

CONCESSION AGREEMENT

NON-EXCLUSIVE RENTAL CAR CONCESSION

Killeen - Fort Hood Regional Airport
Killeen, Texas

between

Killeen - Fort Hood Regional Airport
City of Killeen, Texas

and

Avis Budget Car Rental, LLC dba Avis and Budget
Concessionaire

<u>Section</u>	<u>Page</u>
DEFINITIONS	5
SECTION 1 – LEASED PREMISES.....	8
SECTION 2 – TERM	8
SECTION 3 – USES, PRIVILEGES, COBRANDING AND OBLIGATIONS	8
SECTION 4 – RESTRICTIONS ON USES AND PRIVILEGES.....	10
SECTION 5 – PRIVILEGE FEE, RENTS, FEES AND ACCOUNTING RECORDS.....	11
Subsection 5.1 Privilege Fee, Rent and Fees.	11
Subsection 5.2 Statements, Books, and Records; Delinquent Rentals.	15
Subsection 5.3 Audit.....	16
SECTION 6 – INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES	16
Subsection 6.1 Building Services	16
Subsection 6.2 Approval of Plans and Specifications; Provision of Drawings.....	17
SECTION 7 – TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.	18
Subsection 7.1 Title.....	18
Subsection 7.2 Structural Alterations.....	18
Subsection 7.3 Alterations and Improvements to Airport.....	18
Subsection 7.4 Removal and Demolition.....	19
SECTION 8 – MAINTENANCE OF PREMISES AND UTILITIES.....	19
Subsection 8.1 Airport Maintenance Obligations.....	19
Subsection 8.2 Concessionaire's Maintenance Obligations.	20
Subsection 8.3 Utilities.	21
SECTION 9 – LIENS, PAYMENT, AND PERFORMANCE BONDS.....	21
Subsection 9.1 Construction Surety Bond.....	21
Subsection 9.2 Security.....	22
SECTION 10 – OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES	22
Subsection 10.1 Hours of Operation.....	22

Subsection 10.2 Delivery of Goods.	22
SECTION 11 – QUALITY AND CHARACTER OF SERVICE.....	22
Subsection 11.1 Type of Operation.	22
Subsection 11.2 Services to the General Public.....	22
Subsection 11.3 Additional Compliance.	22
Subsection 11.4 Personnel.....	23
Subsection 11.5 Operations Violations.....	23
SECTION 12 – NON-DISCRIMINATION.....	24
Subsection 12.1 General Civil Rights Provisions.....	24
Subsection 12.2 Compliance with Nondiscrimination Requirements	24
SECTION 13 – IDEMNIFICATION AND INSURANCE.....	26
Subsection 13.1 Indemnification.....	26
Subsection 13.2 Concessionaire to Provide General Liability and Automobile Insurance.	26
Subsection 13.3 Concessionaire to Provide Property and Fire Insurance.....	27
Subsection 13.4 Both Concessionaire and City to Carry Fire Insurance.	27
Subsection 13.5 Insurance Certificate.....	27
Subsection 13.6 Concessionaire Failure to Provide Certificates.	28
SECTION 14 – DAMAGE OR DESTRUCTION OF LEASED PREMISES	28
Subsection 14.1 Partial Damage.	28
Subsection 14.2 Extensive Damage.....	28
Subsection 14.3 Complete Destruction.	28
Subsection 14.4 Limits of City's Obligations Defined.....	29
SECTION 15 – CANCELLATION	29
Subsection 15.1 Cancellation by Concessionaire.....	29
Subsection 15.2 Cancellation by City.	29
Subsection 15.3 Termination.....	30
Subsection 15.4 Notice of Termination.....	30
SECTION 16 – NONWAIVER OF RIGHTS	30
SECTION 17 – SURRENDER OF POSSESSION	31

SECTION 18 – TAXES AND LICENSES	31
SECTION 19 – INSPECTION OF PREMISES	31
SECTION 20 – HOLDING OVER	31
SECTION 21 – QUIET ENJOYMENT	31
SECTION 22 – NO LIENS.....	32
SECTION 23 – SECURITY AGREEMENTS	32
SECTION 24 – AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES	32
SECTION 25 – RIGHTS AND PRIVILEGES OF CITY	32
SECTION 26 – ACCESS CONTROL	34
SECTION 27 – NO PERSONAL LIABILITY	34
SECTION 28 – GOVERNING LAW.....	34
SECTION 29 – NOTIFICATION	35
SECTION 30 – SEVERABILITY	35
SECTION 31 – ASSIGNMENT, SUBLET, AND TRANSFER	35
SECTION 32 – NO WAIVER.....	35
SECTION 33 – CONFLICTS OF INTEREST	36
SECTION 34 – POLITICAL ACTIVITIES.....	36
SECTION 35 – ENTIRE AND SUPERSEDING AGREEMENT	36
SECTION 36 – AMENDMENT	36
SECTION 37 – TIME COMPUTATION	36
SECTION 38 – NOTICES	37
SECTION 39 – CONSTRUCTION.....	37
SECTION 40 – NO THIRD PARTY BENEFICIARY	37
SECTION 41 – COMPLIANCE WITH LAW	37
SECTION 42 – FORCE MAJEURE.....	38
SECTION 43 – GOOD STANDING	38
SECTION 44 – INDEPENDENT CONTRACTORS	38
SECTION 45 – GOVERNMENTAL APPROVALS.....	38
SECTION 46 – AUTHORITY.....	39

SECTION 47 – COUNTERPARTS.....	39
SECTION 48 – SURVIVAL.....	39
SECTION 49 – MORE FAVORABLE TERMS.....	39
SECTION 50 – ENVIRONMENTAL.....	39
SECTION 51 – CONTRACT VERIFICATION	42
EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS	44
EXHIBIT A2 - READY/RETURN BLOCKS AND SERVICE BAYS	45
EXHIBIT A3 – STORAGE AREA.....	46
EXHIBIT A4 – OVERFLOW PARKING LANES.....	47
EXHIBIT B – Sample Monthly Reporting Form	48
EXHIBIT C – Sample ACDBE Reporting Form	49
EXHIBIT D – Title VI List of Pertinent Nondiscrimination Acts and Authorities.....	51

RENTAL CAR CONCESSION
Killeen - Fort Hood Regional Airport
Killeen, Texas

THIS CONCESSION AGREEMENT ("**Agreement**"), made and entered into this ____ day of November, 2023, by and between the City of Killeen (the "**City**"), a municipal corporation and existing under the laws of the State of Texas, whose address is 8101 S. Clear Creek Rd, Box C, Killeen, Texas 76549, hereinafter referred to as "City" and Avis Budget Car Rental, LLC operating as Avis and Budget, (hereinafter referred to as "**Concessionaire**"), a limited liability company with its office and address being 6 Sylvan Way, Parsippany, NJ 07054, with a mailing address of 6 Sylvan Way, Parsippany, NJ 07054.

WITNESSETH:

WHEREAS City controls, owns, operates, and maintains an airport in the City of Killeen, County of Bell, State of Texas, known as Killeen - Fort Hood Regional Airport (hereinafter referred to as "Airport"), and has the power to grant rights and privileges with respect thereto, and

WHEREAS, the City has determined it to be in the best interests of the public and the City to enter into this Agreement with Concessionaire to provide rental car concession services at the Airport pursuant and subject to the terms and conditions hereunder,

NOW, THEREFORE, THE PARTIES AGREE:

DEFINITIONS

The following terms and phrases shall have the following meanings for purposes of this Agreement:

1. "ACDBE" shall mean airport concession disadvantaged business enterprise as that term is defined by 49 CFR Part 23.
2. "City" shall mean the municipal corporation existing under the laws of the State of Texas which controls, operates, and maintains the Killeen - Fort Hood Regional Airport.
3. "Environmental Law" shall mean any federal, state, or local law, rule, regulation, order, or requirement relating to protection of human health and safety or the environment.
4. "Executive Director of Aviation" shall mean the Executive Director of Aviation of the City's Airport, or his or her designee.
5. "Gross Revenues" as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Concessionaire for or

in connection with agreements it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Concessionaire. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Concessionaire 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 Concessionaire'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 Concessionaire'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 Concessionaire 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:

- Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Concessionaire's operations which are separately stated on customers' rental contracts and collected from customers of Concessionaire;
- Those fees referred to in this Agreement as Customer Facility Charges, "CFCs" which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City Resolution, as may be amended;
- Amounts received specifically for the actual loss of or damages of vehicles or other property of Concessionaire;
- 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 Concessionaire's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and
- Reimbursements for amounts actually paid for speeding tickets, parking tickets, red light tickets, tolls, and toll violations, and towing and impound fees from its customers to pass through without markup to an independent third party with no amount being retained by Concessionaire. However, any

amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

6. "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, and includes any material or substance identified, listed, or defined as a "hazardous waste" "hazardous substance," or "pollutant" or "contaminant" or term of similar import, or is otherwise regulated pursuant to Environmental Laws, including any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.
7. "Leasehold Improvements" shall mean all improvements and equipment which are affixed to the Leased Premises, and which cannot be removed without material damage to the Premises.
8. "Operations Year" shall mean January 1 through December 31 annually.
9. "Personal Property" shall mean all movable property of the Concessionaire not directly related to the rental car operations of the privileges granted hereunder, including, office furniture, office equipment, and office supplies.
10. "Refurbish" or "Refurbishment" shall mean the routine repainting or redecoration of public areas within the Leased Premises, as necessary, including the replacement or repair of worn carpet, tile, furniture, or furnishings.
11. "Rental Car" or "Motor Vehicles" shall mean motor vehicles designed primarily for the carriage of passengers and commonly classified as sedans, coupes, convertibles, four-wheel drive vehicles, passenger vans, sport utility vehicles, and pick-up trucks rated one-ton or less.
12. "Terminal Building" shall mean the terminal building at the Airport.
13. "Trade Fixtures" shall mean all non-affixed items, except expendables and Personal Property, which can be removed without damage to the Leased Premises, including cash registers, safes, patron tables and chairs, display fixtures, and the like.
14. "Transaction" shall mean the execution of an agreement or contract for the rental of a Motor Vehicle; or the payment of funds or completion of a cash or credit transaction for payment for rental of a Motor Vehicle; or delivery of a Motor Vehicle to a customer for use in exchange for cash, credit, or any other consideration.
15. "Transaction Day" shall mean each twenty-four (24) hour period or portion thereof, for which a customer of a Rental Car concessionaire rents, or otherwise enters into a similar arrangement for the use of a Motor Vehicle and for which the Rental Car concessionaire collects revenue from the customer. Late returns (after twenty-four

(24) hours) shall be considered a Transaction Day.

SECTION 1 – LEASED PREMISES

- A. City hereby leases to Concessionaire and Concessionaire hereby agrees to lease from City the following premises, which, collectively, are hereinafter called the "Leased Premises": Four Hundred and Eight (408) square feet of counter/office/queuing area "A" in the terminal building, Block "RR-2" the ready return area containing approximately Thirty-Six (36) ready/return parking spaces outside and adjacent to the terminal building, Service Bay "2" and the associated queuing lane, and Storage Cage "D". Said Leased Premises is more particularly shown on **Exhibits A1, A2, and A3** attached hereto and by this reference made a part hereof.
- B. Concessionaire agrees that its Leased Premises have been inspected by Concessionaire and are accepted and will be occupied by Concessionaire on an "as is" basis. The Concessionaire specifically waives any covenants or warranties regarding the Premises, including but not limited to any warranty of suitability and warranty of fitness.

SECTION 2 – TERM

The term of this Agreement is for a five (5) year period commencing on January 1, 2024, and terminating on December 31, 2028, unless sooner terminated or canceled as hereinafter provided.

SECTION 3 – USES, PRIVILEGES, COBRANDING AND OBLIGATIONS

Concessionaire shall have the following uses, privileges, and obligations in connection with its use of the Leased Premises:

- A. The non-exclusive right, privilege, and obligation to conduct and operate a rental car, van or truck rental concession at the Airport including all necessary and ancillary services customarily associated with car rental concessions at public airports within the United States of America or airport of similar size and capacity. Concessionaire 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 thirty-five (35)) to meet all reasonably foreseeable demands of the traveling public. Co-Branding by Concessionaire is limited to two brands per concession space specifically those listed in their submitted proposal. It being understood that no more than two brands under rental car agencies who are owned by the same parent company may operate from any one concession space during the term of this agreement. Concessionaire understands and agrees that it shall not engage in any other business on the Airport under this Agreement.
- B. The right, privilege, and obligation to rent and check-in rental vehicles, including

the right to offer for sale related collision damage waiver protection, personal injury and accident insurance, personal effects insurance, and such other travel or vehicle related coverage offered in connection with and incidental to the rental of a vehicle and occupy operations office, storage, and Ready and Return car parking spaces. It is the intent of this Agreement that rental car customers of Concessionaire will operate the vehicle rented only from the ready spaces provided herein, and Concessionaire shall not engage in customer shuttle operations of any kind to, from, or on the Airport. This does not prohibit the picking up of a customer from the Fixed Base Operator (FBO). No trucks larger than one-ton pickup type/style will be allowed in the ready lot unless approved in writing in advance by the Executive Director of Aviation. Concessionaire shall not park, store, or rent from Premises any vehicles except Motor Vehicles as defined herein that it owns or rents and are properly available for rental as provided herein.

- C. The non-exclusive right and privilege to wash vehicles rented by Concessionaire under the provisions of this Agreement in the City's car wash.
- D. The right and privilege to service vehicles rented by the Concessionaire under the provisions of this Agreement in the service bay identified in Section 1. Concessionaire shall use the service bay for the following activities only: vehicle automated and hand washing, cleaning, fluid replacement, vacuuming, and related activities as are necessary for preparing its vehicles for rental. No washing or vehicle maintenance may be conducted in the rental car parking lot or overflow parking areas.
- E. The right of ingress and egress to and from the Premises, over Airport roadways, are subject to such reasonable rules and regulations as may be established by Airport as respecting such use and subject to law.
- F. Concessionaire shall install no signs on or about the Premises without the prior written approval of the Executive Director of Aviation, said approval being solely discretionary with the Executive Director of Aviation. For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising or promotions, photographs, art displays, and the like. Such signs shall be substantially uniform in size, types, and location with those of other concessionaries, and subject to Executive Director of Aviation's approval, Rules, and Regulations, and in compliance with all applicable laws and resolutions. No temporary signs or displays shall be permitted on the backwall or the counter surfaces without the prior written approval of the Executive Director of Aviation. Handwritten, or hand lettered signs are prohibited. Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Executive Director of Aviation.
- G. The right for Concessionaire's employees, in common with other employees of tenants of the Terminal Building, to use vehicular parking space provided by City,

subject to the payment of reasonable charges therefore, as set by the City. Employee parking shall only be allowed in those areas designated by the Airport. Concessionaire employees shall not park personal vehicles in the Leased Premises.

H. *Airport Concession Disadvantaged Business Enterprise Program*

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulation 49 CFR Parts 23 related to the airport concession disadvantaged business enterprises (ACDBE) program. The concessionaire or contractor 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.
 2. The concessionaire or contractor 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 businesses to similarly include the statements in further agreements.
 3. Each year Concessionaire no later January 10th shall provide to City the following annual ACDBE information: the name and address of each certified ACDBE with which it has done business during the past federal fiscal year (October 1 – September 30), a description of the nature of the services performed by and/or items purchased from each firm named, and the dollar value of each transaction. The ACDBE must be certified by the Texas Unified Certification Program. A sample reporting form is provided as Exhibit C. Concessionaire may use the sample report provided or a form of similar level of detail satisfactory to the City.
- I. Compliance with Federal Aviation Regulations, 14 CFR Part 139, and Transportation Security Administration security requirements 49 CFR Part 1542. Concessionaire agrees to comply with Federal Aviation Regulations, and 1542 (Airport Security), U.S. Army requirements, and the City's policies as outlined in City's approved Operations Plan and Airport Security Plan. Concessionaire further agrees that any fines levied upon the City or Concessionaire through enforcement of these regulations because of acts by Concessionaire's employees, agents, suppliers, guests, or patrons shall be borne by Concessionaire to the extent said acts contributed to said fines.

SECTION 4 – RESTRICTIONS ON USES AND PRIVILEGES

The Leased Premises shall be used only for the purposes specified in this Agreement. Concessionaire understands and agrees that City has the right to grant up to five additional privileges under separate agreements for in-terminal rental car operations

to other companies.

Prohibited Activities at the service bay include:

- A. Concessionaire shall not utilize the service bay for vehicle storage other than vehicles for rent in the process of being serviced.
- B. Concessionaire shall not utilize the service bay for any maintenance or for the storage of damaged vehicles.
- C. Concessionaire shall not allow its customers or the general public to enter the service bay.
- D. Concessionaire shall not permit its employees to vacuum, wash or fuel their personal vehicles or vehicles not part of the Concessionaire's fleet at the service bay or fueling area.

SECTION 5 – PRIVILEGE FEE, RENTS, FEES AND ACCOUNTING RECORDS

Subsection 5.1 Privilege Fee, Rent and Fees.

- A. **Privilege Fee.** As consideration for the privilege of operating the concession hereunder, Concessionaire shall pay to City each Operations Year, for the full term of this Agreement, a Privilege Fee. Said Privilege Fee shall be the greater of either the guaranteed Minimum Annual Privilege Fee or the Percentage Fee applicable to Gross Revenue, hereinafter defined, as follows:

- 1. Privilege Fee – the greater of either:

- a. ten percent (10%) of the Concessionaire's annual Gross Revenues ("Percentage Privilege Fee");

OR

- b. the respective yearly amount shown below as the Concessionaire's Minimum Annual Guaranteed fee ("MAG"):

January 1, 2024, to December 31, 2024	\$ 147,172.00
January 1, 2025, to December 31, 2025	\$ 149,618.00
January 1, 2026, to December 31, 2026	\$ 152,287.00
January 1, 2027, to December 31, 2027	\$ 155,013.00
January 1, 2028, to December 31, 2028	\$ 157,763.00

- 2. Monthly payment shall be the greater of 1/12th of the respective year's MAG or 10% of reported gross revenues for the previous month. The MAG payment shall be paid in advance on the first (1st) day of each month during each Operations Year, until such time as the Concessionaire has paid to the Airport an amount equal to the respective annual MAG

identified in Section 5.1(A)(1)(b) above. On or before the 20th of each month the Concessionaire shall provide the Airport with: i) a signed and certified Report of Gross Revenues for the preceding month and ii) payment of any percentage Privilege Fee shown to be due for the preceding month, as designated on Exhibit B, attached hereto, and made a part hereof. Once the sum of Privilege Fee payments remitted has reached the MAG in any given Operations Year, the Concessionaire may cease remittance of the 1/12th of the respective year's MAG on the first (1st) day of each month for the remainder of that Operations Year. The Concessionaire shall continue to report and remit each and every month after the annual MAG has been reached the full 10% of reported gross revenues for the previous month.

