



City of Dayton, Ohio
Department of Aviation
Division of Finance and Administration

Non-Exclusive Rental Car Concessions at the James M. Cox Dayton International Airport
ACDBE GOAL – 1.0%, Subject to Change

REQUEST FOR PROPOSALS (RFP) No. 21-018AOAD

June 2021

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SECTION 1 – PROPOSAL INSTRUCTIONS

1.01 COMMUNICATIONS REGARDING THIS PROJECT. Please direct all communications regarding the RFP process to:

City of Dayton, Department of Aviation
Sarah Spees, Senior Airport Business Manager
RFP No 21-018AOAD Non-Exclusive Rental Car Concession at the James M. Cox Dayton International Airport
3600 Terminal Drive, Suite 300
Dayton, Ohio 45377
Telephone: (937) 454-8207
E-Mail: sspees@flydaton.com

All communications/questions concerning this RFP must be submitted in writing titled with RFP No 21-018AOAD Non-Exclusive Rental Car Concession at the James M. Cox Dayton International Airport and referencing the specific paragraph and page number. The deadline for questions is listed in Section 1.02 (RFP Schedule). Written responses will be prepared by the City and posted on the City’s web site by the date listed in *Section 1.02*. Changes to this RFP will be made only by formal written correspondence issued by the City.

A copy of this RFP proposal and any additional documentation may be found at the City’s website at:

<http://daytonohio.gov/bids.aspx>

1.02 RFP SCHEDULE. The following is the anticipated schedule for the RFP Process:

| | |
|---|--|
| Issue RFP: | June 9, 2021 |
| Notify City of Intent to Attend Pre-Proposal Meeting: | 3:00 PM local (Dayton OH) time on June 20, 2021 |
| Pre-Proposal Meeting: | 11:00 AM local (Dayton OH) time on June 23, 2021. In-person and virtual options as stated below. |
| Site Visit: | Site visit will be immediately following the pre-proposal meeting |
| Last Day to Submit Questions: | 2:00 PM local (Dayton OH) time on June 28, 2021 |
| Written Responses to Questions: | Will be posted to City’s website no later than July 23, 2021 |
| Due Date for Proposals: | 11:00 AM local (Dayton OH) time on August 18, 2021 |
| Award Recommendations: | Anticipated to be in September 2021 |
| Executed Contracts Due to the City: | 2:00 PM local (Dayton OH) time on October 20, 2021 |
| Contracts Awarded: | Anticipated to be in November 2021 |
| New Term Begins: | January 1, 2022 |

1.03 PRE-PROPOSAL MEETING. The City shall conduct a **VOLUNTARY** pre-proposal meeting. The date of the meeting is listed in Section 1.02 (RFP Schedule). The meeting will be held at the Dayton International Airport, 3600 Terminal Drive, Vandalia, OH 45377 in the Friends and Family Assistance Center (FFAC) located in the terminal building, pre-security next to the Airlines ticket counters. There is a maximum in-person occupancy of 18 attendees, 2 per proposer. For proposers unable to attend in person, a virtual option facilitated by Teams, will be available with the following login information:

Join on your computer or mobile app: [Click here to join the meeting](#)
Or call in (audio only): [+1 872-242-7932](tel:+18722427932), [433799767#](tel:+133799767#) United States, Chicago
Phone Conference ID: 433 799 767#

The intent of the pre-proposal meeting is to:

- Review the Request for Proposal
- Review the City’s Airport Concession Disadvantaged Business Enterprise (ACDBE) Program, as defined in 49 CFR Part 26 per the FAA

This may be the only opportunity for the proposer to meet with the City. Each proposer must limit in-person representation at this meeting to no more than 2 persons, however, no limit to the virtual option. Proposers must notify the City as directed in Section 1.02 (RFP Schedule) if they will be attending in-person the pre-proposal meeting and how many persons will attend. If attending in-person, each attendee is required to wear a mask and social distance for the duration of the meeting.

1.04 SITE VISIT. The City shall conduct a voluntary Site Visit. The date and location of the site visit is listed in Section 1.02 (RFP Schedule). The intent of the site visit is to:

- Walk through the Rental Car Counter Facility, Ready/Return Area and Service Facilities

This may be the only opportunity for the proposer to visit the rental car facilities. . Proposers shall notify the City as directed in Section 1.02 (RFP Schedule) if they will be attending the site visit and how many persons will attend. If attending, each attendee is required to wear a mask and social distance for the duration of the Site Visit.

1.05 SUBMITTING A PROPOSAL. Each proposer seeking consideration for performance of services related to this RFP must submit a proposal. All proposals shall be submitted as a PDF via electronic submission to bids@daytonohio.gov.

All proposals submitted must have a subject line stating: ‘RFP No 21-018AOAD Non-Exclusive Rental Car Concession at the James M. Cox Dayton International Airport’. No paper or fax proposals will be accepted.

The City has a 20meg limit for incoming e-mail message sizes (20meg includes e-mail itself and any attachments total). Should your company’s proposal document exceed this limit, your company will have to submit its document in multiple parts (emails). Should proposal documents require multiple emails, please designate in the “Subject” line of each email sent: RFP No 21-018AOAD Non-Exclusive Rental Car Concession at the James M. Cox Dayton International Airport, RFP No 21-018AOAD Part 1, RFP No. 21-018AOAD, and so forth.

The proposal opening will be facilitated using ZOOM with the following login information:

| | |
|---|---|
| Join Zoom Meeting | +1 301 715 8592 US (Washington DC) |
| https://us02web.zoom.us/j/81099448507 | +1 312 626 6799 US (Chicago) |
| Meeting ID: 810 9944 8507 | +1 669 900 6833 US (San Jose) |
| One tap mobile | +1 253 215 8782 US (Tacoma) |
| +19294362866,,81099448507# US (New York) | +1 346 248 7799 US (Houston) |
| +13017158592,,81099448507# US (Washington DC) | Meeting ID: 810 9944 8507 |
| Dial by your location | Find your local number: |
| +1 929 436 2866 US (New York) | https://us02web.zoom.us/j/81099448507 |

Sealed proposals must be received in the Procurement bid email in-box (BIDS@DAYTONOHIO.GOV) by 11:00am on the date indicated in Section 1.02 (RFP Schedule). Proposals received after the scheduled date/time will not be considered. All supporting materials and documentation must be included with the proposal. The responsibility of timely delivery lies solely with the proposer.

The City reserves the right to reject any and all proposals, to waive any irregularities in a proposal, or to accept the proposal(s) which in the judgment of proper officials, is in the best interest of the City. The City reserves the right to accept a part or parts of a proposal unless otherwise restricted in the RFP or issue subsequent RFPs. The City reserves the right to approve or reject any sub-Contractors proposed for work under this proposal or waive any minor irregularities.

The City reserves the right to select the successful proposers once all proposals are received, without seeking further information for clarification from proposers. Upon review of proposals, the City may designate the most qualified

proposals as finalists. These finalists may be invited to make oral presentations and participate in a question and answer session with the City. The City shall have the right to visit selected user sites, should this be deemed necessary.

All federal, state, and local laws regarding competitive bidding, anti-competitive practices, and conflict of interest shall be applicable to this RFP.

The City does not guarantee that any contract will be awarded because of this RFP. If a contract award is made but the contract is not executed, the City does not guarantee that the contract will be re-awarded.

1.06 REQUIRED PROPOSAL CONTENTS. All brochures and supplemental documentation shall be included with the electronic submission of the proposal as described in Section 1.05 above. If not, the proposal may be considered as non-responsive. Proposers are required to submit the following information in their proposal:

- **Exhibit A - Letter of Transmittal, Company Profile and Background, and Key Personnel Information.** The proposer shall provide a transmittal letter with authorizing signature for the proposal. The letter must briefly summarize the vendor’s ability and willingness to perform the services required by the RFP. The letter must be on the form provided in Exhibit A. If operating as a franchisee, include the required letter from the franchisor per Section 2.03 below.
- **Exhibit B - References.** Provide a list of references on form provided as Exhibit B. The City is particularly interested in contacting your governmental clients in the state of Ohio.
- **Exhibit D - Business Income Tax Questionnaire**
- **Exhibit E - Airport Concessions Disadvantaged Business Enterprise (ACDBE) Good Faith Efforts in Participation Form**
- **Exhibit F - Proposal Form** - including **Proposal Deposit.**
- **Exhibit H - Proposer’s Affidavit**
- **Exhibit I - Service Center Request and Proposal Form (if desired)**
- **Statement of Exceptions to RFP requirements.** Provide a detailed description of any exceptions taken to the requirements of this RFP, including the City Standard Terms and Conditions in Section 3. Exceptions shall be referenced to the applicable RFP section/sub-section numbers. Any other departures from the city’s RFP are to be identified and failure to do so shall make the proposal non-responsive. City’s standard Terms for Payment are Net 30 days from date of invoice once the project is complete, unless otherwise negotiated. If you cannot comply with this, please state any changes in the Statement of Exceptions to the RFP Requirements

1.07 ITEMS THAT DISQUALIFY A VENDOR IMMEDIATELY.

- Incomplete or non-responsive proposal
- Failure to follow the requirements outlined in this RFP
- Failure to meet the minimum qualifications to RFP
- Evidence that the submitted proposal contains falsified information
- Default or termination of other contracts by City of Dayton
- Any outstanding debt to the City of Dayton not current as of August 18, 2021
- Inability to obtain Affirmative Action Assurance approval prior to award of the contract. See Section 3.06 for information on how to contact the Human Relations Council.

1.08 CRITERIA. The selection committee will evaluate each proposal submitted based on the following criteria. After receipt and review of the written proposal, the City may elect to have the proposal presented in person, or clarifications submitted in writing.

Proposers shall not assume that any information shared with the City prior to this RFP will be considered in the evaluation process of this RFP. Evaluation team may or may not have prior knowledge of any discussions and processes. **Evaluation will be completed on the information submitted in response to the RFP only.**

| Evaluation Criteria for Goods and Services | | |
|---|---|------------------------|
| Item | Description | Points Possible |
| 1 | Sum total of the Minimum Annual Guarantee (MAGs) Proposed for Concession Fees | 80 |

| | | |
|---|--|------------|
| 2 | Previous background and experience of Proposer with respect to minimum qualifications | 5 |
| 3 | Previous background of history of default or arrearage in previous or existing contracts or agreements with the City of Dayton | 5 |
| 4 | ACDBE Participation | 10 |
| | Total Points | 100 |

The City shall consider the above factors in awarding the rental car concession agreements. Location preferences for counter space in the Rental Car Counter Facility and Ready/Return areas will be awarded to the qualified Proposers in rank order with the qualified Proposer offering the highest Minimum Annual Guarantee (MAG) for the 3-year term of the Agreement having first choice, the qualified Proposer offering the second highest MAG for the 3-year term having second choice and so on. The City will not “grandfather” any current counter space or adjacent office position or the Ready/Return area in the Garage. If two or more qualified Proposers submit Proposals with identical MAGs, the space allocation preference shall be determined by a random drawing among only those submitting Proposals with identical MAGs.

1.09 MISCELLANEOUS ITEMS.

- All proposers submitting a proposal will be notified via electronic communication, upon final determination by the City, of the firm or firms selected to perform the requested work.

SECTION 2 – SCOPE OF PROJECT

2.01 PURPOSE AND NEED / PROJECT DESCRIPTION. The City of Dayton, Department of Aviation is soliciting Proposals for the operations of On-Airport Non-Exclusive Rental Car Concessions at the James M. Cox International Airport.

Up to six (6) On-Airport Non-Exclusive Rental Car Concession and Lease Agreements will be awarded, to be located in the Rental Car Counter Facility as depicted on Exhibit K.

The Term of the Concession Agreement will commence January 1, 2022 and be in effect for a period of three (3) years. A detailed statement of privileges granted and the rights, privileges and obligations of each Proposer are set forth in the SAMPLE Non- Exclusive Rental Car Concession and Lease Agreement attached as Exhibit G.

2.02 BACKGROUND INFORMATION. The City of Dayton, Department of Aviation.

The James M. Cox Dayton International Airport (FAA Identifier - DAY) is owned by the City of Dayton, Ohio and operated by the Department of Aviation. The Dayton International Airport currently covers an area of approximately 4,500 acres. The Airport is located 9 miles north of the City of Dayton downtown area and conveniently accessed from the designated “Airport Access Road” exit on Interstate 70. The Terminal Building is used by Allegiant Air, American Airlines, United Airlines, Delta Air Lines and various charter companies. The Airport currently has five (5) On-Airport rental car company operating agreements (operating the following brands - Avis, Budget, Hertz, Dollar/Thrifty, Alamo/Enterprise and National) all located within the Rental Car Counter Facility attached to the Parking Garage and operating under individual Concession Agreements by counter space. These Concession Agreements will terminate December 31, 2021.

Provided as Exhibit J is certain statistical information representing the on-airport rental car gross revenues reported to the Airport for Contract Years ended 2019, 2020 and 2021 available to date. The Airport’s passenger deplanements for the same period area also included. All historical information is provided for the convenience of the proposers. The City is not responsible for any conclusions that proposers may draw from this information.

2.03 SCOPE OF MINIMUM QUALIFICATIONS, SERVICES AND OPERATING REQUIREMENTS.

Each successful Proposer shall provide the following minimum requirements:

1. **Obligation to Rent Motor Vehicles.** The successful Proposer shall exercise the privilege granted and accordingly shall, during the entire term of the agreement, rent for consideration, non-chauffeured motor vehicles to the public at and from the premises leased at the Airport. Further, the Proposer shall take all reasonable measures, within proper business practices, to maintain, develop and increase its business of renting non-chauffeured motor vehicles to the public at and from the premises leased at the Airport. The Proposer agrees it will conduct a first-class operation and will provide the public with good, prompt, courteous and efficient service including but limited to, maintaining on Airport, a more than adequate supply (no less than fifty (50) rental cars at the Airport) and variety of recent manufacture (not more than two (2) model years old) vehicles, as stated in Exhibit G, and under 40,000 miles which shall be maintained by the Proposer in first-class operating and mechanical condition and repair in clean and attractive condition. The Proposer agrees it will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.

