



City of Dayton, Ohio
Department of Aviation
Management of Airport Parking Facilities, Shuttle Bus Operation, and Additional
Services at the James M. Cox Dayton International Airport Agreement

THIS MANAGEMENT OF AIRPORT PARKING FACILITIES, SHUTTLE BUS OPERATION, AND ADDITIONAL SERVICES 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 _____ ("Company").

WITNESSETH THAT:

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

WHEREAS, On August 6, 2024, the City issued a Request for Proposal, titled Management of Airport Parking Facilities, Shuttle Bus Operation, and Additional Services at the James M. Cox Dayton International Airport No. 24-030AV ("RFP"); and

WHEREAS, Company responded to the RFP on XXXXXX XX, 2024, setting forth its desire and qualifications to manage and operate the Parking Facilities and Shuttle Bus Services at the Airport; and

WHEREAS, City determined the Company's response to the RFP as the best overall proposal; and

WHEREAS, the parties enter into this Agreement to set forth the terms and conditions for the management and operation of the Parking Facilities, Shuttle Bus, and Additional Services at the Airport.

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

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ARTICLE 1: 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:

1.01 ACDBE means Airport Concession Disadvantaged Business Enterprise as defined in 49 CFR, Part 23 of the Regulations of the Office of the Secretary of the United States Department of Transportation.

1.02 Agreement means (a) this document, MANGEMENT OF AIRPORT PARKING FACILITIES, SHUTTLE BUS OPERATION, AND ADDITIONAL SERVICES AGREEMENT, together with its exhibits; (b) the City's Request For Proposal, dated August 2, 2024, including its attachments, addendum(s), and exhibits; and (c) the Company's Proposal dated _____. The listed documents are to be interpreted so as to give effect to all terms of each and to harmonize their provisions. To the extent there are provisions in the listed documents that are irreconcilable, then the order of precedence is as listed in this section.

1.03 Additional Services means those services of Ground Transportation Coordination and other services (e.g.: Valet services) which may be negotiated at any time throughout the term of the Agreement and included by Amendment to the Agreement.

1.4 Airport means the James S. Cox Dayton International Airport.

1.05 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.

1.06 Airport Parking Facilities means the Assigned Parking Areas, Shuttle Buses, Ground Transportation areas and the operation thereof, all equipment, and structures associated with those areas, as well as all office and storage areas specifically assigned to the Company within the Agreement.

1.07 Assigned Parking Areas means those areas of Airport that are designated for public and Airport or Tenant employees as described in Exhibit A to this Agreement or as otherwise designated by the Director.

1.08 Commencement Date means January 1, 2025.

1.09 Commercial Vehicles collectively means taxis, shuttles, buses, courtesy vehicles, Transportation Networking Companies, and any other vehicle operating for profit in and around the Terminal, Airport Parking Facilities, or roadways on the Airport.

1.10 Contract Year means twelve (12) consecutive calendar months beginning on the Commencement Date and each anniversary of the Commencement Date within the Agreement Term.

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- 1.11 Customer means any person, excluding Company's employees, contractors, and agents, who use the Parking Facilities, Shuttle Bus Service, or Additional Services.
- 1.12 Department means the Department of Aviation of the City.
- 1.13 Director means the Director of the Department and including any acting or interim Director of the Department, or designee of the Director.
- 1.14 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.*
- 1.15 Expiration Date means December 31, 2029.
- 1.16 FAA means the United States Department of Transportation, Federal Aviation Administration, or such other successor agency or agencies of the United States Government.
- 1.17 Fees means all amounts, including but not limited to, Management Fee, Reimbursements, Reimbursable Expenses, and any other charges that are paid or payable by Company to City, or from the City to Company, pursuant to this Agreement.
- 1.18 Gross Receipts as used herein shall mean, all charges or other fees collected by Company, and all revenues of every kind and character derived from, arising out of, or payable on account of any and all operations of Company under this Agreement, whether the same shall be paid or unpaid, which include applicable federal, state, and municipal taxes collected, including sales taxes, and any payments made by a Subcontractor to Company for the privilege of providing Services under this Agreement. Gross Receipts shall not include refunds and adjustments approved by the Director to customers because of unacceptable or unsatisfactory services.
- 1.19 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, except Company may use, bring, and store household and

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commercial cleaners and chemicals in connection with the operation and maintenance of the premises, and may have fuel in the tanks of its vehicles.

1.20 Headway means the maximum time between buses arriving at a designated customer pick-up point which equates to the maximum customer wait time.

1.21 Loyalty Program means a rewards program which provides points or other benefits to registered users and subject to such agreements as City may require.

1.22 Parking Facilities shall mean the parking lots and facilities at the Airport depicted in Attachment A, which is attached hereto and incorporated herein.

1.23 Parking Rate Schedule means the schedule of all monetary amounts charged to the public for use of the Parking Facilities as established by the City, whether now in effect or hereafter imposed, including, but not limited to, rates based on time of use, whether hourly, daily, monthly, or otherwise, and any charges for use of employee parking lots.

1.24 Reimbursable Expenses means those costs and expenses actually incurred and paid by the Company in the management and operation of the Airport Parking Facilities which will be reimbursed by the City as set forth in and subject to the limitations of Article 12.

1.25 Revenue Control Equipment means all access and revenue control system equipment and software used to control access to parking areas and the collection of parking revenue. This includes control gates, ticket dispensers, card readers, cashier terminals, automated credit card stations, central computer, associated computer workstations, system software and all supporting peripherals owned now, or as may be purchased by the City in the future and provided to Company for use in its operation and management of the Parking Facilities.

1.26 Revenue Control System means the Revenue Control Equipment and procedures approved by the City for the control and security of the revenue derived from operation of the Parking Facilities.

1.27 Shuttle Bus(es) means the buses and other vehicles approved by the Director for transport of customers between the Airport's Passenger Terminal Building ("Terminal") and Parking Facilities.

1.28 SOP Manual means the written Standard Operating Procedures and standards for the management and operation of the Airport Parking Facilities (along with any future Additional Services as added) prepared by the Company and approved by the Director.

1.29 Staffing Schedule means the set of schedules for each parking facility, group of parking facilities, on-site parking office, and shuttle bus operation, approved by the Director and incorporated into the SOP Manual, which identifies the positions to be filled by personnel of the Company in performance of this Agreement and the minimum number of personnel that shall be working in each such position during each day of the week and each clock hour of each such day.

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1.30 Temporary Parking Facilities means any parking lot identified by the City for public parking at the Airport on a nonpermanent basis, which the Company is directed to operate and manage under this Agreement.

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

1.32 Terminal means the main passenger terminal building located at the Airport.

1.33 Vehicle(s) means any automobiles, trucks, vans, and all accessories and appurtenances thereto provided by the Company 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 unless otherwise noted.

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

ARTICLE 2: TERM

2.1 This Agreement shall be effective for a period of five (5) years, commencing at 12:00 a.m. Eastern Time ("ET") on January 1, 2025 ("Effective Date") and terminating at 11:59 p.m. ET on December 31, 2029. Additionally, there will be options for two (2) two-year extensions of the Agreement.

2.2 As also noted in Section 20.3, the City shall have the unilateral right to extend the term of this Agreement on a month-to-month basis under the then applicable terms and conditions for a period of up to six (6) months. The City agrees to provide Company with thirty (30) days written notice of the termination date of any holdover period.

ARTICLE 3: COMPANY'S RIGHTS AND OBLIGATIONS

3.1 The City grants Company the right to manage and operate the Airport Parking Facilities in accordance with and subject to the provisions of this Agreement.

3.2 During the term of this Agreement, Company (and any other person or entity which it controls, is controlled by, or is under common control with) is prohibited from owning, in whole or in part, operating and/or managing any public parking facility serving the Airport and located within a ten (10) mile radius of the Terminal Building. This ten (10) mile restriction shall not apply to other parking facilities owned by the City. Company shall not divert or encourage Customers or potential Customers to use other parking facilities, whether or not owned or operated by the Company, except as may be directed by the Director. This includes, without limitation, advertising in any form of media, verbal promotion, signage, discounts of any nature, or inclusion of any other parking facilities with which Company may be associated in promotions or programs that would benefit customers or potential customers of competing parking facilities of any nature, if located within a ten (10) mile radius of the Terminal Building by their use of those competing facilities when those customers would be considered potential customers for the Airport's parking facilities based on the likelihood that their parking stay is for the purpose of air travel or meet-and-greet activity.

3.3 Company shall manage and operate the Airport Parking Facilities in a manner in accordance with the terms of this Agreement, the SOP Manual, applicable law, and management practices in the industry. Company shall take all steps to ensure that prompt, courteous, and efficient service is provided to all Customers.

3.4 Company and its officers, employees, guests, invitees, vendors, and contractors shall observe and obey all rules and regulations of the Airport, existing now or as promulgated in the future.

3.5 An executive level representative for Company from Company's home or regional office, who is familiar with the terms and conditions of this Agreement, shall meet on the Airport premises with the Director and any City designees not less than once each Contract Year as requested and scheduled by the Director. Such executive level representative shall also be available, as required, to resolve any issue that cannot be satisfactorily managed or resolved by Company's local management. Company's cost for such meetings is not a Reimbursable Expense.

3.6 Company shall maintain an internal control structure designed to provide assurance the Airport Parking Facilities assets are safeguarded from loss or unauthorized use, transactions are executed in accordance with Company's authority, and financial records are reliable for the

purposes of preparing financial statements and documenting activity. This internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures.

3.7 Company is responsible for the handling and prompt resolution, in the manner described in the SOP Manual, of all Customer complaints and issues related to the Company's operation and management of the Airport Parking Facilities. Company shall cooperate with the City in the investigation of incidents occurring at the Airport involving parking incidents, shuttle bus drivers, along with complaints from passengers.

