



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox Dayton International Airport

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2024 between the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and _____ ("Operator").

WITNESSETH THAT:

WHEREAS, City owns and operates the improved real property, known and referred to as the James M. Cox Dayton International Airport ("Airport"), which is situated in the City of Dayton, Counties of Montgomery and Miami, State of Ohio; and

WHEREAS, On XXXXX XX, 2024, the City issued a Request for Proposal, titled "Request for Proposal for Non –Exclusive Rental Car Concessions at the James M. Cox Dayton International Airport No. 24-029AV" ("RFP"); and

WHEREAS, Operator responded to the RFP on XXXXXX XX, 2024, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

WHEREAS, City selected Operator's response to the RFP; and

WHEREAS, the parties enter into this Agreement to set forth the terms and conditions for the non-exclusive right and privilege to operate an on-Airport rental car concession.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, **IT IS AGREED AS FOLLOWS:**

ARTICLE I
DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings ascribed to them respectively regardless of whether the word(s) or phrase(s) is capitalized, unless otherwise clearly indicated by the context in which it is used:

"Airport Rules and Regulations" means the rules and regulations of the Dayton International Airport as adopted and as the same may be updated from time to time.

"Commencement Date" means January 1, 2025.

“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.

“Concessionaire(s)” means all rental car businesses operating at the Airport pursuant to the terms of an agreement similar to this Agreement.

“Contract Year” means a twelve-month period beginning on January 1 and ending on December 31 within the Term.

“Customer” means anyone who enters into a vehicle rental contract that originates or ends at the Airport as well as anyone who enters into a vehicle rental contract made within a two (2) mile radius of the Airport property boundary having arrived at the Airport within the last forty-eight (48) hours unless specifically identified as a Non-Airport Customer.

“Customer Facility Charge” or “CFC” means the charge established by Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, which charge must be collected by Operator from its Customers and submitted to the City and is subject to change during this Agreement Term.

“Environmental Laws” means any federal, state, or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any judicial or agency interpretation of any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future, that pertains to any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. §6901 *et seq.*; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; and the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*

“FAA” means the United States Department of Transportation, Federal Aviation Administration, or such other successor agency or agencies of the United States Government.

“Expiration Date” means December 31, 2030.

“Fees” means all amounts, including but not limited to, Premise Rent (including Counter, Office and Queuing Space Rent, Shared Common Space Rent), Concession Fee, and any other incidental fees and charges that are paid or payable by Operator to City pursuant to this Agreement.

“Gross Revenues” as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Operator for or in connection with contracts it secures through its operations and business at the Airport, regardless of

whether such amount is actually paid to or received by Operator. Rentals at the Airport include any rentals on Airport property which includes the commercial passenger terminal, any Fixed Base Operator location, and private aviation or non-aeronautical facilities. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made and services performed for cash, credit or consideration in connection with automobile and vehicle rentals or other products or services provided to persons through Operator's operations at the Airport without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator's customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

Gross Revenues may not be reduced by promotional or other discounts not given directly to the customer at the time of rental. The retroactive adjustment by Operator of Gross Revenues designated as volume discounts or rebates, corporate discounts or rebates, or any other designation of any nature, or for any other purpose, is prohibited. Discounts must be specifically identified on the Customer's contract at the time of rental.

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions set forth below. Exclusions shall be reported on the Operator's monthly report as required in Article VIII(E).

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator's operations which are separately stated on customers' rental contracts and collected from customers of Operator;
2. Those fees referred to in this Agreement as Customer Facility Charges, "CFC's" which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;
3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;
4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator's operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and
5. Reimbursements for amounts actually paid for parking tickets, red light tickets, tolls and toll violations from its customers to pass through without markup to an independent third party with no amount being retained by Operator. However, any amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

“Hazardous Materials” means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a “hazardous substance,” “hazardous waste,” “solid waste,” or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law or that is or contains asbestos, radon, any polychlorinated biphenyl, urea-formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or that causes or poses a threat to cause contamination or nuisance or a hazard to the environment or to the health or safety of any persons, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and maintenance of the premises in commercially reasonable quantities, and may have fuel in the tanks of its vehicles.

“Minimum Annual Guarantee” or “MAG” means the minimum amount to be paid to the City per Contract Year for the concession privileges and rights stated in this Agreement, which the Operator specified in its response to the City’s RFP and provided in Article VIII(B).

“Percentage Concession Fee” means an amount equal to ten percent (10%) of Gross Revenues.

“Premises” means all areas leased to Operator as described in Article IV.

“Premise Rent” means an amount paid the City for Operator’s occupancy of the Rental Car Counter Facility.

“Ready/Return” means that area at the Airport identified by the Ready/Return Agreement and consisting of parking blocks for use by Concessionaires as the location where Customers pick-up and/or drop-off Vehicles.

“Ready/Return Agreement” means that certain Agreement between the City and Operator pertaining to ready/return activities, attached hereto as Exhibit A and incorporated herein.

“Reallocation Date” means on or about March 1 during the term, beginning March 1, 2028.

“Rental Car Counter Facility” means the facility constructed adjacent to the lower level of the parking garage for the purpose of providing an area for conducting rental car transactions with customers.

“Term” means the effective period of this Agreement, beginning on the Commencement Date and expiring on the Expiration Date.

“Terminal” means the main passenger terminal building located at the Airport.

“TSA” means the United States Department of Homeland Security, Transportation Security Administration, or such other successor agency or agencies of the United States government.

“Transaction Day(s)” means a twenty-four (24) hour period or fraction thereof for which a Customer is charged rental for a vehicle which is paid in the form of currency, credit, or promotional coupon for which a Customer is given complimentary use of a vehicle, regardless of the duration or length of the rental term. Late return (after twenty-four (24) hours) shall be considered a Transaction Day.

“Vehicle(s)” means any automobiles, trucks, vans, and all accessories and appurtenances thereto provided by the Operator (and/or other Concessionaires, as the context would dictate) to meet the transportation needs of Customers.

Additionally, the words and phrases used in this Agreement, but not defined herein, shall have their usual and customary meaning, as well as the following:

(A) The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement.

(B) Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.

(C) Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

(D) Words importing the singular shall include the plural and vice versa. Words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders.

(E) The term “including” shall be construed to mean “including without limitation”, unless otherwise expressly indicated.

(F) All references to number of days shall mean calendar days.

(G) Words used in the present tense include the future.

ARTICLE II **NON-EXCLUSIVE AGREEMENT**

The rights and privileges granted under this Agreement are non-exclusive. By entering into this Agreement, Operator acknowledges that the City is or will be entering into non-exclusive agreements with other Concessionaires. The City reserves the right to enter into agreements with other companies providing rental car services from off-Airport locations, if the City determines that it is in its best interest to do so. However, such agreements with off-Airport rental car businesses/operators shall not include the right to staff or operate a rental car concession from an on-Airport Counter and Office area (or other area on the Airport) and/or occupy and use the

Ready/Return. Such off-Airport agreements may be at terms and conditions more or less favorable than this Agreement.

ARTICLE III TERM

A. This Agreement is effective for a period of six (6) years (“Term”), beginning January 1, 2025 (“Commencement Date”) and expiring December 31, 2030 (“Expiration Date”), unless terminated earlier or renewed in accordance with the provisions of this Agreement.

B. Should Operator holdover said Premises after this Agreement has terminated in any manner, Operator shall continue such holding over only at sufferance to City. In the event of such holding over, City shall collect from Operator, 1.25 times the amount of Year Six’s minimum annual guarantee. All other terms and conditions in such holdover shall be the same as herein provided.

ARTICLE IV PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement: approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #___ depicted on Exhibit B.

B. By the execution of this Agreement, Operator accepts the Premises "AS IS". Operator also understands and agrees that the occupant of the Premises prior to the Commencement Date may remove trade fixtures prior to the delivery of possession of the Premises to Operator. Except as expressly provided in this Agreement, the City shall have no obligation or responsibility whatsoever to do any work or furnish any improvements of any kind to the Premises or perform any maintenance or repair on the Premises. **CITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR THAT THE PREMISES ARE SUITABLE FOR OPERATOR'S USE, PURPOSES OR NEEDS.** Upon expiration or termination of the Agreement, Operator shall promptly and peaceably surrender to City its Premises and all improvements thereon to which City is entitled in good and fit condition, reasonable wear and tear excepted; provided, however, nothing in the Article shall be construed to modify the obligations of the parties set forth elsewhere in the Agreement.

C. The allocation of the block of Ready/Return parking area to Operator for the first Contract Year of this Agreement, commencing on the Commencement Date, is based on the sum of the six years minimum annual guarantee proposed by the Operator divided by the sum of the six years minimum annual guarantees proposed by all successful operators. The City may, on not less than thirty (30) days advance notice to Operator and/or on the Reallocation Date, reduce or increase the size and layout of the parking block in the Ready/Return area allocated for use by Operator based on Operator’s market share for the immediately preceding Contract Year. If the

calculation of the reallocation of the parking area does not result in a change to any operator of an increase or decrease of block size of more than 10%, the City will not reallocate the parking blocks.

In general, each parking block will be a general rectangle shape, with at least one side providing for terminal frontage (east) side and the opposite side providing for the entrance/exit driveway (west) side. However, when allocating or reallocating the Ready/Return parking area, the City has full discretion on the shape of each Concessionaire's block based on the geometry or any physical characteristics of the garage (such as support columns and common use sidewalks).

On the date designated for deletion or increase of the parking blocks in the Ready/Return:

1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

Notwithstanding the allocation and reallocation process outlined above, the parking block assigned to Operator shall not be fewer than fifteen (15) spaces, except in the event that the Ready/Return area is reduced in size twenty-five percent (25%) or more as required by the FAA and/or TSA for security purposes or construction activities upon or near the Ready/Return. In the event Operator's block must be reduced in order to allocate fifteen (15) spaces to the smallest Concessionaire, the City will propose a plan to reduce the space to Operator for comment; however, the City shall retain final authority as to the reduction of blocks.

All expenses for the Operator's block configuration upon commencement of this Agreement and/or upon any reallocation of Ready/Return area will be the sole responsibility of the Operator.

D. Notwithstanding any other provision of this Agreement, the City may adjust the boundaries of the Premises as may be required by the City for its purposes by adding to or deleting space from such portion of the Premises from time to time. The City shall notify Operator not less than sixty (60) days in advance of such adjustment, and Operator shall remove all personal property and fixtures located on the area(s) being deleted no later than the date such adjustment is to occur. In such instances, the Premises Rent (as applicable) may be adjusted, based on the new area comprising the Premises.

E. City reserves the right to relocate the Premises (including the Rental Car Counter Facility) to other space in the Terminal and/or on Airport grounds, as applicable, on the terms and conditions hereinafter set forth:

1. If the City elects to relocate all or part of the Premises the City will give Operator at least sixty (60) days' prior written notice of the relocation date. The City agrees to provide substitute space of comparable square footage and shall provide improvements of comparable condition and utility (if not then existing at the new location). City shall pay reasonable out-of-pocket moving costs for moving

Operator's personal property to the substitute premises. Operator shall cooperate with the City in connection with the relocation, including, without limitation, responding in a timely manner to any requests for information or for review and comment on proposed plans for improvements to the substitute premises. Operator shall surrender possession of the portion of the Premises for which the substitution is being made and move from such portion of the Premises to the substitute premises on the relocation date.

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

The City's exercise of its relocation right under this Subsection (E) shall not constitute a constructive eviction or interference with the right of quiet enjoyment, nor shall the City's exercise of such right subject the City to damages for loss of profits or business.

F. Operator's use of the Premises shall be subject to any and all easements, licenses and other rights with respect to the Premises granted to or vested in itself or any other governmental entities or agencies, such as the FAA and TSA. Operator acknowledges that there may currently exist, and that City may grant in the future, easements and rights on, over or under the Premises for the benefit of suppliers or owners of utilities that service the Airport, and Operator hereby consents to any such utility easements whether now in existence or later granted.

ARTICLE V **USE OF THE PREMISES**

A. Subject to the terms and provisions contained in this Agreement, and all applicable rules, regulations, laws, ordinances, codes and orders of any federal, state or local government or subdivision thereof in connection with the conduct of activities by Operator at the Airport, Operator shall use the Premises for the following purposes only and for no other purpose:

1. Arranging and administering the rental of Vehicles and the related incidental provision of loss and collision damage waiver protection, insurance (including but not limited to personal injury insurance), children's car seats, GPS devices, mobile telephones and such other incidental services, items and equipment not being provided by Operator at the Airport prior to the Commencement Date and equipment reasonably associated with the rental of automobiles (but not including any items for which any exclusive right to provide such services, items or equipment has been or may in the future be granted to others at the Airport), which are approved in advance in writing by the City; and
2. For such other uses, the Operator must secure advance approval in writing from the City in its sole and absolute discretion.