2. **Operating Requirements.** Successful proposers are required to meet the terms and conditions provided in the Sample Non-Exclusive Rental Car Concession and Lease Agreement including all operating requirements contained therein.

3. **Experience.** In order to ensure a high a high level of service to the traveling public, The City will consider only Proposals from organizations with experience in the rental car business. Therefore, each Proposer must demonstrate that it:

- Has engaged in the rental car business for at least three (3) years; and
- Will provide a fleet of no less than fifty (50) rental cars at DAY.

4. **Franchise.** Franchise Proposers must provide the required information on financial capabilities, franchise operations and may include information on the operations of the franchisor. A franchisee shall

include a letter from franchisor granting approval to propose at Dayton International Airport and operate throughout the term of the lease.

5. **Dual Branding.** Dual Branding will be permitted under this RFP at the Dayton International Airport. Proposers owning more than one brand may submit multiple Proposals, one for each brand, or combine no more than two (2) brands in one Proposal. Submittal of more than one proposal by a proposer for the same brand will result in rejection of all bids from that proposer.

- The minimum annual acceptable MAG guarantee for a single brand under one Proposal is Two Hundred and Fifty Thousand Dollars (\$250,000) per year; and
- The minimum annual acceptable MAG guarantee for dual-brands under one Proposal is Three Hundred and Seventy-Five Thousand Dollars (\$375,000) per year.

Proposals from Proposers who fail to meet these minimum qualifications shall not be considered.

6. **Rental Car Ready/Return Agreement.** Successful proposers must be party to a current, executed Rental Car Ready/Return Agreement (RR Agreement) as provided for in Article VI(P) and Exhibit X of the Sample Agreement. If a successful proposer does not have a current and executed RR Agreement with the City, then submittal of their Proposal constitutes Proposer's agreement that proposer will execute such RR Agreement upon award recommendation.

2.04 COUNTER AND OFFICE LOCATION, QUEUING SPACE, COMPENSATION, READY/RETURN

A. **RENTAL CAR CONCESSIONS COUNTER and OFFICE LOCATION, QUEUING SPACE.** Rental Car Counter Facilities are attached to the Parking Garage and consist of six (6) Rental Car counters, each with attached office space. The order of choice of counter and office location under the Agreement will be determined by the cumulative MAG (the MAG for each of the 3-years added together) high-to-low Minimum Annual Guarantees (MAGs) Proposal by each Proposer; e.g. the highest successful Proposer will have first choice of location, which will remain the same during the term of the Agreement. Each selected Proposer will have one counter and office location and adjacent queuing space. The floor plan and square footage of the counter and office location, queuing space with shared common area and restrooms (Rental Car Counter Facility) are shown in Exhibit K.

B. **CONCESSION SPACE DEVELOPMENT.** A successful Proposer will be required to install and maintain all counter inserts in the counter and office location. All furnishings, fixtures, trade fixtures, equipment, and all signage (interior and exterior) necessary to operate a first-class concession will be the responsibility of the Proposer. All plans and specifications, materials and color selections must be reviewed and approved by written confirmation by the City of Dayton prior to any install.

C. **COMPENSATION TO CITY.** The Proposer agrees to pay a Concession Fee and Rent for facilities occupied as follows:

1. **Concession Fee.** Compensation to the City (the "Concession Fee") shall be the greater of the Minimum Annual Guarantee (MAG), as defined in the SAMPLE Agreement (see Exhibit G), or ten percent (10%) of gross revenue (the "Percentage Fee").

2. **Rent for Premises in the Rental Car Counter Facility** shall be paid monthly, as defined in the SAMPLE Agreement (see Exhibit G). This rental rate is based on the Terminal Airline Rates and Charges per square foot, per Contract Year, and subject to change annually upon the adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton. The terminal rental rate for 2021 is Sixty-Six Dollars and Sixty-Four Cents (\$66.64) per square foot. The terminal rental rate for 2022 has yet to be established.

D. **READY RETURN.** Priority of choice for location of Operators allocated area in the Ready/Return during the Contract Year 1 of the Term is based on the cumulative MAG (the MAG for each of the 3-years added together) Proposal by each Concessionaire in response to the RFP, with the Concessionaire having the highest cumulative MAG given first priority for choice of location of Operators block in the Ready/Return. Refer to Exhibit L for the Ready/Return layout.

SECTION 3 – REQUIREMENTS AND CONDITIONS FOR ALL PROPOSERS

3.01 TAX EXEMPTION. All items purchased under this contract will be exempt from the State of Ohio Sales Tax as provided for in Section 5739-02(b)(1) of the Revised Code of Ohio and will be exempt from the State of Ohio Use Tax, Section 5741.02(C)(2). Blanket Certification of Exemption Forms will be furnished to the Proposer by the Division of Purchasing.

3.02 PROPOSER AFFIDAVIT. If the successful proposer should be a corporation not incorporated under the laws of the State of Ohio, a certificate from the Secretary of State showing the rights of the successful proposer to do business in the State of Ohio shall be furnished. Each proposer is required to submit with their proposal, an Affidavit stating that neither the proposer nor agents thereof, nor any other party of the proposer has paid or agreed to pay directly or indirectly, any person, firm or corporation, any money or valuable consideration for assistance in procuring or attempting to procure the contract herein referred to, and further agreeing that no such money or reward will hereafter be paid. See Exhibit H.

3.03 AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM. The City encourages ACDBE, as defined in 49 CFR Part 23, in its Concessions at the Airport. In accordance with 49 CFR Part 23, the City is required to establish an overall goal for ACDBE participation in Airport Concessions. The ACDBE car rental goal for federal fiscal years 2019, 2020 and 2021 is 1.0% of the total gross revenues of all Airport car rental concessions. The City is in the process of calculating the new ACDBE car rental goal for federal fiscal years ended 2022, 2023 and 2024 which must be submitted to the FAA for approval. See Exhibit G for more detail, and Exhibit E for RFP requirements. It is the policy of the City of Dayton that ACDBE's shall have the maximum opportunity to participate in any activity, service or facility at the Airport under this Agreement with the City. A successful Proposer shall agree to make good faith efforts to ensure these goals are met, complete the required quarterly reports and provide such reports to the City within thirty (30) days of request.

3.04 PROPOSER'S FINANCIAL OBLIGATION TO THE CITY. No proposal may be accepted, or contract awarded to any person, firm or corporation that is in arrears or in default to the City, or that is a defaulter of surety or otherwise upon any obligation to the City or has failed to perform faithfully any previous contract with the City.

3.05 PROPOSER'S INCURRED COSTS. Each proposer shall be responsible for all costs incurred in preparing a response to this RFP. All materials and documents submitted by the proposer in response to this RFP shall become the property of the City and shall not be returned. Respondents selected for further negotiations, as well as the proposer ultimately selected to enter into a contractual agreement with the City, shall be responsible for all costs incurred by it during negotiations.

3.06 AFFIRMATIVE ACTION ASSURANCE (AAA). The selected proposers must electronically submit an Affirmative Action Assurance application via the City's online vendor portal (citybots.com) and obtain approval from the Human Relations Council (HRC) to do business with the City. You may contact the HRC for the Rules and Regulations regarding AAA certification at:

Human Relations Council
371 West Second Street, Suite 100
Dayton, Ohio 45402
(937) 333-1403 (Office)
(937) 222-4589 (Fax)

Failure to maintain active AAA certification with the HRC may result in termination of the contract and/or denial of future contract awards from the City. AAA certification must be updated annually via citybots.com.

3.07 STANDARD AGREEMENT TERMS FOR PROFESSIONAL SERVICES – See the attached Sample Non-Exclusive Rental Car Concession Agreement attached hereto as Exhibit G. These are standard terms which are subject to change by the City prior to the award of the contract.



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT A – LETTER OF TRANSMITTAL, PAGE 1

The undersigned hereby certifies that items furnished as a result of this proposal will be in full accordance with the City of Dayton specification applying thereto unless exception are stated above.

The Proposer’s name and address exactly as it would appear in a contract:

Entity Name: _____

Street Address: _____

City, State, Zip: _____

Proposer’s Phone Number: _____

Proposer’s Fax Number: _____

Proposer’s E-mail Address: _____

Form of Ownership **Sole Proprietorship** **Partnership** **Corporation**
 Joint Venture **LLC** **Other (Specify):** _____

Indicate if entity will be operating as a **Franchisee**. If so, include letter from _____
Franchisor as required by Section 2.03:

Federal Identification Number (or SSN if sole proprietorship): _____

Please include your IRS Form W9 with your proposal.

I certify the proposing entity complies with City of Dayton Ordinance #30829-09 and the City’s Revised Code of General Ordinances Section 35.70 through 35.74 regarding Living Wages. Yes No

SIGNATURE: _____

PRINTED NAME AND TITLE: _____

By signing this page, you state that you are an authorized representative, and have reviewed and are presenting this proposal on behalf of your business entity. Please continue completing this exhibit on the next page.

EXHIBIT A – LETTER OF TRANSMITTAL, PAGE 2

COMPANY PROFILE AND BACKGROUND

Name of Proposing Company: _____

| | | |
|--|------------|-------------------------|
| Company's Primary Business - State the proposer's primary business, the number of years in the industry, and the number of employees assigned to these related activities: | | |
| Primary Business | # of Years | # of Employees Assigned |
| | | |

If a corporation, state of incorporation: _____

| |
|---|
| Current Pending Lawsuits: Please provide all suits either with the City of Dayton or any other Municipalities and Government Agencies; including, but not limited to Federal, State, Local or other Municipalities and Governmental Agencies: |
| |

Local Office of Proposer: Office in/nearest to Dayton, Ohio: _____

Federal Identification Number (or SSN if sole proprietorship): _____

Key Personnel:

| Name | Title | Contact Information: Mailing address, telephone number, fax number and email address | Designated as Primary Contact for the City of Dayton? YES / NO |
|------|-------|--|--|
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City of Dayton, Ohio
 Department of Aviation
 Non-Exclusive Rental Car Concession at the James M. Cox International Airport
 RFP No. 21-018AOAD
 June 2021

EXHIBIT B – REFERENCES FOR PROPOSING COMPANY

Name of Proposing Company: _____

List company names, addresses, and telephone numbers for at least three references presently or previously served by your Company for RFP No. 21-018AOAD. Do not use the City of Dayton as a reference.

Company Name: _____

Address: _____

Contact Person: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

Company Name: _____

Address: _____

Contact Person: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
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EXHIBIT C – NOT APPLICABLE



City of Dayton, Ohio
 Department of Aviation
 Non-Exclusive Rental Car Concession at the James M. Cox International Airport
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EXHIBIT D- BUSINESS INCOME TAX QUESTIONNAIRE

Business Income Tax Questionnaire

The following information is required to determine your City of Dayton, Ohio income tax liability, if any, and to set up your account if required.



Type of Tax Filing: (check all that apply)

- 1. Employee Withholding FEIN # _____
- 2. Corporate Earnings FEIN # _____
- 3. Individual Ownership Earnings SSN # _____
- 4. Partnership Earnings FEIN # _____

Company Name _____ Phone # _____

Mailing Address _____ City _____ St. _____ Zip _____

Local Business Address _____ City _____ St. _____ Zip _____

Check the jurisdictions that we administer that you operate in:

- Dayton City Limits Dayton Wright Brothers Airport Dayton International Airport NONE

Date Business Started in Our Taxing Jurisdiction _____

Your Accounting Period? Calendar Year _____ or Fiscal Year ending on _____

Withholding Information *Quarterly Withholding cannot exceed \$600.00

■ Do you have employees? Yes or No Date First Employee Started Working in Our Jurisdiction _____

■ Do you submit withholdings QUARTERLY* or MONTHLY? _____

■ Is this a courtesy withholding for your employees who are residents of the above cities only? Yes or No

Do you rent or sublease property or space in the Dayton jurisdiction to another business or individual? Yes No

If so list Names, Addresses, and Tax ID below. If Yes, do they have employees working at that location? Yes No

Do you use Subcontractors? Yes No If so list Names, Addresses, and FEIN or Social Security Numbers below.

If you have filed returns with our office before, show Name and Tax ID #s used, and for what tax years you filed.

Full name of Owner of Company _____

If this is a change of ownership, please provide the date of change, the name, address, and phone number of former owner

If you are not liable to pay taxes in our jurisdiction, please explain why.

Signature _____ Title _____ Date _____

Thank you for your cooperation in this request. For more tax information is available at www.daytonohio.gov

Please return by MAIL or by FAX to: City of Dayton, Division of Revenue & Taxation, 101 West 3rd Street, P.O. Box 2806, Dayton, Ohio 45401
 (937) 333-3500 ~ Fax (937) 333-4280



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT E – AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) GOOD FAITH EFFORTS IN PARTICIPATION FORM, PAGE 1

Purpose for ACDBE Good Faith Efforts in Participation:

- To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at our airport(s);
- To help remove barriers to the participation of ACDBEs in opportunities for concessions at our Airport; and
- To provide appropriate flexibility to our Airport in establishing and providing opportunities for ACDBEs.

Requirements of 49 CFR Part 23 for Dayton International Airport:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of Dayton, Dayton International Airport to practice nondiscrimination based on race, color, religion, sex sexual orientation, gender identity, disability, age, ancestry, marital status, place of birth, or national origin in the award or performance of this contract. Award of this concession will be conditioned upon satisfying the requirements of this RFP specification. These requirements apply to all concession firms and suppliers, including those who qualify as an ACDBE. The concession firm shall make good faith efforts, as defined in 49 CFR Part 26 to meet the concession specific goal for ACDBE participation in the performance of this concession.