3. In any Operations Year where the total deplanements at the Airport decline by 15% or more as compared to the prior Operations Year, the Concessionaire's MAG for such Operations Year shall be reduced proportionate to the decline in deplanements as part of the year end reconciliation process. Where the City reasonably determines during any Operations Year that a MAG reduction is likely, the City may waive the Concessionaire's obligations to remit the monthly 1/12th MAG installment payments for any period of time the City deems appropriate in its sole discretion, but Concessionaire shall continue to remit the Percentage Privilege Fee each month regardless.
4. Concessionaire acknowledges that Privilege Fee payments by Concessionaire to City under this Agreement are for Concessionaire's privilege to use the Airport facilities and access the Airport market and are not fees imposed by City upon Concessionaire's customers. City does not require, but will not prohibit, a separate statement of and charge for the Privilege Fee on customer invoices or rental agreements ("Recovery Fee"), provided that such Recovery Fee meets all of the following conditions: (a) such Recovery Fee must be titled "Concession Recovery Fee," "Concession Recoupment Fee" or such other name first approved by the Executive Director of Aviation in writing; (b) the Recovery Fee must be shown on the customer rental car agreement and invoiced with other Concessionaire charges (i.e. "above the line"); (c) the Recovery Fee as stated on the invoice and charged to the customer shall be no more than 11.11% of Gross Revenues and shall be specifically included in the Definition of Gross Revenues for purposes of remittance to City; (d) Concessionaire shall neither identify, treat, or refer to the Recovery Fee as a tax, nor imply that City is requiring the pass through of such fee; (e) Concessionaire shall comply with all applicable laws, including Federal Trade Commission requirements, any Texas Consumer Protection legislation and any commitment to or contractual obligation by Concessionaire with any governmental agency or officer with authority over Concessionaire's activities.

B. Rent -

1. Rent for Premises

Concessionaire shall pay to the City, in advance, on the 1st day of each month, one twelfth the following annual rents or the monthly rent as applicable:

- a) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Thirty-Six Dollars and (\$36.00) per square foot per annum for Four Hundred and Eight (408) square feet of counter/office/queuing position in the Terminal Building.
- b) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Thirty-Eight Thousand Eight Hundred Eighty Dollars (\$38,800), per annum for Ready Return Block "RR-2" as shown on Exhibit A2.
- c) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Six Thousand Dollars (\$6,000), per annum for service bay "2" as shown on Exhibit A2.
- d) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of One Thousand Five Hundred Dollars (\$1,500), per annum for storage cage "D" as shown on Exhibit A3.
- e) If requested by Concessionaire, overflow parking lanes as agreed upon with the Executive Director of Aviation on a month-to-month basis in the amount of Two Hundred (\$200) per lane per month through December 31, 2028. Overflow lanes are shown on Exhibit A4.

C. Additional Fees –

- 1. The Concessionaire shall collect the CFCs on behalf of the Airport and remit to the Airport, in accordance with the City's CFC resolution, the full amount of the Transaction Day fee collected from each Rental Car customer.
- 2. The Concessionaire shall pay to the City for telephone system/service access to the Internet via a T-1 as follows:

Local service	\$23.50 per line per month
Voice mail	\$4.25 per line per month
Phone rental	\$6.00 per phone per month
Maintenance fee	\$15.50 per line per month

Above telecommunication fees are subject to change as determined by the City. Payment shall be due within thirty (30) days of invoice date.

3. The Concessionaire shall pay to the City a per wash fee of \$3.00 per automated wash. The Concessionaire shall pay to the City, for use of the manual car wash, a rate of \$2.00 per 5-minute session.

Car wash fees are subject to change as determined by the City with advance written notice. Payment shall be due within thirty (30) days of invoice date.

4. The Concessionaire shall pay to the City, based on actual gallons of fuel pumped, a per gallon fuel rate equal to the City's purchase price of the fuel plus \$0.30 cents, as may be adjusted by the City with advance written notice.

Payment shall be due within thirty (30) days of invoice date.

5. If the Concessionaire's bid reflected the operation of two brands in its concession, Concessionaire shall pay to the City a fee of One Thousand Dollars (\$1,000) per month which shall be paid in advance on the first (1st) of each month.
6. Additional fees may include charges for special items or activities including, but not limited to, employee parking, monthly electronic access card fees, badging fees, and disposal of debris left in service bay area and assigned parking areas. The City may assess reasonable, non-discriminatory charges for these special items or activities. All new charges will be reviewed with Concessionaire prior to implementation. Other charges payable by Concessionaire, shall be paid by Concessionaire to City no later than thirty (30) days following receipt by Concessionaire of billing therefor.
7. Concessionaire shall be charged at the current short term parking rate, for any of its vehicles found to be parked in a parking space not specifically leased by the Concessionaire or without the approval of the Executive Director of Aviation.

- D. Any and all payments due to the City by Concessionaire shall be remitted to the following address:

City of Killeen Finance Department
Attn: Accounts Receivable
P.O. Box 1329
Killeen, TX 76540

E. Year End Adjustments to Privilege Fees, Rents and Fees.

In the event the amount of payments made during the preceding Operations Year exceeds the total of any payments due for such Operations Year, the excess payment shall be credited against the payments for the next Operations Year, except that any excess payment during the final Operations Year of this Agreement will be returned to the Concessionaire within thirty (30) days after the Airport's acceptance of the final Certified Statement described in this Section. Concessionaire shall submit separate system generated reports for each brand name operated.

Subsection 5.2 Statements, Books, and Records; Delinquent Rentals.

- A. Monthly Statements; Books and Records. Within twenty (20) days after the close of each calendar month of the term of this Agreement, Concessionaire shall submit to City, in such detail and on the statement form designated as Exhibit B or as may reasonably be specified by City, certain information, including but not limited to, the number of Transactions executed during the preceding month, the number of Transaction Days Motor Vehicles were rented during the preceding month, and the statement of its Gross Revenues during the preceding month upon which the percentage payments to City set forth in Subsection 5.1 A(1) are to be computed, and said Exhibit B statement to be signed by a responsible accounting officer of Concessionaire. City reserves the right to change the form of the monthly statement and to require the submission by Concessionaire of other information pertaining to the Gross Revenues hereunder, and Concessionaire agrees to change the form of its statements to that requested by City and to provide any such additional information City may reasonably request. Concessionaire shall keep full and accurate books and records showing all of its Gross Revenues hereunder, and City shall have the right, through its representatives and at reasonable times, at its own expense, to inspect, examine, copy, and audit such books and records, including State of Texas sales tax return records. Concessionaire hereby agrees that all such books and records will be made available to City for at least three (3) years following the period covered by such books and records.
- B. Annual Certified Statements. Each year during the term of this Agreement, Concessionaire shall provide to City a written statement, certified by an independent Certified Public Accountant, to City stating that in his or her opinion the Percentage Fees paid by Concessionaire 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 Concessionaire, to be received by City within ninety (90) days of the end of each Operations Year. Such statement shall also contain a list of the Gross Revenues, by month, as shown on the books and records of Concessionaire and which were used to compute the Percentage Fee payments made to City during the period covered by said statement.

- C. Delinquent Rentals and Fees. Without waiving any other right or action available to City in the event of default in the payment of charges or fees payable to City, pursuant to this Agreement, a late fee of one and a half percent (1.5%) of the total amount due will be assessed to the Concessionaire if payments prescribed above are not received by the dates prescribed therein. An additional one and a half percent (1.5%) of the outstanding amount will be assessed each month that all or a portion of the Concessionaire's obligations remain unpaid.

Subsection 5.3 Audit. City reserves the right to audit Concessionaire's books and records pertaining to the Leased Premises, at its own expense, at any time for the purpose of verifying the Gross Revenues, Privilege Fee, and CFC calculation hereunder for any period three (3) years prior to such audit. If, however, as a result of such audit, it is established that Concessionaire has understated the Gross Revenues received from all operations at the Leased Premises by two percent (2%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall forthwith be paid by Concessionaire to City with interest thereon at one and one-half percent (1.5%) per month from the date such additional Privilege Fee became due.