B. If Operator parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Operator must pay the posted parking rates.

C. Operator shall not use, bring, store, or dispose of any Hazardous Materials on the Premises, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and maintenance of the premises in commercially reasonable quantities, provided such is permitted by the Airport Rules and Regulations. Operator may have fuel in the tanks of its vehicles. Operator shall comply with all applicable Environmental Laws in its use of the Premises and the conduct of its concession business at the Airport.

ARTICLE VI **OPERATOR'S CONCESSION RIGHTS AND OBLIGATIONS**

A. Operator shall have the non-exclusive right and obligation to conduct a rental car (a.k.a. rent-a-car) concession at the Airport from the Premises under the terms and conditions described herein.

B. During the Term of this Agreement, Operator shall operate its concession and maintain all signage under the brand(s) or trade name(s) of _____. Operator is prohibited from operating at Airport under any other brand name(s) or trade name(s). No other brand name(s) or trade name(s) shall be used or displayed by Operator at the Airport or upon the Premises during the Term of this Agreement. During the term of this Agreement Operator shall operate and maintain all signage under the brand(s) or trade name(s) stated above. No additional brand or trade name may be added to this Agreement during the Term.

If Operator uses any particular brand or trade name under a license or franchise contract, Operator represents and warrants that it has been granted the right to use such brand or trade name for the entire term of this Agreement. At the City's request, Operator agrees to provide a copy of such franchise or license agreement as evidence that the same is in full force and effect. Operator shall immediately notify the City if such agreement is terminated.

C. Operator shall occupy the Ready/Return block assigned for its use only for the parking of rental Vehicles by Operator for pick-up or drop-off by its Customers, in a manner consistent with the terms of the Ready/Return Agreement. Vehicles returned by customers must be removed to the Operator's service facility within one hour of return. Returned vehicles which have not been cleaned and are not immediately available for rental shall not be stored in the Ready/Return. Operator understands that returned vehicles cannot be cleaned and/or serviced in the Ready/Return, including the removal of trash. Operator employees are not permitted to park personal vehicles in the Ready/Return and shall only park in those areas designated by the Airport. Upon notification by the City, Operator shall immediately remove any employee vehicle parked in the Ready/Return.

D. In operating the rental car concession permitted hereunder, Operator shall comply with the following:

1. Operator shall offer for rental only Vehicles of recent manufacture (not more than two (2) model years old and less than 40,000 miles), except as may be allowed under (D) (2) below. All Vehicles provided by Operator shall be maintained at Operator's expense in good and safe operating order, free from any known mechanical defects and be in clean, neat, and attractive condition inside and out. Operator shall furnish good, prompt and efficient service and shall at all times have available a sufficient number of Vehicles (a fleet of no fewer than fifty (50)) to meet all reasonably foreseeable demands of the traveling public. City's Director of Aviation may approve a temporary waiver of the two (2) model year and/or 40,000 mile requirements, upon specific written request by the Operator, to accommodate periods of vehicle supply shortages or as other circumstances dictate.
2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.
3. Operator shall provide the following services for its Customers at the Airport:
 - (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental;
 - (ii) provide for a national reservation system for services of Operator at the Airport, and
 - (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers, Fixed Base Operator and private aviation customers, and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired displaying an Operator issued identification badge. The City shall have the right to document and object to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator's staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such objections. Operator shall perform pre-employment screening on newly hired employees, including criminal background checks which shall be provided to Airport Police upon request. All employees shall be badged, if required according to Airport requirements.
5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator's rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.
7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator's operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its' receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator's written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.
8. Operator shall respond within five (5) business days in writing to complaints registered by the Airport's police with respect to violations of traffic regulations committed in the course of Operator's business by Operator's agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.
9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.
10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.
11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.

12. Operations Violations. Operator's failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

- \$100 per occurrence - first occurrence
- \$200 per occurrence - second occurrence
- \$300 per occurrence - third occurrence
- \$1,000 per occurrence thereafter

Liquidated damage amounts shall not be imposed unless the violation continues for more than three (3) calendar days after City has given Operator written notice (and this written notice may be in the form of an email) of the violation; provided, however, after City has given Operator notice of the same violation more than twice during any Contract Year, the liquidated damage amount may be immediately imposed with no opportunity to cure in order to avoid the sanction. If the violation relates to vehicles or vehicle parking, an occurrence will be based on each vehicle.

For hours of operations violations, liquidated damages are as follows:

- \$100 per hour or portion thereof during which location is not open - first occurrence
- \$200 per hour or portion thereof during which location is not open - first occurrence
- \$300 per hour or portion thereof during which location is not open - first occurrence
- \$1,000 per occurrence thereafter

For violations regarding the minimum hours of operation, the liquidated damages may be incurred immediately and without notice upon violation.

The application of the liquidated damages will be at the discretion of the City. City's failure to impose liquidated damages for any violation of the requirements set forth above shall not waive any right or prohibit City from doing so for subsequent violations. After two (2) violations of the same type in the same Contract Year, City reserves the right, at

its sole option, not to impose the liquidated damage and instead seek any other remedies available to it for an Event of Default, including termination of this Agreement.

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all Vehicles as may be required by laws and ordinances and display all permits or stickers as may be required. Upon execution of this Agreement and thereafter annually or at the City's request, Operator shall provide evidence to the City that Operator has obtained such permits, licenses, certificates, other authorizations and registrations.

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.

G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

H. Operator shall not sell or give away food or beverages on the Premises. Operator may not install vending machines on the Premises for sale of food, beverages or any other items.

I. Operator may, at its own expense and only after receiving written approval from the City, erect and maintain informational signs within and upon the Premises in addition to those provided by City; the size and type of signs are subject to City's standards and prior written approval.

J. Operator shall not erect, allow or permit to be maintained on the Premises, or upon the exterior or any improvement on the Premises, any billboard or advertising signs, except those which have the prior written approval of the City.

K. Throughout the Term of this Agreement Operator shall employ a qualified, full-time, local resident manager having experience in the management of this type of concession, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibilities of Operator under this Agreement, and to accept service of all notices provided for herein. Operator shall provide the City with emergency telephone numbers at which Operator's local manager or designated local employee with authority to speak for Operator may be reached on a 24-hour basis.

L. Operator shall at its sole expense, provide and use suitable receptacles for the storing of all trash, garbage, and other refuse created in the conduct of its business or operations in the Premises, or arising from Operator's exercise of any right or obligation under this Agreement. Trash receptacles in the Ready/Return are provided for customers disposal of trash. These receptacles shall not be used for trash generated from Operator's activities or employees and shall not be used for disposing of trash left in returned vehicles. Such cleaning shall take place at the Operator's service facility. Operator is responsible for removing all collected trash, garbage, and refuse generated by the Operator in the Ready/Return area to its service facility or from any construction, renovation or relocation debris generated by from the Operator's activities.

M. Operator's employees shall be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations. Such badge must be obtained within thirty (30) days of execution of this Agreement.

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator's use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

P. Operator shall be a party to a Ready/Return Agreement at all times this Agreement is effective.

Q. Operator's employees shall be required to obtain an Airport-issued vehicle permit for any personal vehicle which Operator's employees intend to park at the Airport. Operator's employees shall only park in employee designated areas while on duty at the Airport and shall not be permitted to park in employee designated areas for personal or business travel.

R. All of Operator's computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:

1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,
2. Fully compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>).

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance ("AOC") Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton.

(https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or

<https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Offeror.docx?agreement=true&time=1493826893795>).

S. Operator shall arrange for the timely delivery of all Vehicles and supplies, at such times, in such locations(s), and by such routes as determined by the City. Operator shall abide by all Transportation Security Administration (TSA) requirements for parking of Vehicles near the Terminal or perimeter fences. In no event shall Vehicles be parked on unpaved surfaces (grass, turf, etc.) without prior written permission of the City. Vehicles shall not remain in the designated locations for a period of more than twenty-four (24) hours. Any Vehicle remaining in a designated location beyond twenty-four (24) hours will be assessed a Vehicle Storage Fee as provided for in Article VIII(C).

ARTICLE VII **CITY RIGHTS AND OBLIGATIONS**

A. The City agrees to provide normal heating, air conditioning, and electrical service to the Rental Car Counter Facility as reasonably required. Operator shall pay for its own telephone service and installation of any telephone or computer connections or equipment or for extension of any electrical facilities to provide service. The City reserves the right to interrupt temporarily the heating, air conditioning or electrical services furnished to the Premises to make emergency repairs or for other reasonable purposes, and the City shall restore said services as soon as reasonably possible. The City shall endeavor to provide Operator with reasonable notice of such interruptions when possible. The City shall have no responsibility or liability for any failure of heating, air conditioning, electrical or any other service to the Premises, the Rental Car Counter Facility or to the Airport for any other reason whatsoever.

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors or designees):

1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City's police power;
2. to enter the Premises at any time;
3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and
5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

Except in the case of an emergency or previous arrangement with the Operator, City's entry into the Premises shall be during reasonable business hours after providing reasonable advance notice, and in the presence of Operator's representative.

All rights in this Subsection (B) shall be exercisable without notice (except as expressly provided in this Section) and without liability to Operator for damage or injury to property, person or business, and without effecting an eviction or disturbance of Operator's use or possession or giving rise to any claim for setoff or abatement of Fees or affecting any of Operator's obligations under this Agreement. Notices under this Subsection (B) may be given verbally in an emergency or where entry does not materially affect Operator's use and occupancy. Reasonable notice shall in no event require more than twenty-four (24) hours' notice.

C. City warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Operator's covenants contained herein, subject to Subsection (B) of this Article VII.

D. City will remove, during normal business hours, all collected trash, garbage, and refuse from the Premises with the exception of any construction, renovation, Ready/Return area or relocation debris.

E. In an emergency situation or upon occurrence of an Event of Default, the City may (but shall not be obligated so to do), and without waiving or releasing Operator from any obligation of Operator hereunder, make any payment or perform any other act which Operator is obligated to make or perform under this Agreement in such manner and to such extent as the City may deem desirable; and in so doing the City shall also have the right to enter upon the Premises for any purpose reasonably necessary in connection therewith and to pay or incur any other necessary and incidental costs and expenses, including attorneys' fees. All sums so paid and all liabilities so incurred by the City, together with interest thereon, shall be deemed additional fees hereunder and shall be payable to the City upon demand. The performance of any such obligation by the City shall not constitute a waiver of Operator's default in failing to perform the same. Inaction of the City shall not be considered as a waiver of any right accruing to it pursuant to this Agreement. The City shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Operator any other occupant of the Premises or any part thereof, by reason of exercise of its rights under this Subsection (E).

ARTICLE VIII **RENTS, FEES, PAYMENTS AND PERFORMANCE BOND**

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2025 through December 31, 2025 the sum of _____ Dollars and _____ Cents (\$XX.XX)

per square foot per year. For the period commencing January 1 each year thereafter, the per square foot per year rate will be the rate adopted in the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

B. Concession Fee. As consideration for the privilege of operating the concession hereunder, Operator shall pay to the City each Contract Year, for the full term of this Agreement, a Concession Fee. The Concession Fee is the greater of:

1. The Percentage Concession Fee as defined in Article I;

OR

2. The respective amount shown below as the Operator's Minimum Annual Guarantee:

January 1, 2025 to December 31, 2025

January 1, 2026 to December 31, 2026

January 1, 2027 to December 31, 2027

January 1, 2028 to December 31, 2028

January 1, 2029 to December 31, 2029

January 1, 2030 to December 31, 2030

On or before the twentieth (20th) day of each month, Operator shall pay to the City the greater of 1/12th of the Contract Year's MAG or ten percent (10%) of reported Gross Revenues for the previous month. Payment shall be made without prior demand thereof and without notice, deduction or set off.

C. Vehicle Storage. Operator shall pay to the City, rent for any Vehicles parked on the Airport in any location not included in the Operator's Premises. Vehicles parked in any public parking lot will pay the posted parking rates as provided for in Article V(B). Vehicles parked elsewhere shall be assessed rent at the rate of \$8 per vehicle per day.

