



RAPID CITY REGIONAL AIRPORT

REQUEST FOR PROPOSALS (RFP) FOR ATM Services

**Proposal Due Date & Time:
November 1, 2024
2:00 PM MT**

EXECUTIVE DIRECTOR
Patrick Dame

AIRPORT BOARD MEMBERS

Robert Hall
Michelle Thomson
John Pierce

Bob Conway
Caleb Arceneaux

SECTION 1
RAPID CITY REGIONAL AIRPORT
NOTICE FOR REQUEST FOR PROPOSAL
ATM SERVICES

Notice is hereby given that sealed Requests For Proposals (RFP) to provide ATM services in the passenger terminal building located at 4550 Terminal Road, Rapid City, SD 57703, in accordance with the documents prepared by the Airport staff, will be received in the offices of the Rapid City Regional Airport, Rapid City, South Dakota until 2:00 PM MT, Friday, November 1, 2024.

The sealed RFP envelope shall contain one (1) Proposal only and shall be marked with the words “AIRPORT ATM RFP.”

RFP documents are on file and may be obtained at the Rapid City Regional Airport Office, 4550 Terminal Road, Suite 102, Rapid City, South Dakota 57703, or <https://rapairport.com/category/projects/>.

The Rapid City Regional Airport, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

Since the Rapid City Regional Airport is a nonhub primary airport, it is required to have an Airport Concessions Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the US Department of Transportation 49 CFR Part 23. All ACDBE firms and small businesses qualifying under this solicitation are encouraged to submit proposals. Additional information on the ACDBE program is available upon request.

Publication Dates: October 5, 2024 – Rapid City Regional Airport Website
 October 12, 2024 – Rapid City Journal
 October 19, 2024 – Rapid City Journal



SECTION 2 GENERAL INFORMATION

It is the intention of the Airport Board to issue a non-exclusive right through Agreement to provide ATM services at the Airport. This RFP does not obligate the Airport 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 Airport to negotiate an Agreement with the Proposer(s) it deems most beneficial to the Airport. During the Proposal evaluation process, the Airport may request additional information or clarification from Proposers.

The Airport 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.

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 Airport 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 Airport, or other Proposers, to restrict competition as to any matter relating to this RFP.

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. Proposers shall thoroughly examine and become familiar with this RFP, the Proposal forms, the specimen Agreement, and all related documents comprising this RFP and any written Addendum thereto. 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. The provisions and terms of the Agreement may be revised or adjusted by the Airport prior to final execution.

Equal Employment Opportunity

Rapid City Regional Airport is an Equal Employment Opportunity (EEO) organization, which does not discriminate on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity, age, 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

The non-car rental ACDBE goal is set at 1.60%. Service provider is an Airport concessionaire as defined by 49 CFR Part 23. Concessionaire shall employ Good-Faith Efforts to carry out the Airport's ACDBE policy through its own participation, award of subcontracts to disadvantaged business enterprises, and utilization of DBE/ACDBE suppliers where feasible.

Prohibition Against Lobbying

The Proposer shall not lobby, either on an individual or collective basis, the Airport (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 Airport (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 Airport 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 Airport contact is Toni Broom, Deputy Airport Director for Finance & Administration. All questions from Proposers must be submitted in writing, electronically, to toni.broom@rcgov.org by 5:00 PM MT, October 23, 2024. 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 Addendum 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 Attachment A – Proposer Certification & Addenda Acknowledgement Form.



SECTION 3 INFORMATION AND INSTRUCTIONS TO PROPOSERS

GENERAL INFORMATION

The Rapid City Regional Airport is seeking proposals from experienced and qualified financial institutions eligible and licensed to establish and maintain an ATM(s), pursuant to the laws of the State of South Dakota, to install, operate and service two-three (2-3) Automated Teller Machines (ATMs) in the passenger terminal located at 4550 Terminal Road, Rapid City, South Dakota.

AIRPORT/OPERATOR OBLIGATIONS

The Airport will provide at its expense:

1. Area for ATM to be installed on the premises.
2. Electrical outlet and installation of telecommunications port.
3. Basic lighting, heating and air conditioning for general commons area.

The Operator will provide at its expense:

1. Connection to and testing of free-standing kiosk style ATM machine. Machine cannot be bolted to the floor.
2. Repair, maintenance and improvements required for ATM equipment operation.
3. Pay for monthly telecommunication fees (if any).