SECTION 6 – INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES

Subsection 6.1 Building Services

- A. City Improvements and Services. City shall initially insure and provide occupancy of the Leased Premises to Concessionaire with said Leased Premises meeting all federal, state, and local code requirements for the operation of a rental car concession. City shall provide and maintain, water, sewer, general lighting, electrical power, heating and air-conditioning, and telephone system/service access to the Internet via a T-1 for the Terminal Building. Heating and air conditioning, electrical service, and telephone system/service access to the Internet via T-1 are provided to the Leased Premises only. If Concessionaire requires additional lighting, electrical power, water, or adjustments to the air-conditioning system or telephone system, such additional improvements or services shall be subject to the prior written approval of Executive Director of Aviation, and any such approved improvements or services shall be made at Concessionaire's expense.
- B. Concessionaire's Right to Additional Services. Concessionaire shall have the right, at its own expense, to request and receive additional services or systems, provided that any such services or systems shall require the written approval of Executive Director of Aviation before installation.

Subsection 6.2 Approval of Plans and Specifications; Provision of Drawings.

- A. General. Any improvements to be made to or upon the Leased Premises by Concessionaire, and any subsequent alterations or additions to such improvements, shall be subject to the prior written approval of Executive Director of Aviation. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of Executive Director of Aviation before any work or construction is commenced, which shall not be unreasonably withheld or delayed. First-class standards of design and construction shall be complied with in connection with all such work, facilities, and improvements; and all construction shall conform to the general architectural requirements of Executive Director of Aviation as established for each improvement program. Two (2) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to Executive Director of Aviation for review prior to commencement of construction; after final approval by Executive Director of Aviation, Executive Director of Aviation shall return to Concessionaire one (1) approved copy for Concessionaire's records and shall retain one (1) approved copy as an official record thereof.
- B. Improvements Conform to Statutes, Ordinances, Etc. All improvements, furniture, fixtures, equipment, and finishes, including the plans and specifications therefore, constructed or installed by Concessionaire, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations, and public bidding laws. Any approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Concessionaire.
- C. Approvals Extend to Architectural and Aesthetic Matters. Approval of City shall extend to and include architectural and aesthetic matters and City reserves the right to reasonably reject any layout or design proposals submitted and to require Concessionaire to resubmit any such layout or design proposals until they meet Executive Director of Aviation approval.
- D. Disapprovals. In the event of disapproval by City of any portion of any plans or specifications, Concessionaire shall promptly submit necessary modifications and revisions thereof for approval by Executive Director of Aviation. City agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. No substantial changes or alterations shall be made in said plans or specifications after initial approval by City, and no alterations or improvements shall be made to or upon the Leased Premises without the prior written approval of Executive Director of Aviation.

- E. Provision of As-Built Drawings. Upon completion of any construction project, Concessionaire shall provide City two (2) completed sets of as-built drawings in reproducible form as specified by City. Concessionaire agrees that, upon the request of City, Concessionaire will inspect the Leased Premises jointly with City to verify the as-built drawings.
- F. In accordance with Sec. 2252.909 of the Texas Government Code, Concessionaire must provide to the City a notice of commencement consistent with Section 2252.909 at least ninety (90) days before the date of construction, alteration, or repair of any improvement to the leased property begins. A notice of commencement must:
1. Identify the public property where the work will be performed;
 2. describe the work to be performed;
 3. state the total cost of the work to be performed;
 4. include copies of the performance and payment bonds required under Section 2252.909 (See Subsection 9.1 of this Agreement);
 5. include a written acknowledgement signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth (5th) day after the subcontract is executed.

On or before the tenth (10th) day after the date a governmental entity receives a notice of commencement for the construction, alteration, or repair of an improvement to leased property required under this section, the governmental entity may notify the leaseholder that the construction, alteration, or repair may not proceed. A person commits an offense if the person materially misrepresents information in a notice of commencement. An offense under this subsection is a Class A misdemeanor.

SECTION 7 – TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.

Subsection 7.1 Title. All improvements made to the Leased Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, shall be and remain the property of Concessionaire until the termination of this Agreement (whether by expiration of the term, cancellation, forfeiture or otherwise), at which time said improvements, except for Trade Fixtures, personal property, and expendables, shall become the property of City, at no cost to City.

Subsection 7.2 Structural Alterations. Concessionaire shall make no structural alterations to the Leased Premises without the prior written consent of Executive Director of Aviation.

Subsection 7.3 Alterations and Improvements to Airport. Concessionaire acknowledges that from time-to-time City may undertake construction, repair, or other activities related to the operation, maintenance and repair of the Terminal Building which

may temporarily affect Concessionaire's operations hereunder. Concessionaire agrees to accommodate City in such matters, even though Concessionaire's own activities may be inconvenienced, and Concessionaire agrees that no liability shall attach to City, its members, employees, or agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of City substantially impair the operations of Concessionaire under this Agreement, the Minimum Privilege Fee shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being reasonably determined by Executive Director of Aviation after consultation with Concessionaire. Concessionaire agrees that if relocation is required that Concessionaire shall move its operations as reasonably directed by Executive Director of Aviation.

Subsection 7.4 Removal and Demolition. Concessionaire shall not remove or demolish, in whole or in part, any Leasehold Improvements upon the Leased Premises without the prior written consent of City which may, at its sole discretion, condition such consent upon the obligation of Concessionaire, at Concessionaire's cost, to replace the same by an improvement specified in such consent.

SECTION 8 – MAINTENANCE OF PREMISES AND UTILITIES

Subsection 8.1 Airport Maintenance Obligations.

- A. General Maintenance and Operation. City agrees that it will, with reasonable diligence, maintain, operate, and keep in good repair the Airport, including the Terminal Building and all appurtenances, facilities, and services now or hereafter connected therewith. Airport shall keep the car rental parking lot and the overflow parking area in suitable repair and provide general lighting for these areas.
- B. Structural Maintenance. City shall provide, or cause to be provided, structural maintenance of the Terminal Building.
- C. Maintain Access. City shall, throughout the term of this Agreement, maintain all airport-owned roads on the Airport giving access to the Terminal Building in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal Building over said road at all times. City reserves the right to reasonably restrict access to the Terminal Building area for automobile deliveries during peak activity periods.
- D. Car Wash. City will maintain and inspect the car wash facilities as recommended by the manufacturer including routine maintenance of the car wash for normal activities, wear, and tear. Normal and routine maintenance of roofs, walls, utility infrastructure, building mechanical systems and structural building components will be performed by City. Wash soaps, rinses, brushes, hoses, and utilities will be provided by the City. City has the exclusive authority to stop the use of the car wash for maintenance and inspections as is necessary, at City's sole discretion, without damage or liability to

Concessionaire. City will take reasonable action to notify Concessionaire for closure of the car wash.

- E. Telephone System/Service Access to the Internet via a T-1. The Airport shall furnish telephone system/service access to the Internet via a T-1. Rates for these services will be in accordance with Section 5.1(C). A letter of agreement or other suitable document will be executed between the Airport's Executive Director of Aviation or his/her designated representative and the local designated representative of the Concessionaire to document exactly which services are agreed to between the two parties. Airport reserves the right to change or terminate said telephone and/or internet service at some point during the term of this Agreement. Airport will provide at least a ninety (90) day notice to Concessionaire of any service changes and assist in facilitating replacement services via a local communication provider.

Subsection 8.2 Concessionaire's Maintenance Obligations.

- A. Concessionaire's General Obligations. Except for maintenance of the Terminal Building, Car Wash, and Telephone System, as provided in Subsection 8.1, Concessionaire shall be obligated, without cost to City, to maintain the Leased Premises and every part thereof in good appearance, repair, and safe condition. Concessionaire shall maintain and repair all Leasehold Improvements on the Leased Premises and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or furnishings. All such maintenance and repairs shall be at least of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of Executive Director of Aviation. Concessionaire shall be obligated, without cost to City, to provide custodial service to Leased Premises. Concessionaire shall be responsible for the replacement cost of lost keys and floor finish restoration.
- B. Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to Airport of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Leased Premises shall be corrected immediately upon receipt of oral notice from the Executive Director of Aviation. At the direction of said Director, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.
- C. Trash and Refuse. City shall provide, at no cost to Concessionaire, a container for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Leased Premises. Concessionaire shall be responsible for disposal of its own trash accumulations by depositing it in the nearest exterior trash dumpster on a daily basis. Concessionaire will regularly inspect exterior areas assigned to them and will remove all trash and debris.

Failure to do so will result in the City completing this task and a fee assessed to the Concessionaire for the service. Trash receptacles inside the terminal building are for customer use only. Piling of boxes, cartons, barrels, or other similar items in view of a public area is prohibited. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from Airport in a reasonably clean and orderly condition so as not to unduly attract rodents, pests, or birds, or create an offensive odor. Concessionaire also agrees to participate in the City's recycling program by depositing all recyclable products in the appropriate outside recycling containers in lieu of the trash dumpster.

- D. Transporting Trash and Refuse. In transporting trash and refuse from the Leased Premises, Concessionaire shall ensure that trash is not strewn around while taking refuse to the dump site. Such disposal shall take place during hours as may be approved by the City.
- E. Damage to Equipment. Concessionaire will be responsible for the cost of replacement equipment deemed to be damaged by their employees due to negligence.

Subsection 8.3 Utilities.

- A. City shall provide the Leased Premises with heat and air-conditioning to keep the Leased Premises at reasonable temperatures for the conduct of Concessionaire's activities. City shall have the right to set, monitor, adjust and restrict thermostat settings to levels it determines to be appropriate.
- B. City shall provide electricity to the Leased Premises by means of wiring installations, and Concessionaire shall make such connections as required and permitted by building code. At no time shall Concessionaire's use of electric current exceed the capacity of the wiring installation in place.