ARTICLE 4: COMPENSATION AND PERFORMANCE BOND

4.1 Management Fees for management of the Airport Parking Facilities

The City shall pay to Company the Management Fees set out herein as complete compensation to Company for its management and operation of the Airport Parking Facilities under this Agreement. The Management Fees shall cover Company's profit, corporate operating expenses, and any other Company expenses and costs of working capital incurred in the operations described in this Agreement that are not a Reimbursable Expense under Article 12.

4.1.1 In the event that the number of parking spaces included in the public paid parking areas increases by fifteen percent (15%) or more for a period of more than three (3) months during any Contract Year, as compared to the number of spaces on the date of signing this Agreement, Company may request an increase of the Management Fee. Such a request must show a demonstrable increased burden on the Company as a result of the additional parking spaces. If satisfactorily demonstrated and approved, the City shall compensate Company for the additional management and operation services to be performed by the Company. The amount of the additional Management Fee will be in the sole determination of City.

4.1.2 If the City reduces the number of parking spaces by fifteen percent (15%) or more, as compared to the highest number of parking spaces available during the term of this Agreement, the City may reduce the Management Fee to reflect the amount of parking withdrawn. The City may exercise its right to reduce Company's Management Fee at any time during the term of this Agreement by giving Company a thirty (30) day notice in writing of City's intention to do so. If the Company disagrees with City's intention to reduce the Management Fee paid, the Company shall submit a written request demonstrating that the management burden will not decrease as a result of the reduction in spaces and therefore the Management Fee paid should not be reduced. The amount of any reduction to the Management Fee will be at the sole discretion of City.

4.1.3 These adjustments shall be based on total capacity, expressed as the number of marked parking spaces. Physical additions or modifications shall constitute "increases" or "decreases" in capacity only to the extent that the total capacity of the Airport Parking Facilities changes. Areas dedicated to rental car operations are excluded from all calculations of parking capacity except to the extent that such space is converted to public parking capacity.

4.2 Reimbursable Operating Expenses

In addition to the monthly Management Fee, Company shall be reimbursed on a monthly basis for eligible Operating Expenses as defined in Article 12.

4.3 Payment by City

The City shall pay the Management Fees to Company on a monthly basis, in arrears, at the rate of one twelfth of the annual Management Fee, as shown below:

CONTRACT YEAR	AIRPORT PARKING FACILITIES MANAGEMENT FEE
1	\$ _____ / mo (\$ _____ / yr)
2	\$ _____ / mo (\$ _____ / yr)
3	\$ _____ / mo (\$ _____ / yr)
4	\$ _____ / mo (\$ _____ / yr)
5	\$ _____ / mo (\$ _____ / yr)

Unless otherwise specified, Company’s monthly Reimbursable Operating Expenses for the operation of the Airport Parking Facilities shall be reimbursed within thirty (30) days of appropriately submitted documentation.

4.4 Performance Bond

Not later than the date of execution of this Agreement, Company shall deliver to the City, a performance bond, with a penal amount of One Million Dollars (\$1,000,000). In lieu of a performance bond, Company may, at its option, provide, cash or an automatically renewable, for the Term of this Agreement, irrevocable letter of credit drawn on a City-approved bank in the foregoing amount, as a security deposit, to be held by the City as security for the performance of Company's obligations under this Agreement.

The amount of the security shall be renewed annually, prior to the expiration of the Contract Year. Within thirty (30) days of receipt of written notice, the Company shall increase the amount of the performance bond, cash deposit, or letter of credit to equal no less than the sum of the next Contract Year's Management Fee. City will hold the bond, letter of credit or cash deposit as security for the performance of the Company's obligations under the Agreement. The security shall not be considered an advance payment of fees, or a measure of damages in the event of default to make good any arrearage of amounts due under this Agreement. It will guarantee payment of appropriate revenues to the City and will be forfeited in whole or in part to satisfy Company's liability in the event of its failure to pay. Upon request of the City, Company shall restore the security to its original amount or increase it to reflect increased amounts due to the City. Provided Company is not in default at the expiration of this Agreement, the performance bond, letter of credit or cash deposit or any remaining balance thereof will be returned within sixty (60) days after the expiration date, or the date Company surrenders possession of the Airport Parking Facilities to the City.

4.5 Right of Offset

Notwithstanding any other provision hereof, the City shall have the right to offset and deduct any amounts due to the City from Company under this Agreement from the Management Fee or Reimbursable Expenses payable by the City to Company.

ARTICLE 5: PARKING RATES AND REVENUES

5.1 The City shall establish the Parking Rate Schedule as part of the Airport's Rates and Charges. The City reserves the right to amend the Parking Rate Schedule at any time without amending this Agreement and will provide Company a minimum of ten (10) business days' advance notice of any such amendment. Company shall charge Customers only those rates which are set forth in the then current Parking Rate Schedule. Company shall not permit complimentary use of parking spaces except at the specific direction of the Director.

5.2 Company shall be responsible for properly incorporating amended Rate Schedules into the Revenue Control Equipment in a timely manner ensuring the proper rates are charged at all times. Company shall be responsible for remitting the proper amounts to the City even if, or when, rate changes are not properly incorporated after advance notice by the City.

5.3 Company is responsible for the collection of the parking revenue in accordance with the Parking Rate Schedule and the collection of any required Federal, State, County or City sales or other similar taxes or surcharges separately stated to and collected from Customer. Company shall accept, as payment for parking and other charges, U.S. currency (paper bills and coins), Visa, MasterCard, Discover and American Express credit cards and debit cards.

5.4 The City may allow certain companies ("Monthly Accounts") to pay for parking in certain locations with monthly, or other time periods, payment terms. Company is responsible for all billings and collection of parking charges for Monthly Accounts. Company shall have its Monthly Account procedures reviewed and approved as part of the SOP Manual by the Director prior to the commencement date.

5.5 Company shall promptly remit the collected cash and credit card funds in accordance with Section 11.1.5.

5.6 The Company shall operate the Airport Parking Facilities 24 hours a day every day of the year unless otherwise directed by the City. Shuttle Buses and Ground Transportation Coordination will operate from 4:30AM to 30 minutes after the last flight's arrival.

ARTICLE 6: AIRPORT PARKING FACILITIES

6.1 The Company shall use the Airport Parking Facilities shown in Exhibit A for the principal purpose of providing parking spaces for passenger vehicles and charging applicable parking rates. Company's employees may park without charge in spaces designated by the Director during the hours such employees are only engaged in performing duties hereunder for

Company at the Airport. Company shall not sell merchandise or equipment on the Airport premises.

6.2 In addition to the areas shown on Exhibit A, when adequate public parking is not available in the Airport Parking Facilities, and upon approval of the Director, Company may utilize other areas owned by the City for overflow public parking. Use of such areas for overflow parking will be at the rate established by the City and collected upon each entry to the parking area. Parking in overflow parking areas shall be limited to thirty (30) calendar days.

6.3 Company may, at no additional cost, use the Airport Parking Facilities Office Building located at the exit plaza from the garage and long-term parking lots. Other locations within the Airport will be available as assigned by the Director for the storage of materials and for the administrative use of Company in connection with the operation of the Airport Parking Facilities.

ARTICLE 7: MANAGEMENT, PARKING OPERATIONS, AND PROCEDURES

7.1 The management and operation services to be provided by the Company and addressed in the SOP Manual include: (a) providing assistance to customers who may have problems entering and exiting the Airport Parking Facilities and locating parking spaces; (b) transporting Customers and Airport employees between the City-designated Parking Facilities and the Terminal Building along the routes and in compliance with the schedule(s) for the Shuttle Bus Operation included in the SOP Manual; (c) providing customer services such as vehicle starting and out of fuel services; (d) providing on-site uniformed personnel twenty-four (24) hours a day; (e) providing for periodic drive through or walk through of the facilities; (f) coordinating towing / impounding of illegally parked vehicles; (g) providing Terminal Area curbside management, and monitoring and proper billing of Commercial Vehicles; (h) providing general passenger assistance to departing and arriving passengers in and around the Terminal; and (i) providing such other services required by the City that are necessary to maintain and operate the Airport Parking Facilities in accordance with the standards set forth in this Agreement.

7.2 Company shall provide consultation assistance to the City for facility modifications, operation procedure changes, rate changes, parking related equipment purchases, marketing, and revenue enhancement modifications. Company shall provide the consultation services at no additional cost to City.

7.3 As part of its response to the City's RFP, Company provided a DRAFT Standard Operating Procedures (SOP) Manual. At least thirty (30) days prior to commencing operations under this Agreement, Company shall prepare and obtain City's approval of a written SOP Manual describing the specific procedures it will use to manage and operate the Airport Parking Facilities. Prior to commencing operations under this Agreement, Company shall deliver to the Director a final copy of the SOP Manual.

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The SOP Manual must include, but is not limited to, the following sections:

- Corporate and site-specific important contacts;
- Financial controls procedures including:
 - Annual budget process
 - Accounting cycle process
 - Cash control
 - Daily cash on hand verification
 - End of shift cashier closeouts
 - Overages and shortages tracking and disposition
 - Daily cash / credit card reconciliation and deposit
 - Monthly Accounts billing, collection, and recording process
 - Documented compliance with Payment Card Industry Data Security Standards (PCI DSS) in accordance with current standards listed at www.pcisecuritystandards.org
 - Periodic and / or surprise audit activities of supervisors and managers
 - NSF Check process
 - Lost ticket verification and other non-standard transactions
 - Ticket validation process
 - Handling of suspected and known employee theft
 - Ticket inventory and records storage process
 - Preparation of daily, monthly, annual reports to the City
- Operating procedures for the Airport Parking Facilities:
 - Staffing schedule by position
 - Employee job descriptions, training, rules, policies, and evaluation process
 - Employee badging process with frequency of recurring background checks
 - Shuttle Bus routes, schedules, headways, and Customer Service
 - Shuttle Bus operations (e.g.: Driver certifications, shift report, lost & found)
 - Accident and security violation reporting process
 - Ground Transportation Coordination procedures and Customer Service
 - Revenue control equipment maintenance procedures: daily, monthly, annually
 - Cost recovery of damaged lane management equipment process
 - Nightly vehicle inventory procedures
 - Customer service training, policies, and complaint resolution
 - Maintenance, janitorial, and facility inspection
 - Snow removal / deicing notification timing and process
 - Company to contact Airport Operations when contaminants are visible on the surface and/or snow reaches greater than 1/4 inch.
- Other necessary procedures
 - Alerting the City to maintenance issues;
 - Disposal of surplus goods, equipment, and vehicles;
 - Emergency procedures and disaster recovery plan;
 - All systems data back-up procedures;
 - Periodic operational compliance audits; and

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- Such other matters required under this Agreement to be included in the SOP Manual.

