

Operating Agreement and Lease

THIS INDENTURE made this July 16th, 2019, between the Municipal Corporation of the City of MOOSE JAW (the "Lessor") and the Non-Profit Corporation Moose Jaw Municipal Airport Authority (the "Lessee").

IN CONSIDERATION of the rents, covenants, provisos and conditions hereinafter reserved and contained, has demised and leased, and, by these presents, the Lessor does demise and lease unto the Lessee:

1. All and singular that certain parcel of land known as the Moose Jaw Municipal Airport (the "Airport"), such land situated in, lying in and being part of the Rural Municipality of Moose Jaw No. 161, namely Section 16 Township 17 Range 25 West of the 2nd Meridian in the Province of Saskatchewan and being more specifically described in Schedule "A" attached hereto and forming part of this agreement; such total leased area provided to the Lessee for use as an Airport comprising an area of approximately 640 acres, more or less, owned by the City of MOOSE JAW (the "Land"), but such total not including benefiting and encumbering easements including those enumerated in Schedule "B" all of which are included in the area leased to the Lessee; together with those buildings to be included as indicated in Schedule "C", also attached to and forming part of this agreement; both Land and buildings including and being subject to all and any reservations shown therein and to all and any existing grants and reservations in favour of the Lessee or in favour of others by the Lessee, whether or not shown therein.

2. To have and to hold the Land and buildings unto the Lessee, from and after the ____ day of _____, _____, for a term or period of 99 years, subject to annual review pursuant to the Lessor's Bylaw 5561, attached as Schedule "E" to this Agreement; provided that any revision to this Lease shall be by agreement in writing between the parties; and, any dispute shall be mediated in accordance with section 26 of this Lease.

3. Yielding and paying therefore in advance unto the Lessor, in lawful money of Canada the sum of \$1 for the entire term.

4. It is agreed that the word "Lessor" and "City" when used herein shall mean the City of Moose Jaw and shall include the successors and assigns and related regulatory authorities; the word "Lessee" or other words relative thereto, or of like import, shall mean and include, irrespective of gender or number, the party or parties as earlier designated or described, and their or any of their executors, administrators, successors, sub-tenants or assigns.

5. And it is further agreed by and between the parties that these presents are made and executed upon, and subject to, the covenants, provisos, conditions and reservations set forth and contained, and that the same and every one of them, representing and expressing the exact intention of the parties, are to be strictly observed, performed and complied with, namely:

1. Payment of Taxes

That the Lessee shall pay or cause to be paid all rates, taxes and assessments, of whatsoever description, that may at any time during the existence of these presents be lawfully imposed, and become due and payable upon, or in respect of, the Land or any part thereof.

2. Compliance with Regulations

That the Lessee shall in all respects abide by and comply with all lawful rules, regulations and by-laws of the federal government, provincial government, municipal government or any other

governing body whatsoever, and with all local police, health or fire regulations or by-laws, in any manner affecting the Land and buildings.

3. Assignment

3.1 Assignment by Tenant

That the Lessee shall not assign this Lease or sublet all or substantially all of the Lands hereunder without first obtaining the written consent of the Landlord, which consent shall not be unreasonably withheld or delayed.

3.2 Subletting by Tenant

That the Lessee may, without the consent of the Landlord, sublet portions of the Lands (not constituting all or substantially all of the Lands), provided the term and all renewals of each sublease do not extend beyond the Term and all exercised renewal terms at such time; and, provided that the Lessee shall be responsible for administering to and participating in all existing leases, contracts, and agreements listed in Schedule "D" in the place of the Lessor where applicable.

That the Lessee shall indemnify the Lessor from any and all costs, fines, repairs, and any other damages occasioned, arising from, or caused by:

- (a) the Lessee's assignment of these presents, transfers, or sublease of the Lands; and
- (b) the Lessee's administration and participation in the agreements listed in Schedule "D".

3.3 Status of Tenant after Assignment or Subletting

No assignment or sublease shall release the Lessee from its obligations and covenants under this Lease.

4. Access

That the Lessor, its officers, servants or agents, shall have full and free access for inspection purposes, during normal business hours and in the presence of the Lessee or a representative of the Lessee, to any and every part of the Land, buildings, structures and facilities; it being expressly understood and agreed, however, that in cases of emergency, the Lessor, its officers, servants or agents, shall at all times and for all purposes have full and free access to the Land, buildings, structures and facilities.