The ACDBE concession specific goal of 1.0% (of annual Gross Revenues) as defined in the 2019-2020-2021 FAA approved goal methodology, and has been established for this concession RFP, subject to change upon FAA approval of the new goals as determined by the FAA methodology for 2022-2023-2024. *

REQUIREMENTS the concession firm will be required to submit with their RFP package on the Good Faith Efforts in Participation Form:

1. The names and addresses of anticipated ACDBE firms and suppliers that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The anticipated dollar amount of the participation of each ACDBE firm participating;
4. Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet this goal;
5. Written and signed confirmation from the ACDBE that it intends on participating in this concession as provided in the concession's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Good Faith Efforts in Participation Form

ACDBE Airport Rental Car Concession

Agreement Term: January 1, 2022 – December 31, 2024

ACDBE Participation Concession Goal: 1.0% of Gross Revenues *Subject to change

PART I: CONTACT INFORMATION for PRIME CONCESSIONAIRE

| | |
|-----------------------|--|
| Concessionaire: | |
| Address: | |
| Contact Person/Email: | |
| Phone No. / Fax No.: | |

PART II: ACDBE Anticipated Participation

In order to count toward goal achievement, the listed firm(s) must be certified as Airport Concession Disadvantaged Business Enterprises (“ACDBE”) by the State of Ohio’s certification program.

| ACDBE Firm Name Address & Phone No. | Total anticipated ACDBE Participation | Description of work the ACDBE Firm will perform | Race/Gender of Disadvantaged Owner with Largest Ownership Interest |
|---|--|--|--|
| Name: _____ Address: _____ _____ _____ Phone No.: _____ | \$ _____ | <input type="checkbox"/> Joint Venture <input type="checkbox"/> Subcontractor <input type="checkbox"/> Service Provider <input type="checkbox"/> Sub-lessee <input type="checkbox"/> Vehicle Lease <input type="checkbox"/> Supplies <input type="checkbox"/> Other ** | <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian-Pacific <input type="checkbox"/> Non-Minority Women <input type="checkbox"/> Other |
| Name: _____ Address: _____ _____ _____ Phone No.: _____ | \$ _____ | <input type="checkbox"/> Joint Venture <input type="checkbox"/> Subcontractor <input type="checkbox"/> Service Provider <input type="checkbox"/> Sub-lessee <input type="checkbox"/> Vehicle Lease <input type="checkbox"/> Supplies <input type="checkbox"/> Other ** | <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian-Pacific <input type="checkbox"/> Non-Minority Women <input type="checkbox"/> Other |

EXHIBIT E – ACDBE GOOD FAITH EFFORTS IN PARTICIPATION FORM, PAGE 3

Only ACDBE firms certified in the State of Ohio will be counted toward the goal. You can find qualifying ACDBE companies at <http://www.dot.state.oh.us/DBE/Pages/DBE-Directory.aspx> by searching for ACDBE.

PART III: PRIME RENTAL CAR CONCESSIONAIRE

Total Estimated Gross Revenues for Agreement Term:

\$ _____

Total Anticipated ACDBE Participation for Agreement Term:

\$ _____

Anticipated ACDBE Participation Percent (%) of Gross Revenues for Agreement Term:

% _____

I hereby certify that the information contained on this Good Faith Efforts in Participation Form for The City of Dayton, Dayton International Airport RFP No. 21-018AOAD is true and accurate:

Signature of Authorized Representative

In the Presence of

Print Name/Title

Date

Please include a separate **Letter of Intent from each ACDBE participant** listed to verify the above information.

PART IV: PARTICIPATION WAIVER REQUEST

In the event the Prime Concessionaire believes it cannot achieve the ACDBE participation contract goal, this FORM must be accompanied by written documentation evidencing the Prime Concessionaire's good faith efforts to achieve the ACDBE participation contract goal, showing proof the Prime Concessionaire completed the following:

1. Solicited the interest of all certified ACBDE's having the capability to perform the work of the contract;
2. Negotiated with ACBDE subcontractors, and taken the subcontractors' price and capabilities, as well as the contract goals, into consideration;
3. Divided contract work items into economically feasible units to facilitate ACDBE participation, even when the proposer might otherwise prefer to perform these work items with its own forces;
4. Rejected ACDBE as being unqualified only with reasons based on a diligent investigation of their capabilities. The proposers standing within its industry, membership in specific groups, organizations, or associations, and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the proposers' efforts to meet the ACDBE goal;
5. Provided interested ACDBE with, or directed to, the Minority Business Assistance Center (MBAC) for information about the plans, specifications, and requirements of the contract within ten (10) business days of the proposal submittal deadline in order to assist them in responding to the solicitation;
6. Contacted the MBAC and used the services of the community organizations, contractors' groups, local, state and federal business assistance offices, and other organization to find subcontractors certified as ACDBE; and
7. Assisted interested ACBDE firms that responded to the proposers solicitation in obtaining bonding, lines of credit or insurance as required by the City or Proposer.

All Prime Concessionaires qualifying under this RFP must submit to the City (within 30 days of being notified of acceptance of their successful RFP) valid, documented, and verifiable evidence to the satisfaction of the City of compliance to the information supplied on this **Good Faith Efforts in Participation Form**.



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT F – PROPOSAL FORM, PAGE 1

Name _____
Date

Address

Brand or Brand(s) Proposer intends to Operate

The Proposer hereby intends to enter into an Agreement with the City of Dayton, Ohio (hereinafter referred to as "Airport") for the operation of a non-exclusive rental car concession at Dayton International Airport under the terms and conditions as set forth in the Request for Proposal No. 21-018AOAD; Attachments including the Non-Exclusive Rental Car Concession and Lease Agreement, together with the attached Exhibits (Exhibits are not to scale). In furtherance of this Proposal, the Proposer agrees to pay to the Airport the following during the Contract Year(s) 2022, 2023, and 2024: the greater of the Minimum Annual Guarantees (MAG) or ten percent (10%) of the annual gross revenues, and all rents and fees stipulated in the Non-Exclusive Rental Car Concession and Lease Agreement with payments to be made in the manner specifically set forth in said Agreement. The minimum annual acceptable MAG guarantee for a single brand under one Proposal is Two Hundred Fifty Thousand Dollars (\$250,000) per year. The minimum annual acceptable MAG guarantee for dual-brands under one Proposal is Three Hundred Seventy-Five Thousand Dollars (\$375,000) per year.

A subsequent year’s Minimum Annual Guarantee proposed below may not be less than the previously year’s proposed Minimum Annual Guarantee.

Minimum Annual Guarantee (MAG) Proposal
(Per Contract Year Beginning January 1, 2022)

| | | |
|--|--------|-----------|
| Contract Year 1 – January 1, 2022 to December 31, 2022 | \$ | _____ |
| Contract Year 1 – January 1, 2023 to December 31, 2023 | \$ | _____ |
| Contract Year 1 – January 1, 2024 to December 31, 2024 | \$ | _____ |
| THREE (3) CONTRACT YEAR TOTAL \$ | \$ | _____ |

The Proposer hereby agrees to pay the above Minimum Annual Guarantees (MAGs) to the Airport in accordance with and for the term of the Non-Exclusive Rental Car Concession and Lease Agreement.

- The Airport shall allocate the counter and office with queuing positions outlined on Exhibit K and Operators’ ready/return area as outlined on Exhibit L based on the total dollar value of the three (3) year Minimum Annual Guarantees as submitted here on Exhibit F. The order of selection will be on ranking from highest to lowest. The highest successful Proposer shall select location preferences first, the highest second successful Proposer shall select location preferences second from the locations remaining and so on until all locations have been selected.



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
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June 2021

EXHIBIT F – PROPOSAL FORM, PAGE 2

Name _____

Brand(s): _____

2. Accompanying the Proposal shall be one Proposal Bond, Cashiers, Certified or Treasurer's Check or bank draft of any State or National Bank in the amount of Ten Thousand Dollars (\$10,000.00) payable to City of Dayton, Ohio as liquidated damages in the event the undersigned is a successful Proposer who fails to comply with the requirements as set forth in this RFP within thirty (30) days from the estimated November 2021 Award Recommendation date. Only the Bonds etc. of successful proposers shall be deposited to the City of Dayton after the City Commission meeting. All Bonds etc. of non-successful proposers shall be immediately returned to those proposers via registered mail after the City Commission meeting.

All Bonds etc. shall be sent via registered mail, be received no later than proposal closing date and time, and titled with RFP No. 21-018AOAD to:

City of Dayton, Division of Procurement
101 W. Third St.
5th Floor, Room 514
Dayton, OH 45402

Successful Proposer is bound by this offer for a period of one hundred eighty (180) days following the date of Proposal opening and may not withdraw its offer during this period. It is understood by the Proposer that the City of Dayton reserves the right to reject any and all Proposals.

Attest: (Seal)

Proposer:

Title: _____

Title: _____

Witness:

Date:



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT G – SAMPLE NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT G - NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

These terms are subject to change by the City prior to the award of the agreement.

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2021 between the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and _____ ("Operator").

WITNESSETH THAT:

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

WHEREAS, On June XX, 2021, the City submitted a Request for Proposal, titled "Request for Proposal for Non –Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD" ("RFP"); and

WHEREAS, Operator responded to the RFP on August XX, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

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

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

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

ARTICLE I
DEFINITIONS

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

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

“Assigned Areas” means the areas at the Airport designated by the City, from time to time, for occupancy and use by Concessionaires.

“Commencement Date” means January 1, 2022.

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

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

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

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

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

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

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

“Expiration Date” means December 31, 2024.

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

“Gross Revenues” as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Operator for or in connection with contracts it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Operator. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made and services performed for cash, credit or consideration in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator’s customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

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

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;
2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;
3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;
4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

5. Reimbursements for amounts actually paid for parking tickets, red light tickets, tolls and toll violations from its customers to pass through without markup to an independent third party with no amount being retained by Operator. However, any amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

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

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

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

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

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

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

“Reallocation Date” means on or about March 1 during the term, beginning March 1, 2023.

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

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

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

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

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

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

ARTICLE II **NON-EXCLUSIVE AGREEMENT**

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

ARTICLE III **TERM**

A. This Agreement is effective for a period of three (3) years (“Term”), beginning January 1, 2022 (“Commencement Date”) and expiring December 31, 2024 (“Expiration Date”), unless terminated earlier or renewed in accordance with the provisions of this Agreement.

B. In the event that Operator holds over and remains in possession of the Premises, in whole or part, and the rights and obligations granted herein after the Expiration Date, such holding over shall only constitute a month-to-month license on the same terms and conditions specified in this Agreement, except that it may be terminated at any time by the City or Operator. Further, Operator agrees and shall continue to pay during the holding over period all Fees that were effective on the Expiration Date.

ARTICLE IV **PREMISES**

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to

Operator shall be collectively referred to herein as the "Premises"): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #___ depicted on Exhibit B.

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

C. Priority of choice for location of Operator's block in the Ready/Return area during the Term is based on the cumulative MAG (the MAG for each of the three years added together) Proposal by each Concessionaire in response to the RFP, with the Concessionaire having the highest cumulative MAG given first priority for choice of location of Operator's block in the Ready/Return.

The allocation of the block of Ready/Return parking area to Operator for the first Contract Year of this Agreement, commencing on the Commencement Date, is based on the sum of the three years minimum annual guarantee proposed by the Operator divided by the sum of the three years minimum annual guarantees proposed by all successful operators. The City may, on not less than thirty (30) days advance notice to Operator and/or on each Reallocation Date, reduce or increase the size and layout of the parking block in the Ready/Return area allocated for use by Operator based on Operator's market share for the immediately preceding Contract Year. If the calculation of the reallocation of the parking area does not result in a change to any operator of an increase or decrease of block size of more than 10%, the City will not reallocate the parking blocks for that Contract Year.

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

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

1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;

3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

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

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

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

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

1. If the City elects to relocate all or part of the Premises the City will give Operator at least sixty (60) days' prior written notice of the relocation date. The City agrees to provide substitute space of comparable square footage and shall provide improvements of comparable condition and utility (if not then existing at the new location). City shall pay all reasonable out-of-pocket moving costs for moving Operator's personal property to the substitute premises. Operator shall cooperate with the City in connection with the relocation, including, without limitation, responding in a timely manner to any requests for information or for review and comment on proposed plans for improvements to the substitute premises. Operator shall surrender possession of the portion of the Premises for which the substitution is being made and move from such portion of the Premises to the substitute premises on the relocation date.
2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

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

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

ARTICLE V **USE OF THE PREMISES**

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

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

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

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

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

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

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

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

C. Operator shall occupy the Ready/Return block assigned for its use only for the parking of rental Vehicles by Operator for pick-up or drop-off by its Customers, in a manner consistent with the terms of the Ready/Return Agreement. Vehicles returned by customers must be removed to the Operator's service facility within one hour of return. Returned vehicles which have not been cleaned and are not immediately available for rental shall not be stored in the Ready/Return. Operator understands that returned vehicles cannot be cleaned and/or serviced in the Ready/Return, including the removal of trash. Operator employees are permitted to park personal vehicles in the Ready/Return which are properly displaying an Airport-issued vehicle permit issued to the employee for that specific personal vehicle. Upon notification by the City, Operator shall immediately remove any employee vehicle parked in the Ready/Return that does not display an Airport-issued vehicle permit. Operator's employees shall only park personal vehicles in the Ready/Return while on duty at the Airport and shall not be permitted to park in the Ready/Return at any other time, including during personal or business travel, see Article IV(M) below.

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

1. Operator shall offer for rental only Vehicles of recent manufacture (not more than two (2) model years old and less than 40,000 miles), except as may be allowed under (D) (2) below. All Vehicles provided by Operator shall be maintained at Operator's expense in good and safe operating order, free from any known mechanical defects and be in clean, neat, and attractive condition inside and out. Operator shall furnish good, prompt and efficient service and shall at all times have available a sufficient number of Vehicles (a fleet of no fewer than fifty (50)) to meet all reasonably foreseeable demands of the traveling public.

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.
3. Operator shall provide the following services for its Customers at the Airport:
 - (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental;
 - (ii) provide for a national reservation system for services of Operator at the Airport, and
 - (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator's staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).
5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.
6. Operator's rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.
7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator's operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its' receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator's written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.
8. Operator shall respond in writing to complaints registered by the Airport's police with respect to violations of traffic regulations committed in the course of Operator's business by Operator's agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.
10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.
11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator's failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:
 - \$100 per occurrence - first occurrence
 - \$200 per occurrence - second occurrence
 - \$300 per occurrence - third occurrence
 - \$1,000 per occurrence thereafterFor hours of operations violations, liquidated damages are as follows:
 - \$100 per hour or portion thereof during which location is not open - first occurrence
 - \$200 per hour or portion thereof during which location is not open - first occurrence
 - \$300 per hour or portion thereof during which location is not open - first occurrence
 - \$1,000 per occurrence thereafter

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all

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

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

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

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

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

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

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

L. Operator shall at its sole expense, provide and use suitable receptacles for the storing of all trash, garbage, and other refuse created in the conduct of its business or operations in the Premises, or arising from Operator's exercise of any right or obligation under this Agreement. Trash receptacles in the Ready/Return are provided for customers disposal of trash. These receptacles shall not be used for trash generated from Operator's activities or employees and

shall not be used for disposing of trash left in returned vehicles. Such cleaning shall take place at the Operator's service facility.