SECTION 9 – LIENS, PAYMENT, AND PERFORMANCE BONDS

Subsection 9.1 Construction Surety Bond. Concessionaire shall not allow any liens or encumbrances to be attached to the Leased Premises. Prior to the commencement of any construction or alteration hereunder which exceeds \$10,000 in cost, Concessionaire or its contractor shall furnish to City, and without expense to City, a surety bond, issued by a surety company licensed to transact business in the State of Texas and satisfactory to and approved by City with Concessionaire's contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction or alteration of the improvements and facilities mentioned herein. Said bond shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by said contractor, subcontractor(s), and suppliers in the prosecution of the work provided for in said construction contract and shall protect City from any liability, losses, or damages arising there from.

Subsection 9.2 Security. During the term of this Agreement, the City shall require the Operator to deliver (and thereafter maintain current for the entire term of this Agreement) an instrument of security in a form satisfactory to the City, in its sole discretion, in the amount of twenty-five percent (25%) of the average of Concessionaire's five years Minimum Annual Guarantee bids reflected in Subsection 5.1(A)(1)(b), in order to secure the performance of all of Concessionaire's obligations under this Agreement, including without limitation, the payment of all the percentages, minimums, fees, charges and costs set out herein. Said security may be in the form of a bond.

SECTION 10 – OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES

Subsection 10.1 Hours of Operation. Concessionaire shall actively operate in the Leased Premises and shall use a business-like operation therein. The Concessionaire shall be open to serve the public seven (7) days per week and hours of operation shall be such that passengers of flights arriving from the terminal will be accommodated. Concessionaire's facilities will be adequately staffed and open at least thirty (30) minutes before and after every arriving flight. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Concessionaire may advise the Executive Director of Aviation of Concessionaire's analysis of the optimum arrangements, but the final determination shall be made by the Executive Director of Aviation based on their analysis of necessary service to the public.

Subsection 10.2 Delivery of Goods. Concessionaire shall arrange for the timely delivery of all motor vehicles and supplies, at such times, in such locations(s), and by such routes as determined by City. Concessionaire shall abide by all Transportation Security Administration (TSA) requirements for parking of motor vehicles near the terminal building.

SECTION 11 – QUALITY AND CHARACTER OF SERVICE

Subsection 11.1 Type of Operation. Concessionaire shall maintain and operate the concession privileges granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of Executive Director of Aviation, does not unduly annoy, disturb, or offend others at the Airport.

Subsection 11.2 Services to the General Public. Concessionaire understands and agrees that its operation at the Airport necessitates the rendering of public services such as giving directions, and generally assisting the public.

Subsection 11.3 Additional Compliance. Concessionaire shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Agreement.

Subsection 11.4 Personnel.

- A. General. Concessionaire shall maintain a sufficient number of properly trained personnel to ensure that all customers of Concessionaire receive prompt and courteous service. All such personnel, while on or about the Leased Premises, shall be polite, clean, appropriately attired, and neat in appearance. Clothing will be neat and clean and present a professional appearance. Executive Director of Aviation shall have the right to object to the demeanor, conduct, and appearance of any employee of Concessionaire, or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection. Concessionaire will ensure that its counter is staffed at all times during the posted hours of operation.
- B. Manager. The management, maintenance, and operation of the Leased Premises and the concession conducted thereon shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Concessionaire. Concessionaire shall cause such manager to be available during normal business hours, and Concessionaire will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties.

Subsection 11.5 Operations Violations.

Concessionaire'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 City. Additionally, City resources will be expended in dealing with violations of this Agreement by Concessionaire. The parties hereby agree that total damages sustained by to 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 City. Concessionaire, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Concessionaire agrees to pay immediately upon demand by to City the following amounts as liquidated damages upon the occurrence of breaches, in any Operations Year, related to operation violations:

- \$100 per occurrence - first occurrence
- \$200 per occurrence – second occurrence
- \$300 per occurrence - third occurrence
- \$1,000 per occurrence – fourth or more occurrences

Liquidated damage amounts shall not be imposed unless the violation continues for more than three (3) calendar days after City has given Concessionaire written notice (and this

written notice may be in the form of an email) of the violation; provided, however, after City has given Concessionaire notice of the same violation more than twice during any calendar year, the liquidated damage amount shall be immediately imposed with no opportunity to cure in order to avoid the sanction.

For hours of operations violations, liquidated damages shall be 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 - second occurrence
- \$300 per hour or portion thereof, during which location is not open - third occurrence
- \$1,000 per hour or a portion thereof, during which location is not open – fourth or more occurrences

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

City's failure to impose liquidated damages for any violation of the requirements set forth above shall not waive any right or prohibit City from doing so for subsequent violations. After two (2) violations of the same type in the same Operations Years, City reserves the right, at its sole option, not to impose the liquidated damage and instead seek any other remedies available to it for an event of Default, including termination of this Agreement.

SECTION 12 – NON-DISCRIMINATION

Subsection 12.1 General Civil Rights Provisions. The Concessionaire 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 Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

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

Subsection 12.2 Compliance with Nondiscrimination Requirements. During the performance of this Agreement, the Concessionaire, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: Concessionaire 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 D, and which are herein incorporated by reference and made a part of this Agreement.

- B. Nondiscrimination: Concessionaire, 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. Concessionaire 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.
- C. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Concessionaire 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 Concessionaire of the Concessionaire's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.
- D. Information and Reports: Concessionaire 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 FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the FAA may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.
- F. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

SECTION 13 – IDEMNIFICATION AND INSURANCE

Subsection 13.1 Indemnification. To the fullest extent allowable by law, Concessionaire hereby indemnifies and shall defend and hold harmless, at Concessionaire's expense, City, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Concessionaire, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on City. Concessionaire's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the negligent or willful misconduct of City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as City waiving its statutory limitation and/or immunities as set forth in the applicable Texas Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Concessionaire shall reimburse City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Concessionaire's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

To the extent allowed by law, except for damage or injury caused by the willful or negligent act or omission of Concessionaire, its agents or employees, City shall indemnify, defend and save Concessionaire, its agents, representatives, and employees from any and all lawsuits, claims, loss and damages of any nature whatsoever, including damage to property of any Concessionaire and the injury, including death, of employees, agents, or customers of Concessionaire, arising either directly or indirectly out of any operations of the City hereunder, except lawsuits, claims, loss and damages arising out of the sole negligence of the Concessionaire, their employees, or agents.

Subsection 13.2 Concessionaire to Provide General Liability and Automobile Insurance. Concessionaire shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage;
- B. Automobile Insurance of not less than \$5,000,000 per occurrence;

C. To the extent that Concessionaire employs any employees or as otherwise required by law, Workers' Compensation and Employers' Liability Insurance with Texas statutory limits.

Subsection 13.3 Concessionaire to Provide Property and Fire Insurance. Concessionaire, at its own expense, shall insure all Leasehold Improvements and furnishings, fixtures and equipment for fire, extended coverage, vandalism, and malicious mischief. Such insurance shall be in an amount equal to the full insurable replacement value of such improvements. All property insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder and shall contain a waiver of subrogation provision in favor of the City. Concessionaire and City agree that any payments received by either from such insuring companies by reason of loss under such policy or policies shall be applied toward repair and reconstruction of said Leasehold Improvements and repair or replacement of leasehold improvements, furnishings, fixtures, and equipment.

Subsection 13.4 Both Concessionaire and City to Carry Fire Insurance. It is understood that both Concessionaire and City carry insurance in the form of fire, extended coverage, vandalism, and malicious mischief (hereinafter called "Insurance Coverage") on the leased structural part of the premises, permanent improvements and loss of income, (in the case of City) and on Leasehold Improvements, furniture, furnishings, equipment, inventory and loss of income, (in the case of Concessionaire), and said Insurance Coverage authorizes a waiver of subrogation between City and Concessionaire, and the parties wish to enter into such waiver of subrogation to the extent of the said Insurance Coverage; therefore, to the extent that City collects under its Insurance Coverage, City waives any and all claims against Concessionaire, its agents, servants, and employees, for loss or damage to City's property resulting from risks included in said Insurance Coverage; and, to the extent that Concessionaire collects under its Insurance Coverage, Concessionaire waives any and all claims against City, its agents, servants, and employees, for loss or damage to Concessionaire's property resulting from risks included in said Insurance Coverage. If this waiver by the parties shall render fully any such insurance policy or shall result in the denial of coverage for a party under such policy, then the provision paragraph shall be deemed to be null and void.

Subsection 13.5 Insurance Certificate. A certificate evidencing insurance required by Subsection 13.2 and 13.3, and listing the City of Killeen as additional insured, excluding Workers' Compensation and Property and Fire Insurance, shall be filed with City prior to the commencement of construction, furnishing and equipping of Leasehold Improvements by Concessionaire upon the Leased Premises, and such certificate shall provide that such Insurance Coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. Prior to the expiration of any such policy, a certificate showing that such Insurance Coverage has been renewed shall be filed with City. If such Insurance Coverage is canceled or reduced, Concessionaire shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been

reinstated or provided through another insurance company or companies.