ATM MACHINE SPECIFICATIONS

1. Conduct all transactions in United States currency.
2. Accept all major credit cards.
3. Operator's name and address must be clearly identified on ATM
4. ATM must serve the public 24 hours a day, 365 days a year. A toll-free service phone number clearly posted with procedures for reporting problems.
5. Transaction fees or surcharges must be made available to customer prior to transaction.
6. ATM shall not be used to display advertising materials.
7. ATM shall provide a written receipt option, and at minimum, shall support account inquiries, withdrawals and cash advances.
8. ATM shall comply with the Americans with Disabilities Act.

ATM EQUIPMENT

Provide make and model of proposed ATM machine.

LOCATION AND UTILITIES

A minimum of two ATMs will be placed in the terminal as follows:

1. Non-secured passenger waiting area on the 2nd floor.
2. Security waiting area on the 2nd floor.
3. Optional location – Baggage claim area on the 1st floor.



AIRPORT ENVIRONMENT

It is important for Proposers to note that the Airport environment presents a set of unique challenges which are not typical of an off-airport setting.

1. Facilities must be open three hundred and sixty-five (365) days a year with operating hours and staffing levels reflecting the fluctuation in seasonal and daily passenger traffic. Last year, 702,581 passengers came through our facility.
2. The Airport is subject to specific federal security requirements and Proposer employees will be required to abide by all current and future security requirements at all times. Any employee of the Operator who is on-site and/or who will access the machines must pass a TSA mandated security background check and shall be properly badged. Badges must be clearly displayed at all times in the post security location. The cost of badging Proposer employees is the responsibility of the Proposer.
3. Requirements for security screening of employees and goods are established by the Transportation Security Administration and may be changed from time to time. Proposer shall be responsible for complying with these requirements and any future requirements.

HISTORICAL ATM PERFORMANCE AND PASSENGER NUMBERS

The transaction surcharge assessed by the current provider is \$3.00 per transaction. Provider pays \$1.50 per transaction to the Airport.

ATM Performance:	2023	2022	2021	2020	2019
Pre Security ATM					
Number of Transactions	1,037	1,308	1,336	911	1,434
Amount Dispersed	69,380	80,040	83,100	45,500	71,380
Baggage Claim					
Number of Transactions	1,248	1,358	1,104	515	1,315
Amount Dispersed	55,820	63,580	57,460	25,400	68,260
Post Security					
Number of Transactions	1,071	1,092	1,097	720	1,705
Amount Dispersed	73,660	71,820	72,240	45,800	112,100
Total Number of Transactions	3,356	3,758	3,537	2,146	4,454
Total Amount Dispersed	\$ 198,860	\$ 215,440	\$ 212,800	\$ 116,700	\$ 251,740
Passenger Information:	2023	2022	2021	2020	2019
Enplaned Passengers	352,388	338,458	348,269	185,592	351,096
Deplaned Passengers	350,193	334,091	342,471	188,487	354,333
Total Passengers	702,581	672,549	690,740	374,079	705,429

TERM AND AWARD OF CONTRACT



The term of the non-exclusive Agreement will be from January 1, 2025, through December 28, 2029. The Airport will evaluate all proposals and select the one based on what is most advantageous to the Airport and its patrons. It is anticipated that the recommendation will be made to the Airport Board and a contracted awarded by the Board at its regularly scheduled meeting on November 12, 2024.

PROPOSAL INSTRUCTIONS

Proposals should include one original and one electronic copy of the proposal on a flash drive.

Proposals must be submitted in sealed envelopes address to: Rapid City Regional Airport, Administration Office, 4550 Terminal Road, Suite 102, Rapid City, SD 57703 and received no later than 2:00 PM, MT, Friday, November 1, 2024. No proposals will be received after the deadline.

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 ATM RFP**”. Faxed or emailed copies will not be accepted. In lieu of physical deliver, Proposers may request a secure link to upload their Proposal by emailing toni.broom@rcgov.org. Such submittals must be received no later than 2:00 PM, MT, Friday, November 1, 2024.

All responsive Proposals become the property of the Airport and must be provided without cost to the Airport. 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.