D. Additional Fees. City may invoice Operator additional fees for items including, but not limited to, employee parking, badging fees, and background checks. The City may assess reasonable, non-discriminatory charges for these items. Operator shall pay for such additional fees within thirty (30) days of invoicing by the City.

E. In the event of termination of this Agreement on a date other than December 31st in any year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional Contract Year shall be determined by multiplying the number of days that have transpired that year by 1/365th of the annual MAG and Premises Rent.

F. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a certified report of its total Gross Revenues for the preceding month, with the Concession Fee calculated. The Concession Fee will be reconciled at Contract Year end, as described in

Paragraph G below. This report shall be in the format (as provided for in Exhibit C) acceptable to the City and shall contain detailed categories of Gross Revenues including refunds, discounts, coupons and credits, as well as excluded revenues, number of transactions and number of transaction days for the month.

G. Operator shall furnish each year during the term of this Agreement, a written statement, certified by an independent Certified Public Accountant, to the City stating that in his or her opinion the percentage fees paid by Operator to City during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. Said statement shall be submitted by Operator, to be received by the City within ninety (90) days of the end of each Contract Year. Such statement shall also contain a list of the Gross Revenue receipts, by month, as shown on the books and records of the Operator and which were used to compute the percentage fee payments made to City during the period covered by such statement.

H. The Concession Fee will be reconciled at the end of each Contract Year. In the event an annual report indicates Operator's underpayment of the Concession Fee during said annual report Contract Year, the amount of such underpayment shall be remitted from Operator to the City not later than thirty (30) days from the date the annual report was submitted to the City. In the event an annual report indicates overpayment of Concession Fees to the City, Operator shall subtract the amount of such overpayment from its next monthly MAG payment; except that, if, after the last Contract Year of this Agreement, Operator is no longer a Concessionaire at Airport, such settlement shall be remitted from the City to Operator, provided Operator is not then in default under the terms of this Agreement. This provision shall survive the expiration or termination of this Agreement.

I. Prior to the Commencement Date, Operator shall provide to the City, and shall keep in full force and effect during the Term, and thereafter, until all financial obligations hereunder are satisfied, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator fails to pay any moneys required hereunder within the time limits specified herein in addition to taking any other action as may be provided hereunder.

J. Except as provided in Subsection (K) below, all rental and fees payable hereunder shall be remitted by Operator to the following address or at such other address as City shall direct in writing:

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094

K. All annual and monthly reports of Gross Revenues together with the associated payments to the City, as described above, shall be sent to the City at the following address or at such other address as City shall direct in writing:

City of Dayton, Ohio

Department of Aviation
Attn: Accounts Receivable
3600 Terminal Drive, Suite 300
Vandalia, OH 45377

L. In the event Operator fails to make any payments as required to be paid under the provisions of this Agreement within ten (10) calendar days of the due date, late charges at the rate of two percent (2%) per month shall accrue against all such delinquent payment(s) from the original due date until City actually receives payment. The right of City to require payment of such late charges and the obligation of City to pay same shall be in addition to and not in lieu of the right of the City to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by Law.

M. In any Contract Year where the total deplanements at the Airport decline by 15% or more as compared to the prior Contract Year, the Operator's MAG for such Contract Year shall be reduced proportionate to the decline in deplanements as part of the year-end reconciliation process. Where the City reasonably determines during any Contract Year that a MAG reduction is likely, the City may waive the Operator's obligations to remit the monthly 1/12th MAG installment payments for any period of time the City deems appropriate in its sole discretion, but Operator shall continue to remit the Percentage Concession Fee each month regardless.

ARTICLE IX **CUSTOMER FACILITY CHARGE**

Operator shall comply with Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, as may be amended, during the term of this Agreement regarding the imposition and collection of a CFC on all vehicle rental transactions originating at the Airport.

ARTICLE X **INDEMNIFICATION**

A. Operator shall defend, indemnify, save and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages arising from, or in any way connected with, Operator's use or occupancy of the Premises or any condition of the Premises and/or Operator's exercise of any right granted herein (including operation of its concession), and/or Operator's performance for breach or default in the performance of any obligation to be performed pursuant to this Agreement, and/or any wrongful, intentional or negligent act or omission of Operator, its agents, contractors and employees.

B. In the event Operator, its agents, contractors or employees violate any security measure at the Airport, including, but not limited to, any Federal Aviation Administration or Transportation Security Administration security laws, rules, regulations, orders or directives, Operator shall assume full and complete responsibility for such violations, including payment of any penalty

imposed, and shall defend, indemnify and hold the City, its elected officials, officers, agents and employees harmless therefrom.

C. Operator shall defend, indemnify and hold harmless the City, its elected officials, officers, employees, agents and volunteers, from and against any mechanics or other lien or order for the payment of money filed against the Premises, the City or any property of the City, arising out of any act or omission of Operator or anyone claiming through or under Operator. Operator shall, at Operator's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless the City from and against any and all costs, expense, claims, losses or damages including reasonable attorney fees resulting therefrom or by reason thereof.

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.

E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and, shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

F. The City's elected officials, officers, agents and employees shall have no personal liability with respect to any provision of this Agreement or any obligation or liability arising from this Agreement or in connection with this Agreement or the Premises in the event of a breach or default by City of any of its obligations.

G. Notwithstanding any other provision of this Agreement to the contrary, to the extent permitted by law, Operator waives any and every claim for recovery from the City for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Operator or which would have been recoverable if the insurance required hereunder had been maintained by Operator, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Operator agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Operator shall require any subtenant to include similar waivers of subrogation in favor of the City.

ARTICLE XI INSURANCE

A. Operator, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the Term, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A.M. Best and covering all operations under this Agreement, whether performed by Operator or by persons or entities retained by Operator:

1. Worker's Compensation and Occupational Disease Insurance

Worker's Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Ohio, or any other applicable jurisdiction, covering all employees who are to provide a service under this Agreement, and Employer's liability coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000) for each accident or illness. Coverage extensions shall include other states endorsement, alternate employer and voluntary compensation endorsement, when applicable.

2. Commercial General Liability Insurance (Primary and Umbrella)

Commercial General Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The City, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement.

3. All Risk Property Insurance

Operator shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of Fees then payable under this Agreement for a period of one year), and flood. City is to be named as a loss payee.

The Operator shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Operator.

4. Automobile Liability Insurance

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Operator shall provide Comprehensive Automobile Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence combined single limit, for bodily injury and property damage. City is to be named as an additional insured on a primary, non-contributory basis.

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date, and all renewal certificates of such insurance, shall be provided to City. At the City's request, Operator shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Operator shall not be deemed to be a waiver by the City. Operator shall advise all insurers of these Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Operator of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to terminate this Agreement as provided in Article XIII until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

C. If Operator fails to obtain or maintain any of the insurance policies under this Agreement or to pay any premium in whole or in part when due, City may (without waiving or releasing any obligation or default by Operator hereunder) obtain and maintain such insurance policies and take any other action which City, including reasonable attorney's fees, court costs and expenses, shall be reimbursed by the Operator upon demand by City.

D. Operator shall require all contractors to carry the insurance required herein, or Operator or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Operator or its contractors. Operator and its contractors agree that insurers shall waive their rights of subrogation against the City, its employees, elected official, agents, or representatives. Operator and its contractors expressly understand and agree that any coverages and limits furnished by Operator or its contractors shall in no way limit the Operator or its contractors' liabilities and responsibilities specified within this Agreement or by law. Operator and its contractors expressly understand and agree that any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by the Operator or its contractors under this Agreement.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The City maintains the right to modify, delete alter or change these requirements.

F. The insurance required by this Agreement, at the option of Operator, may be effected by blanket or umbrella policies issued to Operator covering the Premises and other properties owned or leased by Operator, provided that the policies otherwise comply with the provisions of this Agreement and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

ARTICLE XII **DAMAGE AND DESTRUCTION OF PREMISES**

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

B. If there is material damage to a portion of the Rental Car Counter Facility or damage to a material access point or building system(s) serving such portion of the Rental Car Counter Facility, by a fire or casualty, rendering such portion of the Rental Car Counter Facility not usable, whether or not improvements on the Premises are damaged, then where operations in the Premises are severely curtailed or such portions of the Premises are unusable, such portion of the Premises shall be deleted from the Premises unless and until the City repairs and restores the damage to the Rental Car Counter Facility within the Term of this Agreement so that the affected portion of the Rental Car Counter Facility is again usable. Operator shall repair and restore any damaged improvements to the Premises at its expense (but it may use insurance proceeds from insurance it carried for the work as the work progresses, and the City shall permit any such proceeds to be made available) if the City repairs and restores the damage to the Rental Car Counter Facility during the Term.

Notwithstanding the foregoing, the City shall not be obligated to repair or restore the Rental Car Counter Facility, and the space deleted shall not be re-included in the Premises if the City determines not to include space for car rental counters in the portion of the Rental Car Counter Facility previously rendered unusable.

C. In the event the Terminal is substantially damaged or destroyed, whether or not improvements to the Premises are substantially damaged or destroyed, and as a result of such damage or destruction, flight operations with respect to the Terminal are terminated or substantially curtailed for ninety (90) days or more, then either the City or the Operator may delete the portion of the Premises located in the Terminal from the Premises or terminate this Agreement.

D. During any period in which Operator is unable to use the portion of the Premises in the Rental Car Counter Facility because of damage or destruction to the improvements on the Premises or the Rental Car Counter Facility, the rent payable for that portion of the Premises in the damaged or destroyed Rental Car Counter Facility shall be abated for the period during which such damage to the Rental Car Counter Facility renders the Premises unusable or

operations are so curtailed or terminated. Except for such abatement of rents due, the Operator shall have no claim against the City for any damage suffered by reason of any such damage, destruction, repair or restoration. There shall be no abatement of Concession Fees. Upon any deletion of a portion of the Premises from this Agreement Operator shall surrender such portion of the Premises to the City.

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XIII **TERMINATION BY CITY**

A. For purposes of this Agreement, the occurrence of any of the following shall constitute an "Event of Default":

1. The failure by Operator to pay any Fees as required under this Agreement when due and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;
2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

B. If an Event of Default occurs, and after the expiration of the applicable period cure period specified for such Event of Default, the City may terminate this Agreement. In the event of termination and in addition to any and all rights and remedies provided elsewhere herein or at law or equity, the City may repossess the Premises and shall be entitled to recover as damages: (i) all of the Fees accrued and unpaid for the period up to and including such termination date; and (ii) any other sums for which Operator is liable or in respect of which Operator has agreed to indemnify City under any provisions of this Agreement which may be then due and owing.

ARTICLE XIV **TERMINATION BY OPERATOR**

A. Operator may terminate this Agreement and all of its obligations hereunder, after the happening and during the continuance of any one of the following events (none of which, however, shall result in any liability to the City or provide Operator with any remedy other than an option to terminate as set forth herein):

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent

Operator's use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator's operations at the Airport.
- B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator's right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.

ARTICLE XV **SURRENDER AND RETURN OF THE PREMISES**

Upon termination of this Agreement or on the Expiration Date, whichever is earlier, Operator shall return the Premises in as good condition and repair as at the Commencement Date, subject to ordinary wear and tear, and Operator shall remove all personal property and trade fixtures of Operator from such portion of the Premises prior to the date of expiration or termination. Further, at the City's request, Operator shall also remove all movable, non-permanent improvements installed by or for Operator prior to or within ten (10) days after the expiration or termination of the Agreement, and Operator shall repair any damage to the Premises caused by Operator's removal of the personal property, trade fixtures and improvements. All such removal and repair required of Operator pursuant to this Section shall be at Operator's sole cost and expense. If Operator fails to remove any items required to be removed by it hereunder or fails to repair any resulting damage prior to or within ten (10) days after expiration or termination of the Agreement, then the City may remove said items, including the improvements, and repair any resulting damage and Operator shall pay the cost of any such removal and repair, together with interest thereon.

ARTICLE XVI **NON-DISCRIMINATION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (ACDBE)**

- A. General Civil Rights Provisions.

In all its activities within the scope of its airport program, the Operator agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race,

color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If the Operator transfers its obligation to another, the transferee is obligated in the same manner as the Operator.

The above provision obligates the Operator for the period during which the property is owned, used or possessed by the Operator and the Airport remains obligated to the Federal Aviation Administration.

B. Compliance with Nondiscrimination Requirements.

During the performance of this Agreement, the Operator, for itself, its assignees, and successors in interest (Hereinafter referred to as the "Operator") agrees as follows:

1. Compliance with Regulations: The Operator (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

2. Non-discrimination: The Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Operator will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of the Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Operator's noncompliance with the Non-discrimination provisions of this Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Operator under the Agreement until the Operator complies; and/or
- b. Cancelling, terminating, or suspending the Agreement, in whole or in part.

