

FIXED BASE OPERATOR AGREEMENT

THIS FIXED BASE OPERATOR’S AGREEMENT is entered into by and between the CITY OF BROOKINGS, South Dakota, a Municipal Corporation, hereinafter referred to as “CITY”, and PHEASANTS FURY AVIATION, LLC of Sioux Falls, South Dakota, (hereinafter referred to as the “Operator”),

WITNESSETH:

WHEREAS, the City owns and operates an Airport known as the Brookings Regional Airport, located in Brookings, South Dakota (hereinafter referred to as the “Airport”) with the power to grant rights and privileges with respect thereto; and,

WHEREAS, the Operator is engaged in the business of providing aeronautical services to the general public as a Fixed Base Operator; and

WHEREAS, the City in its operation of the Airport deems it advantageous to enter into an agreement with the Operator granting Operator the rights necessary to conduct a nonexclusive Fixed Base Operation on the Airport; and

WHEREAS, the Operator owns the facilities and equipment necessary to conduct a Fixed Base Operation and under a lease agreement with the City and leases adequate premises at the Airport for the conduct of such Fixed Base Operation.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other valuable consideration, the City and Operator hereby mutually agree as follows:

ARTICLE I – TERM

Section 1.1 Term. The initial term of this Agreement shall begin on November 12, 2024 and terminate on December 31, 2029. This Agreement shall terminate at an earlier date if Operator, the City, and a third party enter into an agreement to have the third party perform Fixed Base Operations In lieu of Operator or as otherwise allowed in accordance with this agreement.

1 **Section 1.2 Option to Renew.** Subject to Operator having performed the terms and
2 conditions of this Agreement during the initial term to the reasonable satisfaction of the City,
3 this agreement shall be renewed or extended with the approval of the City and such approval
4 shall not be unreasonably withheld. In the event of renewal or extension, the terms of any
5 renewal or extension shall be established by negotiation between the parties and incorporated
6 herein by written amendment.

7 **ARTICLE II – FBO PREMISES**

8 **Section 2.1 Fixed Base Premises.** This Agreement does not lease or convey to
9 Operator any right to occupy or use any real estate, nor does it authorize Operator to construct
10 any facility improvements on the Airport.

11 **Section 2.2 Location where Services May Be Performed.** Any and all buildings,
12 grounds, ramps or other facilities which may be necessary for the Operator to provide Fixed
13 Base Operation services (“FBO Services”) shall be leased pursuant to a SDSU sub-lease. The
14 expiration or early termination, for any reason, of any such lease necessary for Operator to
15 provide required FBO Services, as defined hereinafter, and only such lease, excluding any
16 other leases to which Operator is a party and which are not necessary for Operator to provide
17 the required FBO Services, shall result in the immediate termination of this Agreement without
18 further notice; however, the expiration of the term, or early termination of this Agreement shall
19 not be deemed to be an event of default under or a reason to terminate any of the other leases
20 held by the Operator.

21 The specific buildings, ramps and other facilities leased by Operator, where Operator is
22 granted the right and obligation to provide each of the FBO Services defined in Section 3.1
23 hereof are shown on Exhibit “A”, which is attached hereto and made a part hereof.

24 **ARTICLE III – RIGHTS AND OBLIGATIONS OF THE OPERATOR**

25 **Section 3.1 FBO Services.** The Operator shall have the non-exclusive right, privilege
26 and obligation to provide the Required Services set forth in paragraph A below and shall have
27 the right but not the obligation to provide the Authorized Services set forth in paragraph B
28 below (the Required Services and the Authorized Services being hereinafter referred to

1 collectively as the “ FBO Services”). In performing the FBO Services, Operator shall (1)
 2 demonstrate to the reasonable satisfaction of the City that Operator either (i) owns or operates
 3 a fueling facility at the Airport that is adequate to provide the FBO Services, or (ii) has an
 4 agreement for access to a fueling facility on the Airport that is adequate to provide the FBO
 5 Services.

6 **A. Required Services.** The Operator shall be required to provide the following
 7 services and facilities and engage in the following required activities at the Airport
 8 during the normal business hours of operation and on-call twenty-four (24) hours per
 9 day, three hundred sixty-five (365) days per year:

- 10 1. The sale and plane-side delivery of aviation fuels, lubricants and other
 11 related aviation products for both GA and commercial airline operations;
- 12 2. Flight line services and assistance to aircraft operators, and apron
 13 servicing of aircraft, including, but not limited to, itinerant parking, storage
 14 and tie down service, for both based and itinerant aircraft;
- 15 3. Maintenance of a 24-hour lobby facility to serve pilots and aircraft
 16 personnel;
- 17 4. In addition to the maintenance of a 24-hour lobby facility described in
 18 Section A. 3., immediately above, Operator will also make available the
 19 following amenities and additional portions of Operator’s facilities as
 20 shown on Exhibit “A-1”:

- 21 ⇒ Main level – approximately 1,342 square feet
- 22 ❖ Heated Foyer areas from parking lot and field
- 23 ❖ Pilot and passenger lounge/TV area
- 24 ❖ Work desk area
- 25 ❖ Free access to wireless internet and weather info
- 26 ❖ Free local phone service
- 27 ❖ Bathrooms
- 28 ❖ Vending Machines

❖ TV Streaming Capability

B. Authorized Services: In addition to the services required to be provided by the Operator pursuant to Section 3.1, Paragraph A, Required Services, above, the Operator is authorized, but not required, to provide the following services or activities:

1. Maintenance and operation of a repair shop for the repair and maintenance of based and transient aircraft (aircraft power plant and airframe maintenance and repair operations);
2. Sales, service and installation of avionic and engine parts and instruments and accessories;
3. Flight training, including ground school;
4. Aircraft rental;
5. Aircraft charter operations; and
6. Air taxi service.
7. Special flight services, including aerial sight-seeing, aerial advertising and aerial photography; and
8. Sale of new or used aircraft;
9. Pilot Shop;
10. Sub-leasing of office and hangar space pursuant to the Airport Rules and Regulations;
11. Catering of meals;
12. Travel Agency;
13. Hot-air de-icing or glycol-based de-icing equipment
14. Car rental
15. Courtesy Car

C. No Other Services. The Operator is not authorized to engage in any other business or provide any services at or in connection with the Airport except as authorized herein without the written consent of the City, which consent shall not be unreasonably withheld.