Proposal Information

The Proposer’s documents must include the following information:

1. Completed Attachments:
 - a. Attachment A – Designated Company Point of Contact for this Solicitation and Acknowledgement of Addendum Form
 - b. Attachment B – Proposer Certification Form
 - c. Attachment C – ACDBE Acknowledgement Form
 - d. Attachment D – Financial Offer
 - e. Attachment E – Certification of Prohibited Entity Form
2. Executive Summary – List important features of the proposal, explaining why you would like to be awarded the contract and what you will bring as the preferred vendor, including description of ATM and its features.
3. Management and Operational Plan – Indicate the company structure including the CEO, COO, history/background of service, and qualifications to provide services. Highlight any ACDBE purchases or contracts that will be associated with this concession. Include a complete description of services to be provided, operational plans, hours of operation, staffing, time frames, costs, fees, ATM maintenance plan.



- a. The operating plan should describe the manner in which the ATM will be regularly maintained and replenished with cash. The operating plan must address the manner in which service outages should be reported, and the expected response times for repair services.
 - b. Include any requirements needed for service, such as a phone-line, power, data, etc.
 - c. Include type of ATM, as well as credit or debit cards that will be supported by the ATM.
 - d. A photograph of the equipment should be provided.
5. The initial surcharge amount proposed for chargeable transactions.
 6. The compensation to be paid to the Airport. The proposed compensation may be in the form of a flat monthly rental fee or a percentage of the chargeable transactions.
 7. Three references.

PROPOSAL SCORING

The Selection Committee will use the following evaluation factors in evaluating Proposals. Each criterion is weighted and will receive points from 1-5, with 5 being the highest score, then weighted according to the percentage assigned to each evaluation factor. Individual evaluator scores will then be tallied together for a total of 20 points available for each factor.

- 1) **Financial Strength & Ability, Expected Gross Sales, and Revenues to Board – 40%**
Based on the perceived ability of the Proposer to financially undertake the terms and conditions of the Agreement throughout the entire Term, and the percent fees/surcharge(s) to be paid to the Board.
- 2) **Management and Operations Strategy Plan – 40%**
Based on the years of related experience of the management team, the proposed staffing and cash management plan, and the proposed procedure(s) for ensuring high quality services.
- 4) **ACDBE Participation – 15%**
Based on Proposer's program for the direct involvement including the percentage of Airport Concession Disadvantaged Business Enterprises (ACDBE) in the activities, management and operation of the concession.
- 5) **Quality of Proposal – 5%**
Based on the quality of the Proposal itself and its adherence to the instructions provided in this RFP, its overall organization and appearance, and how well it communicates the Proposer's financial offer, qualifications and concession program plans.



ATTACHMENT A
To be returned with Proposal

Proposer Name: _____

**DESIGNATED COMPANY POINT OF CONTACT FOR THIS SOLICITATION AND
ACKNOWLEDGEMENT OF ADDENDUM FORM**

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 _____

ADDENDA – <https://www.rapairport.com/about-the-airport/doing-business>. It is Proposer’s responsibility to check for issuance of any addenda at the above website. The authorized representative hereby acknowledges receipt of the following addenda:

Addenda No: _____ Date: _____ Addenda No: _____ Date: _____

Addenda No: _____ Date: _____ Addenda No: _____ Date: _____



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 Proposer hereby certifies that the Proposer meets or exceeds the Minimum Qualifications of this RFP and is financially capable of performing the Concession Agreement.

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) _____

(Attach additional sheets if needed)

Dated: _____



ATTACHMENT C
To be returned with Proposal

Proposer Name: _____

COMMITMENT ACKNOWLEDGEMENT FOR ACDBE

Proposer is a SDDOT Certified ACDBE: _____ **YES** _____ **NO**

To comply with requirements of the ACDBE program, please provide the following information about your firm, as well as any ACDBE firms and suppliers that will participate in the concession.

Firm Name	Address including zip code	ACDBE Yes or No	NAICS Code	Race & Gender information for firms majority owner	Age of Firm	Annual Gross Receipts of the Firm

Please complete the following for any ACDBE firms and suppliers that will participate in the concession. Any ACDBEs listed here must also provide the information in the table above.

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



ATTACHMENT D

To be returned with Proposal

Proposer Name: _____

FINANCIAL OFFER & PROPOSED TRANSACTION FEE FORM

Proposed Transaction Fees

Indicate the proposed fee(s) to be charged to customers: (example cash withdrawal, cash advances, balance inquiries, etc.). Indicate the amount that will be paid to the Airport for each transaction. In lieu of a per transaction fee to the Airport, Proposer may submit an Annual Concession Fee to the Airport (see below.)