7.3.1 The SOP Manual shall address all pertinent issues at a level of detail which is satisfactory to the Director, and the Director shall have the right to require Company to address additional topics or provide a higher level of detail as the Director deems appropriate.

7.3.2 At the sole discretion of the Director, at any time during the term of this Agreement, the Director may require Company to make specific or general revisions or corrections to the SOP Manual. Company shall promptly make such corrections as directed and submit a revised/updated SOP Manual to the Director not later than ten (10) business days from receipt of the Director's revisions. Once the Director approves the SOP Manual, Company shall operate in accordance with the approved SOP Manual.

7.3.3 The City shall be the sole judge of Company's compliance with SOP Manual. Distribution of the SOP Manual will be limited and controlled as directed by the City. Company shall prepare and distribute to its employees extracts and summaries of the SOP Manual relevant to the particular job functions for operation of the Parking Facilities and Shuttle Bus System. Audit procedures shall be detailed in a separate confidential procedures document that is not available for general dissemination. Access to this document shall be carefully protected and limited to only those staff members who are directly responsible for auditing. The document shall be kept under lock with restricted access when not in immediate use.

7.3.4 The SOP Manual is the property of the City, but nothing herein shall preclude Company from reusing or distributing those portions of the SOP Manual that were developed by Company and not modified by the City.

7.4 Reporting

7.4.1 Daily Operational Report ("Daily Report")

(a) The SOP Manual shall describe the method of retrieving and compiling information to be reported to the Airport on a daily basis.

(b) Company shall prepare and submit a Daily Report, in a form containing such information as the City may request. At a minimum, the Daily Report shall set forth the following:

- Total daily receipts, separately stated by cash / credit card which corresponds to the amounts deposited into the banking institution,
- Daily receipts by designated parking lot, separately stated by cash / credit card;
- Total number of transactions by designated parking lot;
- Number of Entry tickets issued and those processed for exit by designated parking lot;
- Total number of tickets collected for courtesy parking permit holders, no charge, "IOU" s", parking employees, and other legitimate courtesy or validated tickets;

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- Total number of properly voided tickets (tickets issued but not processed, such as for clearing ticket jams, ribbon checks, found tickets, time check tickets and any other ticket not processed by a cashier with payment);
- Total number of lost ticket transactions.
- Number of vehicles recorded during the overnight License Plate Inventory ("LPI") in each parking lot as defined by the Director.
- Computation of the number of issued tickets not accounted for in each separately controlled parking area based on the previous night's LPI car count, the number of vehicle entries, the number of vehicle exits, and the current overnight LPI.
- Detail of Shuttle Bus Operations that includes a comparison of scheduled Bus-Hours vs. actual Bus-Hours provided each day.

7.4.2 Monthly Operational Report ("Monthly Report")

(a) The SOP Manual shall describe the method of retrieving and compiling information to be reported to the Airport on a monthly basis.

(b) The monthly report shall be delivered to the Director no later than the 15th of each calendar month along with the Company's monthly Management Fee and Reimbursable Expenses invoice(s).

(c) Company shall prepare and submit a Monthly Report, in a form containing such information as the City may request. At a minimum, the Monthly Report shall set forth the following:

- Summary of Gross Receipts collections by defined parking lot, with month and year-to-date comparisons to previous year;
- Detail of Commercial Vehicle activity (summary of daily log sheets)
- Statistical summary of each parking lot for the applicable month to be able to calculate the "un-accounted for" tickets.
- Summary of Reimbursable Expenses comparing (a) Budget to Actual amounts for the month and year-to-date, (b) comparing same month and year-to-date comparisons to the previous year, and (c) with explanations of any material variances;
- Summary of Shuttle Bus Operations that includes a comparison of scheduled Bus-Hours vs. actual Bus-Hours provided each day in the month and a summary for the month;
- End-of-month mileage (odometer) reading and, if so equipped, an engine hour reading for each bus;
- Summary and comparison of scheduled vs. actual staff hours providing each day in the month and a summary for the month.

7.4.3 Annual Audit Report

(a) Within ninety (90) days after the close of each Contract Year (or termination of this Agreement), Company shall provide to the City an Annual Audit Report prepared by an independent Certified Public Accountant ("CPA") subject to approval by the Director and licensed to practice in the State of Ohio.

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(b) The Company's independent CPA shall certify that the report has been prepared in accordance with generally accepted auditing standards and the terms and provisions of this Agreement.

(c) The Annual Report is to certify:

- All Gross Parking Receipts and any other revenue required to be collected by Company hereunder, and the amount of all Gross Receipts and any other revenue actually collected, are correct and have been properly deposited into the bank account designated by the City for such purpose;
- The actual amount of Reimbursable Expenses to which Company was entitled for such year or portion thereof, and the amount of reimbursement of such expenses Company actually received, are correct;
- If such report indicates that any of the Gross Receipts or other revenue collected, or required to be collected, by Company hereunder has not been deposited into the bank account designated by the City for such purpose, Company shall forthwith pay to the City a sum equal to the difference between the amount of such receipts deposited and the amount of such receipts which should have been deposited together with the late payment fee at the rate stated in Section 7.5.2(g) from the date such amount was underpaid;
- If such report indicates that the Reimbursable Expenses for such period have been over- or under-paid, then the amounts of such differences shall be deducted from or added to the fees next due and owing to Company; and
- If the Annual Audit Report establishes that Company has overstated its annual Reimbursable Expenses for the period audited by two percent (2%) or more or understated annual Gross Receipts by one percent (1%) or more, the full cost of the Annual Audit Report shall be borne by the Company and shall not be considered a Reimbursable Expense. The City's rights under this Subsection shall survive the expiration or earlier termination of this Agreement.

7.4.4 Other Reports and Communication

(a) Written reports for each accident, damage, theft, or injury incident arising from the operation of the Airport Parking Facilities, shall be submitted to the City within twenty-four (24) hours of occurrence.

(b) Along with a written report, if Gross Receipts or any other funds are lost, stolen, or otherwise unlawfully removed from the custody and control of Company at any time prior to deposit, Company shall deposit in the City designated bank account from Company's own funds an identical sum of monies within forty-eight (48) hours of discovery of such loss, theft, or unlawful removal.

(c) Written results of periodic accounting, operational, and compliance audits shall be filed with the City in a format approved by the City, stating when the audit was performed, the time period covered by the audit, the scope and methodology of the audit, and audit findings, conclusions, and recommendations.

(d) The City reserves the right, upon written notice to Company, to cause independent inspections, audits, or investigations ("Audit") related to the operations,

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including any subcontractor, of the Airport Parking Facilities for any period no more than three (3) years prior to the commencement of such Audit.

7.4.5 All daily, monthly, annual, and other reports shall be sent to the City at the following address or at such other address, including an email, as City shall direct in writing:

City of Dayton, Ohio
Department of Aviation
Attn: Accounts Receivable
3600 Terminal Drive, Suite 300
Vandalia, OH 45377
Email: monthlyreports@flydayton.com

7.5 Operation Violations (Liquidated Damages)

7.5.1 The parties acknowledge that Company's failure to fulfil its obligations under this Agreement will cause damages to the City that may be difficult to quantify. Therefore, it is agreed that for the specific violations or omissions of the Company as set forth in this Article, the City may assess liquidated damages. Liquidated damages are not a penalty and shall be deducted from the Management Fee payment due the month following the date the liquidated damage is assessed. The provisions of this Article shall not preclude the City from exercising any other right or remedy available to the City for Company's breach of this Agreement.

7.5.2 Liquidated Damages shall be assessed for the following and at the sums or percentages specified:

(a) Unaccounted-for Tickets:

At the end of each month, Company shall provide the City with a calculation of the preceding month's unaccounted for tickets. Unaccounted for tickets will be calculated as follows:

(A) the number of tickets issued during the month	_____
+ (B) month beginning inventory of cars	_____
- (C) month ending inventory of cars	_____
- (D) number of tickets collected during the month	_____
- (E) number of drive outs	_____
 TOTAL OF UNACCOUNTED TICKETS =	 _____

Documented unused tickets (e.g. properly voided tickets), such as system test tickets and damaged tickets, shall be subtracted from the number of tickets issued when performing this calculation. Lost tickets for which the City has received payment will not be considered unaccounted for tickets.

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Company shall pay to the City monthly the following liquidated damages for each unaccounted-for ticket as follows:

UNACCOUNTED FOR TICKETS CHARGE PER TICKET (Within Range)	
<i>Less than or equal to 0.4%</i>	<i>No Damages</i>
<i>0.4% up to 0.6%</i>	<i>\$25.00</i>
<i>0.6% up to 1.0%</i>	<i>\$50.00</i>
<i>More than 1.0%</i>	<i>\$75.00</i>

(b) **Failure To Timely Submit Reports, Deliverables, and Record Requests:** The failure of Company to submit any report, deliverable, or record request required under this Agreement by the third business day after the due date (as specified herein, or as extended in writing by the Director) shall result in the imposition of liquidated damages, as follows:

Violation	Liquidated Damage
<i>Annual Report (Section 7.4.3)</i>	<i>\$500 per day</i>
<i>Monthly Reports (Section 7.4.2)</i>	<i>\$200 per day</i>
<i>Procedural or Operational Audit (Section 7.4.4)</i>	<i>\$500 per day</i>
<i>Certificates of Insurance (Article 16)</i>	<i>\$200 per day</i>
<i>Performance Bond/Letter of Credit (Article 4.4)</i>	<i>\$200 per day</i>
<i>Other reports and deliverables due hereunder</i>	<i>\$200 per day</i>

(c) **Violations of SOP Manual and Other Matters:** If Company fails to comply with any provision of the SOP Manual, this agreement, or comply with any Airport Rules and Regulations or security requirements, the Director may send a written Notice of Violation (“Notice”) to Company. If Company wishes to protest the Notice, it shall send written notice to the Director within ten (10) days of receipt of the Notice. The Director shall make the final determination on all Notice protests in good faith. Commencing with the third and each subsequent unexcused Notice issued within any rolling twelve-month period during the term of this Agreement, liquidated damages shall be imposed in the amount of \$200 per Notice.