1 **Section 3.2 Operating Standards.** In providing any of the FBO Services, Operator
2 shall furnish good, prompt and efficient service adequate to meet all reasonable demands for
3 the FBO Services at the Airport and shall meet or exceed the following standards:

4 **A. FBO Standards.** If the City hereafter adopts Standards for FBO Services at the
5 Airport that are reasonable and customary within the industry for operation of an FBO
6 (“FBO Standards”), the Operator must meet or exceed the City’s FBO Standards to the
7 extent it is reasonably capable without resulting in undue expense or burden to the
8 Operator.

9 Operator understands and agrees that it will no longer have the right to provide
10 or perform a particular Required FBO Service if following thirty (30) days written notice
11 given by the City, clearly specifying the service deficiency, it fails to upgrade and/or
12 improve its performance of the particular Required Service to the reasonable
13 satisfaction of the City.

14 **B. Services to be Non-Discriminatory.** Operator shall offer the FBO Services
15 authorized herein on a fair, reasonable and non-discriminatory basis to all users of the
16 Airport. Operator shall charge nondiscriminatory prices for each unit of sale or service;
17 provided, however, that Operator may be allowed to make non-discriminatory discounts,
18 rebates or other similar types of price reductions.

19 **C. Employees.** Operator shall employ personnel with the necessary technical
20 qualifications and certificates or licenses as may be required to effectively and efficiently
21 provide the FBO Services required or authorized in this Agreement. Operator shall
22 provide any necessary training, and maintain close supervision and control over the
23 conduct, demeanor and appearance of its employees so as to assure a high standard of
24 service to its customers.

25 **D. Laws, Rules and Regulations.** Operator shall comply with all Federal, State and
26 local laws, rules, regulations and other local business requirements which may apply to
27 the conduct of Operator’s business authorized hereunder, including any applicable rules
28

1 and regulations promulgated by the City. Operator shall keep in effect and post in a
2 prominent place all necessary and/or required licenses or permits.

3 **E. Environmental Protection.** Operator represents and warrants that any handling,
4 transportation, storage, treatment or usage of toxic or hazardous substances by
5 Operator that will occur during the term of this Agreement or any renewals thereof shall
6 be in compliance with all applicable Federal, State and local laws, regulations,
7 administrative rulings, orders, ordinances and requirements, and all City and Airport
8 rules, regulations and requirements pertaining to the protection of the environment,
9 including but not limited to those regulating the storage, handling and disposal of waste
10 materials. Operator and any agent or party acting under the direction of, or with the
11 consent of Operator shall not receive, treat, store, transport, dispense or dispose of any
12 "hazardous substance" as defined in Section 101 (14) of the Comprehensive
13 Environmental Response, Compensation and Liability Act of 1980, as amended from
14 time to time ("CERCLA"). Operator and any agent or party acting at the direction of, or
15 with the consent of, Operator shall not receive, store, transport, dispense or dispose of
16 any petroleum products (including crude oil or any fraction thereof) on any premises on
17 the Airport except at and on any facilities of or on the Airport designated by the City for
18 the receipt, storage and dispensing of aviation fuels and lubricants including those
19 areas within Operator's premises in which receipt, storage and dispensing of aviation
20 fuels and lubricants is customary and usual (e.g. Operator's repair shop) (collectively
21 "Approved Fuel Farm"), and provided that, in the receipt, storage, handling, transport
22 and dispensing of any such aviation fuels and lubricants at or on such Fuel Farm and
23 the transport to and dispensing thereof into aircraft on the airport, Operator and any
24 such agent or party acting at the direction of, or with the consent of, Operator will
25 conduct such activities in accordance with all applicable laws, and the rules and
26 regulations of the Airport.

1 **Section 3.3 Signage.** Operator may, at its expense, install or place in or on the
2 Airport premises appropriate signage to identify its Fixed Base Operations. Said sign or signs
3 shall conform to any overall directional graphics or sign program or ordinances or regulations
4 established by the City and be of a size, shape and design, and placed at a location or
5 locations approved by City, which approval shall not be unreasonably withheld. Operator shall
6 remove, at its expense, all lettering, signs, and placards so erected on the Airport at the
7 expiration of the term of this Agreement.

8 **Section 3.4 Rights Non-Exclusive.** The rights granted to Operator hereunder are
9 not exclusive, and Operator agrees that the City may in its sole discretion grant to third parties
10 rights and privileges upon the Airport which are identical in part or in whole to those granted to
11 Operator, provided that such third parties are qualified to exercise such rights and privileges.

12 **ARTICLE IV – USE OF AIRPORT**

13 **Section 4.1 Use of Public Airport Facilities.** In providing the aeronautical services at
14 the Airport, the Operator shall be entitled to the nonexclusive use, in common with others
15 authorized by the City, of the Airport, including runways, taxiways, parking aprons, roadways,
16 appurtenances, and all facilities, equipment, improvements and services which have been, or
17 may hereafter be provided for common use at or in connection with the Airport.