Transaction Type	Transaction Fee	Airport Compensation
Surcharge _____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

List any transactions exempt from any fee(s):

Annual Financial Offer in Lieu of a Per Transaction Fee:

In lieu of a per transaction fee payable to the Airport, Proposer may offer an annual concession fee. The annual concession fee would be paid in twelve monthly installments.

Annual Concession Fee: \$ _____



ATTACHMENT E
To be returned with Proposal

Proposer Name: _____

CERTIFICATION OF PROHIBITED ENTITY STATUS
SDCL 5-18A-51

SDCL 5-18A-1(19A) defines “Prohibited Entity” as follows:

“[A]n organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled by:

- (a) A foreign parent entity from the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela; or
- (b) The government of the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

A prohibited entity does not include a citizen or legal permanent resident of the United States, or an individual foreign national;

The undersigned hereby certifies the following:

1. I am an authorized representative and agent of _____ (“Proposer”);
2. Check one:

___ **Proposer is not a Prohibited Entity as defined by SDCL 5-18A-1(19A); or**
___ **Proposer is a Prohibited Entity pursuant to SDCL 5-18A-1(19A) but grounds for waiver exist pursuant to SDCL 5-18A-52. *If marking this option, provide the basis for the requested grounds for waiver.***
3. I understand that a Proposer who becomes a Prohibited Entity, as defined above, at any time after making this certification that it is not a Prohibited Entity, Proposer must provide written notice to the Board, who may terminate the contract.
4. I understand that the Rapid City Regional Airport Board has the right to terminate a contract with any contractor who submits a false certification, and that any bidder who submits a false certification may be subject to suspension or debarment under SDCL 5-18D-12.

Dated this _____ day of _____, 20____.

(Contractor Business Name)

By: _____

Printed name: _____

Title: _____



**AGREEMENT BETWEEN THE RAPID CITY REGIONAL AIRPORT BOARD AND
_____ FOR ATM SERVICE CONCESSION**

This Agreement is made and entered into this ____ day of _____, 20__, by and between the City of Rapid City by and through the Rapid City Regional Airport Board, 4550 Terminal Road, Suite 102, Rapid City, South Dakota 57703-8706, herein after referred to as the “Board” and, _____, located at _____, herein after referred to as the “Concessionaire.”

WHEREAS, the Board 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, pursuant to the Board’s Request for Proposals (“RFP”) dated October 5, 2024, attached hereto and incorporated herein as Exhibit A, the Board has advertised for proposals for the non-exclusive privilege of operating an ATM Concession at the Airport; and

WHEREAS, Concessionaire has met the requirements of the RFP in accordance with the terms and conditions set forth herein, in the RFP (Exhibit A), and the selected Proposal attached and incorporated herein as Exhibit B; and

WHEREAS, the purpose of this Agreement is to establish the terms and conditions of the Concessionaire’s scope of services and the compensation it is to be paid for those services.

NOW THEREFORE, the parties hereby agree as follows:

1. Concessionaire agrees to perform the services as described in the RFP prepared by the Airport (Exhibit A) and identified in the Proposal submitted by the Concessionaire (Exhibit B). The RFP and Proposal together with this agreement form the entire Agreement between Airport and Concessionaire.
2. Concessionaire agrees to compensate the Airport by direct deposit each banking day \$_____ for each withdrawal on a \$_____ surcharge, as outlined in the Proposal.
3. Concessionaire shall install the equipment in a mutually agreed upon area at the terminal site which is in plain view and readily accessible to the general public. Two

ATMs shall be located pre-security, and one shall be located post-security. Airport will provide the appropriate electrical and data connections at the locations and will furnish electrical service at no cost to Concessionaire. Any necessary data services are the responsibility of the Concessionaire.

