lease shall be on a month-to-month tenancy at sufferance, at a monthly Rent equal to 150% of the monthly, rents, fees, and other charges that were being charged by Lessor at the time this Agreement expired. The holdover period shall not exceed 180 calendar days after which time, this Agreement shall be terminated.

21. Re-delivery of Premises: Upon the expiration or earlier termination of this Lease as called for herein, Lessee shall deliver the Premises to City peaceably, quietly and in as good condition as the same now are or may be hereafter improved by the Lessee, normal use and wear excepted. In addition to a landlord's lien provided by the law of the State of North Dakota, the City has a contractual lien on all property of the Lessee on the Premises as security for nonpayment of Rent.

22. City Obligations:

A. To operate The Williston Basin International Airport as a public airport during the Lease Term, subject to the assurances given by City to the United States Government.

B. To make **water, electricity, and wastewater** service available to the Premises property line on the same basis as it is made available to all business operating at the Airport. Lessee must promptly pay in full all utility assessments as well as usage charges for water, gas, wastewater, electricity and other utilities supplied to the Premises during the Lease Term as the charges become due and payable.

23. Indemnification:

A. General – Lessee must indemnify, hold harmless, defend and insure the City, its officers, agents, elected officials, and employees from and against any and all claims and causes of action, administrative proceedings, judgments, penalties, fines, damages, losses, demands, liabilities, or expenses whatsoever (including reasonable attorney's fees and costs of litigation, mediation and/or administrative proceedings) which may be brought, alleged, or imposed against the City, its officers, agents, or employees arising directly or indirectly from or in any way connected with (i) Lessee's or Lessee's agents' or employees' presence on the Premises or the Airport; (ii) Lessee's or Lessee's agents or employees' performance of services authorized under any agreement with City, excepting only that liability as may result from the negligence or the willful misconduct of the City, including its officers, agents, and employees; The rights and obligations set forth in this Paragraph shall survive the termination of this Lease.

B. Special Claims - Lessee agrees to defend, at its own cost, and to protect, indemnify, and otherwise hold harmless, the City, including its officers, agents, elected officials, and employees (including but not restricted to the posting of bond and release of attachment) from and against any and all claims in any way arising out of or in connection with the construction, repair, or maintenance work undertaken hereunder by, through or on behalf of Lessee, including but not restricted to attachments, liens or levies, and whether or not the claim is meritorious, made, failed or asserted by any party other than Lessee against the City, including its officers, agents, and employees or the Premises or improvements thereon or part thereof, or monies owing to the City.

C. Notice - Notwithstanding the above identifications, Lessee must give the Airport Director notice of any matter covered hereby and forward to the Airport Director copies of *every* demand, notice, summons, or other process received in any claim or legal proceeding covered hereby within ten (10) days of Lessee's receipt of said notice, demand, summons, or other process.

24. Insurance:

A. At all times throughout the term of this Lease or any renewal thereof, Lessee shall maintain at a minimum the following insurance coverage from financially solvent insurance carriers approved by the City. Coverages may be amended from time to time by the City and Lessee shall be responsible for complying with the revised limits:

(i). General Liability Insurance - \$1,000,000 combined single limit, written on an occurrence basis, including endorsements to include contractual liability;

(ii). Aircraft Liability Insurance - \$1,000,000 per occurrence;

(iii). Premises and Property Liability Insurance as provided in Paragraph B below; and

(iv). Any other insurance coverages required by state or federal laws or regulations applicable to Lessee.

B. Premises Liability Insurance - Property/Building/Premises Insurance. Lessee shall, at its sole cost and expense, obtain an insurance policy(ies) insuring the entirety of the building in which the Premises is located as well as the grounds surrounding the building against claims, losses, casualty, damage or destruction thereof from causes, including but not limited to, fire, natural disaster, loss of use or claims for bodily injury or death. The amount of insurance coverage contained in said policy(ies) shall be at least \$1,000,000. The policy(ies) shall name City as an additional insured, and in the event of a claim, insurance proceeds for loss, damage or destruction of the building and/or replacement thereof shall be paid directly to City by the insurance company issuing the policy(ies).