(d) **Failure to Comply with Staffing Schedule:** Company shall pay the City \$1,000 per employee per shift for failing to provide an employee for each scheduled shift in accordance with the approved monthly Staffing Schedule.

(e) **Failure to Open an Additional Exit Lane:** When the average queue in an exit plaza reaches ten (10) vehicles in length and the Company fails to open an additional lane, the Company shall pay City \$200 for each separate occurrence. If all exit lanes serving that parking area are open, then no liquidated damages will be invoked.

(f) **Closing Lanes in Violation of the Staff Schedule:** If Company reduces the number of operating booths at any exit plaza below the level required by the approved Staffing Schedule, Company shall pay the City \$200 for each separate occurrence.

(g) Late Payment: If any payment required to be made by Company to the City is not made when due, Company shall pay the City a late payment penalty equal to five percent (5%) of the amount due. Thereafter, late payment fees shall accrue on all late payments at the rate of one- and one-half percent (1.5%) per month on the amount outstanding for more than thirty (30) days from the payment due date.

7.5.3 Repeated charges for liquidated damages resulting from operation violations may constitute an Event of Default as described at Article 19.1.

ARTICLE 8: VEHICLE OPERATIONS AND MAINTENANCE

8.1 City represents that, as of the Effective Date, the Shuttle Bus fleet provided by the city consists of six (6) 2019 Ford E-450 14-Passenger shuttle buses with miles varying between 38,000 and 80,000. Two shuttle buses are handicap accessible.

8.1.1 The number of Shuttle Buses in operation shall be sufficient with the demand at any time of the day to assure no Customer or employee is without transportation longer than the maximum waiting time specified in the written Headway schedule approved by the Director. The Director reserves the right to adjust the Headway schedule in any way that, in the sole judgment of the Director, will better meet service or cost reduction objectives.

8.1.2 At least two shuttle buses are required to be operating on the shuttle route during all hours of operation, and at least one backup shuttle will be available for use in order to maintain compliance with the requirements of Section 8.2.1 below. Company shall have at least one ADA-compliant shuttle on duty and available at all times.

8.1.3 At all times, the Shuttle Buses shall be clean, in good working order and free of visible body damage with the interior and exterior of its vehicles kept in a safe, clean, sanitary, attractive, and fully functional condition at all times. All body and graphics damage will be repaired within thirty (30) calendar days of occurrence. Company shall not perform Shuttle Bus maintenance on Airport property, except as directed or authorized, in writing and in advance, by the Director. Company may choose to provide maintenance services itself or subcontract for maintenance services.

- The Director shall approve, in writing and in advance, the Shuttle Bus color and all markings on Shuttle Buses. Shuttle Buses shall prominently display the Airport logo, Parking Facility designation and trade name, if any, adopted by the Department. The bus wrap and/or markings may be modified from time to time at the request of the Director.
- The City reserves the exclusive right to use space on the exterior and interior of the Shuttle Buses for commercial advertising. Company shall not place any inscriptions or advertisements on the Shuttle Buses without the Director's prior approval. Any revenues from advertising on the Shuttle Buses shall be Department revenue.

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8.1.4 All costs associated with the maintenance, repair, and operation of the Shuttle Buses are considered Reimbursable Expenses as outlined in Article 12.

8.2 Ownership of all non-shuttle vehicles shall remain with Company. All costs associated with the purchase, lease, maintenance, insurance, taxes, licensing and registration, or repair of vehicles owned by Company are not considered Reimbursable Expenses as outlined in Article 12 and are to be paid solely by Company.

- 8.2.1 All of Company's vehicles shall comply with the following requirements:
- No vehicle shall be more than seven (7) model years old and shall not emit visible smoke or excessive noise.
 - All vehicles shall comply with applicable federal, state, and city laws, rules, regulations, and guidelines.
 - All of Company's vehicles shall be subject to inspection by the City at any time to determine compliance with this Agreement.

8.2.2 Company shall provide sufficient support vehicles to fulfill its obligations to City under this Agreement.

8.3 Company shall provide qualified and appropriately licensed drivers to operate the Shuttle Buses, observing all posted speed limits and traffic rules on Airport property. Company shall provide a schedule of operations to be approved by the Director.

8.4 Company shall be responsible for fueling its vehicles at the fueling stations at a location determined by the Director. Company shall be responsible for all environmental compliance relative to vehicle fueling and operation.

ARTICLE 9: FACILITIES MAINTENANCE, REPAIR AND CLEANING

9.1 Provided the Company properly notifies the Director, the City is responsible for maintenance and repair of the pavement, structures, elevators, grounds, and lighting. The City is also responsible for any snow and ice control and removal operations required. Company is responsible for immediately reporting to the Director all maintenance, repair, and snow and ice control requirements for City maintained facilities.

9.2 Company is responsible for the maintenance, repair, and cleaning of the Airport Parking Facilities other than items noted in Section 9.1. Generally, the cost of maintenance, repairs, and cleaning, including the cost of personnel, equipment, and supplies, are considered Reimbursable Expenses under Article 12. Company will provide sufficient and qualified staff to perform the assigned maintenance and cleaning of the Airport Parking Facilities.

9.3 Company is responsible for support of all Revenue Control Equipment which is considered Reimbursable Expenses as outlined in Article 12. Support of the Revenue Control Equipment includes, but is not limited to: (a) Software including but not limited to setup and maintenance; (b) Hardware including but not limited to gates, ticket columns, transports,

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magnetic stripe tickets, value cards, proximity cards, parking system workstations with associated printers, and equipment necessary to support automatic credit card verification; (c) License Plate Reader (LPR) equipment; and (d) all present and future software and hardware associated with operating the Airport Parking Facilities. Sufficiently trained support personnel shall be provided twenty-four (24) hours a day, 365 days per year.

9.4 Company is responsible for daily cleaning and trash pick-up (except trash containing hazardous materials) in the Airport Parking Facilities, including but not limited to:

- Garage 1st floor: remove trash, cleaning and maintaining lobby, elevators, stairwells, in front of vending area, in front end and back end of garage;
- Garage 2nd and 3rd floors: remove trash and recycle bins;
- Elevators: have the elevator shafts cleaned twice per year, remove any litter in and around elevator cars throughout all shifts;
- All Lots: remove trash
- Garage Windows: have a cleaning company clean twice per year; and
- Terminal Curbside Area: clean and maintain space and grounds.

The SOP Manual will specify the appropriate schedule for cleaning and will include the parking office, exit booths, parking structures, public and employee surface lots, and the Terminal Curbside area. Company shall also be responsible for mechanical sweeping of the parking surfaces and the cleaning of the windows in the stairways and elevator towers. Arrangements to perform this cleaning may be made with a contractor and treated as a reimbursable expense under Article 12.

9.5 The City reserves the right to:

(a) inspect the Assigned Parking Areas at any time to determine whether Company has complied with and is complying with the terms of this Agreement;

(b) perform maintenance and make repairs and replacements in any case where Company is obligated to do so but has failed, after three (3) days written notice, or any other form of communication as approved by the Director, (unless the failure to maintain or repair has created a safety hazard, in which case, after shorter notice) to do so, in which event Company shall reimburse the City for the cost thereof promptly upon demand in which the cost shall not be charged as a reimbursable expense. In addition, Company will be charged a 20% Administrative Fee. In the event Company does not reimburse City within thirty (30) days, City may deduct the cost incurred from Company's monthly Management Fee payment.

(c) perform maintenance and make repairs and replacements, whenever the City determines it necessary or desirable to do so, to preserve the safety of the facilities or to correct a condition likely to cause injury or damage to persons or property.

9.6 The Director shall be the sole judge of the quality of maintenance, repair, and cleanliness under this section.

ARTICLE 10: COMPANY PERSONNEL AND STAFFING

10.1 General Personnel and Staffing

10.1.1 Company understands the standards of excellent customer service and convenience are an important aspect of the operation of the Airport, and Company agrees to cooperate at all times in support of these standards. Company further agrees to operate the Airport Parking Facilities and to manage its employees and programs in accordance with the terms and conditions set forth in this Agreement, the Proposal, and under the rules, regulations, and control of the City and the Director in order to provide both an efficient, well-maintained facility and a high level of customer service.

10.1.2 Company understands excellent customer service is a byproduct of excellent personnel and staffing. In entering into this Agreement, the City has relied upon the knowledge, experience and expertise of the Company's Representative(s) as defined in the Proposal, and the representation of Company that such individual(s) will provide overall supervision of Company's performance of the terms of this Agreement.

10.1.3 Company shall select honest, competent, and courteous personnel, and shall train, supervise, and maintain proper oversight over all its employees to ensure their integrity and the maintenance of an honest and high standard of service to the public, which standard will be determined at the sole discretion of the Director. Company shall follow the hiring processes set forth in its SOP Manual, and shall perform pre-employment screening, including criminal background checks, on newly hired employees. In addition, all employees shall be badged according to Airport requirements.

10.1.4 Company shall assume all responsibility for employer-employee relationships with respect to personnel employed in the Parking Facilities and Shuttle Bus Services. Such personnel shall be employees of and/or contractors for Company. It shall be the duty of Company to perform all employer functions. Company or contractor employees shall not, in any way, be considered to be employees of the City or Department.

