

**CITY OF CORTEZ  
ORDINANCE NO. 1327,  
SERIES 2024**

**AN ORDINANCE AUTHORIZING AND APPROVING AN AIRPORT LAND LEASE AND  
HANGAR DEVELOPMENT AGREEMENT WITH ELI TOMAC FOR CONSTRUCTION  
OF AN AIRCRAFT HANGAR  
AT THE CORTEZ MUNICIPAL AIRPORT**

WHEREAS, Eli Tomac (“Tomac”) wishes to lease land from the City of Cortez at the Cortez Municipal Airport in order to build a hangar to store aircraft used for personal aeronautical activity; and

WHEREAS, the City of Cortez Charter and State Statutes require that these leases be approved by ordinance; and

WHEREAS, the City staff recommends that the City enter into the Airport Land Lease and Hangar Development Agreement with Tomac that is attached hereto and incorporated herein as Exhibit 1.

NOW THEREFORE, BE IT ORDAINED BY THE CORTEZ CITY COUNCIL THAT this Ordinance No. 1327, Series 2024, an ordinance approving the Airport Land Lease and Hangar Development Agreement that is attached hereto and incorporated herein, is hereby presented and adopted on First Reading this 10<sup>th</sup> day of September, 2024, and that the public hearing for the Second and Final Reading of this Ordinance is set for the 24<sup>th</sup> day of September, 2024, at the hour of 7:30 p.m., in the City Council Chambers in City Hall, Cortez, Colorado, at which time and place all persons may appear and be heard concerning the same.

REPEALER. All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

SEVERABILITY. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

RECORDING AND AUTHENTICATION. Upon adoption hereof, this Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the City Clerk.

EFFECTIVE DATE. This ordinance shall be effective upon publication after final passage on Second Reading.

PASSED, ADOPTED AND APPROVED ON FIRST READING THIS 10<sup>th</sup> DAY OF SEPTEMBER, 2024.

CITY OF CORTEZ

ATTEST:



LINDA L. SMITH, CITY CLERK



LYDIA DEHAVEN, MAYOR PRO-TEM

PASSED, ADOPTED AND APPROVED ON SECOND AND FINAL READING THIS 24<sup>th</sup> DAY OF SEPTEMBER, 2024.

CITY OF CORTEZ

ATTEST:



LINDA L. SMITH, CITY CLERK



RACHEL B MEDINA, MAYOR

APPROVED AS TO FORM:



J. PATRICK COLEMAN, CITY ATTORNEY

## AIRPORT LAND LEASE AND HANGAR DEVELOPMENT AGREEMENT

This Airport Land Lease and Hangar Development Agreement (“Agreement”) is made and entered into effective this 1<sup>st</sup> day of OCTOBER (the “Effective Date”), by and between the City of Cortez, Colorado, as lessor, hereafter referred to as “City,” and Eli Tomac, as lessee, hereafter referred to as “Tomac.” City and Tomac may be collectively referred to herein as “Parties,” and individually as a “Party.” The purpose of this Agreement is to lease land to Tomac for aircraft hangar construction and aeronautical use.

For and in consideration of the rent to be paid to City by Tomac at the times, in the amounts, and under the conditions expressed below, and in further consideration of the mutual covenants contained herein, City hereby leases and rents to Tomac the following described tract of land, located at the Cortez Municipal Airport (the “Airport”) in Montezuma County, Colorado, as more particularly described below:

A tract of land in the East half of Section 8, T.35 N., R. 16 W., of New Mexico Principal Meridian, Montezuma County, Colorado, being more particularly described as follows:

North Hangar Lot #8

Measuring 95 feet wide by 80 feet deep

**Totaling 7,600 square feet of land leased.**

**Together with access on, over, and across City's property for access to the leased land (collectively known as the "Premises")**

Tomac is authorized by City to construct a structure, the hangar, measuring approximately 70 feet wide by 60 feet deep, on the Premises. This Agreement does not convey any ownership of the Premises to Tomac but is a ground lease agreement only.

### I. TERM

The term of this Agreement (“Term”) shall be for a period of forty (40) years, beginning on 1 October 2024 and ending 30 September 2064, unless terminated earlier as provided elsewhere in this Agreement.

### II. RENT

A. The land rent shall be based on \$0.41 per square foot (\$3,116.00 per year) in year one, to be paid to City by Tomac. The land rent for the initial year and the year of termination will be prorated.

B. Subsequent years' land rent rate shall be adjusted annually by City according to the published Consumer Price Index for the Denver-Aurora-Lakewood, Colorado area ("CPI"), or its equivalent, should the CPI no longer be published by the Federal government in its present form, in future years. Should the CPI be negative in any year or years, the land rent rate will remain unchanged for the next annual period.