6. Incorporation of Provisions: The Operator will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Operator will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Operator may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Operator may request the United States to enter into the litigation to protect the interests of the United States.

C. Clauses for Transfer of Real Property Acquired or Improved under the Activity, Facility or Program.

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the City pursuant to the provisions of the Airport Improvement Program grant assurances.

1. The Operator for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Operator will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the City will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

3. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the City and its assigns.

D. Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the City pursuant to the provisions of the Airport Improvement Program grant assurances.

1. The Operator for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that

a. no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,

b. that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination,

c. that the Operator will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the City will have the right to terminate the license, permit, etc., as appropriate and to enter or reenter and repossess said land and the facilities thereon, and hold the same as if said license, permit, etc., as appropriate had never been made or issued.

3. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the deeds will there upon revert to and vest in and become the absolute property of the City and its assigns.

E. List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this Agreement, Operator, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); 30
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and Concessionaires, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.

F. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.

G. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 5.36% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its' adoption. Operator shall provide information under this Article XVI as requested by City for City's reporting requirements for FAA or any other governmental entity. The Operator shall be required to track and report all ACDBE, DBE and/or small business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation is to be provided via the electronic portal <https://b2gnow.mwdbe.com/?TN=FlyDayton> per monthly audit. Operator will no longer have to report revenue, goods and services via paper report. All reporting will be completed in the concession compliance software mentioned above. Additional information is provide in Exhibit D - Race Conscious (RC) Contract Clause.

H. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Operator agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Operator shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by Operator to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible. The Operator agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those business to similarly include the statements in further Agreements.

ARTICLE XVII **ASSIGNMENT AND SUBLETTING**

A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not, (a) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (b) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator's interest herein by operation of law; (c) sublease the Premises or any part thereof; or (d) permit the use or occupancy of the Premises or any part thereof for any purpose

not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.

B. If Operator desires, as a result of an acquisition or merger, to assign its interest under this Agreement or sublease any part of Premises, Operator shall make a written request for authorization in a notice to the City. Such notice shall state the name and address of the proposed sub-Operator or assignee and include a copy of the proposed sublease or assignment and all related documents, and, including a financial statement of the sub-Operator or assignee, disclosures and information required by City.

C. Consent by City to any assignment or sublease shall not operate to relieve, release or discharge Operator of or from any obligations, whether past, present or future, under this Agreement, and Operator shall continue fully liable hereunder except to the extent, if any, expressly provided for in such consent. Consent by City in any one instance shall not be deemed to be consent to or relieve Operator from obtaining City's consent to any subsequent assignment or sublease. Consent by City shall be conditioned upon agreement by the sub-Operator or assignees to comply with and be bound by all of terms, covenants, conditions, provisions and agreements of this Agreement to the extent of the space subleased or assigned, and an agreement that City shall have the right, but not the obligation, to enforce the terms and provisions of any such assignment or sublease affecting City's interests and Operator shall deliver to City within thirty (30) days after execution, an executed copy of each such sublease or assignment containing an agreement of compliance by each such sub-Operator and assignee. Operator shall pay all of City's costs, charges and expenses, including attorney's fees, incurred in connection with any assignment or sublease requested or made by Operator.

ARTICLE XVIII **GENERAL PROVISIONS**

A. The term City, as used in this Agreement, means the City of Dayton, Ohio, and where this Agreement speaks of approval and consent by the City, such approval is understood to be manifested by act of the City's Director of Aviation, except as otherwise expressly stated in this Agreement.

B. Notices to the City provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

Department of Aviation
James M. Cox Dayton International Airport
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377
Attn: Director of Aviation

or such other address as the City shall direct in writing.

C. Notices to Operator provided for in this Agreement shall be sufficient if sent by certified or registered U. S. mail, postage prepaid, addressed to:

TBD

or such other address as Operator shall direct in writing.

D. Operator represents that it has carefully reviewed the terms and conditions of this Agreement and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by the Agreement.

E. Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. In this Agreement, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Agreement. All section references, unless otherwise expressly indicated, are to sections in this Agreement. Any references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with this Agreement.

F. By execution of this Agreement, Operator hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

G. Operator shall, upon its execution and delivery of the required copies of this Agreement to the City, deliver to the City the following instruments and documents:

1. Certificates of insurance evidencing the insurance required by this Agreement;
2. Performance Bond.

H. Operator (and any person claiming by or through Operator) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the City under this Agreement, and not any other funds or assets of the City whatsoever.

I. Neither Operator nor any contractor of Operator shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the City's ownership of fee title to the Premises.

J. By entering into this Agreement, City shall in no way be deemed a partner or joint venture with Operator, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Agreement.

K. The City may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of City and Operator and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

L. This Agreement, including the incorporated Ready/Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.

M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City's rights with respect to any other or further breach.

N. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

O. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, its departments and agencies, relative to the development, operation or maintenance of the Airport.

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IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

TBD

By: _____

Its: _____

CITY OF DAYTON, OHIO

City Manager

**APPROVED AS TO FORM
AND CORRECTNESS:**

City Attorney

**APPROVED BY THE COMMISSION OF
THE CITY OF DAYTON, OHIO:**

_____, 2024

Min/Bk. _____ Pg. _____

Clerk of the Commission

EXHIBIT A to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE
AGREEMENT

RENTAL CAR READY/RETURN AGREEMENT
(Parking Garage Ready/Return Spaces at the Dayton International Airport)

THIS RENTAL CAR READY/RETURN AGREEMENT (“Agreement”) is made this ___ day of _____, 20XX, between the City of Dayton, Ohio (“City”), a political subdivision in and of the State of Ohio, and TBD (“Operator”), a TBD corporation authorized to conduct business in the State of Ohio.

RECITALS:

WHEREAS, City owns and operates the improved real property, known and referred to as the James M. Cox Dayton International Airport ("Airport"), situated in the City of Dayton, Counties of Montgomery and Miami and State of Ohio;

WHEREAS, Operator operates a rental car concession at the Airport under and subject to the terms of a Concession Agreement (defined in Article I);

WHEREAS, on May 2, 2008, City and Operator entered into a Memorandum of Understanding (defined in Article I), which set forth the parties' commitments and understandings regarding the construction of a Parking Garage (defined in Article I) at the Airport; and

WHEREAS, this Agreement sets forth the terms and conditions for the Operator's lease and use of the ground level of the Parking Garage as a Ready/Return (defined in Article I).

NOW, THEREFORE, the parties enter into this Agreement to set forth the terms and conditions for the lease of space in the Parking Garage, including use of Customer Facility Charge (defined in Article I) revenues for the design, construction and operation of the Parking Garage at the Airport.

ARTICLE I - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings ascribed to them respectively regardless of whether the word or phrase is capitalized, unless otherwise clearly indicated by the context in which it is used:

“Concession Agreement” means the Non-Exclusive Rental Car Concession and Lease Agreement dated December 13, 2006 between City and Operator and any amendments or successor agreements thereto.

“Customer” means anyone who enters into a vehicle rental agreement that originates or ends at the Airport.

“Customer Facility Charge” or “CFC” means the charge established by Section 37.11 of the Revised Code of General Ordinances of the City of Dayton, which charge must be collected by Operator from its Customers and submitted to the City.

“Debt Financing Costs” means all costs for debt issued for the RAC Share (as this term is defined in Article VI, Subsection B) including, but not necessarily limited to, cost of issuance, bond counsel, trustee and underwriter fees, and the principal and interest payments.

“Environmental Laws” means any federal, state, or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree or rule of common law, and any judicial or agency interpretation of any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future, that pertains to any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above ground tanks) and shall include, without limitation, the Solid Waste Disposal Act, 42 U.S.C. §6901 *et seq.*; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; and the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*

“FAA” means the United States Department of Transportation, Federal Aviation Administration, or such other successor agency or agencies of the United States Government.

“Garage Completion Date” means the date construction of the Parking Garage is substantially complete and access thereto is authorized by the City.

“Hazardous Materials” means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a “hazardous substance,” “hazardous waste,” “solid waste,” or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance or a hazard to the environment or to the health or safety of any persons.

“Market Share” has the same meaning as set forth in the Concession Agreement.

“O&M Services” means the operating and maintenance services for the Parking Garage provided by City.

“Parking Garage” means the three-level parking structure located at the Airport, which will be constructed under the direction of the City beginning on or about March 1, 2009.

“RAC” means all rental car businesses operating at the Airport pursuant to the terms of an agreement similar to the Concession Agreement and this Agreement.

“RAC Specific Costs” means the costs of certain Parking Garage design components that were specifically requested by the RACs including, but not limited to, increase by 1 ft in height for ground floor, 60 ft x 60 ft bay design grid, and restoration of existing ready return lot.

“Ready/Return” means the parking spaces for use by RACs as the location where Customers pick-up and/or drop-off Vehicles, and where Vehicles are to be stored awaiting such pick-up and drop-off.

“Surface Lot” means the surface lot identified by the City for use by RACs for Ready/Return.

“Terminal” means the main passenger terminal building located at the Airport.

“TSA” means the United States Department of Homeland Security, Transportation Security Administration, or such other successor agency or agencies of the United States government.

“Vehicle” means any automobiles, trucks, vans, and all accessories and appurtenances thereto provided by the Operator (and/or other Operators, as the context would dictate) to meet the transportation needs of Customers.

ARTICLE II - PREMISES

- A. The City expects to let a contract for the construction of the Parking Garage on or about February 4, 2009. It is agreed that the ground floor of the Parking Garage, containing approximately 193,020± square feet (approximately 700± parking spaces), shall be allocated to the RACs for Ready/Return. The second and third floors of the Parking Garage are allocated and specifically reserved for public parking or such other uses as the City, in its sole discretion, deems necessary.
- B. Beginning on the Garage Completion Date and during the term of this Agreement, the City shall lease to Operator an area in the Parking Garage for its Ready/Return (hereinafter referred to “Premises”). The specific Premises leased to Operator shall be determined in accordance with Article IV.C of the Concession Agreement. The Premises leased for the period commencing on the Garage Completion Date until the annual reallocation of Ready/Return for the RACs will be specifically depicted in an “Exhibit 1,” which shall be signed by Operator and appended to and made a part of this Agreement. Annually thereafter or at such interval identified in the Concession Agreement, the City will reallocate Operator’s Premises in the manner described for Ready/Return reallocation set forth in the Concession Agreement. A new Exhibit, which shall be sequentially numbered, shall be prepared, as may be necessary, to reflect Operator’s Premises for the applicable period. All such Exhibits shall be signed by Operator and appended to this Agreement without necessity of a formal written amendment to this Agreement. The City shall not reimburse Operator for any expenses incurred during any Ready/Return relocation or reallocation under this Subsection, except as provided for in Article VI (C) below.

Notwithstanding any other provision of this Agreement, the City may adjust the boundaries of the Premises, as may be required by the City for security reasons, to comply with any federal and/or TSA law, regulation, directive or requirement and/or for federal or TSA required construction by adding to or deleting space from the Premises. The City shall notify Operator not less than sixty (60) days in advance of such adjustment, provided no notice shall be required during any real or threatened emergency and/or security threat, and Operator shall remove all personal property and fixtures located on the area being deleted no later than the date such adjustment is to occur. City agrees to reimburse Operator for the expense incurred as a result of the boundary adjustment from the CFC, subject to availability of funds not designated for Debt Financing Costs, O&M Services and other committed obligations. In the event that the boundaries are adjusted by deleting in excess of ten percent (10%) of the total amount of square footage allocated to the RACs for their use on the ground floor of the Parking Garage (approximately 193,020+/- square feet) , the total allocation of space among the RACs will be adjusted so that the impact of the loss of space is distributed among the RACs in accordance with the prescribed methodology for allocation of spaces identified in the Concession Agreement. For any deletion involving greater than ten percent (10%) of the total amount of square footage allocated to the RACs for their use on the ground floor of the Parking Garage, the City will use its best efforts to provide replacement ready return spaces on-Airport in a location as close to the Terminal Building as reasonably possible.