C. The policy(ies) listed above shall name City as an additional insured All insurance required by this Lease must be primary insurance and not in excess of or contributing with other insurance which Lessee or its designee may carry. All this insurance coverage shall be maintained throughout the life of this Lease. True, accurate, and current certificates of insurance, showing evidence of the required insurance coverage, shall be provided to City. The insurance policy(ies) and certificate(s) shall not be cancelled, or the conditions thereof altered in any manner without ten (10) calendar days prior written notice to City. Lessee's policies shall be primary insurance to any other valid and collectible insurance available to City with respect to any claim.

Lessee is responsible for payment of related insurance premiums and deductibles. Lessee's policies shall include legal defense fees in addition to the above required liability policy limits. All policies shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable) and shall apply on a "per occurrence" basis. Lessee shall obtain the insurance policy(ies) from insurance companies having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of North Dakota.

If Lessee fails to provide the specified insurance, then Lessee will defend, indemnify and hold harmless City and its officials, contractors, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to City (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Lessee, its subcontractors, agents, employees or delegates. Lessee agrees that this indemnity shall be construed and applied in favor of indemnification. Lessee also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run. If a claim arises within the scope of the stated indemnity, City may require Lessee to: (a) Furnish and pay for a surety bond, satisfactory to City, guaranteeing performance of the indemnity obligation; or (b) Furnish a written acceptance of tender of defense and indemnity from Lessee's insurance company. Lessee will take the action required by City within fifteen (15) calendar days of receiving notice from City.

The City may annually assess the level and types of insurance required by this Lease. The City may reasonable increase or decrease the level or types of insurance by giving Lessee notice *not* less than sixty (60) days prior to the annual anniversary date of the Effective Date of this Lease. Lessee shall have thirty (30) days to procure the changed insurance and provide the required insurance certificates evidencing the change to the City.

The amounts of all required insurance policies must not be deemed a limitation of Lessee's covenant to indemnify City, and if Lessee or City becomes liable in an amount in excess of the amount(s) of said policies, then Lessee must indemnify City from the whole thereof, except in the event of

negligent or willful misconduct on the part of City, its officers, or employees.

Notwithstanding the foregoing, City reserves the right to immediately terminate this Lease if Lessee is not in compliance with the insurance requirements contained herein and retains all rights to pursue any legal remedies against Lessee.

25. Rights to Sublease and Assignment

The Lessee shall not assign or transfer this Agreement, or any right of leasehold interests granted to it by this Agreement or sublet or otherwise transfer any interest in or to the Leased Premises without the prior written consent of the Lessor, except the Lessee may assign and transfer this Agreement without such consent in its entirety to a parent corporation, a subsidiary corporation, or a successor corporation. The consent to subleasing all or part of the Premises or for assignment or transfer of this Agreement will not be unreasonably withheld however, Lessee must ensure that any sublessee abide by the terms and conditions of this Agreement.

26. Notice:

Notices are sufficient if in writing and sent by certified mail, return receipt requested, postage prepaid, or by overnight delivery service with proof of delivery, or by facsimile (followed by written notice confirmed by mail or other delivery service, as addressed below:

If to City:

City of Williston
PO BOX 1306
Williston, ND 58802

If to Lessee:

[Redacted address information]

Or to any other address that may be designated in writing from time to time.

27. GENERAL PROVISIONS:

A. Mineral Rights - City expressly reserves all water, gas, oil and mineral rights in and under the soil beneath the Premises but testing for and/or removal of any such gas, oil, or minerals shall be done in a manner so as not to disturb the Premises or disrupt the operation of the business being conducted thereon.

B. No Waiver of Forfeiture - Any failure or neglect of City or Lessee at any time to declare a forfeiture of this Lease for any breach or default whatsoever hereunder does not waive City's or Lessee's right thereafter to declare a forfeiture for like or other or succeeding breach or default.