C. If Tomac fails to pay when due any amount required to be paid to City by Tomac, such unpaid amount will accrue interest at the rate of ten percent (10%) per annum commencing from the due date until fully paid. In addition, City may charge a late fee of fifty dollars (\$50) per late payment.

D. In the event City is required to initiate collection of unpaid rent or other charges, then Tomac agrees to pay all costs of collection, including attorney's fees.

### **III. USE OF LEASED PREMISES**

The Premises may be used only for storage of aircraft owned or leased by Tomac, items related to the stored Aircraft, and personal or business vehicles parked by Tomac or his employees while flying or performing maintenance on the Aircraft. The Premises shall not be used for warehousing of Tomac's or anyone else's personal property. No residential use shall be permitted on the Premises. Tomac shall not perform any aircraft repairs or maintenance on the Premises to other than the stored Aircraft. Tomac shall not use the Premises for other commercial purposes except as directly related to the Aircraft which are used in his business. In addition, the storage and accumulation of flammable or hazardous materials in or near any improvements located on the Premises is prohibited except for storage of such types of materials and in such amounts as are required for the normal operation and maintenance of the Aircraft. Tomac shall not enter into other uses of the Premises not specifically authorized by this Agreement.

### **IV. COMPLIANCE WITH LAWS AND REGULATIONS**

Tomac agrees to comply strictly with all federal, state, and local laws, rules, and regulations related to the use and operation of the Premises and the Aircraft. Tomac shall pay all federal, state, and local taxes assessed on any improvement located on the Premises and Aircraft stored within.

### **V. CONSTRUCTION**

Prior to the construction of any structure, modifications, or additions to any existing structures, all plans shall be submitted to, reviewed and approved by the City of Cortez Building Department. All buildings

shall be constructed according to the State, County and City of Cortez building codes in force or effect at the time of construction. Tomac shall obtain any necessary building permits or other required permits (electrical, plumbing etc.) required by federal, state or local law prior to construction. The City of Cortez Building Inspector shall conduct inspections of any improvements Tomac constructs on the Premises during construction. Notwithstanding the foregoing, City agrees to cooperate with Tomac in order for Tomac to obtain any and all necessary permits, consents from agencies with jurisdiction over the Premises and/or the construction of any improvements on the Premises, or operation of Tomac's business, so long as City incurs no liability or cost. In the event that Tomac is unable to obtain any approval herein within a reasonable time, except when due solely to Tomac's own fault, Tomac shall be released from its obligation to construct the hangar and shall be entitled to terminate this Agreement upon sixty (60) days written notice to City.

**Tomac agrees to, and is responsible for, the following:**

1. All hangar design, construction, utilities, maintenance and billing.
2. To construct and pave connecting apron according to the specifications of City.
3. To construct an eight (8) foot fence between the new hangar and the existing, adjacent hangar.
4. To design the hangar in such a manner to blend in with architectural and general appearance of the adjoining airport facilities.
5. If a propane tank is installed, it shall conform to federal, state and local codes for its location and method of installation.
6. Parking area shall be an all-weather surface, i.e. gravel, concrete, asphalt, and approved by City Building Inspector.
7. Tomac or his contractor shall meet security requirements of the Airport during construction, as defined by the Airport manager.
8. Any septic systems requested by Tomac shall be addressed by the City allowing for a variety of possible solutions. A separate document, as a modification to this Agreement will be entered into, details of which will be outlined as determined by the applicable federal, state, and local regulations for a particular septic system installation.
9. Any material interior additions or modifications to the hangar or other improvements on the Premises must be approved in advance by City.

Tomac agrees that at his own expense, he shall move, re-locate or change any structure built upon the Premises which may, in any way, violate any of the rules, codes, and regulations of federal, state, or local

governments. If there are any structures existing on the Premises at the time of execution of this Agreement, City will cause said structures to be demolished, moved, relocated, or remodeled at City's expense, if any are not in compliance with existing federal, state or local laws.

#### **VI. TITLE OF DESIGNATED IMPROVEMENTS TO REVERT**

Upon the termination or expiration of this Agreement, title to all improvements constructed by Tomac shall be transferred to the City. Any improvements deemed unusable or undesirable by City shall be removed at City's direction and Tomac's expense within ninety (90) days after the expiration or termination of this Agreement. If Tomac wishes to abandon any unusable or undesirable improvements and City agrees to keep such improvements, upon written Agreement the improvements may remain and ownership shall vest with City at the final termination or expiration of this Agreement.

#### **VII. INSURANCE**

Tomac shall obtain and keep in force throughout the term of this Agreement, comprehensive general liability and property insurance with limits not less than one million dollars (\$1,000,000) per occurrence, and one million dollars (\$1,000,000) aggregate.