ARTICLE III – USE OF PREMISES

- A. Subject to the terms and provisions contained in this Agreement, and all applicable rules, regulations, laws, ordinances, codes and orders of any federal, state or local government or subdivision thereof in connection with the conduct of activities by Operator at the Airport, Operator shall use the Premises only for the following purposes:
1. The parking of rental Vehicles by Operator for pick-up or drop-off by its Customers;
 2. Uses in connection with Operator’s Ready/Return operations, including but not limited to, customer service kiosks and storage of ancillary equipment associated with Operator’s operations; and
 3. For such other uses as the City may approve in writing in its sole and absolute discretion.
- B. Operator is specifically prohibited from using the Premises or otherwise allowing use of the Premises for any of the following:
1. Washing, fueling, cleaning, painting or maintaining of Vehicles;
 2. To sell Vehicles to the public;
 3. To sell (including sale through vending machines) or give away food or beverages;
 4. To bring, store and/or dispose of any Hazardous Materials, except that Operator may bring and store commercially reasonable quantities of household and commercial cleaners and chemicals in connection with the operation and maintenance of the Premises and may have fuel in the tanks of its Vehicles;

5. Any acts that violate (or may violate) any certificate of occupancy issued for the Parking Garage;
 6. Any acts that void (or makes voidable) any insurance procured by City and covering the Parking Garage;
 7. Any acts that make it impossible or financially impracticable for a RAC or the City to obtain fire or other insurance for the Parking Garage;
 8. Any acts that constitute a public or private nuisance; and
 9. Any acts that disrupt the safe, efficient and normal operation of the Airport.
- C. Operator shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. Operator shall not park Vehicles in the public parking areas of the Parking Garage or other public parking lots on the Airport, and is not entitled to free or discounted parking for its employees, contractors or agents to park automobiles in the Parking Garage or other public parking lots. Notwithstanding, Operator may allow its employees to park on its leased Premises.

ARTICLE IV – OPERATOR’S RIGHTS & OBLIGATIONS

- C. Operator shall comply with all applicable Environmental Laws in its use of the Premises and the conduct of its concession business at the Airport, including the Parking Garage.
- D. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required under this Agreement and/or to conduct its Ready/Return operations at and from the Premises. Upon City’s request, Operator shall provide evidence to the City that Operator obtained such permits, licenses, certificates, other authorizations and registrations.
- E. Operator shall comply with all present and future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.
- F. Operator may, at its expense, erect and maintain directional, informational, and traffic control signs within and upon the Premises in addition to those provided by City, with the size and type of sign or signs and location subject to City’s advance written approval.
- G. Operator shall not erect, allow or permit to be maintained on the Premises, or upon the exterior or any improvement on the Premises or on the Parking Garage structure or fixtures therein, any billboard or advertising signs, except those which have the prior written approval of City. Operator may maintain removable or permanent signage bearing Operator’s name or trade name, in neatly arranged electric, neon, or other type sign or signs, with the size and type of sign or signs and location subject to City’s advance written approval.

- H. Operator shall provide normal custodial and routine maintenance services for its kiosks, booths and other Operator installed or provided equipment and fixtures on the Premises. Operator shall at its sole expense, provide and use suitable covered receptacles for the storing of all trash, garbage, and other refuse created in the conduct of its business or operations, or arising from Operator's exercise of any right or obligation under this Agreement. If required by City, Operator shall deposit such trash, garbage and other refuse (excluding any construction, renovation, removal or relocation debris) in a dumpster or at such location identified by the City for such purpose.
- I. Operator shall repair or pay for any and all damages to City property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator's use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
- J. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations and to strictly observe all posted speed limits.
- K. Operator shall comply with all terms and conditions of its Concession Agreement.
- L. The rights stated in this Article are subject to such ordinances, rules and regulations as now or may hereafter be applied to the operation of the Airport and on-Airport rental car concessions.

ARTICLE V – TERM

This Agreement is effective from the date of complete execution by the parties. This Agreement shall expire twenty (20) years from the Garage Completion Date, unless earlier terminated as set forth in Article XI or Article XII. In addition, this Agreement shall automatically terminate upon the date of termination of the Concession Agreement.

ARTICLE VI – FINANCIAL MATTERS

- A. In consideration of the use of CFCs to fund construction of the Parking Garage (as set forth in Subsection B below) and payment of O&M Services (as set forth in Subsection D below), the Premises are provided to Operator at no additional cost for the term of this Agreement.
- B. Based on the public bid received and to be awarded by the City, the total cost for the Parking Garage, including planning, design, construction, project management costs and RAC Specific Costs is Thirty Five Million Seventy One Thousand Nine Hundred Forty Five Dollars Thirty Nine Cents (\$35,071,945.39). Consistent with the terms of the MOU and agreement between the parties, the RAC portion of the cost of the Parking Garage, including RAC Specific Costs, to be funded with CFCs is Seventeen Million Four Hundred Thirty Nine Thousand Five Hundred Seventy Eight Dollars Sixteen Cents

(\$17,439,578.16), plus Debt Financing Costs (hereinafter referred to as “RAC Share”). By execution hereof, Operator agrees and forever waives any objection to the use and pledge of CFCs to fund the RAC Share.

Operator agrees, to the extent requested by the City, bond counsel and/or underwriters, to execute any and all documents required or otherwise necessary for the City to finance and issue debt for the RAC Share that shall be secured by present and future CFC collections.

- C. It is agreed that the City will make available to the RACs an amount not to exceed a total of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) from CFCs (“Allowance”) for the construction and installation of specific rental car requirements as set forth in Exhibit A, attached hereto and incorporated herein. The Allowance shall be allocated to the RACs based on Market Share for the contract year ending December 31, 2009. Operator shall perform or cause to be performed the items in Exhibit A necessary for Operator’s use of the Premises and in accordance with Article XIV, Subsection D. Upon completion of the work, Operator shall submit copies of paid invoices or receipts in sufficient detail to document the expenditures to City. Upon review and approval of the documents provided to City, City will reimburse Operator for the approved expenditures up to the limits established for each RAC within sixty (60) days. In no event shall City be liable for any interest, late charges or penalty if such reimbursement is delayed beyond sixty (60) days.
- D. Operator agrees and forever waives any objection to the use and pledge of CFCs to fund the RACs portion of the costs for O&M Services for the Parking Garage, which amount is based on completion of the tasks identified in Exhibit B, attached hereto and incorporated herein. City shall provide RACs with an annual report of actual costs for O&M Services in the Parking Garage within thirty (30) days from the date City issues its Consolidated Annual Financial Statement (“CAFR”). For the first year of the Agreement, the total budgeted costs for O&M Services will be One Million One Hundred Sixty Thousand Nine Hundred Forty Five Dollars (\$1,160,945.00) with the RAC portion of the cost for O&M Services being Three Hundred Eighty Six Thousand Nine Hundred Eighty One Dollars and Sixty Seven Cents (\$386,981.67) as provided in Exhibit B. In addition to the cost for O&M Services, property taxes for the portion of the capital costs of the Parking Garage allocated to the RACs will be reimbursed from CFC funds. The budget for the O&M Services will be adjusted every three (3) years or more frequently if the actual costs for O&M Services change by more than ten percent (10%) in any calendar year. Exhibit B shall be revised accordingly, which shall not require a formal written amendment to this Agreement. For the purposes of calculating the costs for O&M Services, the calculations will be based on a calendar year or portion thereof.

In the event the City budgeted CFC funds for O&M Services for any calendar year exceeds the funds required to meet the RAC portion, such overage shall be returned to the CFC fund. In the event the City budgeted fewer CFC funds for the O&M Services than required to meet the RAC portion in any calendar year, the City may draw such additional funds from the CFC fund that are necessary to satisfy the RAC portion of the cost for O&M Services.

- E. By execution hereof, Operator acknowledges receipt of a draft CFC feasibility report. A final CFC feasibility report will be provided by the City upon completion. If for any reason the CFC revenues are insufficient to cover all RAC costs identified in this Article to be paid from CFCs, then any deficiencies in the Debt Financing Costs for the Parking Garage and/or the costs for the O&M Services allocable to the RAC portion of the Parking Garage shall be drawn from the CFC fund held by the City. The CFC to be collected by the Operator for the year following the deficiency shall be increased by an amount sufficient to reimburse the CFC fund for the amount of the deficiency in the previous year and satisfy the continuing Debt Financing Cost and cost of O&M Services allocated to the RAC portion of the Parking Garage. In the event, and only in the event, that (i) future CFCs cannot be collected due to an action or an injunction in a court of competent jurisdiction, and (ii) the balance in the CFC fund held by the City is exhausted or otherwise unavailable due to court action to pay Debt Financing Costs and/or the costs for O&M Services allocable to the RACs, then any deficiencies in the revenues and/or funds available to pay the Debt Financing Costs and the costs for O&M Services allocable to the RAC portion of the Parking Garage shall be reimbursed to the City by Operator in proportion to its Market Share during the applicable contract year.

ARTICLE VII – CITY’S RIGHTS AND OBLIGATIONS

- A. The City is not obligated or required to provide heating and/or air conditioning for the Premises, kiosks and/or booths. The City reserves the right to temporarily interrupt utility services furnished to the Premises to make emergency repairs or for other reasonable purposes, and the City shall restore said services as soon as reasonably possible. The City shall endeavor to provide Operator with reasonable notice of such interruptions when possible. The City shall have no responsibility or liability for any failure of electrical or any other service to the Premises when prevented from doing so by laws, orders or regulations of any federal, state or local governmental requirement (including any requirement of any agency or department of the City) or as a result of the making of repairs or replacements, fire or other casualty, strikes, failure of the utility provider to provide service or for any other reason whatsoever. Except in the event of an emergency, City will work with Operator to select a mutually agreeable date and time that is convenient and causes the least disruption to Operator’s and the City’s operations.
- B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City’s officers, employees, agents, licensees, contractors or designees):
1. To have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. To enter the Premises to remodel, repair, alter or otherwise prepare the Premises for re-occupancy at any time after Operator vacates or abandons the Premises;
3. To enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment;
4. To adopt and enforce rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to obey and enforce; and
5. To exercise such other rights as may be granted the City elsewhere in this Agreement.

All rights in this Subsection (B) are exercisable without notice (except as otherwise expressly provided) and without liability to Operator for damage or injury to property, person or business, and without effecting an eviction or disturbance of Operator's use or possession or giving rise to any claim for setoff or affecting any of Operator's obligations under this Agreement. Notices under this Subsection (B) may be given verbally in an emergency. Reasonable notice shall in no event require more than twenty-four (24) hours notice.

- C. City warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Operator's covenants contained herein, subject to Subsection (B) of this Article VII.
- D. City shall maintain the Parking Garage as set forth herein and shall provide for completion of the O&M Services identified. City, at its option, may elect to contract for such services or provide them through its existing staff. City, in its sole judgment, shall determine the necessity and frequency of the O&M Services.
- E. In an emergency situation or upon occurrence of an Event of Default, the City may (but shall not be obligated so to do), and without waiving or releasing Operator from any obligation of Operator hereunder, make any payment or perform any other act which Operator is obligated to make or perform under this Agreement in such manner and to such extent as the City may deem desirable; and in so doing the City shall also have the right to enter upon the Premises for any purpose reasonably necessary in connection therewith and to pay or incur any other necessary and incidental costs and expenses, including reasonable attorney's fees. All sums so paid and all liabilities so incurred by the City, together with interest thereon at the default rate shall be deemed additional fees hereunder and shall be payable to the City upon demand as additional fees. The performance of any such obligation by the City shall not constitute a waiver of Operator's default in failing to perform the same. Inaction of the City shall never be considered as a waiver of any right accruing to it pursuant to this Agreement. The City shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Operator any other occupant of the Premises or any part thereof, by reason of exercise of its rights under this Subsection (E).

- F. Operator is not responsible for the wrongful or negligent acts or omissions by City and its employees.

ARTICLE VIII - INDEMNIFICATION

- A. Operator shall defend, indemnify and save the City and its elected officials, officers, agents, contractors, directors and employees (each an "Indemnified Party") harmless from and against any and all liabilities, suits, judgments, settlements, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorney's fees, court costs and disbursements, which may be imposed upon or incurred by or asserted against any Indemnified Party by reason of any of the following occurring during or after (but attributable to a period of time falling within) the term of this Agreement:
1. Any demolition or razing or construction of any improvements or any other work or thing done in, on or about the Premises or any part thereof, including any claim that such work constitutes "public works", which is undertaken by Operator or by a third party under Operator's direction;
 2. Operator's use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises;
 3. Any accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or any part thereof, caused by or attributable to Operator, its employees, agents and/or contractors;
 4. Any failure to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement on Operator's part to be performed or complied with (other than the payment of money);
 5. Any lien or claim resulting from an action or inaction of Operator which may be alleged to have arisen against or on the Premises, or any lien or claim which may be alleged to have arisen out of this Agreement and created or permitted to be created by City against any assets of City, or any liability which may be asserted against City with respect thereto; and
 6. Any action or proceedings which may be brought against City or against the Premises, or any part thereof, by virtue of any acts, errors and/or omissions by Operator, including Operator's violation or alleged violation of any laws, regulations, ordinances or requirements of the United States of America, or the State of Ohio or other municipal, public or quasi-public authority now existing or hereafter created, having jurisdiction in the Premises.