10.1.5 To the extent that the Management and/or certain Supervisors need access to secured (nonpublic) areas of the Airport, such as the City's administrative offices, the Company shall comply with all City and federal requirements and procedures for access to such areas. The City reserves the sole right to deny such access and is not obligated to provide same, if the City determines that such access is unnecessary.

10.2 Management Personnel

10.2.1 Company shall provide a competent, qualified, and experienced Manager and Assistant Manager (collectively "Management"), who shall be on duty at the Airport Parking Facilities as outlined in the SOP Manual during generally accepted office hours for a minimum of forty (40) hours a week for each to supervise Company's day-to-day operations.

10.2.2 Management shall have a shift overlap that allows them to communicate appropriately about Company's operations at the Airport. Management shall be available on an "on call" basis twenty-four (24) hours a day, seven (7) days per week, unless prior written arrangements have been made with the City, in which case Company shall designate another qualified manager located within the Dayton metro area to bear this responsibility.

10.2.3 Management shall not be assigned by Company to manage or supervise any other Company operation or assigned any other duties that would adversely affect their full-time responsibilities under this Agreement.

10.2.4 Management shall be available by cell phone whenever on duty. The cell phone numbers shall be provided to the Director and updated by Company, as necessary.

10.2.5 The appointment of Management, at any time, is subject to the prior review and approval of the Director. Company shall propose inaugural Management to the Director no later than 30 days prior to commencement of this Agreement.

10.3 Supervisory Personnel

10.3.1 Supervisory Personnel ("Supervisors") will act as Management in the event both the Manager and Assistant Manager are otherwise unable to act in their capacity. Supervisors shall be available by cell phone whenever acting as Management. The cell phone numbers shall be provided to the Director and updated by Company, as necessary.

10.3.2 Supervisors shall perform duties as outlined in the SOP Manual, including but not limited to, assisting in shift changes, daily cashier closeout, responding to customer service issues, first response to Revenue Control Equipment troubleshooting, and monitoring Shuttle Bus operations.

10.4 Customer Service Representatives ("CSR")

10.4.1 CSRs shall perform duties as outlined in the SOP Manual, including but not limited to, staffing cashier stations, responding to customer service issues, operating Shuttle Buses, providing Janitorial services in all Parking Facilities.

10.4.2 CSRs are to be thoroughly trained including, but not limited to, all areas of the Parking and Shuttle Bus operation, providing solutions to common traveling passenger issues, general Airport operation, general Dayton area information, giving driving and walking directions, and minor complaint resolution.

10.5 Ground Transportation Coordinators ("GTC")

10.5.1 GTCs shall perform duties as outlined in the SOP Manual, including but not limited to 1) monitoring of all Commercial Vehicles; 2) ensuring proper reporting process by such vehicle operators; 3) providing general assistance at the Terminal Curbside areas; and 4) responding to customer service issues.

10.5.2 GTCs are to be thoroughly trained including, but not limited to, all areas of the Parking and Shuttle Bus operation, Commercial Vehicle operation, providing solutions to common traveling passenger issues, general Airport operation, general Dayton area information, giving driving and walking directions, and minor complaint resolution.

10.6 Salaries, Benefits, Uniforms

10.6.1 Employee salaries and benefits for Company's employees may be charged as Reimbursable Expenses as provided for in Article 12. Employee salaries and benefits shall be reviewed and approved, in advance, as part of the Annual Budget process identified in Article 11.

10.6.2 Company shall comply with the City's Living Wage Ordinance that is codified at Sections 35.70 through 35.74 of the Revised Code of General Ordinances of the City of Dayton (https://library.municode.com/oh/dayton/codes/code_of_ordinances). For employees not covered by the Living Wage Ordinance, Company shall pay each such person a wage equal to the average pay for similar employment in the Dayton area, but in no event shall such rate be less than either the Federal or State of Ohio Minimum Wage.

10.6.3 Company's employees, while on duty, shall wear neat, clean, and properly cared for uniforms. A typical employee uniform shall include shirt, slacks, and seasonal outerwear (hat, coat, gloves) if required, and shall be approved by the Director. The cost of leasing or purchasing the uniforms may be charged as a Reimbursable Expense as provided for in Article 12. Cleaning of the uniforms is not a reimbursable expense.

10.6.4 All Company employees, while on duty, will wear an Airport issued identification badge which is visible at all times.

ARTICLE 11: ACCOUNTING, RECORDS, AND ANNUAL BUDGET

11.1 Accounting Systems

11.1.1 Company agrees to install and maintain at its own expense and with approval of City, an accounting, bookkeeping, and revenue control system covering the Airport Parking Facilities, of which the books and accounts must be prepared in accordance with the procedures set forth in the SOP Manual and must be open to the inspection of City and its representatives.

11.1.2 Company's accounting, bookkeeping, and revenue control system shall provide detailed books, records, and accounts for all parking revenues, other revenues, receipts, and disbursements for the Airport Parking Facilities. This system must incorporate the financial reporting and auditing procedures set forth in the Company's SOP Manual and must maintain records in accordance with Generally Accepted Accounting Principles (GAAP).

11.1.3 In addition to any internal and third-party audits or inspections performed by Company, the City may, at any time, perform audits or inspections of Company's financial

records and operations to determine compliance with the terms of this Agreement. The bookkeeping, accounting, and control system including procedures and reporting methods must be satisfactory to the City.

11.1.4 Company's accounting, bookkeeping, and revenue control system must contain, but is not limited to, the following features:

- Numerical accountability of parking tickets on a daily basis by location for those in use;
- Daily reconciliation of ticket revenues by cashier and lot;
- Control and safeguarding of cash and other property assets of City;
- Surprise cash counts and periodic audit of amounts charged customers based on time clock readings from parking tickets;
- Control of payroll costs, including use of time clocks or time sheets, and other expenditures;
- Proper classification of revenues and expenditures and compliance with other accounting requirements as specified by City.
- Proper accounting of revenue so as to provide reports evidencing the duration of patron parking and the revenue generated within each rate class.
- Other reports and statements to be provided by Company as set forth in its SOP Manual.

11.1.5 The City shall establish a bank account in compliance with its investment policy in a financial institution approved by the City in which parking revenues will be deposited. Company shall deposit all income, revenues, and receipts of the Airport Parking Facilities into the account in the manner described in the SOP Manual.

- Company shall bear full responsibility for depositing daily income, revenues, and receipts and providing for their safekeeping;
- Company shall reimburse City for all lost income, revenues and receipts caused by the failure to follow the procedures set forth in Company's SOP Manual or any negligence, misconduct, or other fault of Company;
- Company is not authorized to withdraw any funds from this account;
- City will receive monthly statements directly from the bank in which the account is held.

11.2 Records

11.2.1 Company shall make all of its books, records, and supporting documentation available to the City at any time for at least five (5) years after the termination of this agreement.

11.2.2 Company shall store accounting records in such manner as to provide access for inspection purposes. If any books and records required by the City for inspection are not available at the Airport, Company shall deliver such information to the City within three (3) days of written demand, or Company shall pay all travel, lodging, meals, and other expenses incurred by City personnel to examine such information at the location where Company keeps such books and records, with all such costs not being reimbursable.

11.2.3 Company shall comply with all requests for information from the City within ten (10) business days. In the event that Company fails to comply, Company will be responsible for

liquidated damages shown in Section 7.5.2(b). City shall have sole discretion to waive or extend this time frame as circumstances require.

11.2.4 Company shall ensure that its financial or accounting subcontractors (e.g. armored car service, payroll processor, etc.), comply with the requirements of this section.

11.2.5 In accordance with Article 19, failure to comply with these provisions may be grounds for termination of this Agreement.

11.3 Annual Budget (“Budget”)

11.3.1 Not less than sixty (60) days prior to the commencement date of this Agreement, Company will develop and submit a Budget, to be approved by the City, for the first year of the Agreement in accordance with the procedures set out in Article 11. The final Budget for the first year of operation under this Agreement must be submitted to the City prior to the commencement of the Agreement.

11.3.2 In subsequent years, Company shall prepare and submit for approval by the City a proposed Budget, broken down by type and amount of projected revenues and expenses, for the Airport Parking Facilities. The Budget for subsequent years must be submitted ninety (90) days prior to the beginning of each agreement year. Company shall promptly submit any modifications to the proposed budget as requested by City.

11.3.3 Once the Budget is approved by the City, Company is only authorized to make adjustments of five percent (5%) or less between line items without prior written approval by the Director. In no event shall the revised Budget exceed the original Budget during any Contract Year unless such excess expenditures are approved by the Director under exception provisions set out elsewhere in this Agreement.

ARTICLE 12: REIMBURSABLE EXPENSES

12.1 Unless otherwise specified, Company’s monthly Operating Expenses for the operation of the Airport Parking Facilities shall be reimbursed as stated in Section 4.3. The following is a non-exhaustive list of Reimbursable Expenses which the Company may be reimbursed:

- Employee recruitment activities and pre-employment costs
- Employee payroll including taxes
- Employee health insurance, life insurance, and retirement benefits
- Employee uniforms (excluding laundry service)
- Employee training
- Armored car services
- Revenue Control Equipment maintenance and supplies
- Small tools and supplies for general maintenance
- Credit cards: equipment, segmented internet service, processing, supplies

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- Traffic management safety equipment
- Loyalty Program, Marketing, and Advertising
- Cleaning and janitorial supplies
- City owned equipment maintenance and repair
- Trash collection including container
- Licenses and permits (except those pursuant to the purchase and operation of vehicles)
- Fuel for shuttles and parking support vehicles not provided by City
- Shuttle Bus amenities and markings as approved by the Director
- Utilities not furnished by City
- Cellular telephone service
- Vehicle relocation and towing in an emergency
- Other costs and expenses incurred with respect to the Airport Parking Facilities which have been specifically approved by the Director in writing and in advance of the expenditure by the Company. Approval of such expenditures shall be on a case-by-case basis as approved by the Director and shall not carry forward as expanding the definition of Reimbursable Expenses unless specifically identified by the Director as an ongoing re-definition of Reimbursable Expenses.