C. Force Majeure - Neither City nor Lessee will be deemed to be in breach of this Lease if either is prevented from performing any of its obligations hereunder by reason of Force Majeure. Force Majeure means any prevention, delay, or stoppage due to strikes, lockouts, labor disputes, acts of God, including inclement weather and/or periods of rain or snow, inability to obtain labor or materials, or reasonable substitutes therefore, governmental restrictions or requirements, governmental regulations, governmental controls, inability to timely obtain governmental approvals, enemy or hostile governmental

action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform. All of the foregoing events excuse the performance by either party for a period equal to any prevention, delay, or stoppage, including the obligations imposed with regard to commencement or payment of rental and other charges to be paid by Lessee pursuant to this Lease and the obligation of City to deliver the Premises.

D. Quiet Enjoyment - City covenants that it has the authority to execute this Lease, that at commencement of the Lease, City has good title to the Premises and that throughout the term hereof, Lessee will have peaceful and uninterrupted possession of the Premises subject to Lessee's payment of Rent and other charges and to its performance of the covenants of this Lease. City agrees to remedy any violation of quiet enjoyment caused by City or one of the other tenants and to honor Lessee's tenancy for the term of the Lease.

E. Minimum Standards, Development Standards, and Rules and Regulations – The City has adopted and will enforce Minimum Standards, Development Standards and reasonable rules and regulations to be uniformly applied to similar uses and users of similar space, which Lessee agrees to observe and obey with respect to the use of the Premises and the, and the health, safety and welfare of those using the Premises and the health, safety, and welfare of those using the Premises. The Minimum Standards, Development Standards, and rules and regulations may be amended from time to time following notice to Lessee.

F. Venue - Venue of any action brought under this Lease lies in Williams County, North Dakota, exclusively, where the Lease was executed and will be performed.

G. No Third-Party Benefit - No provision of this Lease creates a third party claim against the City, the Airport, or the Lessee beyond that which may legally exist in the absence of any such provision.

H. Taxes and Licenses - Lessee must cause to be paid any and all taxes of whatever character, including ad valorem and intangible taxes, that may be levied or charged upon the Premises, leasehold improvements, or operations hereunder and upon Lessee's rights to use the Premises, whether the taxes are assessed against Lessee or City, prior to the past due date. Lessee shall cause to be paid any and all sales taxes arising in connection with the occupancy or use of the Premises whether the taxes are assessed against the Lessee, any sublessee or City. Lessee must obtain and pay for all licenses or permits necessary or required by law for the construction of improvements and must require any sublessee to must obtain and pay for all licenses and permits necessary or required by law for the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder. If Lessee or any sublessee wishes to contest any tax or charge, that contest will not be a default under the Lease so long as Lessee or sublessee diligently prosecutes the contest to conclusion and promptly pays whatever tax is ultimately owed. Further, Lessee shall cause any taxes not being contested to be paid prior to the past due date.

I. Trash and Refuse - Lessee must arrange for the collection and lawful disposal of all trash and other refuse resulting from operations on the Premises; must provide and use suitable sealed receptacles approved by Airport Director for all trash and other refuse generated by the use of the Premises; must prohibit piling of boxes, barrels or other similar items in or within view from a public area; must comply with all applicable laws and regulations relative to trash disposal; and must pay or cause to be paid the costs associated with trash removal and disposal.