Subsection 13.6 Concessionaire Failure to Provide Certificates. In the event that Concessionaire shall at any time fail to furnish City with the certificate or certificates required under this Section, City, upon written notice to Concessionaire of its intention so to do, shall have the right to obtain the required insurance, at the cost and expense of Concessionaire, and Concessionaire agrees to promptly reimburse City for the cost thereof, plus fifteen percent (15%) thereof for administrative overhead.

SECTION 14 – DAMAGE OR DESTRUCTION OF LEASED PREMISES

Subsection 14.1 Partial Damage. If all or a portion of the Leased Premises is partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered untenable, the same will be repaired with due diligence by City subject to the limitations of Subsection 14.4; provided, however, to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the cost and expenses insured in such repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees.

Subsection 14.2 Extensive Damage. If the damages referred to in Subsection 14.1 shall be so extensive as to render the Terminal Building Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City subject to the limitations of Subsection 14.4; and the charges payable herein for the MAG and Rent under Section 5.1 shall abate from the time of such damage or destruction until such time as the said Leased Premises are fully restored and certified by City's Engineers as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees.

Subsection 14.3 Complete Destruction. In the event the Terminal Building Premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty, or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, City shall undertake the repair, replacement, and reconstruction of said Leased Premises; and charges payable herein for the MAG and Rent under Section 5.1, shall abate as of the time of such damage or destruction until such time as the said Premises are fully restored and certified by City's Executive Director of Aviation as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the costs and expenses incurred in said repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees; provided further, however, if within twelve (12) months after the time of such damage or destruction said Leased Premises shall not have been repaired or reconstructed, Concessionaire may

cancel this Agreement in its entirety. Rents payable for the leased areas in the Terminal Building and/or Ready/Return Block will only abate if the City is unable to provide alternative space for Concessionaire to conduct its business.

Subsection 14.4 Limits of City's Obligations Defined. It is understood that, in the application of the foregoing Subsections, City's obligations shall be limited to repair or reconstruction of the Leased Premises to the same extent and of equal quality as obtained at the commencement of operations hereunder, subject to funding and appropriation. Redecoration and replacement of furniture, fixtures, equipment, and supplies shall be the responsibility of Concessionaire and any such redecoration and refurnishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

SECTION 15 – CANCELLATION

Subsection 15.1 Cancellation by Concessionaire. Concessionaire may cancel this Agreement and terminate all its obligations hereunder upon or after the happening of one or more of the following events and provided that Concessionaire is not in default in the payment of any fees or charges to City:

- A. The abandonment of the Airport as an airline terminal or the removal of all certificated passenger airline service from the Airport for a period of no less than thirty (30) consecutive days.
- B. The inability of Concessionaire to use the Airport for a period of longer than ninety (90) days, because of the issuance of any order, rule, or regulation by any competent governmental authority or court having jurisdiction over Concessionaire or City, preventing Concessionaire from operating its business; provided, however, that such inability or such order, rule, or regulation is not primarily due to any fault of Concessionaire.
- C. The material breach by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such breach for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy the same.

Subsection 15.2 Cancellation by City. City may cancel this Agreement and terminate all of its obligations hereunder at any time that City is not in default, upon or after the happening of any of the following events:

- A. Concessionaire shall file a voluntary petition in bankruptcy; or
- B. Proceedings in bankruptcy shall be instituted against Concessionaire and Concessionaire is thereafter adjudicated bankrupt pursuant to such proceedings; or
- C. A court shall take jurisdiction of Concessionaire and its assets pursuant to

- proceedings brought under the provisions of any federal reorganization act; or
- D. A receiver of Concessionaire's assets shall be appointed; or
 - E. Concessionaire voluntarily abandons its conduct of its business at the Airport for a period of thirty (30) days, except if such is due to a labor strike or labor dispute in which Concessionaire is involved; or
 - F. Any assignment is made by Concessionaire for the benefit of its creditors; or
 - G. The material breach by Concessionaire of any of the covenants or agreements herein contained and the failure of Concessionaire to remedy such breach as hereinafter provided. In this regard it is understood that nonpayment of fees or charges hereunder is a material breach. In the event of such material breach, City shall give to Concessionaire notice in writing to correct such breach and if such breach shall continue for fifteen (15) days after the receipt of such notice by Concessionaire, City may, after the lapse of said fifteen (15) day period, cancel this Agreement, without forfeiture, waiver, or release of City's rights to any sum of money due or to become due under the provisions of this Agreement.
 - H. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as to substantially restrict Concessionaire, for a period of at least thirty (30) days, from its Airport operation.

Subsection 15.3 Termination. Should an early termination of this Agreement occur pursuant to the terms of Subsection 15.2 hereof, City shall have the right to re-enter the Leased Premises, make repairs as necessary, and enter into another agreement for the Leased Premises and privileges, or any part thereof, for the remainder of the term hereof.

Subsection 15.4 Notice of Termination. If any of the events enumerated in Subsections 15.1 and 15.2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

SECTION 16 – NONWAIVER OF RIGHTS

Continued performance by either party hereto pursuant to the terms of this Agreement after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, or observed by the other party hereto shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default; and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

SECTION 17 – SURRENDER OF POSSESSION

Concessionaire shall, upon termination of this Agreement or cancellation, quit and deliver up the Leased Premises and privileges to City peaceably and quietly, with the Leased Premises being in as good order and condition as the same now are or may be hereafter improved by Concessionaire or City, reasonable use, and wear thereof excepted. In addition to any lien provided by Texas law, City shall have a specific lien on all property of Concessionaire, and related equipment on the Leased Premises as security for nonpayment. Concessionaire shall have the right to remove all of its trade fixtures and equipment installed or placed by it at its own expense, in, on or about the Premises; subject however, to any valid lien which City may have thereon for unpaid charges or fees. Provided however, the City will not claim or have a lien of any kind, be it contractual or statutory, on or against Concessionaire's motor vehicles for non-payment of any rent or fees due under the Agreement, or for any default of Concessionaire or any other reason, and the City hereby waives all such liens available to the City.

SECTION 18 – TAXES AND LICENSES

Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder.

SECTION 19 – INSPECTION OF PREMISES

City or its duly authorized representatives, or agents, and other persons for it, may enter upon said Leased Premises at any and all reasonable times during the term of this Agreement for the purpose and conditions hereof or for any other purpose incidental to rights of City.

SECTION 20 – HOLDING OVER

Should Concessionaire holdover said Leased Premises after this Agreement has terminated in any manner, Concessionaire shall continue such holding over only at sufferance to City. In the event of such holding over, Concessionaire shall pay to the City the amounts specified in Subsection 5.1, the amounts being the amounts in effect immediately prior to the commencement of such holdover." All other terms and conditions in such holdover shall be the same as herein provided.

SECTION 21 – QUIET ENJOYMENT

City agrees that Concessionaire, upon payment of the fees and charges and all other payments to be paid by Concessionaire under the terms of this Agreement, and upon observing and keeping the agreements and covenants of this Agreement on the part of Concessionaire to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of this Agreement.

SECTION 22 – NO LIENS

Concessionaire shall pay for all labor done or materials furnished in the repair, replacement, development, or improvement of the Premises by Concessionaire, and shall keep said Leased Premises and Concessionaire's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Concessionaire's act or omission.

SECTION 23 – SECURITY AGREEMENTS

City shall provide, or cause to be provided, during the term of this Agreement, all proper and appropriate public fire, and police protection similar to that afforded to other Landside tenants or licensees at the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Concessionaire shall comply with the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Concessionaire, shall not in any way be construed to limit or reduce the obligations of City hereunder.

SECTION 24 – AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the Killeen - Fort Hood Regional Airport. Should the effect of such Agreement with the United States government be to take any of the property under lease or substantially destroy the commercial value of such improvements, City shall terminate this Agreement.

SECTION 25 – RIGHTS AND PRIVILEGES OF CITY

- A. City shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, which Concessionaire agrees to observe and obey, with respect to the use of the Airport, Airport Terminal Building, and appurtenances, provided that such rules and regulations shall not be inconsistent with safety, current rules and regulations of the FAA, and any future changes prescribed from time to time by the FAA.
- B. The City Manager or designee is hereby designated as its official representative for the enforcement of all provisions in this Agreement with full power to represent City with dealings with Concessionaire in connection with the rights herein granted.