12.2 The following is a non-exhaustive list of costs and expenses that are not a Reimbursable Expense, and Company understands that it will not be reimbursed by the City for such costs and expenses incurred under this Agreement:

- All travel costs and expenses of the manager, assistant manager, and any of Company's regional or main office personnel;
- Off-Airport office expense, including payroll costs or wages;
- Legal representation and union negotiations;
- Liquidated damages, penalties and fines assessed;
- Establishment / maintaining Cashier's Change Fund;
- The cost of any payments made by Company to City under the indemnification provisions;
- The cost of the Performance Bond or Letter of Credit, all insurances, and deductibles (excluding employee insurances), which Company is required to obtain and maintain in accordance with this Agreement;
- The acquisition and maintenance of the required service vehicles;
- The cost of acquiring and maintaining office and cashier booth equipment, furniture, and fixtures;
- The cost of repairs for damages to City owned property and equipment caused by the intentional, negligent and/or wrongful conduct or omissions of Company and its employees, agents, and contractors;
- The cost of providing independent audits as defined in Section 7.4.4(d); and
- Any other cost or expense not identified herein as a reimbursable cost or cost that is identified herein to be the sole responsibility of the Company.

12.3 Company shall pay all costs and expenses connected with the operation of the Airport Parking Facilities when due. Company shall submit to the City, on or before the eighth (8th) of each month, an electronic itemized Statement of Reimbursable Expenses (“Invoice”) incurred and paid by Company for its services during the previous calendar month. Each such statement shall be accompanied by complete supporting documentation, proof of charges and disbursements, and other supporting documents as the City may periodically request, including, but not limited to, paid invoices, payroll records, vehicle service records and paid checks.

12.3.1 The itemized Invoice shall show a summary of expenditures by expense category followed by a full and detailed schedule of all invoices paid by Company and any other payments made by Company under each expense category, including:

- Payee
- Invoice Date
- Invoice Number
- Invoice Amount
- Payment Amount
- Payment Date
- Verification of Payment

12.3.2 All supporting documentation, including invoices and receipts shall be arranged in the same sequence as the detailed schedule.

12.3.3 Payroll registers shall be provided in a separate section following the other categories.

12.3.4 The City shall notify Company in writing of its objection to any cost and/or expense which it deems to be non-reimbursable. Any such notice shall set forth the nature of the City's objection and shall be accompanied by the City's payment of the undisputed portion of such statement. If a disputed item is later justified to the satisfaction of the City, it shall be promptly approved and paid.

12.4 The City's financial obligations under this Agreement are payable only and solely from funds appropriated and available for the purpose of this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available.

12.5 If the City has incurred any obligation or expense for which Company has agreed to pay or reimburse the City, or if the City is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Company to perform or fulfill any of the terms or conditions of this Agreement, then the City may offset and deduct such amount from any amounts due Company under this Agreement. Should any offset exceed amounts available for offset, Company shall, immediately upon demand by the City, reimburse the City for the cost thereof.

12.6 In no event shall the City be liable for any fees or charges due to late payment of any amounts due Company under this Agreement.

12.7 Any non-budgeted acquisition of goods, services, vehicles, or equipment greater than \$500 in any month must be submitted in writing and approved, in writing and in advance, by the Director. Company shall obtain at least three bids or proposals. Company shall evaluate all bids or proposals and make a written recommendation to the Director as to which offer is the low responsive bid or the best proposal, as applicable. The SOP Manual shall include detailed procedures for procuring common types of goods, services and equipment required in the operation of the Parking Facility.

12.8 The Director must approve, in writing and in advance, the acquisition and, as applicable, the terms of any lease or installment purchase agreement for the goods, services, vehicles, or equipment to be acquired by Company under this Subsection. If the term of any authorized lease or installment purchase agreement extends past the expiration date of this Agreement, or its early termination by either party, Company shall, upon expiration or termination of this Agreement, assign all its rights and obligations in such lease or installment purchase agreement to the Company's successor as manager of the Airport Parking Facilities. This Section does not apply to the service vehicles and other non-reimbursed expenses.

12.9 The SOP Manual shall include procedures for disposing of surplus goods, equipment, and vehicles ("Surplus").

12.9.1 Disposal of Surplus shall comply with applicable law, ordinances, and regulations.

12.9.2 All proceeds of sales of Surplus which the Company received full reimbursement from the City for the acquisition or purchase thereof shall be the property of the City, and shall be remitted by Company to the City, less actual expenses of sale. Company may not sell or dispose of any goods, equipment, or vehicles without the prior written consent of the Director.

12.9.3 All property purchased by Company for which the City fully reimburses Company shall become property of the City immediately upon full reimbursement. At any time during the term of this Agreement or thereafter, Company shall, upon the request of the City, execute a bill of sale or such other document as the City determines is appropriate and sufficient to vest title in or otherwise evidence ownership by the City. Company shall provide, as part of the monthly report, a list of all City-reimbursed property. This Subsection shall survive expiration or termination of this Agreement.

ARTICLE 13: CITY'S RIGHTS AND OBLIGATIONS

13.1 During the term of this Agreement, the City may (i) replace the Company with another Company if this Agreement is terminated in accordance with Article 19, and (ii) add or remove parking lots and facilities from the Parking Facilities, provided the City gives Company sixty (60) days advance written notice of the addition or removal of such lot and/or facility.

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13.2 The City is responsible for providing and maintaining the pavement, structures, elevators, grounds, and lighting of the Parking Facilities.

13.3 The City shall provide office space in the Airport Parking Facilities for the Company's use to manage the Airport Parking Facilities. The Department may at any time, upon sixty (60) days prior written notice to Company, substitute other office space comparable in size and amenities for Company's use. Company may, with the Director's prior written approval and at Company's sole expense, reconfigure space as needed.

13.4 The City will provide Company's employees with parking, at no cost, in City designated areas.

13.5 The City may provide a number of free parking permits or free parking tickets to people conducting official business with City or other Airport employees. Such persons shall be allowed to exit the paid public parking lots without charge or at a discounted fee as determined by the City.

13.6 The City may, at any time, make repairs to the Airport Parking Facilities and the Airport, as well as enter any facilities for the purpose of so doing, free from any and all liability to Company for damages sustained by Company for whatever reason as a result of the making of any such repairs, with the exception of liability for damage to tangible personal property of the Company caused solely by the City's negligence.

13.7 The City will provide the following utilities and services to the Parking Facilities at the City's expense: electricity, natural gas, water and sewer, (Check on Phone dial tone) and fuel dispensed at the Airport Fuel Facility. Should the Fuel Facility be inoperable, fuel may be obtained, with Director approval, at other fueling service locations and submitted as a reimbursable expense item.

13.8 The City will provide general public fire and police protection as afforded to other tenants and licensees at the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Company shall comply with the Airport Security Plan and may, subject to prior approval of the City and at Company's sole expense, obtain such additional security protection as it may desire.

ARTICLE 14: LICENSES, PERMITS, AND TAXES

14.1 Company shall pay, on or before their respective due dates, to the appropriate collecting authority, all sales and use taxes, ad valorem, personal property taxes, excise or occupation taxes that may be levied or charged in connection with the operation and management of the Airport Parking Facilities hereunder. Company shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements and/or the installation of equipment and furnishings, and as otherwise necessary for the conduct of its operations hereunder. Company shall, after notifying the City of its intention to do so, have the right to contest in good faith by all appropriate proceedings, the amount, applicability, or validity of any such tax, or assessment.

14.2 Purchases of goods or services by Company are generally not exempt from City, State, and most Federal taxes. If Company requests and receives Tax Exemptions from the City, State, or U.S., applications for reimbursement may not include exempted taxes. Under no circumstances shall the City ever be liable to pay, or to reimburse Company for, any tax from which the City is exempt.

ARTICLE 15: INDEMNIFICATION

15.1 The Company shall indemnify the City for any and all financial losses emanating from the handling of the City's checks, credit card receipts, or cash, including but not limited to losses resulting from dishonest or criminal acts, fraud, embezzlement, forgery, misappropriation or loss of funds and errors in the processing or reporting of funds by the Company.

15.2 Company, for itself and its agents, employees, subcontractors (of every tier), and the agents and employees of said subcontractors, shall defend, indemnify, and hold the City, its successors, assigns, officers, employees, and elected officials (collectively, the "Indemnified Parties"), harmless from and against any and all cost, loss, expense, claims, penalties, demands, suits, causes of action, and judgments (collectively, "Indemnified Claims") for:

15.2.1 Damage, contamination, or loss of the use of the property of any person (including, but not limited to Company, its agents, officers, employees and subcontractors, the Indemnified Parties, and customers); and

15.2.2 Death, bodily injury, illness, disease, workers' compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers, and employees of Company, Company's subcontractors and the Indemnified Parties, and Customers, and regardless of whether such injury, illness or disease becomes immediately apparent or following a latency period of any duration), arising out of, incident to, concerning or resulting from the negligence (of every kind or degree), strict liability, or intentional or willful misconduct (collectively "fault") of Company, its agents employees, or subcontractors (of any tier), in the performance of any service to be provided by Company under the Agreement, no matter how, or to whom, such loss may occur.

15.3 In the event that any Indemnified Claim is caused or alleged to be caused by the concurrent fault of Company, or its agents, employees, or subcontractors, or is found to be more than fifty percent responsible for the Indemnified Claim, it is the intention of the parties, and Company expressly agrees, that the foregoing indemnity shall protect the Indemnified Parties against 100% of the Indemnified Party's cost, loss or expense attributable to the Indemnified Claim, without deduction or offset for the Indemnified Party's proportionate fault, if any. If the fault of the Company, or its agents, employees, or subcontractors, is found to be less than 50% responsible, the foregoing indemnity shall protect the Indemnified Parties to the full proportionate extent to which the Company is determined to be responsible for the Indemnified Claim.