M. Operator's employees shall be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations. Such badge must be obtained within thirty (30) days of execution of this Agreement. At that time, Operator's employees may request a parking sticker for their personal vehicle. See Article IV(C) above.

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

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

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

Q. Operator's employees shall be required to obtain an Airport-issued vehicle permit for any personal vehicle which Operator's employees intend to park in the Ready/Return.

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

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

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

(https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or <https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Offeror.docx?agreement=true&time=1493826893795>).

ARTICLE VII **CITY RIGHTS AND OBLIGATIONS**

A. The City agrees to provide normal heating, air conditioning and electrical service to the Rental Car Counter Facility as reasonably required. Operator shall pay for its own telephone service and installation of any telephone or computer connections or equipment or

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

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

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

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

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

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

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

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

ARTICLE VIII
RENTS, FEES, PAYMENTS AND PERFORMANCE BOND

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2022 through December 31, 2022 the sum of _____ Dollars and _____ Cents (\$XX.XX) per square foot per year. This rate is subject to updating annually upon adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

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

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

OR

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

January 1, 2022 to December 31, 2022 _____

January 1, 2023 to December 31, 2023 _____

January 1, 2024 to December 31, 2024 _____

The MAG shall be paid in equal monthly installments, in advance, on the first day of each month during the Term.

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

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

E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

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

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

H. Prior to the Commencement Date, Operator shall provide to the City, and shall keep in full force and effect during the Term, and thereafter, until all financial obligations hereunder are satisfied, a performance bond for the payments required hereunder, in an amount

equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator fails to pay any moneys required hereunder within the time limits specified herein in addition to taking any other action as may be provided hereunder.

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

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

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

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

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

L. In the event that the following condition exists during the term of this Agreement, the MAG hereinabove provided for in Article VIII(B)(2) shall be subject to proportional abatement for the period of time the condition exists:

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.
2. The abatement amount for those months that are abated as defined in Article VIII(L)(1) will be the prorated reduction of that month's 1/12th payment of the MAG. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12th MAG payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.

3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the 25% threshold, at which time the full MAG payment shall be made for such month.

This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than 25% reduction in passenger deplanements. Overpayments of the MAG will be credited to the Operator during the year-end reconciliation process described in Article VIII(G).

ARTICLE IX **CUSTOMER FACILITY CHARGE**

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

ARTICLE X **INDEMNIFICATION**

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

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

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

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

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

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

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

ARTICLE XI **INSURANCE**

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

1. Worker's Compensation and Occupational Disease Insurance

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

2. Commercial General Liability Insurance (Primary and Umbrella)

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

3. All Risk Property Insurance

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

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

4. Automobile Liability Insurance

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

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date, and all renewal certificates of such insurance, shall be provided to City. At the City's request, Operator shall furnish complete copies of all policies of insurance. The

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

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

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

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

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

ARTICLE XII **DAMAGE AND DESTRUCTION OF PREMISES**

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as

described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

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

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

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

D. During any period in which Operator is unable to use the portion of the Premises in the Rental Car Counter Facility because of damage or destruction to the improvements on the Premises or the Rental Car Counter Facility, the rent payable for that portion of the Premises in the damaged or destroyed Rental Car Counter Facility shall be abated for the period during which such damage to the Rental Car Counter Facility renders the Premises unusable or operations are so curtailed or terminated. Except for such abatement of rents due, the Operator shall have no claim against the City for any damage suffered by reason of any such damage, destruction, repair or restoration. There shall be no abatement of Concession Fees. Upon any deletion of a portion of the Premises from this Agreement Operator shall surrender such portion of the Premises to the City.

E. If any improvements to the Premises are not diligently repaired by Operator where required within thirty (30) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XIII
TERMINATION BY CITY

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

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

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

ARTICLE XIV
TERMINATION BY OPERATOR

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

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator's use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;
2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator's operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If

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

ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

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

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

- A. The Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Operator transfers its obligation to another, the transferee is obligated in the same manner as the Operator.

The provision obligates the Operator for the period during which the property is owned, used, or possessed by the Operator and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

- B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:
1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. **Nondiscrimination:** Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.
4. **Information and Reports:** Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Operator's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.
6. **Incorporation of Provisions:** The Operator will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Operator will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Operator becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Operator may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Operator may request the United States to enter into the litigation to protect the interests of the United States.

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

D. 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 X.X% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its' adoption. Operator shall provide information under this Article XVI as requested by City for City's reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

E. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. The Operator agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those business to similarly include the statements in further Agreements.

ARTICLE XVII **ASSIGNMENT AND SUBLETTING**

A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not, (a) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (b) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator's interest herein by operation of law; (c) sublease the Premises or any part thereof; or (d) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.

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

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

ARTICLE XVIII
GENERAL PROVISIONS

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

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

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

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

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

TBD

or such other address as Operator shall direct in writing.

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

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

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

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

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

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

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

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

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

L. This Agreement, including the incorporated Ready/Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator.

This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.

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

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

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

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

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:**

_____, 2021

Min/Bk. _____ Pg. _____

Clerk of the Commission

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

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

THIS RENTAL CAR READY/RETURN AGREEMENT (“Agreement”) is made this ___ day of _____, 2021, between the City of Dayton, Ohio (“City”), a political subdivision in and of the State of Ohio, and TBD (“Operator”), a TBD corporation authorized to conduct business in the State of Ohio.

RECITALS:

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

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

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

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

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

ARTICLE I - DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II - PREMISES

- A. The City expects to let a contract for the construction of the Parking Garage on or about February 4, 2009. It is agreed that the ground floor of the Parking Garage, containing approximately 193,020± square feet (approximately 700± parking spaces), shall be allocated to the RACs for Ready/Return. The second and third floors of the Parking Garage are allocated and specifically reserved for public parking or such other uses as the City, in its sole discretion, deems necessary.
- B. Beginning on the Garage Completion Date and during the term of this Agreement, the City shall lease to Operator an area in the Parking Garage for its Ready/Return (hereinafter referred to “Premises”). The specific Premises leased to Operator shall be determined in accordance with Article IV.C of the Concession Agreement. The Premises leased for the period commencing on the Garage Completion Date until the annual reallocation of

Ready/Return for the RACs will be specifically depicted in an “Exhibit 1,” which shall be signed by Operator and appended to and made a part of this Agreement. Annually thereafter or at such interval identified in the Concession Agreement, the City will reallocate Operator’s Premises in the manner described for Ready/Return reallocation set forth in the Concession Agreement. A new Exhibit, which shall be sequentially numbered, shall be prepared, as may be necessary, to reflect Operator’s Premises for the applicable period. All such Exhibits shall be signed by Operator and appended to this Agreement without necessity of a formal written amendment to this Agreement. The City shall not reimburse Operator for any expenses incurred during any Ready/Return relocation or reallocation under this Subsection, except as provided for in Article VI (C) below.

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

ARTICLE III – USE OF PREMISES

- A. Subject to the terms and provisions contained in this Agreement, and all applicable rules, regulations, laws, ordinances, codes and orders of any federal, state or local government or subdivision thereof in connection with the conduct of activities by Operator at the Airport, Operator shall use the Premises only for the following purposes:
1. The parking of rental Vehicles by Operator for pick-up or drop-off by its Customers;
 2. Uses in connection with Operator’s Ready/Return operations, including but not limited to, customer service kiosks and storage of ancillary equipment associated with Operator’s operations; and
 3. For such other uses as the City may approve in writing in its sole and absolute discretion.

- B. Operator is specifically prohibited from using the Premises or otherwise allowing use of the Premises for any of the following:
1. Washing, fueling, cleaning, painting or maintaining of Vehicles;
 2. To sell Vehicles to the public;
 3. To sell (including sale through vending machines) or give away food or beverages;
 4. To bring, store and/or dispose of any Hazardous Materials, except that Operator may bring and store commercially reasonable quantities of household and commercial cleaners and chemicals in connection with the operation and maintenance of the Premises and may have fuel in the tanks of its Vehicles;
 5. Any acts that violate (or may violate) any certificate of occupancy issued for the Parking Garage;
 6. Any acts that void (or makes voidable) any insurance procured by City and covering the Parking Garage;
 7. Any acts that make it impossible or financially impracticable for a RAC or the City to obtain fire or other insurance for the Parking Garage;
 8. Any acts that constitute a public or private nuisance; and
 9. Any acts that disrupt the safe, efficient and normal operation of the Airport.
- C. Operator shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. Operator shall not park Vehicles in the public parking areas of the Parking Garage or other public parking lots on the Airport, and is not entitled to free or discounted parking for its employees, contractors or agents to park automobiles in the Parking Garage or other public parking lots. Notwithstanding, Operator may allow its employees to park on its leased Premises.

ARTICLE IV – OPERATOR’S RIGHTS & OBLIGATIONS

- C. Operator shall comply with all applicable Environmental Laws in its use of the Premises and the conduct of its concession business at the Airport, including the Parking Garage.
- D. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required under this Agreement and/or to conduct its Ready/Return operations at and from the Premises. Upon City’s request, Operator shall provide evidence to the City that Operator obtained such permits, licenses, certificates, other authorizations and registrations.
- E. Operator shall comply with all present and future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

- F. Operator may, at its expense, erect and maintain directional, informational, and traffic control signs within and upon the Premises in addition to those provided by City, with the size and type of sign or signs and location subject to City's advance written approval.
- G. Operator shall not erect, allow or permit to be maintained on the Premises, or upon the exterior or any improvement on the Premises or on the Parking Garage structure or fixtures therein, any billboard or advertising signs, except those which have the prior written approval of City. Operator may maintain removable or permanent signage bearing Operator's name or trade name, in neatly arranged electric, neon, or other type sign or signs, with the size and type of sign or signs and location subject to City's advance written approval.
- H. Operator shall provide normal custodial and routine maintenance services for its kiosks, booths and other Operator installed or provided equipment and fixtures on the Premises. Operator shall at its sole expense, provide and use suitable covered receptacles for the storing of all trash, garbage, and other refuse created in the conduct of its business or operations, or arising from Operator's exercise of any right or obligation under this Agreement. If required by City, Operator shall deposit such trash, garbage and other refuse (excluding any construction, renovation, removal or relocation debris) in a dumpster or at such location identified by the City for such purpose.
- I. Operator shall repair or pay for any and all damages to City property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator's use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
- J. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations and to strictly observe all posted speed limits.
- K. Operator shall comply with all terms and conditions of its Concession Agreement.
- L. The rights stated in this Article are subject to such ordinances, rules and regulations as now or may hereafter be applied to the operation of the Airport and on-Airport rental car concessions.

ARTICLE V – TERM

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

ARTICLE VI – FINANCIAL MATTERS

- A. In consideration of the use of CFCs to fund construction of the Parking Garage (as set forth in Subsection B below) and payment of O&M Services (as set forth in Subsection D below), the Premises are provided to Operator at no additional cost for the term of this Agreement.
- B. Based on the public bid received and to be awarded by the City, the total cost for the Parking Garage, including planning, design, construction, project management costs and RAC Specific Costs is Thirty Five Million Seventy One Thousand Nine Hundred Forty Five Dollars Thirty Nine Cents (\$35,071,945.39). Consistent with the terms of the MOU and agreement between the parties, the RAC portion of the cost of the Parking Garage, including RAC Specific Costs, to be funded with CFCs is Seventeen Million Four Hundred Thirty Nine Thousand Five Hundred Seventy Eight Dollars Sixteen Cents (\$17,439,578.16), plus Debt Financing Costs (hereinafter referred to as "RAC Share"). By execution hereof, Operator agrees and forever waives any objection to the use and pledge of CFCs to fund the RAC Share.

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

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

budget for the O&M Services will be adjusted every three (3) years or more frequently if the actual costs for O&M Services change by more than ten percent (10%) in any calendar year. Exhibit B shall be revised accordingly, which shall not require a formal written amendment to this Agreement. For the purposes of calculating the costs for O&M Services, the calculations will be based on a calendar year or portion thereof.

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

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

ARTICLE VII – CITY’S RIGHTS AND OBLIGATIONS

- A. The City is not obligated or required to provide heating and/or air conditioning for the Premises, kiosks and/or booths. The City reserves the right to temporarily interrupt utility services furnished to the Premises to make emergency repairs or for other reasonable purposes, and the City shall restore said services as soon as reasonably possible. The City shall endeavor to provide Operator with reasonable notice of such interruptions when possible. The City shall have no responsibility or liability for any failure of electrical or any other service to the Premises when prevented from doing so by laws, orders or regulations of any federal, state or local governmental requirement (including any requirement of any agency or department of the City) or as a result of the making of repairs or replacements, fire or other casualty, strikes, failure of the utility provider to provide service or for any other reason whatsoever. Except in the event of an emergency, City will work with Operator to select a mutually agreeable date and time that is convenient and causes the least disruption to Operator’s and the City’s operations.

- B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors or designees):
1. To have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City's police power;
 2. To enter the Premises to remodel, repair, alter or otherwise prepare the Premises for re-occupancy at any time after Operator vacates or abandons the Premises;
 3. To enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment;
 4. To adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to obey and enforce; and
 5. To exercise such other rights as may be granted the City elsewhere in this Agreement.