18 **Section 4.2 Ingress and Egress.** The Operator shall have the right of ingress and
19 egress to and from the areas from which FBO Services are authorized by means of connecting
20 taxiways, roadways, streets, driveways and sidewalks designated by the City for such purpose,
21 for use in common with others having rights of passage thereon. The use of any such taxiways
22 or roadways shall be subject to the Rules and Regulations of the Airport which are now in
23 effect or which may hereafter be reasonably promulgated from time to time. The City may, at
24 any time, temporarily or permanently, close any such roadway or taxiway, as long as a
25 reasonable means of ingress and egress remains available to the Operator. The Operator
26 hereby releases and discharges the City, it's Boards, officers, employees and representatives,
27 and all other governmental authorities and their respective successors and assigns, of and
28 from any and all claims, demands or causes of action which the Operator may at any time

1 hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any
2 areas provided that a reasonable alternate means of access remains available to the Operator.

3 **Section 4.3 Obligations of City.** City shall keep and maintain the Airport and its
4 appurtenances, including the landing area, lighting, runways, taxiways and roadways, and
5 other publicly owned facilities located thereon in such condition during the term of this
6 Agreement as will permit the safe landing and taking off of aircraft using the Airport; provided
7 that in the event of snow or ice storms, City shall have such time as is reasonably necessary in
8 which to clear the several Airport runways, taxiways and roadways of accumulated ice and
9 snow.

10 The City reserves the right to take any action it considers necessary to protect the aerial
11 approaches of the Airport against obstruction, together with the right to prevent Operator from
12 erecting, or permitting to be erected any buildings or other structures on or adjacent to the
13 Airport which, in the reasonable opinion of the City, would limit the usefulness of the Airport or
14 constitute a hazard to aircraft.

15 **ARTICLE V – FUELING FARM**

16 **Section 5.1. Description of Fueling Farm.** The City of Brookings' fueling farm consists
17 of the fuel tanks, equipment and apparatus described on Exhibit "B", attached hereto and
18 made a part of this agreement.

19 **Section 5.2. Authorization, Term and Compliance.** The City of Brookings hereby
20 authorizes Operator to operate the fueling farm during the term of this agreement in
21 accordance with the terms and conditions of this agreement. Operator agrees that it will
22 operate the fueling farm at all times during the term of this agreement in accordance with the
23 City of Brookings Airport Board By-laws, Operations Manual, Rules and Regulations and the
24 terms and conditions of this Agreement. During the term of this Agreement, Operator shall
25 have the exclusive right to operate the City of Brookings' fueling farm, but this shall not
26 constitute an exclusive right to sell fuel at the Brookings Municipal Airport.

27 **Section 5.3. Term.** The Fueling Farm portion of this Agreement shall remain in effect
28 for the same term as this FBO Agreement, however the Fueling Farm portion of this

1 Agreement may be terminated by either party by giving the other party written notice of at least
2 thirty (30) days. No cause is required to terminate the Fueling Farm portion of this Agreement
3 upon said thirty (30) day notice. The parties agree that upon termination of the Fueling Farm
4 portion of this Agreement, the fuel remaining in the fueling farm shall be measured and
5 Operator shall be reimbursed for their cost of such fuel.

6 **Section 5.4. Fee.** In consideration for the operation of the fueling farm, Operator shall
7 pay the City of Brookings a flowage fee as determined by the current City of Brookings
8 Consolidated Fee Schedule for all aviation fuel pumped from the City of Brookings' fueling
9 farm.

10 **Section 5.5. Independent Contractor.** Operator is and shall perform this Agreement as
11 an independent contractor and, as such, shall have and maintain complete control over all of its
12 representatives and operations. Neither Contractor nor anyone employed by it shall be,
13 represent, act, purport to act, or be deemed to be the agent, representative, employee or servant
14 of the City of Brookings.

15 **Section 5.6. Access/Repairs/Inspections.** The City of Brookings shall have access at all
16 times to the fueling farm for any purpose, except to operate the fueling farm during the term of
17 this Agreement, unless Operator fails to operate the fueling farm prior to the expiration of the
18 thirty (30) day termination notice period. The City of Brookings may make repairs as necessary,
19 and will attempt to minimize the time when the fueling farm is not available for operation. The
20 City of Brookings, at its expense, will repair tanks and pumps if there is a mechanical failure.
21 Operator will provide regular maintenance of the fuel farm at their expense to include furnishing
22 and installing filters and furnishing and installing delivery hoses and grounding cables. The
23 parties understand that a representative of the City of Brookings may observe the fueling
24 procedures and consult with representatives or employees of Operator as necessary concerning
25 the operation of the fueling farm.

26 **Section 5.7. Indemnification.** Each party shall defend, indemnify and save the other and
27 its Representatives harmless against all liabilities, losses, damages, costs and expenses which
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1 any or all of them may hereafter incur or pay out as a result of the willful misconduct or negligent
 2 acts or omissions of the indemnifying party or its Representatives.

3 **Section 5.8 Insurance.** Operator shall not begin performance of this Agreement until
 4 insurance, in coverages and amounts acceptable to the City of Brookings is obtained, as per
 5 Exhibit “C”, and until it has obtained such liability and errors and omissions insurance and
 6 provided proof of such insurance in the form of a certificate of insurance to the City of Brookings,
 7 naming the City of Brookings as an additional insured on all such insurance policies, and in a
 8 form which is deemed satisfactory and appropriate by the City of Brookings.

9 **Section 5.9 Miscellaneous.** The obligations of the parties under this Section Five (5)
 10 are of a continuing nature and effect and shall survive the termination of this Agreement.