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Nothing herein shall be deemed to limit the Company's rights of recovery or contribution from parties other than the City.

15.4 Company shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Indemnified Claims. Maintenance of the insurance required under this Agreement shall not affect Company's indemnity obligations. Company may contest the validity of any Claims, in the name of the Indemnified Parties or Company, as Company may in good faith deem appropriate, provided that the expenses thereof shall be paid by Company. In no event may Company admit liability on the part of an Indemnified Party, without the prior written consent of the City.

15.5 The terms of any subcontract awarded by Company under the Agreement shall contain Indemnity provisions whereby the subcontractor shall indemnify the Indemnified Parties to the same extent as described above.

15.6 No specification or method of performance described herein shall relieve the Company of its responsibility or liability for compliance with any and all State, Federal, or local laws, ordinances, rules, regulations or orders, nor shall any specification or suggested method of performance constitute a waiver by an Indemnified Party of its rights to seek collection against Company's insurance or its rights to seek indemnification against Company in accordance with terms of such indemnification and hold harmless provisions.

15.7 In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Company arising out of or concerning this Agreement or the Airport Parking Facilities the Company shall provide verbal notice within Twenty-four (24) hours to the City and follow up with written notice thereof, to the City within two (2) days after being notified of such claim, demand, suit, or action. Such written notice shall enclose a true copy of all written claims, and if the claim is not written or the information is not discernable from the written claim, state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to:

Director of Aviation
Department of Aviation
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377

15.8 Company shall immediately notify Director upon the occurrence of any fire, flood, personal injury or other damage occurring within the Airport Parking Facilities. Within one (1) business day, Company shall provide a written report detailing the extent of any such damage to the Director. Company shall provide such additional information as the Director may request.

ARTICLE 16: INSURANCES

16.1 Company, 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 Company or by persons or entities retained by Company:

- 16.1.1 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.
- 16.1.2 Commercial Liability Insurance (Primary and Umbrella) 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 Parking Facilities 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 Indemnified Parties shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement.
- 16.1.3 All Risk Property Insurance shall be obtained 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 Parking Facilities. 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 Company 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 Company.
- 16.1.4 Vehicle Liability Insurance for any motor vehicles (owned, non-owned, and hired) when used in connection with work to be performed, Company 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.
- 16.1.5 Crime Insurance on an Occurrence Basis covering Employee Dishonesty for each loss at a limit of not less than \$1,000,000. The policy deductible maximum shall

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be \$1,000 and any payment of deductible is not a Reimbursable Expense as outlined in Section 12.2. Coverage will include direct losses of money, securities and other property of the City caused by theft (the unlawful taking of money, securities, or other property to the deprivation of the City) or forgery by any employee of Company acting alone or in collusion with others who may or may not be employees of Company. The limit may be adjusted January 1 of each year subject to the experience in the previous year.

16.2 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. The Indemnified Parties are required to be named as additional insureds on each certificate on a primary, non-contributory basis for any liability arising directly or indirectly from the Agreement. At the City's request, Company 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 Company or its Contractors shall not be deemed to be a waiver by the City. Company or its Contractors shall advise all insurers of these Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Company 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 19 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.

16.3 If Company 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 Company hereunder) obtain and maintain such insurance policies and take any other action which City, including attorney's fees, court costs and expenses, shall be reimbursed by the Company upon demand by City.

16.4 Company shall require all contractors to carry the insurance required herein, or Company 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 Company or its contractors. Company and its contractors agree that insurers shall waive their rights of subrogation against the City, its employees, elected official, agents, or representatives. Company and its contractors expressly understand and agree that any coverages and limits furnished by Company, or its contractors, shall in no way limit the Company or its contractors' liabilities and responsibilities specified within this Lease or by law. Company 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 Company or its contractors under this Lease. If Company or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Company or its contractors shall each be responsible for the acquisition and cost of such additional protection.

16.5 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.

16.6 The insurance required by this Agreement, at the option of Company or Contractors, may be effected by blanket or umbrella policies issued to Company or Contractors covering the Premises and other properties owned or leased by Company 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 17: PROHIBITED ACTS AND UNUSUAL RISKS

17.1 Company shall not knowingly:

17.1.1 Commit any nuisance on the Airport Parking Facilities or any other portion of the Airport, or do or permit to be done anything that may result in the creation or commission of such nuisance;

17.1.2 Cause, produce, or permit to be caused or produced upon the Airport Parking Facilities, or upon any other portion of the Airport, or to cause to emanate therefrom, any unusual, noxious, or objectionable smokes, gases, vapors, or odors;

17.1.3 Use, or permit to be used, the Airport Parking Facilities for any illegal purpose or for any purpose not expressly authorized hereunder;

17.1.4 Do, or permit to be done, anything which may interfere with the effectiveness or accessibility of existing and future utilities systems or portions thereof on the Airport Parking Facilities; or do, or permit to be done, anything which may interfere with free access and passage into the Terminal Building or in the streets and sidewalks adjacent thereto;

17.1.5 Do, or permit to be done, any act or thing upon the Airport Parking Facilities, or upon any other portion of the Airport, which will invalidate or conflict with any fire insurance policies covering the Airport or any part thereof or which, in the opinion of the Director, may constitute a hazardous condition, so as to increase the risks normally attendant upon the operations contemplated herein and elsewhere at the Airport; and

17.1.6 Install, or permit to be installed, cash or credit card operated vending machines in the Parking Facilities without the Director's written consent, which may be granted, denied, or conditioned in the Director's sole discretion. The Director reserves the right to install and maintain, through independent contractors,

vending machines in or on the Airport Parking Facilities as Company may request. All revenues received by Company from vending machines shall be considered and reported as Gross Receipts.

17.2 Company shall not change operating hours or rates of the Airport Parking Facilities without the Director's prior written approval.

ARTICLE 18: ASSIGNMENT, TRANSFER, AND SUBLETTING

18.1 Company shall not, at any time, assign this Agreement or any part hereof, without the prior written consent of City. Failure to obtain approval will be cause for immediate termination of this Agreement.

18.2 A transfer of ten percent (10%) or more of Company's corporate stock, or a transfer of ten percent (10%) of the control of Company to another individual or entity is considered an assignment of this Agreement and City's written approval of such transfer is required. This provision will not apply when Company's corporate stock is traded on the New York Stock Exchange or the NASDAQ Exchange.

18.3 Company shall notify the City of any change in corporate name, whether in accordance with Section 18.2 above or a simple name change.

18.4 Company shall not subcontract for the provision of any management or operation services or sublease any of the premises under this Agreement without the prior written consent of the City.

ARTICLE 19: TERMINATION

19.1 Termination by the City

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

- (a) Company fails to perform any provision or covenant of this Agreement, and Company does not remedy the default within ten (10) days of the receipt of written notice of the default from City; or
- (b) Repeated failure to perform one or more of the provisions or covenants of this Agreement, which leads the City to deem the Airport Parking facilities as not being operated in a manner that is satisfactory or in accordance with this Agreement;
- (c) Repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices;
- (d) The property is required for any purpose other than parking;

(e) If a receiver for Company's assets is appointed by a court of competent jurisdiction or if Company shall be divested of its rights, powers, and privileges under this Agreement by other operation of law;

(f) Violations by Company, its agents, contractors, or employees, of applicable laws, ordinances, codes, and the rules, and regulations issued by any competent governmental authority, including the Airport Rules and Regulations, or revocations of permits or licenses required in the performance of this Agreement, if the same shall not be corrected or action taken to correct, within thirty (30) days after Company's receipt of written notice, which shall state in detail the violation;

19.1.2 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 upon giving the Company thirty (30) days' notice in writing.

19.1.3 In the event that the City terminates this Agreement under the terms in this Article 19, the City will not reimburse Company for any expenses beyond the Reimbursable Expenses provided for in Article 12 as of the final day of Company's operation at the Airport.

19.1.4 For the purposes of this Article the term "Repeated" shall mean any occurrence in violation of this Agreement of a similar nature within a rolling consecutive six (6) month period. For example, if Company is assessed Liquidated Damages for a Monthly Report Violation twice within a six-month period then the second violation may constitute an Event of Default.

19.1.5 The City may at any time, upon twenty calendar days written notice to the Company, terminate the Agreement in whole or in part for the City's convenience and without cause. Upon receipt of the notice of termination for convenience, the Company shall immediately cease all work in accordance with the notice and the Company shall only be paid for services that were performed in accordance with the Agreement and prior to the date of the notice of termination.

19.2 Termination by Company

19.2.1 Company 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 Company with any remedy other than an option to terminate as set forth herein):

(a) The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport in its entirety so as to prevent Company's use of the Premises in its conduct of its business which remains in force, not stayed by way of appeal or otherwise, for a period not less than ninety (90) consecutive days;

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(b) 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 one hundred eighty (180) consecutive days, provided such restriction adversely affects all of Company's operations at the Airport.

(c) The default by City in the performance of any material covenant or agreement required to be performed by it herein, and the failure of City to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt from Company of written notice to remedy the same; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Company shall have the right to terminate this Agreement if the City shall have failed to commence the remedying of such default within said thirty (30) days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remedying thereof.

19.2.2 Any termination by Company pursuant to this Article shall not occur unless the Company 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 Company does not give such notice during the period that any of the above events is occurring, then Company's right to terminate this Agreement as provided in this Article shall not be available to Company until another happening of any one of said events.

ARTICLE 20: SURRENDER, TRANSITION, AND HOLDOVER

20.1 **Surrender of Possession:** Upon termination of this Agreement or on the Expiration Date, whichever is earlier, Company shall peaceably quit, deliver up, and surrender the Airport Parking Facilities to the Department, in good order, repair, and condition, normal wear and tear excepted. Company shall turn over all keys to any and all Revenue Control System(s) and Revenue Control Equipment along with all operating and maintenance manuals. Company shall remove all personal property and trade fixtures of Company from such portion of the Premises prior to the date of expiration or termination. Further, at the City's request, Company shall also remove all movable, non-permanent improvements installed by or for Company prior to or within ten (10) days after the expiration or termination of the Agreement, and Company shall repair any damage to the Premises caused by Company's removal of the personal property, trade fixtures and improvements. All such removal and repair required of Company pursuant to this Section shall be at Company's sole cost and expense. If Company 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 Company shall pay the cost of any such removal and repair, together with interest thereon.