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

- C. City warrants quiet enjoyment of the rights and privileges granted herein, during the term hereof, upon the performance of Operator's covenants contained herein, subject to Subsection (B) of this Article VII.
- D. City shall maintain the Parking Garage as set forth herein and shall provide for completion of the O&M Services identified. City, at its option, may elect to contract for such services or provide them through its existing staff. City, in its sole judgment, shall determine the necessity and frequency of the O&M Services.
- E. In an emergency situation or upon occurrence of an Event of Default, the City may (but shall not be obligated so to do), and without waiving or releasing Operator from any obligation of Operator hereunder, make any payment or perform any other act which Operator is obligated to make or perform under this Agreement in such manner and to such extent as the City may deem desirable; and in so doing the City shall also have the right to enter upon the Premises for any purpose reasonably necessary in connection therewith and to pay or incur any other necessary and incidental costs and expenses,

including reasonable attorney's fees. All sums so paid and all liabilities so incurred by the City, together with interest thereon at the default rate shall be deemed additional fees hereunder and shall be payable to the City upon demand as additional fees. The performance of any such obligation by the City shall not constitute a waiver of Operator's default in failing to perform the same. Inaction of the City shall never be considered as a waiver of any right accruing to it pursuant to this Agreement. The City shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Operator any other occupant of the Premises or any part thereof, by reason of exercise of its rights under this Subsection (E).

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

ARTICLE VIII - INDEMNIFICATION

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

6. Any action or proceedings which may be brought against City or against the Premises, or any part thereof, by virtue of any acts, errors and/or omissions by Operator, including Operator's violation or alleged violation of any laws, regulations, ordinances or requirements or of the United States of America, or the State of Ohio or other municipal, public or quasi-public authority now existing or hereafter created, having jurisdiction in the Premises.

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

B. Any Indemnified Party shall utilize the following procedure in enforcing any and all claims for indemnification against Operator:

1. If any claim, action or proceeding is made or brought against any Indemnified Party against which it is indemnified under Subsection (A) above, the Indemnified Party shall give notice to Operator promptly after obtaining written notice of any claim as to which recovery may be sought against it or him.
2. Operator shall assume the defense of such claim or litigation, and its obligations hereunder as to such claim or litigation shall include taking all steps necessary in the defense or settlement of such claim or litigation and holding the Indemnified Party harmless from and against any and all damages caused by or arising out of any settlement approved as provided herein, or any judgment in connection with such claim or litigation. Any counsel employed by Operator to represent the City's interest shall be subject to the City's prior approval.
3. In the event Operator fails to assume the defense of any such claim by a third party or litigation after receipt of notice from the Indemnified Party, the Indemnified Party may defend against such claim or litigation in such manner as it deems appropriate, and Operator shall promptly reimburse the Indemnified Party as set forth in (4) below.
4. Operator shall promptly reimburse the Indemnified Party for any amount of any judgment rendered or settlement and for all damages, costs, fees and expenses (including attorney's fees) incurred or suffered by it in connection with the defense against such claim or litigation.

C. City is not liable to Operator or to Operator's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's subtenants, agents, representatives, contractors or

employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot, located either on or off the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.

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

ARTICLE IX - INSURANCE

- A. Operator, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the Term, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an "A" rating

from A.M. Best and covering all operations under this Agreement, whether performed by Operator or by persons or entities retained by Operator:

1. Worker's Compensation and Occupational Disease Insurance

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

2. Commercial Liability Insurance (Primary and Umbrella)

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

3. All Risk Property Insurance

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

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

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

4. Automobile Liability Insurance

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

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

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

ARTICLE X - DAMAGE AND DESTRUCTION OF PREMISES

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

ARTICLE XI - TERMINATION BY CITY

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

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

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

ARTICLE XII - TERMINATION BY OPERATOR

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

ARTICLE XIII - SURRENDER AND RETURN OF THE PREMISES

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

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

ARTICLE XIV - NON-DISCRIMINATION

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

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

ARTICLE XV - ASSIGNMENT AND SUBLETTING

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

ARTICLE XVI - GENERAL PROVISIONS

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

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

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

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

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

TBD

or such other address as Operator shall direct in writing.

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

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

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

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

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

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

WITNESSED BY:

TBD

By: _____

Its: _____

WITNESSED BY:

CITY OF DAYTON, OHIO

City Manager

**APPROVED AS TO FORM
AND CORRECTNESS:**

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

City Attorney

_____, 2021

Min/Bk. _____ Pg. _____

Clerk of the Commission

EXHIBIT 1 to the Rental Car Ready/Return Agreement

To be inserted after space selection prior to final execution

SAMPLE

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

Rental Car Counter Facility Layout

To be inserted after space selection prior to final execution

SAMPLE

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

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Operator, for itself, its assignees, and successors in interest (hereinafter referred to as the “Operator”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 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 USC § 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 USC § 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 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 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 USC 1681 et seq).

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

ACDBE Rental Car Annual Participation Report - Quarterly Reporting

Fiscal Year: October 1, 20 ____ - September 30, 20 ____

ACDBE Participation Contract Goal: ____% Prime Concessionaire Total Gross Revenue: \$ _____
 Total ACDBE Participation: \$ _____

Annual Reports are required to be submitted by the 30th day of the month following the end of each fiscal year. The information received will be compiled and reported to the FAA in accordance with 49 CFR Part 23.

PART I: CONTACT INFORMATION

| | |
|-----------------------|--|
| Concessionaire: | |
| Address: | |
| Contact Person/Email: | |
| Phone No. / Fax No.: | |

PART II: ACDBE Participation

In order to count toward goal achievement, the listed firm(s) must be certified as Airport Concession Disadvantaged Business Enterprises ("ACDBE") by the State of Ohio's certification program. (Certification can be verified at <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>)

| ACDBE Firm Name Address & Phone No. | Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 – Sept. 30) | Nature of Relationship with ACDBE Firm | Race/Gender of Disadvantaged Owner with Largest Ownership Interest |
|---|--|--|---|
| Name: _____ Address: _____ _____ _____ Phone No.: _____ Email: _____ | \$ _____ | <input type="checkbox"/> Prime Concession <input type="checkbox"/> Subcontractor <input type="checkbox"/> Management Contract <input type="checkbox"/> Goods/Services | <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Asian-Indian American <input type="checkbox"/> Non-Minority Women <input type="checkbox"/> Other |
| Business Type: <input type="checkbox"/> Car- Rental- Insurance <input type="checkbox"/> Car- Rental- Vending <input type="checkbox"/> Car- Rental- Office Supplies <input type="checkbox"/> Car- Rental- Uniforms <input type="checkbox"/> Car- Rental- Gas: Oil <input type="checkbox"/> Car- Rental- Other (Explain business type below) | Shortfall Explained: | Does this vendor have a lease or sublease ? <input type="checkbox"/> Yes Agreement Dates: <input type="checkbox"/> No | Does the agreement have an option to renew? <input type="checkbox"/> Yes How many renewal options? Length of time of renewal: <input type="checkbox"/> No |

**AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE")
RENTAL CAR ANNUAL PARTICIPATION REPORT
QUARTERLY REPORTING**

| NON-ACDBE Subconcession(s) | | |
|-----------------------------------|--------------------------|-------------------------------------|
| NAME | TYPE OF GOODS OR SERVICE | Total NON-ACDBE Subs Gross Receipts |
| | | \$ |
| | | \$ |
| | | \$ |

PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

Quarterly Reports are required to be submitted by the 30th day of the month following the end of each annual quarter. The information received will be compiled and reported on the below graph.

| | Gross Receipts | ACDBE Participation | Actual % |
|---|----------------|---------------------|----------|
| 1st Quarter (Jan 1, 20__ - Mar 30, 20__) | _____ | _____ | _____ |
| 2nd Quarter (Apr 1, 20__ - Jun 30, 20__) | _____ | _____ | _____ |
| 3rd Quarter (Jul 1, 20__ - Sep 30, 20__) | _____ | _____ | _____ |
| 4th Quarter (Oct 1, 20__ - Dec 31, 20__) | _____ | _____ | _____ |

I hereby certify that the information contained in this report is true and correct:

Signature of Authorized Representative

Print Name/Title

Date

For BOTH Annual and Quarterly Reporting:

In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire's good faith efforts to achieve the ACDBE participation contract goal.



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT H – PROPOSER’S AFFIDAVIT

Affiant, _____, being first duly sworn, deposes and says:

A. Affiant does hereby state that neither the Proposer nor any of Proposer’s officers, partners, owners, agents, representative, employees, or parties in interest, has in any way colluded, conspired, or agreed, directly or indirectly with any person, firm, corporation or other Proposer or potential Proposer in regard to the amount, terms or conditions of this proposer and has not paid or agreed to pay, directly or indirectly any person, firm, corporation or other Proposer or potential Proposer any money or other valuable consideration for assistance in procuring or attempting to procure the Agreement or fix the prices in the attached proposal or the proposal of any other Proposer, and further states that no such money or other reward will be hereinafter paid.

For purposes of this RFP, collusion shall mean illegal cooperation to cheat or deceive and is not the coordination that takes place between brands owned by the same company.

B. Affiant further states that no officer, or stockholder of the Proposer is a member of the City of Dayton or its staff, or, related to any members of the City of Dayton, their elected officials, officers, agents and employees, except as noted herein below: _____.

C. Affiant hereby agrees to enter into a Non-Exclusive Rental Car Concession and Lease Agreement with the City of Dayton for the operation of a non-exclusive rental car concession at Dayton International Airport under the terms and conditions as set forth in the Request for Proposal; Proposal Form; Letter of Transmittal; Proposers Affidavit; Addendum(s); and the Non-Exclusive Concession and Lease Agreement, together with all Exhibits.

Signed _____

Title _____

Subscribed and sworn before me this _____ day of _____, 2021.

Notary Public in and for the State of _____

My Commission expires _____



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT I – REQUEST FOR SERVICE CENTER OFFER FORM, PAGE 1

Monthly Rent Offers for Lease of On-Airport Rental Car Service Center for successful proposals for the Non-Exclusive Rental Car Concession and Lease Agreement are being accepted with the RFP No. 21-018AOAD.

There are four (4) available Service Center sites, identified on Exhibit M, attached, beginning January 1, 2022.

The following four (4) Service Centers sites are the only four (4) Service Center sites available for lease at this time:

1. Service Center B – (approx. 130,000 SF ground / 4,019 SF building)
2. Service Center C – (approx. 66,000 SF ground / 2,960 SF building)
3. Service Center D – (approx. 40,000 SF ground / 1,200 SF building)
4. Service Center E – (approx. 120,000 SF ground / 4,019 SF building)

Only those Rental Car Companies who are successful proposers and are awarded an Agreement for the Non-Exclusive Rental Car Concessions as a result of RFP No. 21-018AOAD will be eligible to enter into a Rental Car Service Center Lease Agreement for a Service Center.

SUMMARY OF CERTAIN Service Center LEASE AGREEMENT TERMS:

Lessee shall adhere to all terms of the SAMPLE Rental Car Service Center Lease Agreement, attached hereto as Exhibit N, including, but not limited to the terms set forth below:

- The Term of the Lease shall be approximately three (3) years, and, coincide with the term of the Lessee’s Non-Exclusive Rental Car Concession and Lease Agreement. The Lease Agreement terminates upon expiration of Lessee’s current Concession Agreement;
- The Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee;
- The Lessee shall use the Premises only for the purpose of storing, washing, servicing and making minor repairs on vehicles owned and used in the operation of its rental car operation at the Airport;
- The Lessee shall accept the Property in its present condition “as is” and shall maintain the Property in a comparable condition as existed at the time of the execution of the Lease;
- The Lessee shall keep the facility in clean orderly condition;
- The Lessee shall carry and maintain Insurance as required in the Lease at all times during the term of the Lease in amounts set forth in the Lease;
- The Lessee shall provide the Airport with a United States Environmental Protection Agency (EPA) approved Spill Prevention, Control and Countermeasure Plan (SPCC) addressing all Hazardous Substances within forty-five (45) days after the execution of the Lease;
- The Lessee shall comply with the Airport’s Storm Water permit and prohibit the washing of vehicles outside of the wash rack on each property.

The available Service Center sites will be awarded in rank order, beginning with the potential Lessee who has offered the highest monthly rental first, and so forth until all properties have been awarded.



City of Dayton, Ohio
 Department of Aviation
 Non-Exclusive Rental Car Concession at the James M. Cox International Airport
 RFP No. 21-018AOAD
 June 2021

EXHIBIT I – ON-AIRPORT SERVICE CENTER OFFER FORM, PAGE 2

Rental Car Company (Brand) _____ Date _____

Rental Car Company Authorized Representative _____

We hereby request to enter into an agreement with the City of Dayton, Ohio (hereinafter referred to as "City") for the Lease of an On-Airport Service Center at the James M. Cox, Dayton International Airport under the terms and conditions as set forth in Sample Rental Car Service Center Lease Agreement, Exhibit N. In furtherance of this desire to lease a Rental Car Service Center, the Rental Car Company agrees to pay to the City the following monthly rent each month of the Lease Agreement with payments to be made in the manner specifically set forth in said Lease Agreement.

The minimum acceptable monthly rent offer is detailed below for each Service Center Site:

| | | |
|---|----|--|
| Service Center B - Minimum Monthly Offer for B is \$12,000.00 | \$ | |
| Service Center C - Minimum Monthly Offer for C is \$ 9,000.00 | \$ | |
| Service Center D - Minimum Monthly Offer for D is \$3,000.00 | \$ | |
| Service Center E - Minimum Monthly Offer for E is \$ 9,000.00 | \$ | |

The undersigned Rental Car Company hereby agrees to pay the above monthly rent to the City of Dayton in accordance with and for the term of the Rental Car Service Center Lease Agreement.

The undersigned hereby acknowledges receipt of the Sample Lease Agreement, Exhibit N entitled Sample Rental Car Service Center Lease Agreement and the same have reviewed prior to the execution of this offer.

The City shall award Rental Car Service Center Leases based on the highest offered monthly rent for each property at the same time the City awards the Non-Exclusive Rental Car Concession and Lease Agreement.

The undersigned is bound by this offer for a period of sixty (60) days following the date of this Letter Offer opening and may not withdraw its offer during this period. It is understood by the Rental Car Company that the City reserves the right to reject any and all offers.