It is agreed that, to the extent permitted by law, no agreement or covenant by Operator under this Subsection (A) shall include liability or damages for injury to persons or damage to property caused by or resulting from the sole negligence of City or its employees.

- B. Any Indemnified Party shall utilize the following procedure in enforcing any and all claims for indemnification against Operator:
1. If any claim, action or proceeding is made or brought against any Indemnified Party against which it is indemnified under Subsection (A) above, the Indemnified Party shall give notice to Operator promptly after obtaining written notice of any claim as to which recovery may be sought against it or him.
 2. Operator shall assume the defense of such claim or litigation, and its obligations hereunder as to such claim or litigation shall include taking all steps necessary in the defense or settlement of such claim or litigation and holding the Indemnified Party harmless from and against any and all damages caused by or arising out of any settlement approved as provided herein, or any judgment in connection with such claim or litigation. Any counsel employed by Operator to represent the City's interest shall be subject to the City's prior approval.
 3. In the event Operator fails to assume the defense of any such claim by a third party or litigation after receipt of notice from the Indemnified Party, the Indemnified Party may defend against such claim or litigation in such manner as it deems appropriate, and Operator shall promptly reimburse the Indemnified Party as set forth in (4) below.
 4. Operator shall promptly reimburse the Indemnified Party for any amount of any judgment rendered or settlement and for all damages, costs, fees and expenses (including attorney's fees) incurred or suffered by it in connection with the defense against such claim or litigation.
- C. City is not liable to Operator or to Operator's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's subtenants, agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot, located either on or off the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
- D. Obligations of Operator under this Article VIII, which arise during Operator's use and occupancy of the Ready/Return Area of the Parking Garage throughout the term of this Agreement, shall survive the termination and/or expiration of this Agreement, and shall not be affected in any way by the amount of or the absence in any case of covering

insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

- E. The City's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Agreement or any obligation or liability arising from this Agreement or in connection with this Agreement or the Premises in the event of a breach or default by City of any of its obligations.
- F. Notwithstanding any other provision of this Agreement to the contrary, to the extent permitted by law, Operator waives any and every claim for recovery from the City for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Operator or which would have been recoverable if the insurance required hereunder had been maintained by Operator, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Operator agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Operator shall require any subtenant to include similar waivers of subrogation in favor of the City.
- G. In the event Operator, its agents, contractors or employees, violate any security measure at the Airport, including, but not limited to, any FAA or TSA security laws rules, regulations, orders and directives, Operator shall assume full and complete responsibility for such violations, including payment of any penalty imposed, and shall defend, indemnify and hold the City and its elected officials, officers, agents and employees harmless therefrom.

ARTICLE IX - INSURANCE

- A. Operator, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the Term, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an "A" rating from A.M. Best and covering all operations under this Agreement, whether performed by Operator or by persons or entities retained by Operator:

1. Worker's Compensation and Occupational Disease Insurance

Worker's Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Ohio, or any other applicable jurisdiction, covering all employees who are to provide a service under this Agreement, and Employer's liability coverage with limits of not less than five hundred thousand dollars (\$500,000) each accident or illness. Coverage extensions shall include other states endorsement, alternate employer and voluntary compensation endorsement, when applicable.

2. Commercial Liability Insurance (Primary and Umbrella)

Commercial Liability Insurance with limits of not less than two million dollars (\$2,000,000) per occurrence, combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The City and its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement.

3. All Risk Property Insurance

Operator shall obtain an "All Risk Property" policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting the Premises. City is to be named as a loss payee.

The Operator shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Operator.

When Operator undertakes any Improvement, construction or repair project to the Premises, All Risk Blanket Builders Risk Insurance shall be provided to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, flood including surface water backup, collapse, faulty workmanship or materials, business interruption, extra expense, loss of revenue, and loss of use of property. The City shall be named as loss payee.

4. Automobile Liability Insurance

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Operator shall provide Comprehensive Automobile Liability Insurance with limits of not less than two million dollars (\$2,000,000) per occurrence combined single limit, for bodily injury and property damage. City is to be named as an additional insured on a primary, non-contributory basis.

- B. Original certificates of insurance evidencing the required coverage to be in force on the Garage Completion Date, and all renewal certificates of such insurance, shall be provided to City. At the City's request, Operator shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Operator or its Contractors shall not be deemed to be a waiver by the City. Operator or its Contractors shall advise all insurers of these Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Operator or its Contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to terminate this Agreement as provided in Article XI until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.
- C. If Operator fails to obtain or maintain any of the insurance policies under this Agreement or to pay any premium in whole or in part when due, City may (without waiving or releasing any obligation or default by Operator hereunder) obtain and maintain such insurance policies and take any other action which City, including reasonable attorney's fees, court costs and expenses, shall be reimbursed by the Operator upon demand by City.
- D. Operator shall require all Contractors to carry the insurance required herein, or Operator or its Contractors may provide the coverage for any or all Contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by Operator or its Contractors. Operator and its Contractors agree that insurers shall waive their rights of subrogation against the City and its employees, elected official, agents, or representatives. Operator and its Contractors expressly understand and agree that any coverages and limits furnished by Operator or its Contractors shall in no way limit the Operator or its contractors' liabilities and responsibilities specified within this Agreement or by law. Operator and its Contractors expressly understand and agree that any insurance or self insurance programs maintained by the City shall not contribute with insurance provided by the Operator or its Contractors under this Agreement. If Operator or its Contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Operator or its Contractors shall each be responsible for the acquisition and cost of such additional protection.

- E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The City maintains the right to modify, delete alter or change these requirements.
- F. The insurance required by this Agreement, at the option of Operator or Contractors, may be effected by blanket or umbrella policies issued to Operator or Contractors covering the Premises and other properties owned or leased by Operator or Contractors, provided that the policies otherwise comply with the provisions of this Agreement and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

ARTICLE X - DAMAGE AND DESTRUCTION OF PREMISES

- A. If Operator's improvements on the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial or material damage to the Parking Garage Parking as described in Subsection (B), Operator shall repair the damage to the improvements as soon as reasonably possible at Operator's expense. Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.
- B. If there is substantial or material damage to the Parking Garage or portion thereof caused by or attributable to the acts, errors or omissions of Operator, Operator shall, at the City's option, either: (1) repair or cause the repair of such damage; or (2) pay all costs incurred by the City to repair or cause the repair of the damage. If there is substantial or material damage to the Parking Garage or portion thereof not attributable to the acts, errors or omissions of Operator and the Operator's use of the Premises is severely curtailed or such portions of the Premises are unusable by Operator, then such portion of the Premises shall be deleted from the Premises unless and until the City repairs and restores the damage to the Parking Garage within the Term of this Agreement so that the affected portion of the Parking Garage is again usable.
- C. Operator shall have no claim against the City for any damage suffered by reason of any such damage, destruction, repair or restoration. Upon any deletion of a portion of the Premises from the Premises, Operator shall surrender such portion of the Premises to the City.

ARTICLE XI - TERMINATION BY CITY

- A. For purposes of this Agreement, the occurrence of any of the following shall constitute an "Event of Default":
 - 1. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or agreement required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within

- a period of thirty (30) days after written notice to the Operator, or such additional time, up to sixty (60) days, as may be reasonably necessary to remedy such default so long as Operator is diligently and expeditiously proceeding to cure such default; provided, however, that such additional period beyond thirty (30) days shall not apply to a default that creates a present danger to persons or property or materially adversely affects the City's interest in the Premises or the Airport, or if the failure or default by Operator is one for which the City (or any official, employee or other agent) may be subject to fine or imprisonment;
2. The termination or discontinuance, for any reason by Operator of its operation of its on-Airport rental car concession for Customers at the Airport or the abandonment or vacation of the Premises during the Term;
 3. If Operator shall suffer or permit any lien or encumbrance to attach to the Premises or the interest of Operator and Operator shall not discharge said lien or encumbrance within thirty (30) days or within ten (10) days prior to any sale or disposition or forfeiture pursuant to such execution, whichever date shall first occur;
 4. If Operator shall fail to carry all required insurance under this Agreement and such failure continues for five (5) days after written notice by the City to Operator;
 5. Any material misrepresentation (including by omission) made by Operator in this Agreement or by Operator or any person having more than a ten percent (10%) direct or indirect ownership interest in Operator or any affidavit, certification, disclosure or representation made pursuant to this Agreement;
 6. If Operator shall fail to comply with an order of a court of competent jurisdiction or proper order of a governmental agency relating to this Agreement or the Premises within the required time period;
 7. The failure to deliver the estoppel certificate required hereunder within five (5) days after written notice of failure to deliver within the time period required therein;
 8. The default of Operator under its Concession Agreement, any service facility lease agreement, any indemnity agreement or any other agreement it may presently have or may enter into with the City during the Term of this Agreement, and failure to cure said default within any applicable cure period. Operator agrees that in case of an Event of Default under this Agreement the City also may declare a default under any future such agreements;
 9. Any permit of Operator allowing it to do business in the City of Dayton has been revoked;
 10. On or after the date of this Agreement, the admission, in writing, by Operator of its inability to meet its debts as they mature;
 11. The appointment of a receiver on or after the date of this Agreement of any, all, or substantially all of Operator's assets and Operator's failure to vacate such appointment within sixty (60) days thereafter; or
 12. The assignment by Operator on or after the date of this Agreement of all or substantially all its assets for the benefit of its creditors.

- B. If an Event of Default occurs and after the expiration of the applicable cure period specified for such Event of Default, if any, the City, with or without notice or demand, may terminate this Agreement. In the event of termination and in addition to any and all rights and remedies provided elsewhere herein or at law or equity, the City may repossess the Premises.

ARTICLE XII - TERMINATION BY OPERATOR

- A. Operator may terminate this Agreement and all of its obligations hereunder, after the happening and during the continuance of any one of the following events (none of which, however, shall result in any liability to the City or provide Operator with any remedy other than an option to terminate as set forth herein):
1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator's use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months; or
 2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator's operations at the Airport.
- B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination in the case of (A)(1) or (A)(2) above together with a statement of the grounds for termination. Notice may be given at any time prior to or after the expiration of the periods set forth in (A)(1) and (A)(2) above, but any such termination prior to expiration of such period shall be conditioned upon the continuation of the conditions resulting in Operator's right of termination for the applicable period of time. If Operator does not give such notice during the period that any of the above events is occurring, then Operator's right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.

ARTICLE XIII - SURRENDER AND RETURN OF THE PREMISES

Upon termination or expiration of this Agreement, whichever date is earlier, Operator shall return the Premises in as good condition and repair as at the Garage Completion Date, subject to ordinary wear and tear, and Operator shall remove all personal property and trade fixtures of Operator from such portion of the Premises prior to the date of termination. Further, at the City's request, Operator shall also remove all improvements installed by or for Operator prior to or within ten (10) days after the termination of the Agreement, and Operator shall repair any

damage to the Premises caused by Operator's removal of the personal property, trade fixtures and Improvements. All such removal and repair required of Operator pursuant to this Section shall be at Operator's sole cost and expense. If Operator fails to remove any items required to be removed by it hereunder or fails to repair any resulting damage prior to or within ten (10) days after termination of the Agreement, then the City may remove said items, including the improvements, and repair any resulting damage and Operator shall pay the cost of any such removal and repair, together with interest thereon at the Default Rate from and after the date such costs were incurred until receipt of full payment therefore.

ARTICLE XIV - NON-DISCRIMINATION

- A. Operator, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained or otherwise operated on the Premises described in this Agreement for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits. Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 C.F.R. part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation, and as said regulations may be amended, superseded or modified.
- B. Operator, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) Operator shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said regulations as may be amended, superseded or modified.
- C. In the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Agreement and to re-enter and repossess the Premises and facilities thereon and hold the same as if said Agreement had never been made or issued. Notwithstanding the foregoing, it is specifically agreed that nothing in this Article shall prevent Operator from exhausting all administrative and/or judicial remedies available to Operator in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.