5. Purpose

That the Land and all buildings, structures and facilities thereon shall only be used for the purposes of a public airport including related uses and shall be used for no other purpose or purposes whatsoever, save for and unless the prior written approval of the Lessor and Lessee has been granted for an ancillary purpose or use.

6. "As Is" Condition

That the Lessee accepts the Land, buildings, structures and facilities in an "as is" condition, and any improvements made to the Land, buildings, structures and facilities by the Lessee at any time during the currency of this Lease, to make the Land, buildings, structures and facilities suitable for the operations of the Lessee hereunder, shall be at the risk, cost and expense of the Lessee and to the satisfaction of the City. Furthermore, the Lessee acknowledges the Lessor has made no representation or warranties with respect to the condition of any structures, improvements, buildings, fixtures, which may be part of or in place on the Lands, nor of any part or area of the Lands themselves.

7. Claim or Demand

That the Lessee shall not have any claim or demand against the Lessor or any of its officers, servants or agents for detriment, damage, accident or injury of any nature whatsoever or howsoever caused to the Land, buildings, structures and facilities, or to any person or property, including any structures, erections, aircraft, equipment, materials, supplies, motor or other vehicles, fixtures and articles, effects and things erected, brought, placed, made or being on or about the Land or in the building, unless such damage or injury is due to the negligence of any agent, officer or servant of the City while acting within the scope of his or her duties or within the course of his or her employment.

8. Erection and Maintenance of Buildings, Structures and Facilities

(1) That the Lessee shall at all times during the currency of this Lease, operate, manage and maintain the Airport, buildings and all related facilities; and without restricting the generality of the foregoing, such shall include the landing strips, lighting facilities, sewers, ditches, roads and other facilities (the "Facilities") on the Land and in the buildings; such operation, management and maintenance shall be carried on, under and in accordance with the supervision and direction of the Lessor, pursuant to the Lessor's Bylaw No. 5561, attached as Schedule E to this Agreement, and shall be done in all respects in accordance with industry standards and best practices, lawful rules, regulations and by-laws of the federal government, provincial government, municipal government or any other governing body whatsoever and at the expense of the Lessee.

(2) That the Lessee shall at all times during the currency of this Lease maintain the Airport in a serviceable condition for operation in accordance with the Canadian Aviation Regulations, subpart 301, as it pertains to registered airports;

(3) That the Lessee shall not construct or erect any building or other structures on the Land without obtaining the prior approval by the local Rural Municipality or the applicable municipal government authority's building code, as applicable.

(4) That the Lessee shall abide by the funding, reporting, and other requirements as contained in the Lessor's Bylaw 5561, attached as Schedule E to this Agreement, as amended by the Lessor from time to time.

9. Utilities

That the Lessee shall, at the cost and expense of the Lessee, be responsible for any additional installation and maintenance of any water, sanitary sewerage and storm sewerage systems; no work in this Agreement shall be commenced or undertaken without the prior approval of the the local Rural Municipality or the applicable municipal government authority's building code, as applicable.

10. Environmental Protection Statutes

That the Lessee shall accede to and abide by federal environmental protection statutes and regulations and by-laws and any regulations thereto and appropriate provincial, municipal or local environmental protection statutes, regulations and by-laws.

11. Nuisance

That the Lessee shall not do, suffer or permit to be done any act or thing which is or would constitute a nuisance and shall indemnify and save harmless the Lessor from any nuisance coimplaint, and shall have sole authority to respond to, defend, litigate, or otherwise determine any

nuisance complaint made as against the Lessee due to its operation on an Airport, or use of the Land.

12 Police and Fire Protection

(1) That the Lessee shall be responsible for providing fire and police protection at the Airport through their Land Taxes, Fees, and Dues to the Rural Municipality wherein the Land is located.

(2) That the Lessee shall, at its expense, take all precautions to prevent fire from occurring in or about the leased premises, and shall observe and comply with all laws and regulations in force respecting fires at the Airport.

13. Advertising

That the Lessee shall have authority to construct, erect, place or install on the outside of the buildings or on the Land, any poster, advertising sign or display, electrical or otherwise, in accordance with applicable best industry practices, lawful rules, regulations and by-laws of the federal government, provincial government, municipal government or any other governing body whatsoever as applicable.