SIGNATURE OF AUTHORIZED REPRESENTATIVE OF RESPONDENT:

Attest: (Seal)

Rental Car Company Authorized Representative :
 Name _____
 Signature _____

Title: _____

Title _____



City of Dayton, Ohio
 Department of Aviation
 Non-Exclusive Rental Car Concession at the James M. Cox International Airport
 RFP No. 21-018AOD
 June 2021

EXHIBIT J – STATISTIAL INFORMATION – JULY 2018 THROUGH APRIL 2021

| Contract Year Ended 7/2019 | Dual Branded | | Dual Branded | | Single Branded Hertz | Dual Branded Dollar/Thrifty | | Single Branded National | | Total | Passenger Deplanements |
|----------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|-----------------------------|------------------------|-------------------------|----------------|-------|------------------------|
| | Alamo | Enterprise | Avis | Budget | | Dollar/Thrifty | National | National | Total | | |
| July 2018 | \$ 360,352.17 | \$ 490,625.74 | \$ 548,757.44 | \$ 378,973.29 | \$ 515,661.75 | \$ 309,629.30 | \$ 503,428.38 | \$ 3,107,428.07 | 81,854 | | |
| August 2018 | \$ 301,716.69 | \$ 481,862.27 | \$ 622,729.01 | \$ 440,032.20 | \$ 610,425.37 | \$ 376,804.36 | \$ 638,351.62 | \$ 3,375,921.52 | 80,033 | | |
| September 2018 | \$ 288,182.93 | \$ 417,279.64 | \$ 440,352.72 | \$ 362,771.59 | \$ 488,043.92 | \$ 327,739.97 | \$ 537,862.00 | \$ 2,862,232.77 | 72,470 | | |
| October 2018 | \$ 301,610.60 | \$ 412,621.91 | \$ 483,050.93 | \$ 325,306.41 | \$ 464,797.91 | \$ 195,111.75 | \$ 574,347.63 | \$ 2,756,847.14 | 79,423 | | |
| November 2018 | \$ 267,226.28 | \$ 398,495.21 | \$ 391,981.95 | \$ 284,045.45 | \$ 396,084.09 | \$ 215,300.83 | \$ 498,204.79 | \$ 2,451,338.60 | 76,591 | | |
| December 2018 | \$ 224,285.03 | \$ 324,364.40 | \$ 318,811.78 | \$ 225,869.60 | \$ 342,562.00 | \$ 216,325.42 | \$ 396,958.63 | \$ 2,049,176.86 | 69,252 | | |
| January 2019 | \$ 269,733.02 | \$ 175,939.24 | \$ 292,828.63 | \$ 184,895.81 | \$ 317,356.89 | \$ 170,461.49 | \$ 399,489.06 | \$ 1,810,704.14 | 62,986 | | |
| February 2019 | \$ 152,163.76 | \$ 309,177.55 | \$ 380,924.00 | \$ 204,049.06 | \$ 349,810.63 | \$ 192,911.29 | \$ 410,331.59 | \$ 1,999,367.88 | 61,311 | | |
| March 2019 | \$ 219,070.91 | \$ 406,120.17 | \$ 451,751.80 | \$ 392,797.24 | \$ 407,692.89 | \$ 245,685.59 | \$ 519,741.44 | \$ 2,642,860.04 | 78,707 | | |
| April 2019 | \$ 232,459.24 | \$ 401,451.24 | \$ 401,158.67 | \$ 382,653.46 | \$ 371,882.64 | \$ 260,822.63 | \$ 497,882.03 | \$ 2,548,309.91 | 77,982 | | |
| May 2019 | \$ 309,283.99 | \$ 447,656.76 | \$ 498,658.83 | \$ 371,418.01 | \$ 457,099.90 | \$ 299,144.10 | \$ 546,871.35 | \$ 2,930,132.94 | 79,337 | | |
| June 2019 | \$ 413,239.43 | \$ 507,766.47 | \$ 490,595.58 | \$ 356,193.93 | \$ 490,984.04 | \$ 352,993.13 | \$ 547,176.41 | \$ 3,158,948.99 | 84,939 | | |
| Totals | \$ 3,339,324.05 | \$ 4,773,360.60 | \$ 5,321,601.34 | \$ 3,813,006.05 | \$ 5,212,402.03 | \$ 3,162,929.86 | \$ 6,070,644.93 | \$ 31,693,268.86 | 904,885 | | |
| Contract Year Ended 7/2020 | Dual Branded | | Dual Branded | | Single Branded Hertz | Dual Branded Dollar/Thrifty | | Single Branded National | | Total | Passenger Deplanements |
| | Alamo | Enterprise | Avis | Budget | | Dollar/Thrifty | National | National | Total | | |
| July 2019 | \$ 451,903.57 | \$ 557,249.69 | \$ 451,071.21 | \$ 406,987.37 | \$ 466,263.82 | \$ 340,314.22 | \$ 505,047.00 | \$ 3,178,836.88 | 80,851 | | |
| August 2019 | \$ 367,386.01 | \$ 538,366.31 | \$ 519,205.49 | \$ 427,823.81 | \$ 531,169.88 | \$ 457,878.87 | \$ 582,504.27 | \$ 3,424,334.64 | 78,395 | | |
| September 2019 | \$ 302,827.18 | \$ 523,834.25 | \$ 426,010.62 | \$ 336,438.99 | \$ 462,441.18 | \$ 322,313.13 | \$ 520,002.62 | \$ 2,893,867.97 | 72,375 | | |
| October 2019 | \$ 240,606.24 | \$ 416,680.49 | \$ 457,313.07 | \$ 325,056.41 | \$ 508,644.30 | \$ 278,948.34 | \$ 573,821.04 | \$ 2,801,069.89 | 77,294 | | |
| November 2019 | \$ 185,647.50 | \$ 405,689.09 | \$ 436,951.56 | \$ 347,968.98 | \$ 466,080.70 | \$ 303,188.92 | \$ 498,655.78 | \$ 2,644,182.53 | 71,575 | | |
| December 2019 | \$ 224,728.85 | \$ 392,225.00 | \$ 342,848.63 | \$ 261,547.12 | \$ 443,479.09 | \$ 250,050.93 | \$ 427,359.87 | \$ 2,342,239.49 | 72,604 | | |
| January 2020 | \$ 174,363.57 | \$ 309,274.67 | \$ 316,883.98 | \$ 225,066.87 | \$ 410,633.22 | \$ 165,995.71 | \$ 426,660.97 | \$ 2,028,878.99 | 62,251 | | |
| February 2020 | \$ 150,733.76 | \$ 329,519.72 | \$ 353,288.42 | \$ 292,515.60 | \$ 418,643.65 | \$ 181,340.66 | \$ 506,243.59 | \$ 2,232,285.40 | 62,274 | | |
| March 2020 | \$ 140,797.87 | \$ 208,746.38 | \$ 217,465.00 | \$ 240,439.15 | \$ 236,932.61 | \$ 155,883.73 | \$ 293,802.38 | \$ 1,494,067.12 | 36,142 | | |
| April 2020 | \$ 28,804.34 | \$ 63,255.31 | \$ 39,712.42 | \$ (4,062.60) | \$ 31,282.50 | \$ 46,781.50 | \$ 78,222.27 | \$ 283,995.74 | 3,703 | | |
| May 2020 | \$ 56,267.87 | \$ 107,571.88 | \$ 79,813.61 | \$ 81,232.66 | \$ 67,382.80 | \$ 45,111.48 | \$ 99,257.64 | \$ 536,637.94 | 9,151 | | |
| June 2020 | \$ 141,674.00 | \$ 214,862.79 | \$ 134,577.60 | \$ 193,764.94 | \$ 132,143.12 | \$ 79,625.65 | \$ 171,868.32 | \$ 1,068,516.42 | 17,448 | | |
| Totals | \$ 2,465,740.76 | \$ 4,067,275.58 | \$ 3,775,141.61 | \$ 3,134,779.30 | \$ 4,175,096.87 | \$ 2,627,433.14 | \$ 4,683,445.75 | \$ 24,928,913.01 | 644,063 | | |
| Contract Year Ended 7/2021 | Dual Branded | | Dual Branded | | Single Branded Hertz | Dual Branded Dollar/Thrifty | | Single Branded National | | Total | Passenger Deplanements |
| | Alamo | Enterprise | Avis | Budget | | Dollar/Thrifty | National | National | Total | | |
| July 2020 | \$ 165,500.58 | \$ 295,841.52 | \$ 161,349.57 | \$ 184,001.04 | \$ 210,947.44 | \$ 86,714.24 | \$ 216,583.24 | \$ 1,320,937.63 | 23,476 | | |
| August 2020 | \$ 178,870.96 | \$ 308,465.20 | \$ 179,677.87 | \$ 195,510.33 | \$ 177,294.35 | \$ 115,371.90 | \$ 210,532.29 | \$ 1,365,722.90 | 23,696 | | |
| September 2020 | \$ 143,693.89 | \$ 275,096.47 | \$ 168,083.24 | \$ 174,977.56 | \$ 179,962.26 | \$ 118,462.26 | \$ 219,753.35 | \$ 1,280,029.03 | 25,006 | | |
| October 2020 | \$ 153,617.40 | \$ 295,601.37 | \$ 178,603.75 | \$ 194,372.32 | \$ 232,327.54 | \$ 84,412.75 | \$ 289,838.25 | \$ 1,428,773.38 | 28,815 | | |
| November 2020 | \$ 107,913.11 | \$ 227,244.24 | \$ 146,604.99 | \$ 157,741.47 | \$ 143,451.08 | \$ 69,112.05 | \$ 216,222.45 | \$ 1,068,289.39 | 24,360 | | |
| December 2020 | \$ 96,445.65 | \$ 200,271.96 | \$ 130,381.58 | \$ 107,830.68 | \$ 129,586.16 | \$ 79,541.70 | \$ 193,058.68 | \$ 937,116.41 | 23,655 | | |
| January 2021 | \$ 101,639.20 | \$ 177,255.86 | \$ 112,437.20 | \$ 124,166.52 | \$ 142,755.41 | \$ 54,962.57 | \$ 216,735.21 | \$ 929,951.97 | 23,566 | | |
| February 2021 | \$ 101,899.51 | \$ 201,560.67 | \$ 126,292.21 | \$ 136,292.21 | \$ 139,571.82 | \$ 47,186.84 | \$ 212,919.70 | \$ 969,232.94 | 22,965 | | |
| March 2021 | \$ 159,344.58 | \$ 278,081.01 | \$ 215,633.25 | \$ 199,264.24 | \$ 199,346.70 | \$ 93,155.05 | \$ 286,402.25 | \$ 1,431,227.08 | 34,543 | | |
| April 2021 | \$ 160,766.25 | \$ 288,202.19 | \$ 288,708.68 | \$ 301,339.88 | \$ 276,904.55 | \$ 53,573.96 | \$ 345,051.78 | \$ 1,714,547.29 | 40,623 | | |
| Totals | \$ 1,369,691.13 | \$ 2,547,620.49 | \$ 1,711,282.32 | \$ 1,775,496.25 | \$ 1,832,147.31 | \$ 802,493.32 | \$ 2,407,097.20 | \$ 12,445,828.02 | 270,705 | | |

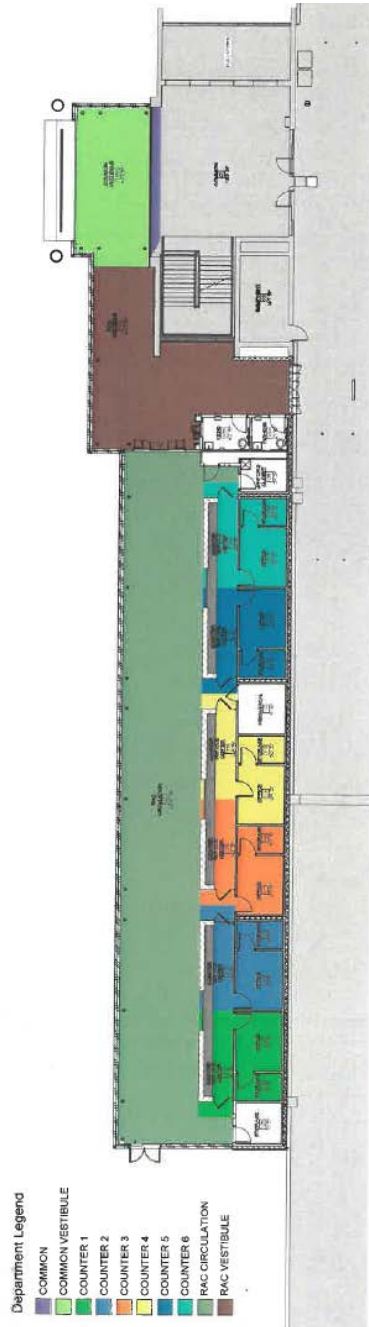


City of Dayton, Ohio
 Department of Aviation
 Non-Exclusive Rental Car Concession at the James M. Cox International Airport
 RFP No. 21-018AOAD
 June 2021

EXHIBIT K – RENTAL CAR COUNTER FACILITY LAYOUT

Rental Car Facility Counter Layout

EXHIBIT K
 RFP No 21-018AOAD
 June, 2021



Individual Office = 108 SF
 Individual Storage = 50 SF
 Individual Counter = 146 SF
 Individual TOTAL = 305 SF