- D. Operator agrees that any and all design specifications for improvements to the Premises shall comply with all federal, state and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to, the following: American with Disabilities Act, P.L. 101-336 (1990), 42 U.S.C. 12101 *et seq.* and the Uniform Federal Accessibility Guidelines for Buildings and Facilities. In the event that the above-cited standards are inconsistent, Operator shall comply with the standard providing greater accessibility.

ARTICLE XV - ASSIGNMENT AND SUBLETTING

- A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not: (a) assign, transfer, mortgage, pledge, hypothecate, encumber, subject to, permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (b) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator's interest herein by operation of law; (c) sublease the Premises or any part thereof; or (d) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.
- B. If Operator desires, as a result of an acquisition or merger, to assign its interest under this Agreement or sublease any part of Premises, Operator shall make a written request for authorization in a notice to the City. Such notice shall state the name and address of the proposed sub-Operator or assignee and include a copy of the proposed sublease or assignment and all related documents, and including a financial statement of the sub-Operator or assignee, disclosures and information required by City.
- C. Consent by City to any assignment or sublease shall not operate to relieve, release or discharge Operator of or from any obligations, whether past, present or future, under this Agreement, and Operator shall continue fully liable hereunder except to the extent, if any, expressly provided for in such consent. Consent by City in any one instance shall not be deemed to be consent to or relieve Operator from obtaining City's consent to any subsequent assignment or sublease. Consent by City shall be conditioned upon agreement by the sub-Operator or assignees to comply with and be bound by all of terms, covenants, conditions, provisions and agreements of this Agreement to the extent of the space subleased or assigned, and an agreement that City shall have the right, but not the obligation, to enforce the terms and provisions of any such assignment or sublease affecting City's interests and Operator shall deliver to City within thirty (30) days after execution, an executed copy of each such sublease or assignment containing an agreement of compliance by each such sub-Operator and assignee. Operator shall pay all of City's costs, charges and expenses, including attorney's fees, incurred in connection with any assignment or sublease requested or made by Operator.

ARTICLE XVI - GENERAL PROVISIONS

A. The term City, as used in this Agreement, means the City of Dayton, Ohio, and where this Agreement speaks of approval and consent by the City, such approval is understood to be manifested by act of the City's Director of Aviation, except as otherwise expressly stated in this Agreement. Whenever in this Agreement the approval or consent of the City is required, such approval or consent will not be unreasonably withheld or delayed.

B. Notices to the City provided for in this Agreement shall be sufficient if sent by certified U.S. mail, postage prepaid, addressed to:

City of Dayton, Ohio - Department of Aviation
James M. Cox Dayton International Airport
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377
Attn: Director of Aviation

or such other address as the City shall direct in writing.

C. Notices to Operator provided for in this Agreement shall be sufficient if sent by certified U. S. mail, postage prepaid, addressed to:

TBD

or such other address as Operator shall direct in writing.

D. Operator represents that it has carefully reviewed the terms and conditions of this Agreement and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by the Agreement.

E. Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. In this Agreement, unless the context otherwise requires, the terms "hereby," "herein," "hereof," "hereto," "hereunder" and any similar terms used in this manner refer to this Agreement. All section references, unless otherwise expressly indicated, are to sections in this Agreement. Any references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with this Agreement.

F. By execution of this Agreement, Operator hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

- G. Operator shall, upon its execution and delivery of this Agreement to the City, deliver to the City the following instruments and documents:
1. Written opinion of Operator's counsel addressed to City that the execution and delivery of this Agreement is properly authorized; and
 2. Corporate Resolution(s), if applicable, which authorize Operator's execution and delivery of this Agreement and performance of Operator's obligations under this Agreement.
- H. Operator (and any person claiming by or through Operator) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the City under this Agreement, and not any other funds or assets of the City whatsoever.
- I. Neither Operator nor any contractor of Operator shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the City's ownership of fee title to the Premises.
- J. If the provisions of this Agreement conflict with the provisions of the Concession Agreement, Service Facility lease or other similar agreement between Operator and the City, the City shall be the sole arbiter of the provisions which shall control.
- K. By entering into this Agreement, City shall in no way be deemed a partner or joint venturer with Operator, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Agreement.
- L. The City may amend or modify this Agreement, at any time, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of City and Operator and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.
- M. This Agreement represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.
- N. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City's rights with respect to any other or further breach.
- O. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

- P. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, its departments and agencies, relative to the development, operation or maintenance of the Airport.
- Q. Contractor affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

SAMPLE

IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

TBD

By: _____
Its: _____

CITY OF DAYTON, OHIO

City Manager

**APPROVED AS TO FORM
AND CORRECTNESS:**

**APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO:**

_____, 20XX
City Attorney

Min/Bk. _____ Pg. _____

Clerk of the Commission

EXHIBIT 1 to the Rental Car Ready/Return Agreement

To be inserted after space selection prior to final execution

SAMPLE

EXHIBIT B to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE
AGREEMENT

Rental Car Counter Facility Layout

To be inserted after space selection prior to final execution

SAMPLE

EXHIBIT C to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Example Monthly Report

JAMES M. COX DAYTON INTERNATIONAL AIRPORT (DAY)	
RENTAL CAR MONTHLY REPORT	
FOR THE MONTH OF _____	
CONCESSIONAIRE _____	
Gross Revenue:	
Time and Mileage	\$
Fuel	\$
Waivers and Insurance	\$
Ancillary Charges (GPS, Car Seats, Satellite Radio, Equipment, etc.)	\$
Concession Recovery Fee	\$
Vehicle Licensing Recovery Fees	\$
Energy Surcharges / Emissions Offsets	\$
Additional Drivers	\$
Miscellaneous (Battery/Tire/License Fees, etc.)	\$
Additional Fees due to tickets, tolls, violations, etc.	\$
Less: Refunds, Discounts, Coupons, Other credits	\$
Total Concessionable Gross Revenue	\$ 0
Privilege Fee - 10%	\$ 0
1/12th Minimum Annual Guarantee	\$
Total Number of Transactions	
Total Number of Transaction Days	
Customer Facility Charges Due	\$
Amount Due with this Report	\$ 0
Excluded Items:	
Sales or other taxes	\$
CFCs	\$
Amounts received from loss or damages	\$
Reimbursements (tickets, tolls, etc.)	\$
Other (Identify): _____	\$
Total Charges Excluded from Gross Revenues	\$ 0
Concessionaire Official Signing and Certifying accuracy of information on this report:	
Signature	
Typed Name & Title	
Date Signed	
Phone Number:	
Email Address:	
REMIT THIS REPORT AND PAYMENT TO:	
City of Dayton, Ohio	
P. O. Box 632094	
Cincinnati, OH 45263-2094	

EXHIBIT D to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

**AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM
RACE CONSCIOUS (RC) CONTRACT CLAUSE**

SECTION I DEFINITIONS

Agency means The City of Dayton for purposes of this Contract Clause.

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a firm that has been granted ACDBE certification status by the City of Dayton (City) as a member of the Ohio Unified Certification Program pursuant to the criteria contained in 49 Code of Federal Regulations (CFR) Parts 23 and 26.

Ohio Unified Certification Program (Ohio UCP) means a consortium of government agencies organized to provide reciprocal ACDBE and DBE certification in Ohio 49 CFR Part 26. The official ACDBE and DBE database containing eligible ACDBE and DBE firms certified by the Ohio UCP can be accessed at: <https://www.transportation.ohio.gov/programs/business-economic-opportunity/ucp>

Commercially Useful Function (CUF) means that an ACDBE or DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If an ACDBE or DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the ACDBE or DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the ACDBE or DBE is presumed not to be performing a Commercially Useful Function.

Compliance Specialist means an Agency employee responsible for compliance with this Contract Clause.

Concession means one or more of the types of for-profit businesses that serve the traveling public.

Contract is a written agreement for a direct concession opportunity with the Agency. Or a written agreement between a Proposer and JV partner, sublessee, or a Goods and Services Provider.

DBE stands for Disadvantaged Business Enterprise. means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

In this context, DBE means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an OHIO UCP member pursuant to the criteria contained in 49 CFR Part 26.

Human Resources Council (HRC) means the City of Dayton's HRC which enforces civil rights; provides business and technical assistance to minority-owned, woman-owned and small disadvantaged businesses;

and administers community relations initiatives that promote and maintain peace, goodwill and harmony; assists in reducing inter-group tensions, and ensures equality of treatment and opportunity to all who live, work, play, and gather in the City of Dayton.

Goods and Services Providers are firms that provide goods and services that represent a Commercial Useful Function (CUF) directly to airport concessionaires as an ACDBE, DBE or small business.

Joint Venture (JV) means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venture entities are not certified as ACDBEs.

One participant in the JV arrangement must be a certified ACDBE or DBE by an OHIO UCP member. The JV is limited in scope and duration to this Contract. The resources, asset and labor of the participants must be combined in an effort to accrue profit.

Outreach Efforts means the diligent and good-faith efforts demonstrated by a Proposer to solicit participation from interested and qualified ACDBEs, DBEs and other Small Businesses. Proposer shall: identify and document potential business opportunities for ACDBEs, DBEs and other Small Businesses; describe what efforts were undertaken to solicit ACDBE, DBE and Small Business participation; disclose results of negotiations with ACDBEs, DBEs and Small Businesses; and communicate and record Proposer's selection decisions relating to ACDBE, DBE and Small Business participants.

Proposer means an individual, partnership, JV, corporation or firm that tenders a proposal to the Agency to perform services requested by a solicitation or procurement. The proposal may be direct or through an authorized representative.

Race-Conscious means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.

Race-Neutral means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

Small Business Administration or SBA means the United States Small Business Administration.

Small business concern means a for profit business that does not exceed the size standards of § 23.33.

Small Hub Airport means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a certain group and

without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control. Socially and economically disadvantaged individuals include:

(1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if the certifier requires it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State-recognized Indian Tribe, Alaska Natives, or Native Hawaiians.

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Subconcession means a firm that has a sublease or other agreement with a prime concessionaire rather than with the airport itself, to operate a concession at the airport.

Sublease means a lease by a lessee (tenant) to a sublessee (subtenant). Sublease is an example of a subconcession in which the sublessee is independently responsible for the full financing and operation of the subleased concession location(s) and activities. A sublease passes on to the sublessee all requirements applicable to the concession under the primary lease, including proportionate share of the rent and capital expenditures.

Tribally-owned concern means any concern at least 51 percent owned by an Indian Tribe as defined in 49 CFR § 23.3.

Small Business means, with respect to firms seeking to participate as ACDBEs or DBEs in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part

121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b). “Small Business” and “Small Business Concern” are used interchangeably in this Contract Clause.

Small business concern means a for profit business that does not exceed the size standards of § 23.33.

Subcontractor means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the prime contract, including a vendor under a purchase order.

Sublease means a lease by a lessee (tenant) to a sublessee (subtenant). Sublease is an example of a subconcession in which the sublessee is independently responsible for the full financing and operation of the subleased concession location(s) and activities. A sublease passes on to the sublessee all requirements applicable to the concession under the primary lease, including proportionate share of the rent and capital expenditures.

Successful Proposer means a firm that has been selected by the Agency to perform services or furnish supplies requested by a solicitation or procurement.

SECTION II GENERAL REQUIREMENTS

- A. **Applicable Federal Regulations.** This Contract is subject to ACDBE requirements issued by USDOT in 49 CFR Parts 23 and 26. As required by 49 CFR 23, the Agency must track and report ACDBE and DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving an ACDBE or DBE. For this reason, the Successful Proposer shall provide all relevant information to enable the required reporting.
- B. **ACDBE Participation.** For this solicitation, the Agency has established a *race-conscious* ACDBE participation goal of 5.36%. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses *race-conscious* measures to facilitate participation by ACDBEs, DBEs and Small Businesses. The Agency *encourages* each Proposer to voluntarily subcontract with ACDBEs, DBEs and Small Businesses to perform part of the work—a Commercially Useful Function (CUF)—that Proposer might otherwise perform with its own forces.
- C. **Counting ACDBE Participation.** The Agency will count ACDBE and DBE participation as authorized by federal regulations. A summary of these regulations can be found at 49 CFR § 23.41.
- D. **ACDBE Certification.** *Only* firms (1) certified by the OHIO UCP or another member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine ACDBE and DBE participation resulting from RC measures on this Contract. This ACDBE and DBE determination affects the Agency’s tracking and reporting obligations to USDOT.
- E. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Proposer, and each Subcontract signed by the Successful Proposer and a Subcontractor, must include the following assurance *verbatim*:

26.13

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

SECTION III REQUIRED OUTREACH EFFORTS

The Agency has implemented outreach requirements for this Contract. Specifically, each Proposer shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal. If a Proposer fails to conduct these Outreach Efforts or fails to submit the required documentation of Proposer's Outreach Efforts as indicated in Section IV, Parts A, B and C below, the Agency may determine that the Proposer's proposal is *nonresponsive*. A determination of nonresponsiveness *disqualifies* Proposer from further consideration for the Contract award.