11 **ARTICLE VI – RENTALS & FEES**

12 **Section 6.1 Buildings and Land Rent.** All rents for the use of any premises or facilities
 13 on the Airport from which Operator provides FBO Services shall be as set forth in the separate
 14 lease agreement between the City and Operator.

15 **Section 6.2 FBO Fees and Charges.** Operator agrees to pay to City, for the right and
 16 privilege of providing the FBO Services, the following fees:

17 **A. Fuel Flowage Fees.** Operator shall, on or before the fifteenth (15th) day of each
 18 calendar month during the term hereof and of the calendar month immediately following
 19 the end of the term of this Agreement, pay to the City, without further demand, a fuel
 20 flowage fee as determined by the current City of Brookings Consolidated Fee Schedule
 21 for each gallon of aviation fuel (avgas or jet-A), including “plane-side” or “contract” fuel
 22 together with its payment, Operator shall submit to City copies of receipts which set
 23 forth the total number of gallons of all fuel delivered by Operator’s fuel supplier as well
 24 as records of all fuel sold by Operator during the preceding month so the City may verify
 25 the accuracy of the amount of such fuel to which the fuel flowage fee applies.

26 City shall have the right to increase the fuel flowage fee rate from time to time.
 27 City shall notify Operator in writing of its intent to increase the then prevailing fuel
 28 flowage fee rate, indicating the new rate proposed and the date such rate is scheduled

1 to go into effect, at least ten (10) days prior to the proposed effective date. Operator
2 may appeal the implementation of the proposed new rates to the City by submitting a
3 request to the Airport Manager. The City may, but shall not be required to, adjust the
4 new rates based upon the comments or objections of Operator and the new rates
5 adopted by the City shall be final.

6 If during the term of this Agreement, aviation fuel (avgas or jet-A) should be
7 supplanted as an aircraft propellant, either totally or to any substantial degree, by any
8 other fuel (whether in a solid, liquid or gaseous state), the parties shall negotiate and
9 agree to the payment of a fee which, on the basis of the practice then existing in the
10 industry, will give the City a fair return based on the quantities of such other fuel or fuels
11 delivered to Operator at the Airport during the remaining term hereof.

12 **B. Tie Down Fee.** Operator shall collect tie down fees daily at a rate as specified in
13 the current City Consolidated Schedule of Fees. Operator shall keep records of all tie
14 down fees collected and shall, on or before the fifteenth (15th) day of each calendar
15 month during the term hereof and of the calendar month immediately following the end
16 of the term of this Agreement, pay to the City, without further demand, all collected tie
17 down fees.

18 **C. Landing Fees.** Operator shall collect landing fees daily at a rate as specified in
19 the current City Consolidated Schedule of Fees. Operator shall keep records of all
20 landing fees collected and shall, on or before the fifteenth (15th) day of each calendar
21 month during the term hereof and of the calendar month immediately following the end
22 of the term of this Agreement, pay to the City, without further demand, all collected
23 landing fees.

24 **Section 6.3 Failure to Pay Fees and Charges.** In the event Operator shall fail to pay
25 any fee or charge hereunder, within fifteen (15) days after the same shall become due, such
26 fee or charge shall bear interest from the date such sum should have been paid until paid, with
27 interest at the rate of ten percent (10%) per annum. Notwithstanding the foregoing, the City
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1 may, at its option, terminate this Agreement following the Operator's failure to cure the default
2 in payment within seven (7) days after receipt of written notice.

3 **ARTICLE VII – ASSIGNMENT & SUBLETTING**

4 This Agreement, or any part hereof, may not be assigned, transferred or subleased by
5 either party, by process or operation of law or in any other manner whatsoever, without the
6 prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

7 Any proposed assignment, transfer or sublease of a part or all of the rights and
8 privileges granted to Operator hereunder to a subcontractor or sub-licensee must be pursuant
9 to a written agreement that clearly specifies the services to be provided by such entity which
10 shall include a provision binding the sublessee to pay all fees due the City in accordance with
11 those fees prescribed herein. Operator shall remain fully responsible to the City for the
12 activities and unpaid fees of any services provided by such entities. Operator understands that,
13 in order to maintain responsibility and control, Required FBO Services may only be sublet or
14 sub-licensed to one party.

15 Operator shall submit to the City copies of proposed written agreements, together with
16 proof of insurance, and such other information or documentation as may be reasonably
17 required by the City. The City shall maintain a list of all approved agreements between
18 Operator and approved subcontractors and sub-licensees.

19 **ARTICLE VIII – INDEMNITY AND INSURANCE**

20 **Section 8.1 Indemnification.** Operator agrees at all times during the term of this
21 Agreement to indemnify, hold harmless and defend the City, its Boards, officers, employees
22 and representatives against any and all liability, including claims, demands, losses, damages,
23 costs or expenses, including reasonable attorney fees, which the City, its Boards, officers,
24 employees and representatives may sustain, incur or be required to pay by reason of bodily
25 injury, personal injury or property damage of whatsoever nature or kind arising out of or in
26 connection with or occurring during the course of this Agreement unless such liability arises
27 out of the negligence of the City, its Boards, officers, employees and representatives.