14. Drainage and Discharge of Material

That the Lessee shall not discharge, cause or permit to be discharged or howsoever to pass into the sewer systems, storm drains or surface drainage facilities, at the Airport or elsewhere on the Lands, any deleterious material, noxious, contaminated or poisonous substances, any or all as determined so by the City, whose determination shall be final. In the event of a discharge or escape of such deleterious material, noxious, contaminated or poisonous substance in and under the control of the Lessee, the Lessee shall terminate and rectify all damage or injury arising therefrom, such termination and rectification to be conducted to the satisfaction of the City and at the Lessee's expense.

15. Indemnity

(1) That the Lessee shall at all times indemnify and save harmless the Lessor or any of its officers, servants or agents from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by, or attributable to, the execution of this Lease, or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising in this Lease, except claims for damage resulting from the negligence of any agent, officer or servant of the City while acting within the scope of his or her duties or within the course of his or her employment.

(2) That the Lessee, except as mutually agreed upon between the Lessee and the Corporation of the City of Moose Jaw, shall not assume nor be liable for any claims, demands, or action related to the subject-matter of this Lease, and incurred, commenced or suffered prior to the effective date of this Lease.

16. Insurance

(1) That the Lessee shall place, and at all times during the currency of this Lease maintain, comprehensive commercial general liability insurance, as their respective interests shall appear, and such coverage shall be limited to no less than such amount of coverage directed by the City, the coverage for the initial _____ years to be no less than \$_____ inclusive for any one occurrence or series of occurrences arising out of one cause.

(2) That, further, without restricting the generality of the foregoing, such coverage shall include the following:

- (a) the City shall be named as an Additional Insured Party;
- (b) a waiver of rights of subrogation of the Insurer in favour of the City as an additional insured party;
- (c) personal injury coverage;
- (d) contingent employer's liability;
- (e) completed operations coverage;
- (f) non-owned automobile coverage on automobiles and trucks maintained, operated or used (but not owned by the Lessee) in connection with the maintenance and operation of the Airport;
- (g) contractual or assumed liability under this Lease;
- (h) products liability coverage;
- (i) hangarkeeper's liability coverage;
- (j) host liquor liability; and
- (k) owner's or operator's protective liability.

(3) That, further, such general liability insurance shall not provide for deductibility to be borne by one or either or both of the insured parties; but such insurance may provide for deductibility up to such amount directed by the City for liability arising out of the operation of vehicles, such liability for such deductible to be borne in its entirety by the Lessee.

(4) That, further, such general liability insurance coverage shall provide the following basic exclusions:

- (a) ownership of any motor vehicle, trailer or semi-trailer, obliged by law to carry a licence (other than a special licence issued in respect of any motor vehicle trailer or semi-trailer chiefly used or operated off-highways);
- (b) watercraft and aircraft;
- (c) property owned or leased by, or in the care, custody or control of the insured, and
- (d) basic exclusions such as war, nuclear radiation, wear and tear, mysterious disappearance and earthquake.

(5) That the Lessee shall place, and shall at all times maintain during the currency of this Lease, insurance against fire with respect to any improvements, buildings or structures in place or constructed, brought or placed upon the Land by the Lessee during the term of this Lease; and all policies for such insurance shall be in an amount and in a form satisfactory to the Lessor.

(6) That the Lessee shall submit such policy or policies or certified copies thereof, and any renewals thereof, to the City for review and approval together with proof of payment of the premiums therefore.

(7) That the Lessee shall not do or omit to do or suffer anything to be done or omitted to be done in the leased premises which will in any way impair or invalidate such policy or policies. Every policy shall contain a provision that advance written notice of cancellation shall be given to the City.

17. Reasonable Use

That the Lessee shall not, during the currency of this Lease, do, suffer nor permit to be done any act or thing which may impair, damage or injure the Land, the buildings and the Facilities or any part thereof, beyond the damage occasioned by reasonable use, and shall, at the cost and expense of the Lessee, repair and renew in a good, sufficient and workmanlike manner all portions of the Land or the buildings and the Facilities which may at any time by the Lessee be damaged (ordinary wear and tear only excepted); and in the event of the failure on the part of the Lessee to so repair and renew, the Lessee shall indemnify and save harmless the Lessor from all damages, costs and expenses suffered or incurred by the Lessor by reason of such impairment, damage or injury to the extent the Lessee is liable for the same in law, such payment to be made forthwith upon receipt of appropriate accounts therefore from the Lessee.

