

## **LEASE AGREEMENT**

Lease made as of the \_\_\_\_ day of December, 2002, by and between the City of Rapid City ("City"), Lessor, and Rapid Transit System ("Lessee").

For and in consideration of the mutual covenants herein contained, the City hereby leases to Lessee and Lessee hires and takes from the City the property hereinafter described as "the premises", subject to the terms, conditions, and stipulations herein provided.

### **I.**

#### **PREMISES**

The premises leased to the Lessee shall consist of the following within the Milo Barber Transportation Center terminal:

Area A (dispatch drivers' area) - approximately 1,384 square feet

Area B (Rapid Transit office) - approximately 716 square feet

Area C (supervisor's office) - approximately 403 square feet

the same being located upon portions of the following described real property:

Lots 17-32, Block 64, Original Townsite to the City of Rapid City,  
Pennington County, South Dakota.

Additionally, Lessee shall have access to and use of common areas and facilities, subject to such limitations as the Lessor shall deem appropriate for the common good of all tenants. Such access and use and the restrictions thereon shall be reasonable, consistent with the purpose of the terminal, and the interests of the other tenants, and consistent with the nature of the Lessee's business. The term "common areas" shall include, but not be limited to, the lobby, public restrooms, employee facilities, and loading areas.

The purpose of said terminal is to provide a central terminal for ground transportation carriers for the benefit of such carriers, their patrons, and the general public. It is intended that use of space in said terminal shall be limited to the usual and customary functions of common carriers and such other related uses as the City shall determine to be appropriate.

### **II.**

#### **USE**

Lessee shall use the premises, including the common areas, for the purposes of its business of providing a public bus system and such other activities commonly and customarily associated therewith. Lessee specifically agrees not to engage in any food, beverage, or amusement operation on the premises, including the common areas.

**III.**

**RENT**

Lessee shall pay to the City the premises the sum of One Thousand Five Hundred Dollars (\$1,500.00) on or before the first of each month commencing on December 1, 2002, as basic rent and utilities.

**IV.**

**AGREEMENT TO OCCUPY**

As part of the consideration for the execution of this lease, Lessee agrees to occupy the premises and to conduct its business therefrom insofar as may, in good faith, be practical with the intent of making all of its services available to the public at said terminal.

**V.**

**TERM**

The term of this lease shall be on a month to month basis.

**VI.**

**OCCUPANCY AND ACCEPTANCE**

By entering into and occupying the premises, Lessee shall be deemed to have acknowledged that the premises are in good order and repair and that the premises have been constructed substantially in accord with approved plans and specifications therefor.

**VII.**

**SIGNS**

Lessee shall not erect, place, or maintain any signs upon the premises or elsewhere upon the terminal site without the express written consent of the City by and through its Director of Public Works.

**VIII.**

## **INSTALLATION AND MAINTENANCE OF FIXTURES**

Lessee shall furnish and install upon the premises all trade fixtures, light fixtures, floor coverings, equipment, and furnishings as shall be proper for the conduct of the business. Such items to be furnished and installed shall not include such items as are shown on the architectural plans for the terminal.

Items to be furnished and installed by Lessee shall be installed as expeditiously as reasonably possible, shall be of first quality and commensurate in appearance and in keeping with the premises, and shall be maintained in good order and repair by Lessee, at its expense, during the term of this lease.

## **IX.**

### **ALTERATIONS, CHANGES, ADDITIONS**

No structural changes, alterations, or additions shall be made by Lessee to the premises without the express written consent of the City. Any such structural changes, alterations, or additions to or on the premises made with such consent shall remain for the benefit of and become the property of the City unless otherwise provided in such written consent.

## **X.**

### **DEFECTS; DEFECTIVE CONDITIONS; WIND; ACTS OF THIRD PARTIES**

The City of Rapid City shall not be liable to Lessee for any damage or injury to Lessee or Lessee's property occasioned by any defect of plumbing, heating, air cooling, air conditioning equipment and ducts, electrical wiring or installation thereof, gas pipes, steam pipes, or from broken steps, or from the backing of any sewer pipe, or from the bursting, leaking, or running of any tank, tub, washstand, toilet, or waste pipe, drain, or any other pipe or tank in, on, or about the premises, or from the escape of steam or hot water from any boiler or radiator, or for any such damage or injury occasioned by water being on or coming through the roof, stairs, walks, or any other place on or near the premises unless the City neglects or fails to make necessary repairs required of it to be made under the terms of this lease after receipt of written notice thereof from Lessee, or for any such damage or injury done or occasioned by the falling of any fixture, plaster, or stucco, or for any such damage or injury caused by wind or by the act, omission, or negligence of co-tenants or of other persons, occupants of the same building or of adjacent buildings or contiguous property.