SECTION IV SUBMITTAL REQUIREMENTS

Attachments A-1 and A-2, along with supporting documentation for Attachment A-1 are due with the proposal.

- A. Attachment A-1.** Each Proposer shall complete and submit Attachment A-1 documenting its diligent, good-faith Outreach Efforts.
- a. Each Proposer shall list in Attachment A-1 all ACDBEs, DBEs and Small Businesses contacted by Proposer in preparing its proposal. Each Proposer shall also provide the following minimum information to document its Outreach Efforts. The Compliance Specialist will consider this information to determine whether Proposer has demonstrated the required Outreach Efforts:
 - a. Each business's full legal name and contact information;
 - b. Business status (ACDBE, DBE, Small Business, SBE, or unknown);
 - c. Scope of work solicited (brief description, percentage of contract value);
 - d. Solicitation method (personal contact, telephone, fax, e-mail, other);
 - e. Selection process; and
 - f. Communication of selection outcome to each participant.*

Proposer shall provide supporting documentation that shows Proposer has communicated its final selection decisions and outcomes to **all ACDBEs, DBEs and Small Businesses **not** chosen to participate in this Contract.*

- b. Each Proposer shall complete Attachment A-1 in accordance with the following instructions.
 - a. Each Proposer shall actively contact ACDBEs, DBEs or Small Businesses for each scope of work or business opportunity selected for Outreach Efforts (Columns A and C).
 - b. Proposer's contacts with ACDBE's, DBEs and Small Businesses should occur well before the proposal deadline to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Contract.
 - c. Proposer shall ask each firm to indicate the number of its employees (Column A).
 - d. For each ACDBE's, DBE's or Small Business's annual gross receipts, Proposer shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) rather than requesting an exact figure from the firm (Column A).
 - e. If Proposer does not select an ACDBE, DBE or Small Business to participate in the Contract, Proposer shall explain the reason why (Column E).
 - f. Proposer shall notify each ACDBE, DBE or Small Business contacted whether or not Proposer selected the firm. Proposer shall notify all firms not selected, and Proposer shall state when (date) and how (method) the selection outcome was communicated to each firm (Column F).

B. Attachment A-1 Supporting Documentation. Each Proposer shall complete and submit supporting documentation of its Outreach Efforts related to Attachment A-1.

- a. Proposer shall submit with Attachment A-1 all supporting documentation of Proposer's contacts with ACDBEs, DBEs or Small Businesses for each scope of work or business opportunity selected for Outreach Efforts.
- b. This documentation must include: (1) descriptions of scopes of work and business opportunities identified for ACDBEs, DBE and Small Business participation, and (2) a copy of the actual solicitation sent to interested ACDBEs, DBEs and Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce.
- c. Proposer shall submit documentation that establishes how Proposer communicated its selection decisions and outcomes to each ACDBE, DBE and Small Businesses *not* selected for this Contract. This documentation may be in the form of a letter, e-mail, or a telephone log and must show the name of the person contacted and date.
- d. For all of the above documentation, if Proposer uses a blast e-mail or fax format, the documentation submitted must include the a copy of the e-mail or fax, and Proposer must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Proposer shall document the date and time of the call and the names of the respective persons representing Proposer and the ACDBE, DBE or Small Business.

C. Attachment A-2. Proposer shall sign and submit Attachment A-2, which commits Proposer to the Agency as follows:

- a. The firms indicated as "selected" in Attachment A-1 will participate in the Contract;

- b. The Proposer will comply with the RC post-award requirements as stated in Sections V and VI below;
- c. Any and all changes or substitutions will be authorized by the Compliance Specialist before implementation; and
- d. The proposed total Small Business participation percentage is true and correct.

Proposer shall ensure that the percentages proposed for Small Business participation on Attachment A-1 equal the total percentage proposed in Attachment A-2.

- D. Failure To Meet Outreach Requirements.** The Compliance Specialist will determine, in writing, whether Proposer has satisfied all outreach requirements. If the Compliance Specialist determines that Proposer has failed to satisfy the outreach requirements (specified in Sections III and IV, Parts A, B, and C), then the Compliance Specialist may determine that the proposal is nonresponsive. A determination of nonresponsiveness *disqualifies* Proposer from further consideration for the Contract award. The Agency shall send written notice to Proposer stating the basis for the Compliance Specialist's decision.
- E. Administrative Reconsideration.** If the Compliance Specialist determines that Proposer failed to submit required documentation to meet the stated outreach requirements in Section III, the Agency will permit Proposer to request HRC to reconsider this determination. In its request for reconsideration, Proposer may *clarify* its proposal. But Proposer may *not* submit or refer to new or revised documents or information. HRC will only reconsider the original proposal as clarified in the request for reconsideration.

If Proposer requests HRC to reconsider the Compliance Specialist's determination of nonresponsiveness based on insufficient demonstration of Outreach Efforts, Proposer must provide written notice to the Agency and HRC within three (3) business days of the Agency's notice of disqualification to Proposer. The request for reconsideration should be addressed to:

Human Relations Council
371 West Second Street, Suite 100
Dayton, Ohio 45402
Office: (937) 333-1403
Fax: (937) 222-458

with a *copy* e-mailed to the Procurement Officer and the Compliance Specialist.

SECTION V POST-AWARD GENERAL REQUIREMENTS

- A. Subcontracting Commitment.** Promptly after Contract award, the Successful Proposer shall submit to Agency copies of all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful Proposer and any ACDBE, DBE or Small Business.

The Successful Proposer shall not terminate any ACDBE, DBE or Small Business Subcontracts, and the Successful Proposer shall not alter the scope of work or reduce the Subcontract amount, without the Compliance Specialist's prior written approval. Any request to alter an ACDBE, DBE or Small Business

Subcontract must be submitted in writing to the Compliance Specialist before any change is made. If the Successful Proposer fails to do so, the Agency may declare the Successful Proposer in breach of contract.

- B. Post-Award Relief From DBE Requirements.** After Contract award, the Agency will not grant relief from the proposed ACDBE, DBE or Small Business utilization except in extraordinary circumstances. The Successful Submitter's request to modify ACDBE, DBE or Small Business participation must be in writing to the Compliance Specialist, who has final discretion and authority to determine if the request should be granted.

The Successful Submitter's waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the Compliance Specialist should consider. The Successful Submitter shall include with the request all documentation of its attempts to subcontract with the ACDBE, DBE or Small Business and any other action taken to locate and solicit a replacement ACDBE, DBE or Small Business.

If an approved ACDBE or DBE allows its ACDBE or DBE status to expire or its ACDBE or DBE certification is removed during the course of the subcontract, the Agency will consider all work performed by the ACDBE or DBE under the original contract to count as ACDBE or DBE participation. No increased scopes of work negotiated after expiration or revocation of the ACDBE's or DBE's certification may be counted. Likewise, any work performed under a Contract extension granted by the Agency may not be counted as ACDBE or DBE participation.

- C. Substitutions.** If an ACDBE or DBE was approved by the Agency, but the firm subsequently loses its ACDBE or DBE status before execution of a contract, the Compliance Specialist will consider whether or not the Successful Submitter has exercised diligent and good-faith efforts to find another ACDBE or DBE as a replacement. The Successful Submitter shall notify the Compliance Specialist in writing of the necessity to substitute an ACDBE, DBE or Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of an ACDBE, DBE or Small Business may not occur before the Compliance Specialist's written approval has been obtained.

SECTION VI RECORDS & REPORTING REQUIREMENTS

- A. Records.** During performance of the Contract, the Successful Proposer shall keep all records necessary to document ACDBE, DBE and Small Business participation. The Successful Proposer shall provide the records to the Agency within 72 hours of the Agency's request and at final completion of the Contract. The Agency will prescribe the form, manner, and content of reports. The required records include:
1. A complete listing of all Subcontractors and suppliers on the project;
 2. Each Subcontractor's and supplier's scope performed;
 3. The dollar value of all subcontracting work, services, and procurement;
 4. Copies of all executed Subcontracts, purchase orders, and invoices; and
 5. Copies of all payment documentation.
- B. Reports.** The Successful Proposer shall be required to track and report all ACDBE, DBE and/or small business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such

documentation is to be provided via HRC's electronic portal <https://b2gnow.mwdbe.com/?TN=FlyDayton> per monthly audit. HRC also requires Attachments A-1 and A-2 to be provided monthly to _____.

- C. **JVs.** In instances where ACDBE, DBE or small business participation occurs as the result of a JV arrangement with a Proposer, the Successful Proposer is required to complete JV documentation, and cooperate and participate in a review of the utilization of the JV participants at least once a year. The review will determine the percentage of participation that will be counted for ACDBE, DBE and small businesses and the participation of ACDBE and DBE's to be reported to the Federal Aviation Administration each year of the contract.

SAMPLE

Attachment A-1

NEGOTIATIONS WITH SMALL BUSINESS CONCERNS

A	B	C	D	E	F
Small Business Name & Information	Certification Type	Participation Opportunity	Solicitation Method	Selected for participation	Communication of Selected Decision
Name _____ Address _____ City, State, Zip _____ Phone _____ Email: _____ Age of Firm: _____ Annual Gross Receipts: \$ _____	<input type="checkbox"/> ACDBE <input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> SWAM <input type="checkbox"/> OTHER	<input type="checkbox"/> JV/Sublease <input type="checkbox"/> Supplier of Goods & Services <input type="checkbox"/> Supplier of Services	<input type="checkbox"/> Advertisement <input type="checkbox"/> Business Outreach <input type="checkbox"/> Email <input type="checkbox"/> Other _____ _____ _____	<input type="checkbox"/> Selected <input type="checkbox"/> Not Selected, reason _____ _____ _____	Date: _____ Method of Communication: <input type="checkbox"/> Email <input type="checkbox"/> Phone Call <input type="checkbox"/> Other _____ _____ _____
Name _____ Address _____ City, State, Zip _____ Phone _____ Email: _____ Age of Firm: _____ Annual Gross Receipts: \$ _____	<input type="checkbox"/> ACDBE <input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> SWAM <input type="checkbox"/> OTHER	<input type="checkbox"/> JV/Sublease <input type="checkbox"/> Supplier of Goods & Services <input type="checkbox"/> Supplier of Services	<input type="checkbox"/> Advertisement <input type="checkbox"/> Business Outreach <input type="checkbox"/> Email <input type="checkbox"/> Other _____ _____ _____	<input type="checkbox"/> Selected <input type="checkbox"/> Not Selected, reason _____ _____ _____	Date: _____ Method of Communication: <input type="checkbox"/> Email <input type="checkbox"/> Phone Call <input type="checkbox"/> Other _____ _____ _____

I, _____ Type or print name _____, a duly authorized representative of _____ Type firm name _____, certify that the above information is true and correct.

Signature: _____ Date: _____ Page ___ of ___

Attachment A-2

ACDBE PARTICIPATION FORM

The Bidder/Offeror shall submit the participation form and return it with its solicitation response. Please attach additional sheets if needed.

Name of All Firms participating in the agreement	Federal Tax ID	Certification *	Point of contact (POC) Address & Phone number	Description of work: example Car wash NAICS Code:811192	Amount of contract or PO
		<input type="checkbox"/> ACDBE <input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Other <input type="checkbox"/> Goods & Service provider <input type="checkbox"/> Broker	POC: Street Address: City, State, ZIP:	Description of Work: NAICS Codes: _____ _____ _____	\$ _____
		<input type="checkbox"/> ACDBE <input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Other <input type="checkbox"/> Goods & Service provider <input type="checkbox"/> Broker	POC: Street Address: City, State, ZIP:	Description of Work: NAICS Codes: _____ _____ _____	\$ _____

I, _____ a duly authorized representative of _____, certified that the above information is true and correct.

Signature: _____ Date: _____

Certification/Firm Type *ACDBE=Airport Concessions Disadvantaged Business Enterprise

DBE=Disadvantaged Business Enterprise

SBE=Small Business Enterprise