18. Repair of Damage

That if, at any time or times hereafter, any damage or injury (ordinary wear and tear only excepted) should be occasioned to the Land, the buildings or the Facilities or any part thereof, or to any works of the Lessor on the Airport by reason of or on account of the operations of the Lessee hereunder or of any action taken or things done or maintained by virtue thereof; then, and in every such case, the Lessee shall, within a reasonable time, upon notice thereof from the City given in writing, repair, rebuild and restore the same in good, sufficient and workmanlike manner. In the event of failure on the part of the Lessee to so repair, the City may, at its option, repair such damage or injury; in which case, the Lessee shall repay and reimburse the Lessor for all costs and expenses connected therewith or incidental thereto to the extent that the Lessee is liable for the same in law, plus an additional amount for administration and overhead, forthwith upon receipt by the Lessee of appropriate accounts therefore from the Lessor. In the event of failure on the part of the Lessee to repair such damage or injury and in the event of non-repair by the Lessor, the Lessee shall remain liable to the Lessor for the amount of such damage or injury to the extent the Lessee is liable therefore in law, and payment of such amount shall be made by the Lessee to the Lessor forthwith, upon receipt by the Lessee of appropriate accounts therefore from the Lessor.

19. Conflicts of Interest

That pursuant to the provisions of this Lease, no person who holds an elected position within the Corporation of the City of Moose Jaw shall be permitted to personally contract with the Lessee to confer any benefit or other right which is provided by the Lessor to the Lessee under the terms of this Lease, nor to personally benefit from the Lessee's operation of the Lands or Airport pursuant to this Lease.

20. Approval

That the Lessee shall, at its own cost, before using the Land, the buildings and installations and the Facilities as an airport, obtain approval from the relevant regulatory authorities to use the Land as a public airport, and thereafter shall, during the currency of this Lease, operate the Airport as a public airport subject to such terms and conditions as relevant regulatory authorities may direct, and shall charge, for the use of the Airport or for any services performed in connection therewith.

21. Default and Re-Entry

(1) That it is expressly agreed that:

- (a) if the Lessee shall fail to observe or perform any of the terms, covenants or agreements under this Lease (other than its covenant to pay rent or amounts collectable as rent) and

such default shall continue for a period of 90 days (or such longer period as may be reasonably necessary to cure such default considering the nature thereof) after notice by the Lessor to the Lessee, specifying with reasonable particularity the nature of such default and requiring the same to be remedied;

- (b) if the default set out in the notice given to the Lessee by the Lessor pursuant to (a) reasonably requires more time to remedy than the 90 day period referred to in that clause, and the Lessee has not commenced remedying the same within the 90 day period, or, in the opinion of the Lessor the Lessee fails to diligently complete the same within a reasonable time, or
- (c) if the Lessee shall make an assignment for the benefit of creditors, or shall make an assignment or have a receiving order made against it under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3; or, becoming bankrupt or insolvent, shall make application for relief under the provisions of any statute now or hereafter in force concerning bankrupt or insolvent debtors; or any action whatsoever, legislative or otherwise, shall be taken with a view to the winding-up, dissolution or liquidation of the Lessee;

then, at the option of the Lessor the term hereby granted shall become forfeited and void; and the Lessor may, without notice or any form of legal process whatsoever, forthwith re-enter upon the leased premises or any part thereof in the name of the whole, and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding.

(2) That forfeiture of this Lease by the Lessee shall be wholly without prejudice to the right of the Lessor to recover arrears of rent or damages for any antecedent breach of covenant on the part of the Lessee. Notwithstanding any such forfeiture, the Lessor may subsequently recover from the Lessee damages for loss of rent suffered by reason of this Lease having been determined prior to the end of the term of this Lease; and this clause and the rights under this clause shall survive the termination of this Lease whether by act of the parties or by operation of law.

22. Vesting of Building and Fixtures

(1) It is expressly understood and agreed by the Lessee that, subject to clause (2), title in all buildings and improvements affixed upon the Land shall at the termination of this Lease be vested in the Lessor without any right to compensation on the part of the Lessee. Nevertheless, the Lessor shall have the option of requiring or compelling the Lessee, upon termination to remove such buildings and improvements, and the Lessee shall be so bound to remove such buildings and improvements and to restore the site to the Lessor's reasonable satisfaction at its own cost and expense and without any right on the part of the Lessee to seek compensation for any reason whatsoever. Upon the removal of such buildings and improvements, title in the buildings and improvements will re-vest in the Lessee, and the Lessor's interest in the buildings and improvements will terminate at that time.