City may at any time, with thirty (30) days written notice to Tomac, adjust the insurance amounts as deemed necessary by City. Tomac shall furnish current certificates of insurance to City at the time this Agreement is executed, once construction of a hanger or other improvements on the Premises are completed, and annually, before February 1 of each calendar year thereafter. Tomac agrees to name the "City of Cortez" as an additional insured on all required insurance policies.

#### **VIII. RIGHT OF ACCESS**

City shall have the right to enter the Premises at reasonable times after twenty-four (24) hours advance written notice (except in the event of an emergency in which event only such notice as may be reasonable under the circumstances will be required), for the purposes of inspection to determine if the conditions and requirements of the Agreement are being complied with by Tomac. Tomac agrees to provide access for any inspections required by any federal, state or local law or regulation. Should the Premises or any improvements constructed thereon prove to be deficient in maintenance or in need of repair, Tomac agrees to take whatever action is necessary to bring the same back into compliance with the maintenance and repair standards as set forth herein within thirty (30) days of written notice by City. If necessary repairs require more than thirty (30) days to complete the work, additional time may be granted by City in writing, and such additional grant of time shall not be unreasonably withheld. Tomac shall proceed in

good faith to complete such work as soon as possible. Failure to make necessary repairs or maintenance so shall be considered a breach of this contract. Should Tomac fail to bring the facility back into compliance within thirty (30) days of written notice or as otherwise set out in this Agreement, City may make the necessary repairs or maintenance and bill Tomac for the actual cost to City of same. If it is necessary for City to institute legal action to collect unpaid maintenance or repair charges, Tomac agrees to pay all cost of collection including, but not limited to, reasonable attorney's fees, court costs and other related costs of collection.

#### **IX. ASSIGNABILITY**

Except as specifically noted in this paragraph, this Agreement shall not be conveyed or assigned to a third party without the express written consent of City, which consent shall not be unreasonably withheld. City reserves the right to renegotiate any and all portions of this Agreement with any third-party assignee, who shall not rely upon this Agreement as a reason or basis for sub-leasing or assignments. No partial or total sublease of any improvements constructed on the Premises, or other shared use agreement of any improvements constructed on the Premises, shall occur without prior written request made by Tomac to the City and prior written consent by City, which consent shall not be unreasonably withheld. Notwithstanding anything in this to the contrary, City's consent shall not be required for any Tomac transfer to: (i) any affiliate which controls, is controlled by or is under common control with Tomac, (ii) any business entity in which or with which Tomac, an affiliate of Tomac, or their respective corporate successors or assigns, is merged or consolidated, (iii) any business entity that acquires all or substantially all of Tomac's assets or Tomac's ownership interest.

#### **X. ABANDONMENT**

Should Tomac abandon the Premises, cease paying rent, and fail to use or occupy the same for a period of ninety (90) consecutive days, then, this Agreement may be terminated by City, and title to all improvements on the Premises shall then pass to and vest in City.

#### **XI. TERMINATION OF AGREEMENT**

**Termination by City.** In the event of a breach this Agreement by Tomac, City may terminate this Agreement by providing Tomac with sixty (60) days written notice of termination. Tomac may cure any breach of this Agreement within the sixty (60) day notice period. City shall return to Tomac any prepaid or prorated rent if Tomac terminates this Agreement pursuant to this section.

**Termination by Tomac.** In the event of a breach of this Agreement by City, Tomac may terminate this Agreement by providing City with sixty (60) days written notice. City may cure any breach of this

Agreement within the sixty (60) day notice period. City shall return to Tomac any prepaid or prorated rent if Tomac terminates this Agreement pursuant to this section.

**Mutual Termination.** The Parties may agree in writing to mutually terminate this Agreement at any time.

**Removal of Property.** In the event this Agreement is terminated, Tomac shall have thirty (30) days to remove any personal property from the Premises, and any improvements that City has required Tomac to remove from the Premises.

## **XII. MAINTENANCE**

Tomac agrees to keep the Premises and improvements thereon in a clean, neat and orderly condition at all times. Vegetation shall be kept trimmed to a height not exceeding six (6) inches. If repeated violations are noted by Airport staff and after a thirty (30) day written notice to Tomac, City shall take measures to correct the violation and Tomac agrees to pay all actual costs of the City to correct the violation. Tomac agrees to make repairs within thirty (30) days of written notice of violations by City to Tomac or, if the necessary repairs require more than thirty (30) to complete such work, Tomac shall proceed in good faith to complete such work as soon as possible. Damaged panels, broken windows, peeling paint and heaved or broken pavement, are examples of conditions that will not be tolerated.

## **XIII. AIRPORT RESPONSIBILITIES**

Tomac shall have use of the Cortez Municipal Airport facilities including runways and taxiways, excepting commercial aprons and other leased areas. City will provide snow removal to Tomac's adjoining ramp within a reasonable time following snowfall, noting that commercial operations take precedence.