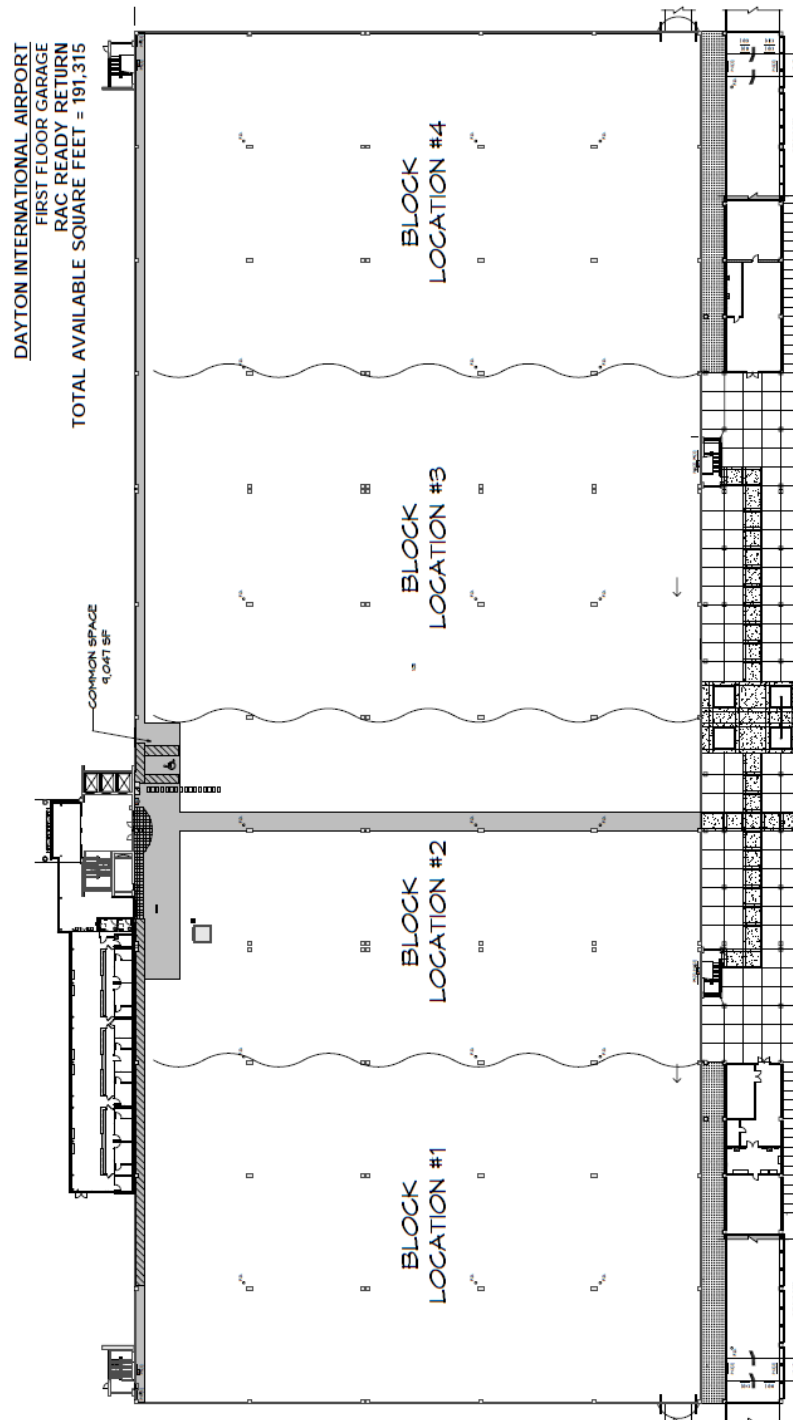
RAC Circulation = 2218 SF / 6 Counters = 370 SF per
 RAC Vestibule = 847 SF / 6 Counters = 142 SF per
 RAC Mechanical/Closet = 150 SF / 6 Counters - 25 SF per
 RAC Shared TOTAL = 537 SF per

Individual TOTAL = 305 SF
 RAC Shared TOTAL = 537 SF per
 TOTAL EACH RAC = 842 SF



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT L – READY/RETURN AREA LAYOUT

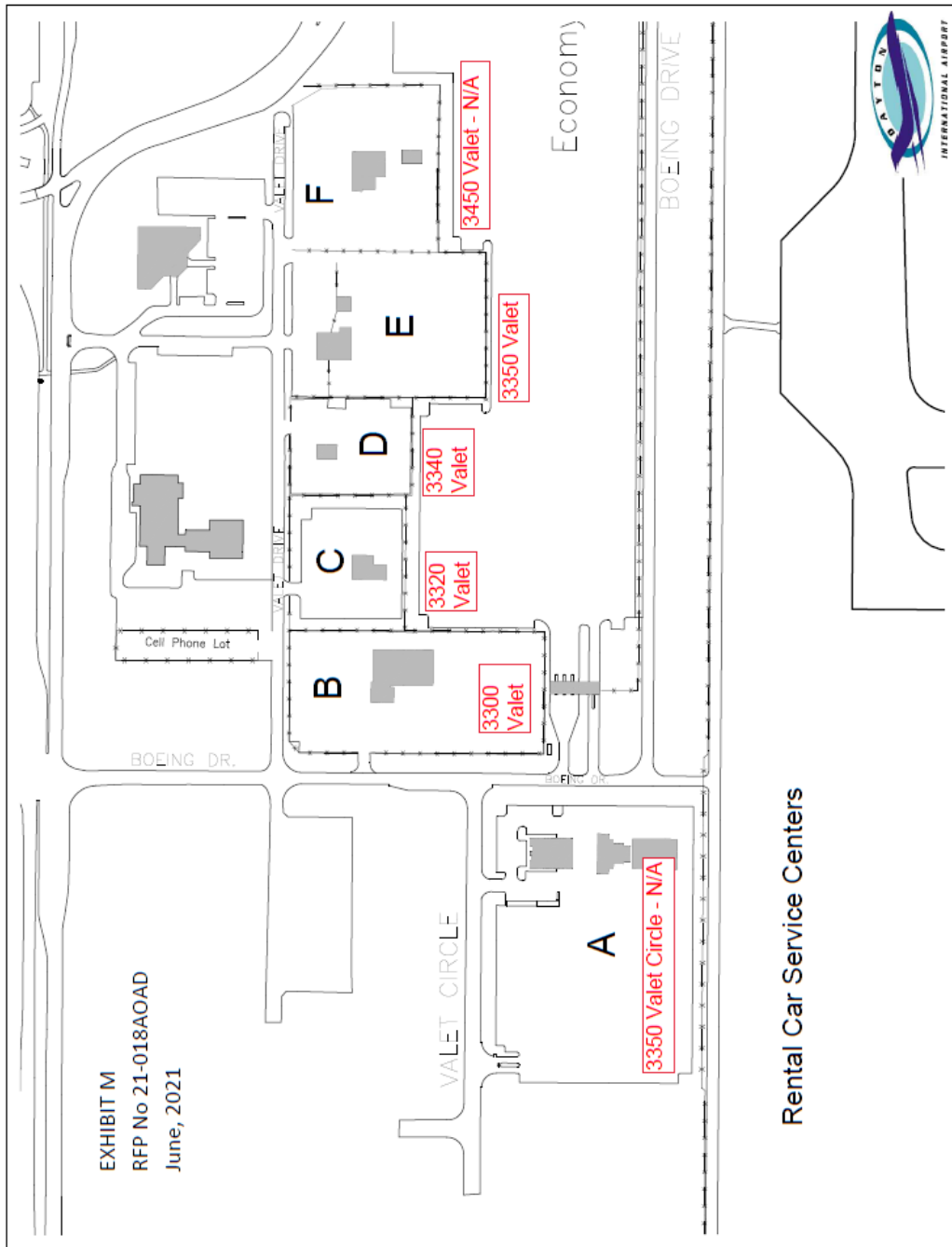


The purpose of this exhibit is to provide proposers with an understanding of the size of the Ready/Return area and generally how the blocks will be configured. The number of blocks, the size of each block and the location of the blocks will be based on the number of proposals received and the proposed minimum annual guarantees. The City has discretion on the shape of the blocks based on the geometry or any physical characteristics of the garage.



City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOD
June 2021

EXHIBIT M – RENTAL CAR SERVICE CENTER FACILITIES MAP





City of Dayton, Ohio
Department of Aviation
Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT N – SAMPLE RENTAL CAR SERVICE CENTER LEASE AGREEMENT



City of Dayton, Ohio
Department of Aviation

Non-Exclusive Rental Car Concession at the James M. Cox International Airport
RFP No. 21-018AOAD
June 2021

EXHIBIT N – SAMPLE RENTAL CAR SERVICE CENTER LEASE AGREEMENT

These terms are subject to change by the City prior to the award of the agreement.

THIS LEASE AGREEMENT, ("Lease") is made and entered into this ____ day of _____, 2021, between the City of Dayton, Ohio ("Lessor"), a political subdivision in and of the State of Ohio, and _____ ("Lessee"), a _____ authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

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

WHEREAS, Lessor heretofore acquired a rental car service center, which is located at _____, and listed on Exhibit A as property _____;

WHEREAS, Lessee operates a rental car concession at the Airport pursuant to a separate Non-Exclusive Rental Car Concession and Lease Agreement with Lessor (“Concession Agreement”) to be dated January 1, 2022 and desires to lease the rental car service center to support its rental car operations at the Airport; and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee this rental car service center upon the terms and conditions set forth herein.

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

ARTICLE I - LEASED REAL PROPERTY

- A. Lessor leases to Lessee the rental car service center located at the Airport and having the address of _____, which facility is situated on _____ square feet of ground space (“Ground Space”) and containing a building containing

approximately _____ square feet space (“Building”, and collectively, the Ground Space and Building referred to herein as the “Premises”). The exact location of the Premises at the Airport is depicted in Exhibit A, property ____, which is attached hereto and incorporated herein.

- B. As part of this Lease and the Premises leased hereunder, Lessee shall have the right to use all appurtenances, equipment and fixtures located and/or situated upon the Premises. Lessor makes no representation or warranty as to such appurtenances, equipment and/or fixtures, their fitness for a particular purpose or merchantability or condition. By execution hereof, Lessee represents that it has inspected the Premises and all appurtenances, equipment and fixtures, and accepts same on an “as-is” basis.
- C. From and after the date of execution of this Lease, Lessee shall be solely responsible for replacement, repair and maintenance for all appurtenances, equipment and fixtures.

ARTICLE II - USE OF PREMISES

- A. Lessee shall have the exclusive use of the Premises for operating a rental car service center in support of its rental car concession at the Airport. It is agreed that the Premises will not be used for servicing any other rental car concessionaire, whether operating at the Airport or off the Airport, without the prior written approval of Lessor. Sales of vehicles at and/or from the Premises are strictly prohibited. Lessee shall only be permitted to operate the rental car service center under the trade name which shall be identical to that under the Concession Agreement for the Lessee.
- B. Lessee shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. All employees shall be required to obtain an airport-issued vehicle permit for any personal vehicle which the Lessee's employees intend to park in the Premises.
- C. If Lessee parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Lessee must pay the posted parking rates.
- D. Lessee shall actively use the Premises only for the purposes specified in this Lease at all times. Lessee shall not at any time leave the Premises vacant without the written consent of Lessor; provided, however, that failure to actively use the Premises as the result of (1) a work stoppage by Lessee's employees, or (2) the repair or restoration or making of alterations, additions and changes to the Premises, will not constitute a default or breach of this Lease.
- E. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority; or allow the Premises to be used for any improper, immoral or unlawful purpose.

- F. Lessee may make any necessary minor alterations to the Premises required for its operations, upon obtaining the prior approval of Lessor.
- G. Lessee shall, upon termination and/or expiration of this Lease, remove all personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises to Lessor in good condition, normal wear and tear excepted.

ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSEE

- A. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees and agents operating under this Lease are properly identified with an Airport Identification Badge and that said badge is prominently displayed at all times. Lessee's employees shall, at Lessee's expense, be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations.
- B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration ("FAA"), Transportation Security Administration ("TSA"), Environmental Protection Agency ("EPA"), Ohio Environmental Protection Agency ("OEPA"), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with its National Pollutant Discharge Elimination System ("NPDES") permit. In addition, the Airport holds the Ohio EPA NPDES permit for the Airport as a whole. In accordance with the Dayton International Airport Storm Water Pollution Prevention Plan, as required by the NPDES Permit, Lessee is required to submit a chemical inventory and implement Best Management Practices in accordance with the Dayton International Airport Storm Water Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required. Lessee will provide Lessor with complete information concerning any such dispute or contest.
- C. Lessee shall fully comply with all current and future requirements of all regulatory agencies having jurisdiction over the fuel/oil storage tank systems, either underground or aboveground including, but not limited to, the Bureau of Underground Storage Tank Regulations ("BUSTR"), EPA, OEPA, the State Fire Marshall, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of Lessor's Director of Aviation will be final. Lessee agrees to register the Premises' underground storage tanks with BUSTR, its successor or any other regulatory agency having jurisdiction. Lessee further agrees to

apply, maintain, and pay the annual assessment fee for coverage for the underground storage tanks with the Petroleum Underground Storage Tank Release Compensation Board. Lessee shall also at its sole expense, when required by law or when deemed necessary by the Lessor or his designee, test all storage tanks located on the Premises for structural integrity and leaks and shall maintain and repair the leak detection system provided by Lessor. Upon request, Lessee shall make available to the Lessor the results of such tests. Testing required herein shall be to the satisfaction of the Lessor and in conformance with all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during the Lessee's occupancy of the Premises, a tank leaks or the pipelines servicing a tank leak or are discovered to be leaking, Lessee shall immediately notify the Lessor and take all necessary steps to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of the Lessor and in accordance with this Lease and all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. Lessee agrees to maintain the existing storage tank system in operational condition at its sole expense and pay or reimburse Lessor for all licenses, inspections, fines, insurance and other fees and charges that may be incurred by or levied upon Lessor due to Lessee's activities under this Lease. If the fuel facility must be removed through no fault or cause of Lessee, Lessor shall be responsible for the cost of the removal, but not previously existing environmental issues, of the fuel facility. This clause shall survive the termination of this Lease with respect to environmental issues caused by Lessee.