- C. All actions relating to policy determination, modification of this Agreement, termination of this contract, and any similar matters affecting the terms of this Agreement shall emanate from the City Council, their successors or assigns.
- D. The Executive Director of Aviation or designee may enter upon the Leased Premises, now or hereafter leased to Concessionaire hereunder, at any reasonable time, for any purpose necessary, incidental to, or connected with, the performance of its obligations hereunder, or in the exercise of its governmental functions.
- E. City reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, including the Leased Premises and existing vehicle and pedestrian traffic patterns, as the City deems appropriate, regardless of the desires or views of Concessionaire, and without interference or hindrance.
- F. City hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of Killeen - Fort Hood Regional Airport, and the right to pursue all operations of the Killeen - Fort Hood Regional Airport.
- G. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Airport, which, in the opinion of the City, would limit the usefulness of the Airport, or constitute a hazard to aircraft.
- H. City may from time to time increase the size or capacity of any such Public Aircraft Facilities or Passenger Terminal Building or Common Use Portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided notice is given to Concessionaire.
- I. This Agreement at any time may be reopened for renegotiation if Federal Aviation Administration (FAA) Airport Certification (FAR Part 139), Transportation Security Administration (TSA) Security Requirements (49 CFR, Part 1542), or U.S. Army regulations result in major expenditures to City due to Concessionaire's tenancy on the Killeen - Fort Hood Regional Airport. If said renegotiation is desired, written notice must be given to Concessionaire sixty (60) days prior to such renegotiations.
- J. City reserves the right to relocate the Leased Premises upon the completion of any Terminal area remodeling or expansion. City will not be liable for the costs associated with the moving or reinstallation of Concessionaire's equipment. In

the event the City requires a move by the Concessionaire, the City will reimburse actual out-of-pocket costs associated with the relocation as approved in advance subject to a maximum amount as established by the City.

SECTION 26 – ACCESS CONTROL

- A. Concessionaire shall upon termination of this agreement return all issued keys and access cards to City. If all issued keys and access cards are not returned to City at the termination of this Agreement Concessionaire shall pay to City cost to re-core premises locks and cut new keys at the rate set at the time of such re-core and to pay for any lost access cards.
- B. Concessionaire is responsible for all keys and access cards issued to employees of Concessionaire. Concessionaire is responsible to insure every employee that has regular duty at the Airport is submitted for airport electronic access cards appropriate for that employee and that all employee data remains current. The Concessionaire will notify the appropriate representative of the Airport by telephone or other appropriate means as soon as possible following the termination of any employee, but will do so in writing no later than the end of the next working day after the employee's last day of employment at the Airport. The Concessionaire is further responsible for returning the employee's electronic access cards no later than three (3) working days after the last day of employment at the Airport. Any lost electronic access cards must be reported in writing to the Airport's representative as soon as possible, but no later than the end of the next working day from the date of the loss. Concessionaire is responsible for any charges or damages incurred by the use of electronic access cards issued to its employees unless more than 24 hours (excluding weekends and City of Killeen recognized holidays) have passed from the time the Concessionaire provides written notification to the Airport's representative to cancel any access these electronic access cards allow. A monthly fee will be charged for active employee electronic access cards and for lost cards at the current rates adopted by the City.
- C. Concessionaire may not install additional locks or change locks to Leased Premises without the written approval of the Executive Director of Aviation.

SECTION 27 – NO PERSONAL LIABILITY

Under no circumstances shall any trustee, officer, official, commissioner, Director, member, partner, or employee of City have any personal liability arising out of this Agreement, and Concessionaire shall not seek or claim any such personal liability.

SECTION 28 – GOVERNING LAW

This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Texas. Venue for

any action arising out of or in any way related to this Agreement shall be exclusively in Bell County, Texas. Each party waives its right to challenge venue.

SECTION 29 – NOTIFICATION

Concessionaire shall:

- A. As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Concessionaire with respect thereto.
- B. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Concessionaire contained in this Agreement to be untrue.
- C. Notify City, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Concessionaire or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Concessionaire or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Concessionaire or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

SECTION 30 – SEVERABILITY

The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

SECTION 31 – ASSIGNMENT, SUBLET, AND TRANSFER

Concessionaire shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of City, which shall not be unreasonably withheld or delayed. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Concessionaire shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

SECTION 32 – NO WAIVER

The failure of any party to insist, in any one or more instance, upon performance of any

of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

SECTION 33 – CONFLICTS OF INTEREST

Concessionaire covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Concessionaire further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Concessionaire or its employee must be disclosed to City.

SECTION 34 – POLITICAL ACTIVITIES

Concessionaire shall not engage in any political activities while in performance of any and all services and work under this Agreement.

SECTION 35 – ENTIRE AND SUPERSEDING AGREEMENT

This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions, and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of City, granting approvals or conditions attendant with such approval, the specific action of City shall be deemed controlling.

SECTION 36 – AMENDMENT

This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

SECTION 37 – TIME COMPUTATION

Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

SECTION 38 – NOTICES

NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City: Killeen - Fort Hood Regional Airport Attn: Executive Director of Aviation 8101 S. Clear Creek Rd, Box C Killeen, TX 76549	Copy to: Attn. City Attorney City of Killeen 101 N. College St., 1 st Floor Killeen, TX 76541
---	---

To the Concessionaire: Avis Budget Car Rental, LLC
6 Sylvan Way
Parsippany, NJ 07054

The parties may designate other addresses from time to time in writing. Concessionaire must provide a valid new address for notices within ten (10) days if the above address becomes invalid.

SECTION 39 – CONSTRUCTION

This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

SECTION 40 – NO THIRD PARTY BENEFICIARY

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

SECTION 41 – COMPLIANCE WITH LAW

The parties shall comply in all material respects with any and all applicable federal, state, and local laws, regulations, and ordinances.

SECTION 42 – FORCE MAJEURE

City shall not be responsible to Concessionaire and Concessionaire shall not be responsible to City for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

SECTION 43 – GOOD STANDING

Concessionaire affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Texas and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Concessionaire is duly licensed or qualified to do business and is in good standing in the State of Texas and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

SECTION 44 – INDEPENDENT CONTRACTORS

The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

SECTION 45 – GOVERNMENTAL APPROVALS

Concessionaire acknowledges that various of the specific undertakings of City described in this Agreement may require approvals from the City of Killeen City Council, City of Killeen bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Concessionaire further acknowledges that this Agreement is subject to appropriation by the Killeen City Council. City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. City cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

SECTION 46 – AUTHORITY

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

SECTION 47 – COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

SECTION 48 – SURVIVAL

All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

SECTION 49 – MORE FAVORABLE TERMS

In the event the City shall enter into any lease or agreement with any other rental car operator within the Airline Terminal building, that agreement will not contain more favorable terms than this Agreement, unless the same rights, privileges, and more favorable terms are concurrently made available to Concessionaire.

SECTION 50 – ENVIRONMENTAL

Subsection 50.1 Disposal, Use and Storage of Hazardous Materials. Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except:

- A. Concessionaire may store and use Hazardous Materials on the Leased Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Agreement. Storage shall be in an approved Hazardous Materials cabinet or storage container. Concessionaire shall provide Executive Director of Aviation with a copy of any application for a permit for use or storage of Hazardous Materials on the Leased Premises from any regulatory agency responsible for enforcement of Environmental Laws, and shall also a copy of any permit received from such agency; and
- B. Concessionaire may use Hazardous Materials on the Airport other than the Leased Premises only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement.

Subsection 50.2 Liability. Concessionaire shall be solely and fully responsible and liable for:

- A. Storage, use or disposal of Hazardous Materials on the Leased Premises or the Airport, by Concessionaire, Concessionaire's officers, agents, employees, or contractors,
- B. Any Hazardous Material release which is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, or contractors on the Leased Premises or the Airport.

Subsection 50.3 Prevention of Release. Concessionaire shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Leased Premises or the Airport, including, but not limited to any release into soil, groundwater, or City's sewage or storm drainage system.

Subsection 50.4 Obligation to Investigate and Remediate. Concessionaire, at Concessionaire's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:

- A. Any release or threat of release of Hazardous Material on the Leased Premises or the Airport, including, but not limited to, into soil or groundwater, or City's sewage or storm drainage system which was caused or results in whole or in part from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees; except that Concessionaire shall have no responsibility for any release or threat of release of Hazardous Material which Concessionaire establishes was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees by any third party, or by migration of Hazardous Materials onto the premises from a specifically identifiable source off the use premises. In addition to all other rights and remedies of City hereunder, if Concessionaire does not promptly commence, and diligently pursue to remediate, to the extent required, any such release, or threat of release, of Hazardous Materials for which it has responsibility under this section, City, in its discretion, may pay to have same remediated and Concessionaire shall reimburse City plus a fifteen percent administration fee within fifteen (15) business days of City's demand for payment. The failure to commence investigation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or threat of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that expense was incurred by City.

Subsection 50.5 Records and Inspections.

- A. Concessionaire will maintain a chemical inventory list and material safety data sheets of hazardous materials stored on site in accordance with state and federal regulations. The Concessionaire will also maintain manifests for all hazardous or regulated wastes transported and disposed of off-site.
- B. Upon reasonable notice by City, Concessionaire shall make available for review by City such records pertaining to the use, handling and disposal of any Hazardous Material(s) as Concessionaire is required to maintain under this section.
- C. City shall have the right, under the terms hereof, and upon reasonable notice for exclusive use space, to enter the Leased Premises during the Term hereof to conduct periodic environmental inspections and testing. City shall conduct each inspection or test in a manner that does not unreasonably interfere with Concessionaire's operations.

Subsection 50.6 Concessionaire Obligations upon Termination. Prior to vacating the Leased Premises, and in addition to all other requirements under this Agreement, Concessionaire shall remove any containers of Hazardous Materials placed on the Leased Premises during the Term by Concessionaire or as a result of Concessionaire's use or occupancy of the Leased Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws, including without limitation conducting any environmental audits as may be required by City.

Subsection 50.7 Storm Water.