4. The term of the agreement will be from January 1, 2025, through December 31, 2029.
5. Either party may terminate this Agreement upon fifteen (15) days written notice in the event of a breach by the other party of a material provision of this Agreement if same has not been cured within fifteen (15) days of written notice from the non-breaching party as to the specifics to the extent known, of the breach.
6. Responsibilities of the Airport:
 - a. Allow Concessionaire or its designated agents access to the site for the purpose of installing, maintaining, servicing, repairing, and removing the equipment.
 - b. Maintain the area around the equipment so that it is clean, safe, accessible and visible to the general public.
 - c. Notify Concessionaire within 24 hours of any operating problems with the equipment.
 - d. Not post or allow to be posted on the equipment any signs, plaques, advertising or other material except as may be authorized in writing by Concessionaire.
7. Responsibilities of the Concessionaire:
 - a. Install the equipment on or before sixty (60) days from date of this contract.
 - b. Maintain the equipment and repair same in a timely manner.
 - c. Provide Airport with appropriate instructions and training with regard to the operations of the equipment.
 - d. Provide the necessary working cash for the operation of the equipment.
 - e. Provide Airport with copies of the monthly reports received by Concessionaire from its electronic funds service showing the services performed and the charges collected for the use by the public of the equipment.
 - f. Ensure that all Concessionaire's employees or agents needing access to the post-security ATM have the proper Airport ID Media allowing them access to the secured area. This includes an Airport background screen, fingerprint check, and SIDA training. Concessionaire understands this will be an expense paid by the Concessionaire.
8. The anticipated monthly minimum revenue to the Concessionaire will be \$100 per month. No guarantees of monthly minimum revenue are given by the Board. The Concessionaire may raise the surcharge amount to meet the minimums only upon

written approval from the Board. Concessionaire reserves the right to remove any equipment which is not meeting the monthly minimum revenue after 90 days.

9. The parties agree that the Concessionaire operates an independent business and is contracting to do work according to his own methods, subject to the control of the Airport, or any applicable local, state, or federal laws or FAA requirements. The relationship between the Airport and Concessionaire shall be that as between an independent contractor and the Airport and not as an employer-employee relationship.
10. Concessionaire shall obtain and maintain at its expense the following minimum limits of occurrence-based insurance coverage for the duration of this Agreement.

<u>Type of Coverage</u>	<u>Minimum Limits of Coverage</u>
A. Workers' Compensation Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
B. Comprehensive General Liability (Including Contractual Liability and Completed Operations):	
Bodily Injury and Property Damage	\$1,000,000 each occurrence
General Aggregate	\$2,000,000

Such insurance policies shall name the City of Rapid City as an additional insured with respect to all activities arising out of the performance of the work and/or services under this Agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the Airport before commencing any work and/or services. The Airport's failure to obtain from the Concessionaire a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity section.

11. The Concessionaire agrees to indemnify, defend and hold the Airport harmless against all liability, loss, damage, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the Airport may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Concessionaire and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Concessionaire or its employees, any subconsultant or its employees,

or any person, firm, partnership, or corporation employed or engaged by the Concessionaire.

12. The Airport agrees to hold the Concessionaire harmless against all liability, loss, damage, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the Concessionaire may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Airport and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Concessionaire or its employees, any subconsultant or its employees, or any person, firm, partnership, or corporation employed or engaged by the Airport.

13. 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 1.60% ACDBE participation for FFY 2023-2025 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.

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.

14. Civil Rights/NonDiscrimination

- A. In all its activities within the scope of its airport program, CONCESSIONAIRE agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), 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 property 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.
- B. 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);
 - 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 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
 - 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 § 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 (42 USC § 12101 *et seq.*), (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) 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 (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. 74087 (2005));
- 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.*).

C. 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. In the event of breach of any of the above nondiscrimination covenants, AIRPORT 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.

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

- A. Compliance with Regulations: CONCESSIONAIRE (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination: CONCESSIONAIRE, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and

retention of subcontractors, including procurements of materials and leases 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.

- C. 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.
 - D. 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 AIRPORT 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 AIRPORT or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
 - E. Sanctions for Noncompliance: In the event of CONCESSIONAIRE'S noncompliance with the non-discrimination provisions of this Agreement, AIRPORT 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.
 - F. 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 AIRPORT 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 AIRPORT to enter into any litigation to protect the interests of AIRPORT. In addition, CONCESSIONAIRE may request the United States to enter into the litigation to protect the interests of the United States.
- E. The parties' rights and obligations under the Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be litigated, and venued, in Pennington County, South Dakota, in the Circuit Court of the Seventh Judicial Circuit for the State of South Dakota.

F. During the performance of this contract, Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with the Federally Mandated Contract Clauses attached hereto and incorporate herein as Exhibit A.

RAPID CITY REGIONAL

NAME OF CONCESSIONAIRE

Robert Hall, President

ATTEST:

Bob Conway, Secretary

Sample