28 **Section 8.2 Environmental Indemnification.**

1 **A.** Operator hereby agrees to indemnify, defend, protect, and hold harmless
2 City, its Boards, employees, and representatives, and their respective successors
3 and assigns, from any and all claims, judgments, damages, penalties, fines, costs,
4 liabilities, and losses (including, without limitation, loss, or restriction on use of
5 rentable space or sums paid in settlement of claims, reasonable attorneys' fees,
6 consultant's fees, and expert's fees) that arise during or after the term of this
7 Agreement directly or indirectly from the presence of hazardous materials on, in,
8 or about the premises used by Operator to provide FBO Services hereunder, or
9 elsewhere on the Airport if such claims, judgments, damages, penalties, fines,
10 costs, liabilities, and losses (including, without limitation, loss, or restriction on use
11 of rentable space or sums paid in settlement of claims, attorneys' fees,
12 consultant's fees, and expert's fees) result from events perpetrated or caused by
13 Operator or Operator's agents.

14 This indemnification by Operator of City, its Boards, employees, and
15 representatives, includes, without limitation, any and all costs incurred in
16 connection with any investigation of site conditions or any cleanup, remedial,
17 removal, or restoration of work required by any federal, state, or local
18 governmental agency or political subdivision because of the presence of such
19 hazardous material in, on, or about any premises used by Operator to provide
20 FBO Services, or the soil or ground water on or under any buildings, or any portion
21 thereof, leased or used by Operator at the airport. Operator shall promptly notify
22 City of any release of hazardous materials in, on, or about any premises used by
23 Operator to provide FBO Services that Operator becomes aware of during the
24 term of this Agreement, whether caused by Operator, its agent, or other persons
25 or entities.

26 **B.** The City hereby agrees to indemnify, defend, protect and hold harmless
27 Operator, its owners, employees, and representatives, and their respective
28 successors and assigns, from any and all claims, judgments, damages, penalties,

1 fines, costs, liabilities, and losses (including, without limitation, loss, or restriction
2 on use of rentable space or sums paid in settlement of claims, reasonable
3 attorneys' fees, consultant's fees, and expert's fees) that arise during or after the
4 term of this Agreement directly or indirectly from the presence of hazardous
5 materials on, in, or about the premises, or elsewhere on the Airport if such claims,
6 judgments, damages, penalties, fines, costs, liabilities, and losses (including,
7 without limitation, loss or restriction on use of rentable space or sums paid in
8 settlement of claims, attorneys' fees, consultant's fees, and expert's fees) result
9 from events perpetrated or caused by the City.

10 This indemnification by City of Operator, its owners, employees, and
11 representatives, includes, without limitation, any and all costs incurred in
12 connection with any investigation of site conditions or any cleanup, remedial,
13 removal, or restoration of work required by any federal, state, or local
14 governmental agency or political subdivision because of the presence of such
15 hazardous material in, on, or about any premises used by Operator to provide
16 FBO Services, or the soil or ground water on or under any buildings, or any portion
17 thereof, leased or used by Operator at the airport. City shall promptly notify
18 Operator of any release of hazardous materials in, on, or about the Airport that
19 City becomes aware of during the term of this Agreement, whether caused by City,
20 its agent, or other persons or entities, however City shall not be obligated to
21 indemnify Operator if the release of hazardous materials is caused by such other
22 persons or entities or other airport users or airport tenants.

23 **Section 8.3 Compliance with Labor Laws and Regulations.** Operator shall comply
24 with all Federal, State and local codes, laws, regulations, standards, and ordinances, including
25 those of the Occupational Safety and Health Administration (OSHA), the South Dakota
26 Department of Labor and all City rules and orders governing the providing of the services and
27 sale of goods provided for under this Agreement.
28

1 **Section 8.4 Insurance.** Operator agrees that, in order to protect itself and the City, its
2 Boards, employees and representatives under the indemnity provisions of this Article 8,
3 Operator will at all times during the term of this Agreement procure and keep in force and
4 effect insurance policies as outlined in Exhibit "C". Operator shall provide copies of such
5 policies of insurance to City upon request.

6 Policies shall be issued by a company or companies authorized to do business in
7 the State of South Dakota. The City shall be given thirty (30) days advance notice of
8 cancellation or nonrenewal, or material reduction of coverages during the term of this
9 Agreement. Upon execution of this Agreement, Operator shall furnish City with a certificate of
10 insurance, with the City shown as an additional insured. City reserves the right to reasonably
11 amend the monetary limits or coverages herein specified during the term of this Agreement to
12 provide for inflationary conditions and changes in the size and extent of Operator's business,
13 but in so doing will give Operator at least thirty (30) days prior written notice. In the event any
14 action, suit or other proceeding is brought against the City, upon any matter herein indemnified
15 against, the City shall, within five (5) working days, give notice thereof to the Operator and
16 shall cooperate with their attorneys in the defense of the action, suit or other proceeding.

17 If Operator fails to comply with the terms of this Section, City shall have the right, but
18 not the obligation, to cause insurance as aforesaid to be issued, and in such event Operator
19 shall pay the premium for such insurance as additional rent upon the City's demand.

20 **ARTICLE IX – RULES & REGULATIONS**

21 Operator agrees to observe and obey all applicable laws, orders, ordinances or
22 regulations of any governmental agency or authority with jurisdiction over the Airport, as may
23 be amended from time to time, including, but not limited to, rules and regulations of the Federal
24 Aviation Administration ("FAA") or the Transportation Security Administration ("TSA") and all
25 rules and regulations of the City as established by the City Council, Airport Board or Airport
26 Manager, governing the conduct and operation of the Airport and its facilities.

27 Operator shall comply with all applicable rules, regulations and procedures of the City
28 as established by the Airport Board, Airport Manager, and FAA and TSA relating to Airport

1 security and shall control its FBO Operation so as to prevent unauthorized persons from
2 gaining access to the air operations area of the Airport. Operator shall be responsible for and
3 pay, as an additional fee, any fine or other penalty assessed against the City as a result of
4 Operator's breach of this section. If such rules and regulations become burdensome and
5 create a financial hardship, this agreement may be terminated for this reason by Operator
6 upon thirty (30) days written notice to the City.