- D. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee's use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
- E. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations, or arising from Lessee's exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete and proper removal and disposal away from the Airport of all refuse collected. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.
- F. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.
- G. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

- H. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee's tenancy. Real property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation for property taxes for the Premises shall be based on the Industrial Report of the Auditor of Montgomery County, Ohio (the "Report"), and any updates thereto or successor reports. Lessee shall be permitted to protest or contest in a manner specified by Lessor, the validity or amount of any such real property tax or assessment under this provision. Lessor retains the sole right and obligation to file such protest or contest with the taxing authority for Montgomery County, Ohio; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee's sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee's right to protest or contest taxes and assessments hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the taxing authority for Montgomery County, Ohio.
- I. Except as otherwise provided in Article VI, Lessee is responsible for the complete and proper maintenance and repair of the Premises including any maintenance and repair of all building systems, including but not limited to:
1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all surfaces located on the Premises as required;
 2. Mowing, planting and maintenance of grass areas and landscaping on the Premises;
 3. Maintenance of all utility lines serving the Premises to lease line or metering or submetering point, whichever is larger. Access to such areas located outside the Premises shall be provided by Lessor;
 4. Maintenance of storm drainage structures and storm lines that solely serve the Premises and maintenance of oil separators in storm and sanitary sewer lines serving the Premises, if provided. Access to such areas located outside the Premises shall be provided by Lessor;
 5. Maintenance, test and service of the fire suppression system serving the Premises in accordance with applicable codes;
 6. Maintenance, test and service of the fire alarm system serving the Premises;
 7. Maintenance, test and service of existing Underground storage tank system, associated piping and associated leak detection system; and
 8. Complete interior and exterior maintenance.
- J. Lessee shall not make any alterations, repairs, additions or undertake demolition activities (collectively, "modifications") during the term of this Lease. In the event any such

modification(s) are required or desired, the Lessee must first receive written approval for the modification(s) from Lessor.

- K. Lessee shall have all utility accounts placed in its name and shall pay all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such services. Lessee agrees to notify Lessor immediately upon termination of any utility account, except at the termination of this Lease. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to Lessee, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee.
- L. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the Premises, or on the exterior of any improvement on the Premises, its name, or trade name, in neatly arranged electric, neon or other type sign or signs; the size and type of sign or signs subject to Lessor's approval.
- M. Nothing contained in this Lease prohibits Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee's use of the Premises for purposes stated herein.

ARTICLE IV - TERM

This Lease shall commence on January 1, 2022 and terminate on December 31, 2024, provided that the Concession Agreement has not been terminated and/or expired without a written renewal or written extension thereof and Lessee is not in default in any of the terms, conditions or promises set forth in the Concession Agreement.

ARTICLE V - RENTAL

- A. During the term of this Lease, Lessee shall pay to Lessor as rent for the Premises the following monthly amount which Lessee specified in its response to the City's RFP: _____ (\$X,XXX). Lessee shall pay the aforesaid monthly rentals on the first day of the month. All payments due hereunder shall be sent to Lessor at the following address:

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, Ohio 45202

or at such other place as Lessor shall, in writing, direct.

- B. Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee plus two thousand five hundred (\$2,500) dollars for utilities.
- C. Without waiving any other right or action available to Lessor in the event of default in payment of rentals hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any rental due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon at the rate of two percent (2%) per month from the date such item was due and owing until full payment has been paid. The late charge shall not occur with respect to disputed items being contested in good faith by Lessee.

ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSOR

- A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe, obey and enforce.
- B. Lessor's Director of Aviation or such designees shall have the full and unrestricted right, at all times during normal business hours and at all other times upon reasonable notice to Lessee, when possible, to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor's police power. This provision shall in no way limit or restrict Lessor's right to enter upon the Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour notification.
- C. Should Lessee fail to provide and maintain proper trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee the costs of providing same plus a fifteen (15%) administrative service fee.

ARTICLE VII - NON-DISCRIMINATION

- A. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee.

The provision obligates the Lessee for the period during which the property is owned, used, or possessed by the Lessee and the airport remains obligated to the Federal

Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

- B. During the performance of this Agreement, the Lessee, for itself, its assignees and successors in interest agrees as follows:
1. **Compliance with Regulations:** Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit B and which are herein incorporated by reference and made a part of this Agreement.
 2. **Nondiscrimination:** Lessee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
 3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Lessee 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 Lessee of the Lessee's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.
 4. **Information and Reports:** Lessee 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 Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
 5. **Sanctions for Noncompliance:** In the event of Lessee's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

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

ARTICLE VIII - INDEMNIFICATION

- A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, the use or occupancy of the Premises, or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, or Lessee's exercise of any right granted herein, or Lessee's performance for breach or default in the performance of any obligation to be performed pursuant to this Lease, or any wrongful or negligent act or omission of Lessee, its agents and employees.

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

- B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee, its tenants or subtenants or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expense, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof.
- C. Lessor shall not be liable to Lessee or to Lessee's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessee's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport nor, to the extent permitted by

law, shall Lessor have any liability whatsoever to Lessee, Lessee's subtenants, agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot, including the future parking garage, located either on or off the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee resulting from Lessor's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.

- D. The obligations of Lessee under this Article VIII shall survive the termination or expiration date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.
- E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.
- F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or damage is covered by valid and collectable physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

ARTICLE IX - INSURANCE

- A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, 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 Lease, whether performed by Lessee or by its contractors:
 - 1. Commercial Liability Insurance (Primary and Umbrella):

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

2. All Risk Property Insurance:

- i. Lessee shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of rents then payable under this Lease for a period of one year), and flood. Lessor is to be named as a loss payee.
- ii. The Lessee 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 Lessee.
- iii. When Lessee undertakes any improvement, construction or repair project to the Premises, All Risk Blanket Builders Risk Insurance shall be provided to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, flood including surface water backup, collapse, faulty workmanship or materials, business interruption, extra expense, loss of revenue, and loss of use of property. The Lessor shall be named as loss payee.

3. Automobile Liability Insurance:

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

4. Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB):

Lessee will, at its expense, enroll the existing underground storage tank system in the Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB).

- B. Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease, and all renewal certificates of such insurance, shall be provided to Lessor. Lessee shall provide the Lessor with a Certificate of Insurance on all required insurance prior to Lessee's exercise of any privileges provided by this Lease within thirty (30) days of execution of this Lease. In the event of a claim or threatened claim against Lessor that could be covered under a policy of insurance required hereunder, Lessee agrees to promptly furnish, upon Lessor's request, a copy of such policy or policies of insurance to Lessor. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XIV 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 Lessor in the event coverage is substantially changed, canceled, or non-renewed.
- C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and take any other action which Lessor, including reasonable attorney's fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.
- D. Lessee shall require all contractors to carry the insurance required herein, or Lessee 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 Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors' liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

- E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.
- F. The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease 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.
- G. Lessee shall also maintain, at all times during the term hereof, Workers' Compensation and Occupational Disease Insurance for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law, or of at least \$1,000,000 each accident.

ARTICLE X – DAMAGE AND DESTRUCTION OF PREMISES

- A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, Lessee shall repair the damage to the improvements as soon as reasonably possible at Lessee's expense or, upon mutual agreement, shall take such other actions as is mutually agreed between Lessor and Lessee, which actions may include, but are not limited to, demolition and removal of the entire Building and all appurtenances and fixtures. Lessee may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.
- B. During any period in which Lessee is unable to use all or a substantial portion of the Premises due to damage or destruction of the Premises and which significantly impacts Lessee's operations at the Airport, then the rent payable for the Premises shall be abated or appropriately adjusted for the period during which such damage renders the Premises unusable or operations are so curtailed or terminated. However, if Lessor determines that such damage resulting in inability to use all or a substantial portion of the Premises is caused by the acts, errors or omissions of Lessee, its employees, agents and/or contractors, Lessee shall not be entitled to an abatement of rents as provided herein. Except for such abatement of rents due, as applicable, Lessee shall have no claim against the Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.
- C. If any improvements to the Premises are not diligently repaired by Lessee where required, or such action as mutually agreed by the Lessor and Lessee is not completed, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is

obligated to repair or restore or remove improvements or the entire Building structure, Lessee must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XI - ASSIGNMENT AND SUBLETTING

The leasehold estate and rights granted herein are personal property of Lessee. Lessee may not sell, assign, transfer sublet or underlet the same, or any portion thereof. Any assignment in violation hereof shall be void.

ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

ARTICLE XIII - CANCELLATION BY LESSEE

- A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to cancellation by Lessee should any one or more of the following events occur:
1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations;
 2. The default by Lessor in the performance of any material covenant or agreement required to be performed by it herein, and the failure of Lessor to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt from Lessee 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 Lessee shall have the right to terminate this Lease if the Lessor 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.
- B. Lessee may exercise its rights of termination by prior written notice to Lessor at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of the effective date of termination specified in such notice. Rentals due hereunder shall be payable only to the date of termination.

ARTICLE XIV - CANCELLATION BY LESSOR

- A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to cancellation by Lessor should any one or more of the following events occur:
1. If Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.
 2. If Lessee shall default in or fail to make payments at the times and in the amounts as required of it under this Lease and said default is not cured by amounts due and owing within thirty (30) days after Lessor notifies Lessee in writing of the default;
 3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease to be performed, kept and observed by it, and said failure is not cured, or action taken to correct such failure, within thirty (30) days after Lessor notifies Lessee in writing of said failure;
 4. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.
- B. Lessor may cancel this Lease upon giving Lessee ninety (90) days prior written notice to Lessee in the event the Premises is needed for any municipal, airport or economic development purpose or project.

ARTICLE XV - HOLDING OVER

In the event that Lessee holds over and remains in possession of the Premises and the rights granted herein after expiration and/or termination of this Lease and without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease but shall only create an at will month-to-month tenancy that may be terminated at any time by Lessor or Lessee.

ARTICLE XVI - INVALID PROVISIONS

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or

Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

ARTICLE XVII - WAIVER

- A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee, as the case may be.
- B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

ARTICLE XVIII - GENERAL PROVISIONS

- A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio, and where this Lease speaks of approval and consent by the Lessor, such approval is understood to be manifested by act of the Lessor's Director of Aviation, except as otherwise expressly stated in this Lease. Whenever in this Lease, the approval or consent of Lessor is required, such approval or consent will not be unreasonably withheld.
- B. Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

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

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

- C. Notices to Lessee provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

TBD

or such other address as Lessee shall direct in writing.

- D. Lessee represents that it has carefully reviewed the terms and conditions of this Lease 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 Lease.
- E. Any headings in this Lease are for convenience of reference only and do not define or limit the provisions thereof. In this Lease, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Lease. All section references, unless otherwise expressly indicated, are to sections in this Lease. Any references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with this Lease.
- F. By execution of this Lease, Lessee 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 Lease.
- G. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.
- H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor's ownership of fee title to the Premises.
- I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, 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 Lease.
- J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.
- K. This Lease represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

L. This Lease 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.

IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease 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, CORRECTNESS
AND LEGAL SUFFICIENCY:**

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

City Attorney

_____, 2021

Min/Bk. _____ Pg. _____

Clerk of the Commission

EXHIBIT A – RENTAL CAR SERVICE CENTER PROPERTY

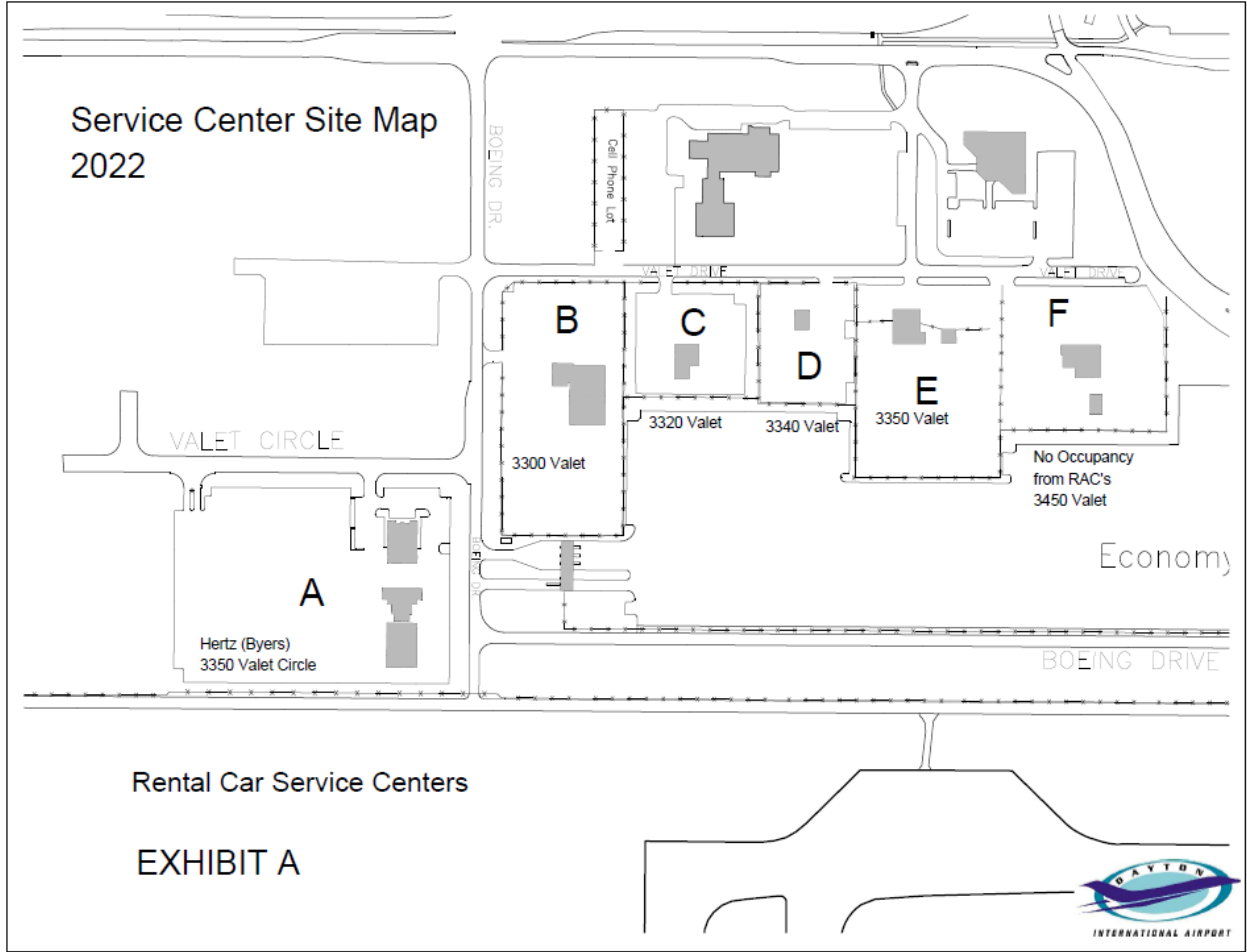


EXHIBIT B - Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 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 USC § 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 USC § 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 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 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 USC 1681 et seq).