(2) The Lessor agrees that it neither has, nor will have at the end of the term of this Lease, any ownership rights by operation of vesting in any buildings or improvements that have been, or may be, declared surplus to the requirements of the City and sold to any party who, at the time of sale, was or is a sublessee of the Airport premises.

23 Application of Lease and Interpretation of Text

This Lease and everything contained in this Lease shall enure to the benefit of and be binding upon the successors and assigns, as the case may be, of each of the parties, subject to the granting of consent by the Lessor as provided in this Lease to any assignment of this Lease. Where there is a male, female or corporate party, the provisions of this Lease shall be read with all grammatical changes to gender and number required by the context. All covenants and obligations in this Lease shall be deemed joint and several. The invalidity of any clause for any reason whatsoever shall not invalidate any other clause of these presents.

24. Notices

(1) That whenever in this Lease, it is required or permitted that notice or demand be given or served by either party to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by registered mail, E-mail or facsimile transmission as follows:

To the Lessor: City Clerk/Solicitor

City of Moose Jaw

228 Main St. N

Moose Jaw, SK

S6H 3J8

To the Lessee: Corporate Solicitor of the Lessee

Chow McLeod Barristers and Solicitors

48 High St. W

Moose Jaw, SK

S6H 1S3

Attn: Timothy S. Hansen

(2) That such addresses may be changed from time to time by either party giving notice as provided.

(3) That if any question arises as to whether any notice was or was not communicated by one party to the other, it shall be deemed to have been effectively communicated or given on the day received or on the fifth day after it was mailed or sent, whichever is the earlier.

25. Headings

That any note appearing as a heading in this Lease has been inserted for convenience and reference only, and of itself cannot define, limit or expand the scope or meaning of the present Lease or any of its provisions.

26. Differences or Disputes

That all matters of difference or dispute arising between the Lessor and the Lessee in any matter connected with or arising out of this Lease, whether as to interpretation or otherwise, failing negotiation between the Lessor and Lessee or their respective agents, shall be determined through a process of mandatory mediation as follows:

a) If any dispute remains unresolved following the negotiation efforts first mentioned, and before pursuing arbitration as set forth below, the parties must engage in mandatory mediation before a third-party mediator agreed to by the parties;

b) A representative of the City and a representative of the Authority shall participate in such mediation and the mediator will have thirty (30) days from the date of his or her appointment to help resolve the dispute;

c) The parties will share the cost of the mediator equally. The cost of each party's legal and other representation at the mediation shall be each party's individual responsibility.

d) The mediator shall work with the representatives and each party shall promptly respond to any written requests from the mediator for information and/or documentation with respect to the dispute, and shall copy the other party with all such response; and

e) The mediator shall provide the parties with a written recommendation respecting the dispute. The recommendation of the mediator is not binding but shall be used by the parties for the purpose of resolving the dispute.

Should the Lessor and Lessee fail to resolve their dispute through the mandatory mediation process, the Lessor and Lessee shall determine their dispute in accordance with *the Arbitration Act, 1992*, SS 1992, c. A 24.1 of Saskatchewan, as amended from time to time.

27. Bribes

That the Lessee confirms that it has not, nor has any person on its behalf, given, promised or offered to any official or employee of the City, for or with a view to obtaining this Lease, any bribe, gift or other inducement, and that it has not, nor has any person on its behalf, employed any person to solicit or secure this Lease upon any agreement for a commission, percentage, brokerage or contingent fee.

28. Entire Agreement

That this Lease shall be deemed to constitute the entire agreement between the Lessor and the Lessee with respect to the subject-matter of this Lease and shall supersede all previous negotiations, representations, and documents in relation hereto made by any party to this Lease.

In witness whereof the parties have executed these presents as at the date above written:

LESSOR

Municipal Corporation of The City of Moose Jaw

Per: _____

(seal)

Name: _____

Title: _____

I/We have authority to bind the Lessor

LESSEE

The Moose Jaw Municipal Airport Authority

(seal)

Per: _____

Name: _____

Title: _____

I/We have the authority to bind the Lessee

[Remainder of this page intentionally blank]

Schedule "A"

Copy of printed title to be added here

Schedule "B"

List of accepted interests, encumbrances, or easements to Title, if any

Schedule "C"

List of included buildings, structures, fixtures, improvements, etc. on the Land, if any

Schedule "D"

List of leases, contracts, and/or agreements to be performed, accepted, completed, or otherwise participated in by the Lessee on behalf of and in indemnifying the Lessor

Schedule "E"

Copy of Reporting and Funding Bylaw 5561