7 **ARTICLE X – GOVERNMENT REQUIREMENTS**

8 **Section 10.1 Grant Assurances.** This Agreement shall be subject and subordinate to
9 the provisions of any existing or future agreement between the City and the United States, or
10 any agency thereof, relative to the operation and maintenance of the Airport, the execution of
11 which has been or may be required as a condition precedent to the expenditure of Federal
12 funds for the development or operation of the Airport; and any lawful assurances, heretofore or
13 hereafter given by the City to the United States or the State of South Dakota, in respect to and
14 in connection with any grants or aid for the improvement of the Airport.

15 **Section 10.2 Non-Discrimination.** Notwithstanding any other or inconsistent provision
16 of this Agreement, during the performance of this Agreement, Operator, for itself, its heirs,
17 personal representatives, successors in interest and assigns, as part of the consideration for
18 this Agreement, does hereby covenant and agree that:

19 **A.** No person shall be excluded from participation in, denied the benefits of, or
20 otherwise be subjected to discrimination in the use of the Airport premises affected by conduct
21 of the Fixed Base Operator's business on the grounds of race, color, religion, sex or national
22 origin;

23 **B.** No person shall be excluded from participation in, denied the benefits of, or
24 otherwise be subject to discrimination in the construction of any improvements on, over or
25 under the Airport premises, and the furnishing of services therein or thereon, on the grounds of
26 race, color, religion, sex or national origin;

27 **C.** Operator shall use the Airport in compliance with all other requirements imposed
28 by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle

1 A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the
 2 Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as
 3 said regulations may be amended.

4 In the event of breach of any of the above nondiscrimination covenants, the City shall
 5 have the right to terminate this Agreement, to re-enter and repossess any Airport premises
 6 used by the Operator that are necessary for and used by Operator to provide FBO Services
 7 pursuant to this Agreement and hold the same as if said Agreement had never been made or
 8 issued. This provision does not become effective until the procedure of 49 CFR Part 21 have
 9 been followed and completed, including expiration of appeal rights.

10 **Section 10.3 Airport Development.** It is understood and agreed that the rights granted
 11 by this Agreement will not be exercised in such a way as to interfere with or adversely affect
 12 the use, operation, maintenance, or development of the Airport.

13 **Section 10.4 Airport Protection Clause.** The City hereby reserves for the use and
 14 benefit of the public, the right of aircraft to fly in the airspace overlying the Airport land,
 15 together with the right of said aircraft to cause such noise as may be inherent in the operation
 16 of aircraft landing at, taking off from, or operating on or in the vicinity of the Airport, and the
 17 right to pursue all operations of the Airport.

18 **ARTICLE XI – NOTICES**

19 Any notice under this Agreement shall be in writing and shall be deemed to be duly
 20 given if delivered personally or sent by registered or certified mail, to the following address, or
 21 such other address as the parties may designate to each other in writing from time to time:

- 22 1. To City, address to:
 23 Brookings Regional Airport
 24 509 W. 2nd Street S
 25 Brookings, SD 57006
 26 Attention: Airport Manager
- 27 2. To Fixed Base Operator, address to:
 28 Pheasants Fury Aviation, LLC

9101 W Lakeside Drive
Sioux Falls, SD 57107
Attn: Joey Johnson

ARTICLE XII – DEFAULT AND TERMINATION

Section 12.1 Termination By Fixed Base Operator. Provided Operator is not in default of its obligations hereunder, this Agreement shall be subject to termination by Operator upon the happening of any one or more of the following events of default:

- A. The Operator loses its rights to operate at the Airport for a period of ninety (90) consecutive days because of the exercise of the power of a governmental authority;
- B. The substantial damage to or destruction of all or a material part of the Airport facilities necessary for Operator’s Fixed Base Operation if such damage is not to be repaired and it materially limits the Operator’s ability to provide the FBO Services;
- C. The default by the City in the performance of any of the terms, covenants or conditions of this Agreement, and the failure of the City to remedy, or undertake to remedy such default for a period of thirty (30) days after receipt of written notice from Fixed Base Operator specifying the default.

Section 12.2 Events of Default-Termination By City. This Agreement shall be subject to termination by City upon the happening of any one or more of the following events of default:

- A. The failure of Operator to make any payment of fees or any other payment required to be made by Operator hereunder when due which failure is not remedied within ten (10) days after receipt by Operator of City’s written demand;
- B. The failure of Operator to keep, observe or perform any of the other terms or conditions of this Agreement to be kept, observed or performed by Operator, including but not limited to the failure to perform any of the Required or Authorized FBO Services to the reasonable satisfaction of the City, and the continued failure to observe or perform any such terms or conditions after a period of thirty (30) days after receipt by

1 Operator of City's written demand except with respect to Authorized FBO Services in
2 which case Operator may terminate the authorized service which is the subject of the
3 default within said thirty (30) day period and upon such termination of the service, such
4 default shall be deemed cured;

5 **C.** The repeated failure (defined for this purpose as at least three (3) such failures
6 within any consecutive twelve (12) month period) to make any payment of fees or any
7 other payment required to be made by Operator within ten (10) days after such payment
8 is due as herein provided whether or not such failure had previously been cured by
9 Operator following receipt of written notice of default from City;

10 **D.** The reported failure (defined for this purpose as at least three (3) such failures
11 within any consecutive twelve (12) month period) to keep, observe or perform any of the
12 other terms conditions of this Agreement to be kept, observed or performed by
13 Operator, including but not limited to the failure to perform any of the Required or
14 Authorized FBO Services to the reasonable satisfaction of the City, whether or not such
15 failure had previously been cured by Operator following receipt of written notice of
16 default from City;

17 **E.** The filing by Operator of a voluntary petition in bankruptcy, including a
18 reorganization plan, the making of a general or other assignment for the benefit of
19 creditors, the adjudication of Operator as bankrupt or the appointment of a receiver for
20 the property or affairs of Operator and such receivership is not vacated within thirty (30)
21 days after the appointment of such receiver.