20.2 **Transition to Successor:** Upon expiration or termination of this Agreement, the Company shall transition to the new parking management operator in an orderly fashion. The Company

shall deliver all equipment keys, computer cards, and equipment operating manuals to the City or its designee. Company shall cooperate with the City and successor parking management operator and shall provide the successor parking management operator all information and documentation regarding Company's operations at the Airport under this Agreement as requested by the successor or the City. Company's obligations under this Subsection shall survive termination or expiration of this Agreement.

20.3 Holdover Period: The City shall have the unilateral right to extend the term of this Agreement on a month-to-month basis under the then applicable terms and conditions for a period of up to six (6) months. The City agrees to provide Company with thirty (30) days written notice of the termination date of any holdover period.

ARTICLE 21: LEGAL RELATIONSHIP

Company is, and shall be, an independent contractor hereunder and shall control all ways, means and details incident to the performance of itself, and its agents and employees and shall not be considered employees of the City of Dayton, shall not be subject to the personnel policies of the City, nor participate in the benefits which accrue to City employees. As an independent contractor for the City, the Company is prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this Article. The Company shall have no authority to assume or create any obligation on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City, except as otherwise provided herein.

ARTICLE 22: NON-DISCRIMINATION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

22.1 General Civil Rights Provisions

In all its activities within the scope of its airport program, the Company 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 Company transfers its obligation to another, the transferee is obligated in the same manner as the Company.

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

22.2 Compliance with Nondiscrimination Requirements

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

(a) **Compliance with Regulations:** The Company (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.

(b) **Non-discrimination:** The Company, 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 Company 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.

(c) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Company 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 Company of the Company's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

(d) **Information and Reports:** The Company 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 Company is in the exclusive possession of another who fails or refuses to furnish the information, the Company 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.

(e) **Sanctions for Noncompliance:** In the event of the Company's noncompliance with the Non-discrimination provisions of this Agreement, the City will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1. Withholding payments to the Company under the Agreement until the Company complies; and/or
2. Cancelling, terminating, or suspending the Agreement, in whole or in part.

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(f) Incorporation of Provisions: The Company will include the provisions of paragraphs 22.1 through 22.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Company will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided that if the Company becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Company may request the City to enter into any litigation to protect the interests of the City. In addition, the Company may request the United States to enter into the litigation to protect the interests of the United States.

22.3 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.

(a) The Company 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:

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 Company 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.

(b) 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.

(c) 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.

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

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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.

(a) The Company 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

1. 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,

2. 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,

3. the Company 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.

(b) 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.

(c) 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.

22.5 List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, Company, 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);

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- 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.)

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

22.7 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 0.10% 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 Company upon its' adoption. Company shall provide information under this Article XVI as requested by City for City's reporting requirements for FAA or any other governmental entity. The Company 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 at <https://b2gnow.mwdbe.com/?TN=FlyDayton> per monthly audit. Company 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 provided in Exhibit B - Race Conscious (RC) Contract Clause.

22.8 This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Company agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Company shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by Company 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:

- (a) Withholding monthly progress payments;
- (b) Assessing sanctions;
- (c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. The Company 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 23: GENERAL PROVISIONS

23.1 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.

23.2 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.

23.3 Notices to Company 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 Company shall direct in writing.

23.4 Company 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.

Sample Agreement

23.5 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 exhibit or document. 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.

23.6 By execution of this Agreement, Company 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.

23.7 Company 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:

- a. Certificates of insurance evidencing the insurance required by this Agreement;
- b. Performance Bond.

23.8 Company (and any person claiming by or through Company) 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.

23.9 Neither Company nor any contractor of Company 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.

23.10 By entering into this Agreement, City shall in no way be deemed a partner or joint venture with Company, 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.

23.11 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 Company and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

23.12 This Agreement represents the entire and integrated agreement between City and Company. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements, or contracts, whether verbal or written, relating to the subject matter of this Agreement.

23.13 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.

Sample Agreement

23.14 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.

23.165 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.

23.16 Neither Company nor City will be liable for delays in performance caused by acts of God or government regulatory authority, war, riot, sabotage, storm, flood, inclement weather, strike or work stoppage, or other cause beyond the control of Company or City. The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by facsimile transmission or telephone confirmed promptly thereafter in writing and shall use due diligence to remedy the event of Force Majeure, as soon as possible. Nothing contained herein shall be construed to require a party to settle a strike or other labor dispute against its will. No event of Force Majeure shall relieve Company from its monetary obligations under this Agreement, including but not limited to, Company's obligations to remit Gross Receipts to the City, nor shall the term of this Agreement be extended by any event of Force Majeure.

23.17 Company affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

Sample Agreement

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

WITNESSED BY:

TBD

By: _____

Its: _____

WITNESSED BY:

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

CURRENT PARKING FACILITIES AS OF DATE OF AGREEMENT

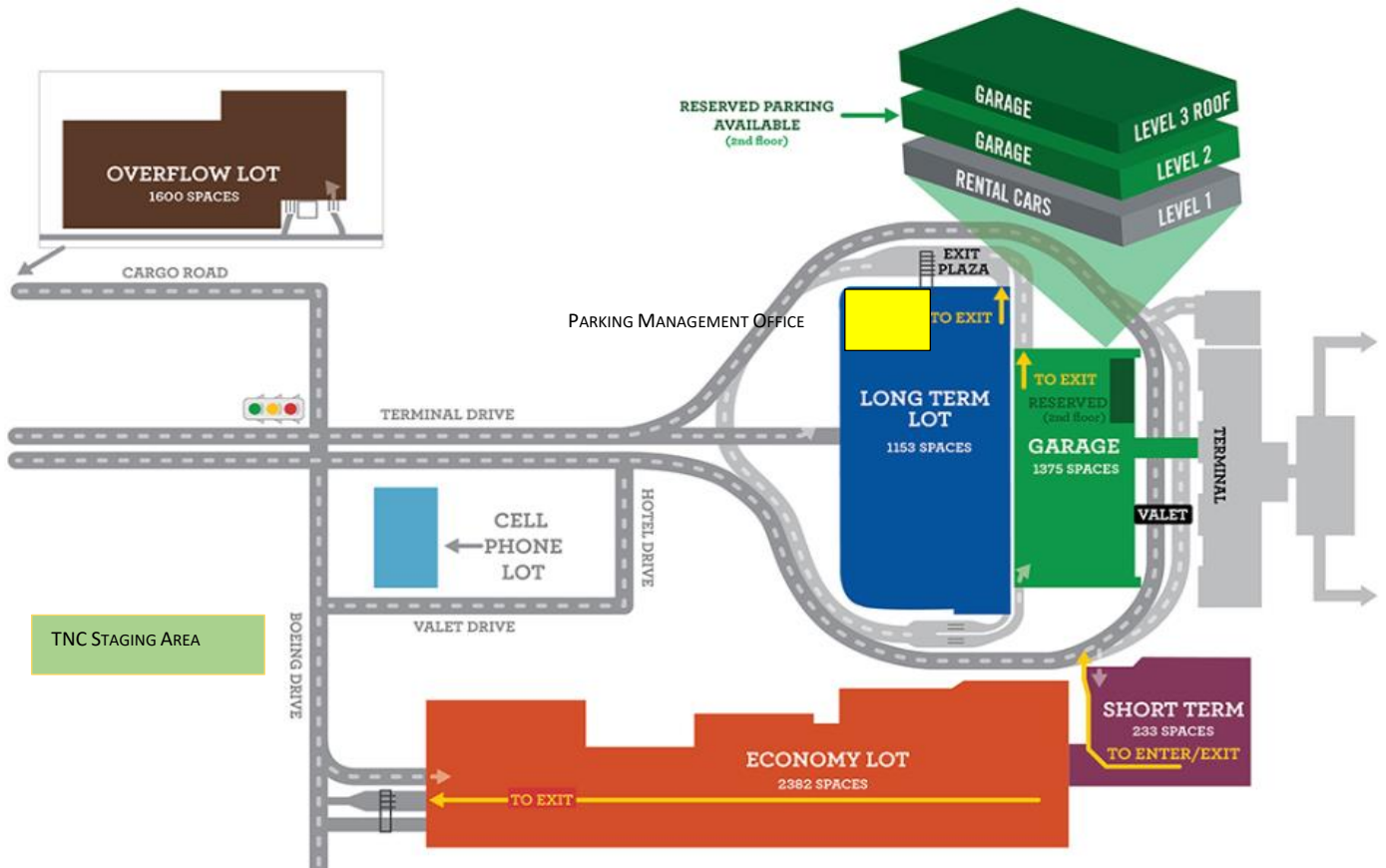


EXHIBIT B

MANAGEMENT OF AIRPORT PARKING FACILITIES, SHUTTLE BUS OPERATION, AND
ADDITIONAL SERVICES 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.

Sample Agreement

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.

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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.

Sub-concession 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.

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 sub-concession 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

Sample Agreement

requirements applicable to the concession under the primary lease, including proportionate share of the rent and capital expenditures.

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.

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

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

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 0.10%. 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:

Sample Agreement

“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 non-responsiveness *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.

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- 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;

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- 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 non-responsiveness *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 non-responsiveness 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

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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

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<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.

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**Attachment A-1
NEGOTIATIONS WITH SMALL BUSINESS CONCERNS**

A Small Business Name & Information	B Certification Type	C Participation Opportunity	D Solicitation Method	E Selected for participation	F 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 _____ _____ _____

Type or print name

Type firm name

I, _____, a duly authorized representative of _____, 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