## **XIV. ENFORCEMENT**

A delay by either Party in enforcing provisions of this Agreement does not constitute a waiver of enforcement. If Tomac becomes deceased, or either Party is prevented from the performance of any required act by reason of a strike, labor trouble, pandemic, epidemic, act of terror, acts of nature and the elements, or any other cause beyond the reasonable control of the delayed Party (financial inability excepted), i.e. "force majeure," and the delayed Party is otherwise without fault, then performance of the applicable act is excused for the period of the delay, provided the delayed Party will take all commercially reasonable efforts to mitigate the force majeure.

In the event that suit is brought to enforce or interpret this Agreement, the substantially prevailing Party shall be entitled to its reasonable attorneys' fees and related court costs. Colorado law shall apply to the

construction and enforcement of this Agreement. The Parties agree to the jurisdiction and venue of the state courts of Montezuma County in connection with any dispute arising out of or in any matter connected with this Agreement.

#### **XV. INDEMNIFICATION OF CITY**

Tomac agrees to indemnify, hold harmless, and defend City and its elected officials, employees, and agents, from and against losses and damages of every kind and character (including, but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court or dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) any use, occupancy, or operations on the Premises, the Airport, or other property owned by City, by Tomac or Tomac's employees, contractors, agents or invitees; or (ii) any wrongful, reckless, or negligent act or omission of Tomac or Tomac's employees, contractors, agents, or invitees, provided, however, Tomac will not be liable for any loss of any kind or character whatsoever that results from the negligence or willful misconduct of City or City's elected officials, employees, contractors or agents. In the event Tomac uses attorneys, experts or other professionals to investigate, litigate, or otherwise comply with its obligations under this paragraph, Tomac shall use attorneys, experts, and professionals that are reasonably acceptable to City. The obligation stated in this section shall survive the expiration or other termination of this Agreement.

#### **XVI. MODIFICATION**

This Agreement may be modified at any time by mutual written consent of the Parties.

#### **XVII. MISCELLANEOUS**

**Surrender of the Premises.** Tomac shall return the Premises to City upon the expiration or termination of this Agreement in good condition and repair, ordinary wear and tear excepted. Within sixty (60) days following the expiration or termination of this Agreement, Tomac shall remove all equipment, materials, fixtures and other personal property belonging to Tomac from the Premises. Any property left on the Premises after sixty (60) days following the termination of this Agreement will be deemed to have been abandoned by Tomac and may be retained by City.

**Registration or Recording of this Agreement.** The Parties may, to the extent required by law and practice, properly register or record this Agreement with the relevant government office that may serve as a place for registering or recording leases, within 45 days from the date that this Agreement is executed.

**Subordination.** This Agreement and Tomac's rights hereunder shall be subject and subordinate in all respects to any mortgage, deed of trust, or other lien now or hereinafter incurred by City. Upon request of

City, Tomac will enter into a subordination agreement or other customary form as required by any lien holder.

**No Partnership.** Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other fiduciary relationship between the Parties other than that of landlord and tenant. Neither Party is authorized to act as an agent or on behalf of the other Party.

**Condemnation.** In the event that all or a material portion of the Premises necessary for Tomac's Permitted Use of the Premises is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by the right of eminent domain, this Agreement shall terminate on the date of such taking, and all rent under this Agreement shall be prorated and paid to such date. In the event such taking is less than a material portion of the Premises, this Agreement shall remain in full force and effect; provided however, the rent due under this Agreement shall be reduced to such extent as may be fair and reasonable under the circumstances. City and Tomac shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings.

**Limitation of Liability.** City is not responsible or liable for any loss, claim, damage or expense as a result of any accident, injury or damage to any person or property occurring anywhere on the Premises, unless resulting from the negligence or willful misconduct of City.

**Quiet Enjoyment.** If Tomac pays the rent and performs all other obligations under this Agreement, Tomac may peaceably and quietly hold and enjoy the Premises during the Term.

**Notices.** All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be delivered in person, sent by overnight courier service or sent via certified or registered mail, addressed to City or Tomac at the address stated below, or to another address that either Party may designate in writing upon reasonable notice to the other Party.

**Addresses for Notices:**

**City:**

Jeremy Patton  
Airport Director  
123 Roger Smith Ave.  
Cortez, CO 81321

**Tomac:**

Eli Tomac  
45493 Highway 160  
Mancos, CO 81328

**Further Assurances.** Each Party hereto agrees to execute and deliver any additional documents and to do all such other acts as may be necessary to carry out this Agreement and each Party's rights and interests in this Agreement.

**No Waiver.** No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly in writing.