22 **Section 12.3 Exercise of Termination Rights Due to Default.** Upon the occurrence of
23 an event of default as set forth in Sections 12.1 and 12.2 above, giving rise to the right by the
24 non-defaulting party to terminate this Agreement, such termination shall be effective only upon
25 written notice to the defaulting party of such termination and this Agreement shall terminate
26 immediately following receipt of such written notice to the defaulting party unless the notice
27 provides for a later termination date.

ARTICLE XIII – MISCELLANEOUS PROVISIONS

Section 13.1 Relationship of Parties. Operator is an independent contractor. Nothing contained in this Agreement shall be deemed or construed by City or Operator or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between City and Operator.

Section 13.2 Rights Cumulative. No Waiver by either party of any violation or breach of any of the terms, provisions and covenants of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Except as otherwise expressly provided in this Agreement, all rights and remedies of each party enumerated herein shall be cumulative and none shall exclude any other right or remedy allowed by law or in equity. Likewise, except as otherwise expressly provided herein, the exercise by a party of any remedy provided for herein or allowed by law or in equity shall not be to the exclusion of any other remedy. The failure of a party to insist upon the other party's compliance with any of that party's obligations under this Lease in any one or more instances shall not operate to release the other party from its obligation to comply with all of its other obligations and requirements under this Agreement.

Section 13.3 Force Majeure. Neither party shall be held to be in breach of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of sabotage, or any other circumstances for which it is not responsible or which are not within its control; provided, however, this section shall not apply to or relieve Operator of the obligation of paying the fees, rents or other charges payable to the City pursuant to this Agreement or any other agreement or lease between Operator and City except in the event that the national airspace is closed by governmental order for a period in excess of 30 days in which case Operator's fees shall abate during such period of time.

Section 13.4 Invalidity. The City and Operator agree that in the event any covenant, condition or provisions herein contained is held to be invalid by any court of competent jurisdiction, the invalidity so determined shall in no way affect any other covenant, condition or

1 provision herein contained; provided that such invalidity does not materially prejudice either the
 2 City or the Operator in their respective rights and obligations contained in the valid covenants,
 3 conditions and provisions of this Agreement.

4 **Section 13.5 Conflict of Laws.** This Agreement was made in and shall be governed by
 5 and construed in accordance with the laws of the State of South Dakota. If any covenant,
 6 condition or provision contained in this Agreement is held to be invalid by any court of
 7 competent jurisdiction, such invalidity shall not affect the validity of any other covenant,
 8 condition or provision herein contained.

9 **Section 13.6 Attorneys' Fees.** If the City incurs any expenses (including, but not
 10 limited to, court costs and reasonable attorneys' fees) as a result of a default by Operator
 11 under this Agreement, then such expenses shall be reimbursed by Operator as additional rent,
 12 whether or not such default is subsequently cured. Further, if any legal proceeding at law or in
 13 equity arises hereunder or in connection herewith (including any appellate proceedings or
 14 bankruptcy proceedings), the prevailing party shall be awarded costs, reasonable expert fees
 15 and reasonable attorneys' fees incurred in connection therewith (including fees and charges
 16 for services of paralegals or other personnel who operate for and under the supervision of
 17 such attorneys and whose time is customarily charged to clients).

18 If the Operator incurs any expenses (including, but not limited to, court costs and
 19 reasonable attorneys' fees) as a result of a default by the City under this Agreement, then such
 20 expenses shall be reimbursed by the City, whether or not such default is subsequently cured.

21 **ARTICLE XIV – PRIOR FIXED BASE OPERATION AGREEMENTS**

22 City and Operator agree that this Agreement, together with the Exhibits attached hereto,
 23 contains the entire agreement between the Parties concerning the right to perform FBO
 24 Services and conduct a Fixed Base Operation at the Airport, and that all other representations
 25 or statements heretofore made, whether verbal or written, are merged herein.

26 However, this Agreement shall not affect the validity of any existing lease between the
 27 City and Operator. In the event there shall be a conflict between the provisions of this
 28

1 Agreement and any other existing agreement between City and Operator the provisions of
2 each Agreement shall be interpreted to give effect to all of their respective provisions.

3 This Agreement may be amended only in writing, executed by duly authorized
4 representatives of each party.

5 **IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals this ____ day of
6 _____, 2024.

7
8 CITY OF BROOKINGS

9
10 By: _____

11 Paul Briseno, City Manager

12
13 ATTEST:

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15 _____

16 City Clerk

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19 PHEASANTS FURY AVIATION, LLC

20
21 By: _____

22 Signature

23
24 Printed Name: _____

25
26 Title: _____

1 **Exhibit "A"**

2 **Leased, Owned, or Rented Facilities**

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4 The FBO Facilities (approximately 1,342 square feet) are located inside the following described property,
and shown on Exhibit "A-1".

5
6 A tract of land, being 13,589 square feet, including a hangar being approximately 130 feet by 82 feet,
to also include two small entrance vestibules, situated in the Northwest One-fourth of the Southwest
7 One-fourth (NW¼SW¼), Section Twenty-six (26), Township One Hundred Ten (110) North, Range Fifty
(50) West of the 5th P.M., Brookings County, South Dakota, which tract has been measured and
8 described as Lot "X", and shown on Exhibit "A"

9
10 The FBO rentable hangar space is located in the following described property and is conferred in a separate
land lease agreement between the City and the Operator.