J. Terms Binding on Successors and Assigns - All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of Lessee and City.

K. Estoppel - Both parties agree that at any time and from time to time at reasonable intervals, within fifteen (15) business days after written request by the other party, said party will execute,

acknowledge and deliver to the party designated by the other party, a certificate in a form as may from time to time be provided, certifying to the extent true and correct the following, as well as any other provision reasonably requested by the other party: (a) that Lessee has entered into occupancy of the Premises and the date of said entry if requested; (b) that this Lease is in full force and effect, and has not been assigned, transferred, modified, supplemented, or amended in any way (or if there has been any assignment, modification, supplement or amendment, identifying the same); (c) that this Lease represents the entire agreement between City and Lessee as to the subject matter hereof (or if there has been any assignment, modification, supplement or amendment, identifying the same); (d) the date of commencement and expiration of the term; (e) that all conditions under this Lease to be performed by City, if any, have been satisfied (and if not, what conditions remain unperformed); (f) that to the knowledge of the signor of said writing, no default exists in the performance or observance of any covenant or condition in this Lease and there are no then existing defense or offsets against the enforcement of this Lease by City, or instead specifying each default, defense or offset of which the signor may have knowledge; and (g) the amount of Rent or other charges, if any, that has been paid in advance and the amount of security, if any, that has been deposited with City.

L. Radio Antenna - Subject to the City's prior written approval as to height and location, which will not be unreasonably withheld, conditioned or delayed, Lessee or any sublessee, as the case may be, may furnish and install at its own expense, a radio antenna either adjacent to the improvements or on the roof of the improvements on the Premises subject to (a) any and all federal, state and local laws, ordinances, statutes, rules, regulations and orders applicable thereto; (b) Lessee, as the case may be, obtaining any and all building and other permits, licenses and other approvals with respect thereto; (c) the antenna and building both must be structurally sound and not adversely affect the soundness of, or the condition of, the roof and/or other parts of the building; and (d) any and all costs of maintaining and operating the same must be paid entirely by the Lessee. Upon the expiration or earlier termination of this Lease as identified herein, Lessee shall cause the removal of the antenna(s) and the restoration of any damage to the improvements and Premises caused by the installation and/or removal thereof. Lessee shall be responsible for all costs for the repair and maintenance of said installation of the antenna.

M. Severability: Each provision, paragraph, section, sentence, clause, phrase, and word of this lease is intended to be severable. If any provision, paragraph, section, sentence, clause, phrase, and/or word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this lease.

N. Voluntary and Knowing Action. The parties, by executing this lease, state that they have carefully reviewed this lease and understand fully the contents hereof; that in executing this lease they voluntarily accept all terms described in this lease without duress coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

O. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this lease are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this lease against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

P. North Dakota Law. This lease shall be construed and enforced in accordance with the laws of the State of North Dakota.

Q. Data Practices. The parties acknowledge that data collected by the City pertaining to this Lease may be subject to the requirements of North Dakota's Government Data Practices Act.

R. No Partnership, Joint Venture, or Fiduciary Relationship. Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Lessor and Lessee, it being understood that the sole relationship created hereby is one of landlord and tenant.

S. Records—Availability and Retention. Lessee agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Lessee and involve transactions relating to this Lease. The Lessee agrees to maintain these records for a period of six (6) years from the date of termination of this Lease.

T. Waiver and Assumption of the Risk: Lessee knows, understands and acknowledges the risks and hazards associated with using the Facilities, Building and Premises and hereby assumes any and all risks and hazards associated therewith. Lessee hereby irrevocably waives any and all claims against Lessor or any of its officials, employees or agents for any bodily injury (including death), loss or property damage incurred by the Lessee as a result of using the Facilities, Building or Premises and hereby irrevocably releases and discharges Lessor and any of its officials, employees or agents from any and all claims of liability.

U. Attorney Fees: Lessee shall pay all costs, attorney fees, and expenses incurred by Lessor to enforce this agreement.

28. PROPERTY SUBJECT TO TAXATION

All real and personal property contained in the Premises shall be subject to taxation in accordance with North Dakota law as may be amended from time to time.

EXECUTED IN DUPLICATE ORIGINALS this _____ day of _____, 2019, by the authorized representative of the parties.

Attest:	City of Williston
_____	Name: _____
City Auditor	Its: _____
	Date: _____

Attest:	Lessee: _____
_____	It's: _____
Title: _____	Name: _____
	Date: _____