All claims against the City for any damage or injury as provided in the preceding paragraph of this section are hereby expressly waived by Lessee, except those claims occasioned by the City's neglect or failure to make repairs for which the City is responsible under this lease, after due written notice thereof by Lessee.

For the purposes of this section “Lessee” shall include Lessee, its agents, licensees, permittees, assigns, guests, and bailors.

## **XI.**

### **REPAIRS**

The City shall repair any damage to the premises occasioned by termites, dry rot, or fungus, and keep and maintain the roof and exterior walls of the premises in good repair at all times, and will further keep and maintain all underground plumbing in good order and repair, but not including the repair of plumbing stopped up by reason of foreign matter introduced into the plumbing fixtures. There shall be no obligation on the part of the City to make any of the repairs required in this section unless and until Lessee gives to the City at least ten (10) days written notice, advising the City of the necessity of the repair or repairs, and the City shall not be liable to Lessee for any loss or damage caused by the failure of the City to make any repairs required of it hereunder unless the City, on receipt of such notice, shall fail to proceed with due diligence to make such repair or repairs. The phrase “exterior walls” as herein used shall not be so construed as to require the City to make repairs to the interior surfaces thereof. Except as provided herein, Lessee shall not call on the City to make any improvements or repairs whatsoever in or on the premises.

Lessee shall serve a written notice on the City at least ten (10) days prior to permitting any work involving repairs, improvements, construction, and the like to be commenced in or on the premises.

Lessee shall, at its own expense, keep and maintain all of the premises, including but not limited to walls, floors, doors, counters, and other fixtures, in good order, condition, and repair, and in compliance with all laws and regulations applicable thereto, during the entire term of this lease, except for those repairs required of the City to be made and as provided in the first paragraph of this section.

## **XII.**

### **MAINTENANCE**

The City shall maintain and repair all common areas, including cleaning, snow and ice removal, cost and expenses of planting, replanting, and replacing flowers and landscaping, water and sewage charges, maintenance, repair and replacement of utility systems, lighting, heating and air conditioning, premiums for liability and fire insurance, management expense, supplies for the common areas, operation of public toilets, and other similar direct costs.

## **XIII.**

### **NON-ASSIGNABLE**

The interest of Lessee under this lease shall not be assignable without the express written consent of the City, which consent shall not be unreasonably withheld. Because of the nature of the terminal and the purposes for which it was constructed and is being used, the parties specifically agree that refusal by the City to approve an assignment other than to a similar enterprise shall not be deemed unreasonable. Approval of any assignment shall not be construed to permit the use of the premises for any purpose not permitted under this lease.

**XIV.**

**SURRENDER OF PREMISES**

Lessee shall, at the termination of this lease, vacate the premises in as good a condition as they were at the time of entry thereon by Lessee, except for reasonable use and wear thereof, acts of God, or damage by casualty beyond the control of Lessee, and on vacating shall leave the premises free and clear of all rubbish and debris.

**XV.**

**LESSOR'S RIGHT OF INSPECTION**

The City shall have access to the premises, and each part thereof, during Lessee's regular business hours for the purpose of inspecting the same, making repairs, and posting notices which the City may deem to be for the protection of the City or the premises.

**XVI.**

**NOTICES**

All notices or demands of any kind which the City may be required or may desire to serve on Lessee under their terms of this lease may be served on Lessee by leaving a copy of such demand or notice, or by mailing a copy thereof by first class mail to Lessee at the premises or at such other address or addresses as may from time to time be designated by Lessee in writing to the City. All notices and demands from Lessee to the City may be similarly served on the City at 300 Sixth Street, Rapid City, South Dakota, or at such other address as the City may in writing designate to Lessee.

IN WITNESS WHEREOF, the parties have executed this lease at Rapid City, South Dakota.  
CITY OF RAPID CITY

By: \_\_\_\_\_  
Jerry Munson, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

RAPID TRANSIT SYSTEMS

By: \_\_\_\_\_

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned officer, personally appeared Jerry Munson and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:  
(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2002, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of Rapid Transit System, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by himself as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:  
(SEAL)

\_\_\_\_\_

Prepared By: CITY ATTORNEY'S OFFICE