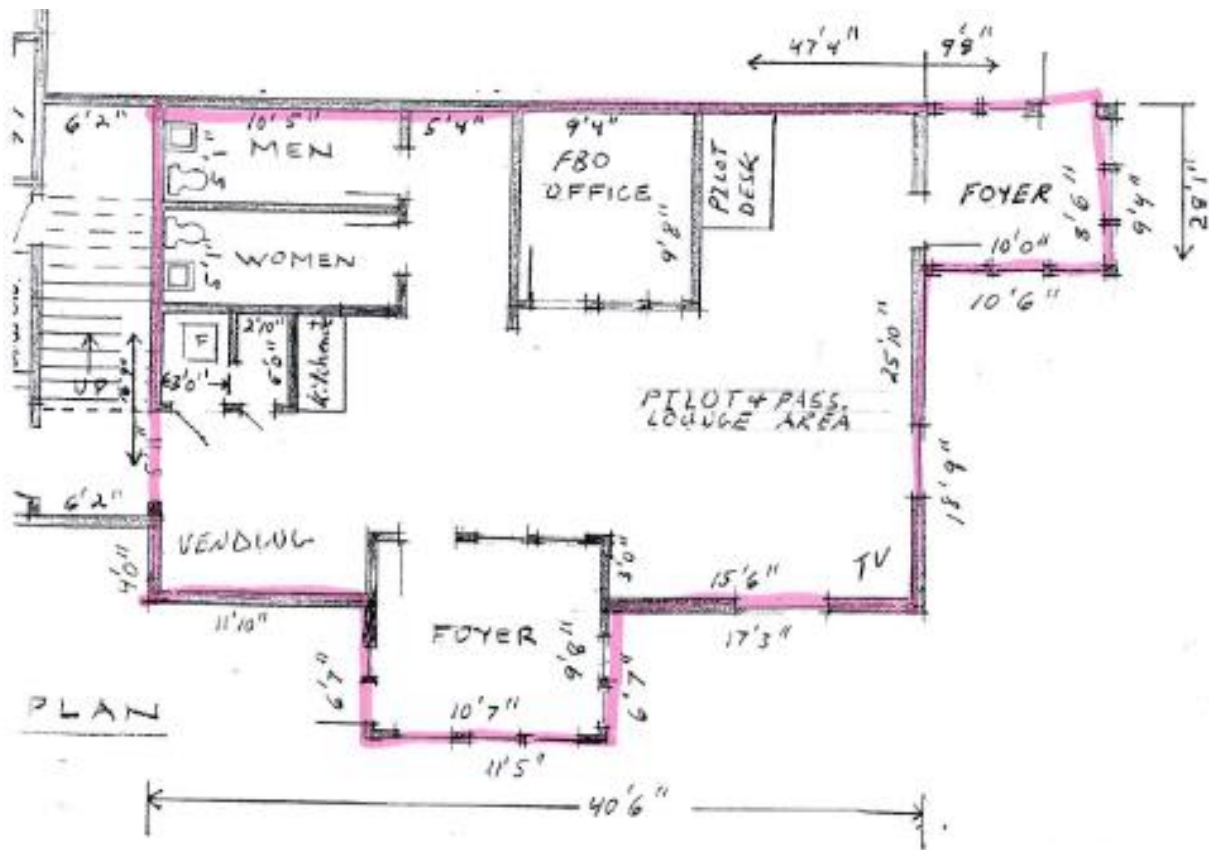
11
12 A tract of land, being 5,280 square feet, with approximate dimensions of 66 feet by 80 feet, having a
legal description of: Lot Two (2) of Block Three (3) of the Replat of Blocks (3 and Four (4) of Airport
13 Hangar Area Addition, Number One (1) in the Northwest Quarter of the Southwest Quarter
(NW¼SW¼), Section Twenty-six (26), Township One Hundred Ten (110) North, Range Fifty (50) West
14 of the 5th P.M., Brookings County, South Dakota, and shown on Exhibit "A"

15 Below is a picture with the leased, owned, or rented facilities highlighted by bold black outline:



Exhibit "A-1"

Floorplan



7-12-13

PHEASANT FURY
LEASED SPACE FOR FBO OPERATIONS

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Exhibit "B"

Description of Fueling Farm Facilities

1. One (1) 12,000 gallon double wall flameshield horizontal above ground steel Av Gas storage tank with 4' x 8' pump platform to include hoses, reels, gauges, pumps, dispensers, and other associated equipment
2. One (1) 12,000 gallon double wall flameshield horizontal above ground steel Jet Fuel storage tank with 4' x 8' pump platform to include hoses, reels, gauges, pumps, dispensers, and other associated equipment
3. One (1) FuelMaster Fuel Management Unit (FMU) with credit card capabilities, a receipt printer and a smart card reader for use with the fuel system
4. One (1) computer to be connected to the FMU from inside the FBO facilities
5. One (1) smart card encoder for use with the computer previously stated
6. One (1) 40' x 50' concrete spill containment basin

Below is a picture with the Fueling Farm Facilities highlighted by bold black outline:



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Exhibit "C"

Insurance Requirements of Fixed Base Operator

General liability insurance protecting both the City and Operator against claims for injury or damages to persons or property, said policy to have general liability limits of at least One Million Dollars (\$1,000,000) single limit, and One Million-Dollars (\$1,000,000) aggregate. The general liability insurance limits are subject to change and Operator agrees to change limits of insurance if required by the City.