- A. Notwithstanding any other provisions or terms of this Agreement, Concessionaire acknowledges that certain properties within the Airport, or on City-owned land, are subject to storm water rules and regulations. Concessionaire agrees to observe and abide by such storm water rules and regulations as may be applicable to City's property and Concessionaire's uses thereof.
- B. Concessionaire acknowledges that any storm water discharge permit issued to City may name Concessionaire as a co-permittee. City and Concessionaire both acknowledge that close cooperation is necessary to insure compliance with any storm water discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Concessionaire acknowledges further that it may be necessary to undertake such actions to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by Concessionaire, as such term may be defined by applicable storm water rules and regulations, by implementing and

maintaining "best management practices" as that term may be defined in applicable storm water rules and regulations.

- C. City will provide Concessionaire with written notice of any storm water discharge permit requirements applicable to Concessionaire and with which Concessionaire will be obligated to comply from time-to-time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Concessionaire agrees that within thirty (30) days of receipt of such written notice it shall notify City in writing if it disputes any of the storm water permit requirements it is being directed to undertake. If Concessionaire does not provide such timely notice, Concessionaire will be deemed to assent to undertake such storm water permit requirements. In that event, Concessionaire agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Concessionaire, those storm water permit requirements for which it has received written notice from City, and Concessionaire agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements.

SECTION 51 – CONTRACT VERIFICATION

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on this ____ day of November, 2023.

ATTEST:

CITY OF KILLEEN:

Laura Calcote
City Secretary

Kent Cagle
City Manager

ATTEST:

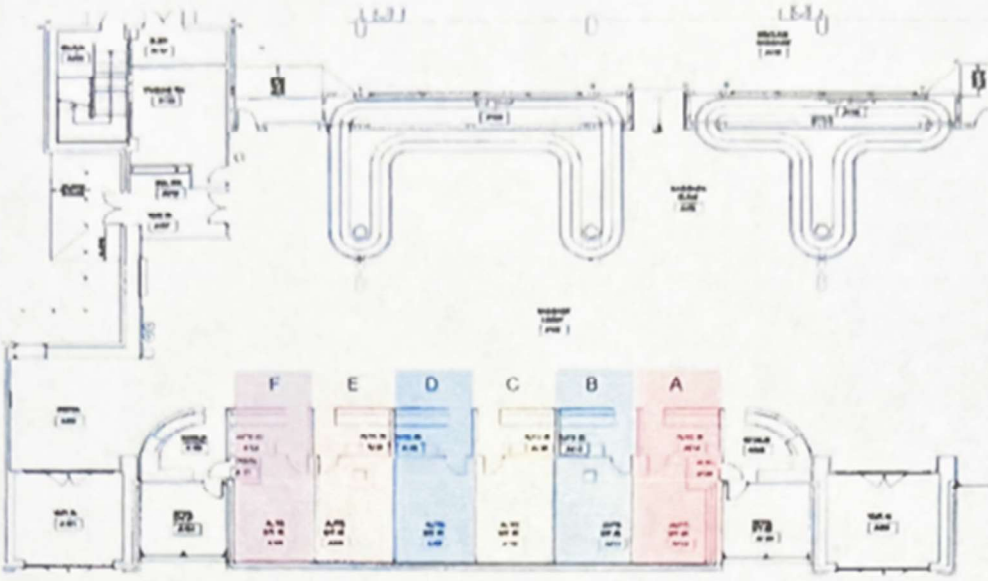
CONCESSIONAIRE:

(Signature of signing authority)

(Printed Name of signing authority)

(Title)

EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS



Space	Office	Counter Area	Queuing	Total Square Footage	Counter Length
A	199	107	102	408	12' 9"
B	232	109	103	444	12' 10"
C	232	109	103	444	12' 10"
D	232	109	103	444	12' 10"
E	232	109	103	444	12' 10"
F	199	104	102	405	12' 9"

Acknowledged By:

Space A Selected By: Avis / Budget 11/1/23
Date

Space C Selected By: Hertz / Dollar 11/2/2023
Date

Space D Selected By: Enterprise 10/31/23
Date

Space E Selected By: Alamo / National 10/31/23
Date

Space B and Space F were not selected.

EXHIBIT A2 - READY/RETURN BLOCKS AND SERVICE BAYS

Blocks:

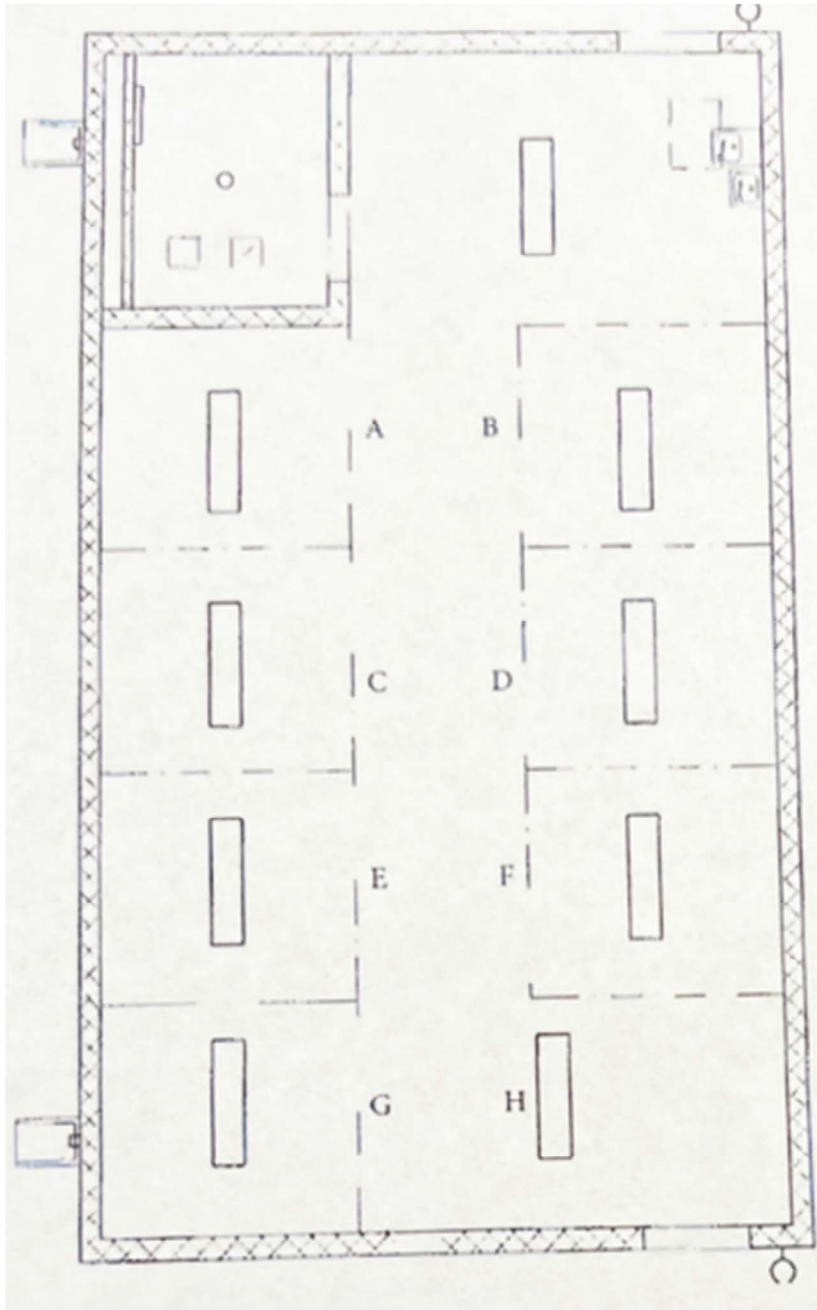
- RR-2 = 36 spaces
- RR-3 = 36 spaces
- RR-4 = 36 spaces

← Terminal Building

Space RR-3 and SB-5 Selected By: Enterprise	<p>ACKNOWLEDGED BY: <i>[Signature]</i></p> <p>GAN Holdings LLC</p>	<p>11/2/23</p> <p>Date</p>
Space RR-2 and SB-2 Selected By: Avis / Budget	<p><i>[Signature]</i></p> <p>Avis Budget Car Rental LLC</p>	<p>11/1/23</p> <p>Date</p>
Space RR-4 and SB-3 Selected By: Hertz / Dollar	<p><i>[Signature]</i></p> <p>The Hertz Corporation</p>	<p>11/2/2023</p> <p>Date</p>
Space RR-1 and SB-4 Selected By: Alamo / National	<p><i>[Signature]</i></p> <p>GAN Holdings LLC</p>	<p>10/31/23</p> <p>Date</p>

SB-1 and SB-6 were not selected.

EXHIBIT A3 – STORAGE AREA



Acknowledged By: *[Signature]* Date: 11/2/2023
The Hertz Corporation
Avis Budget Car Rental LLC

Cage A Selected By: Hertz / Dollar
Cage D Selected By: Avis / Budget
Cages B, C, E, F, G, and H were not selected.

EXHIBIT A4 – OVERFLOW PARKING LANES

RENTAL CAR OVERFLOW PARKING LOT

27 – LANES
Each lane 8'6" x 85'

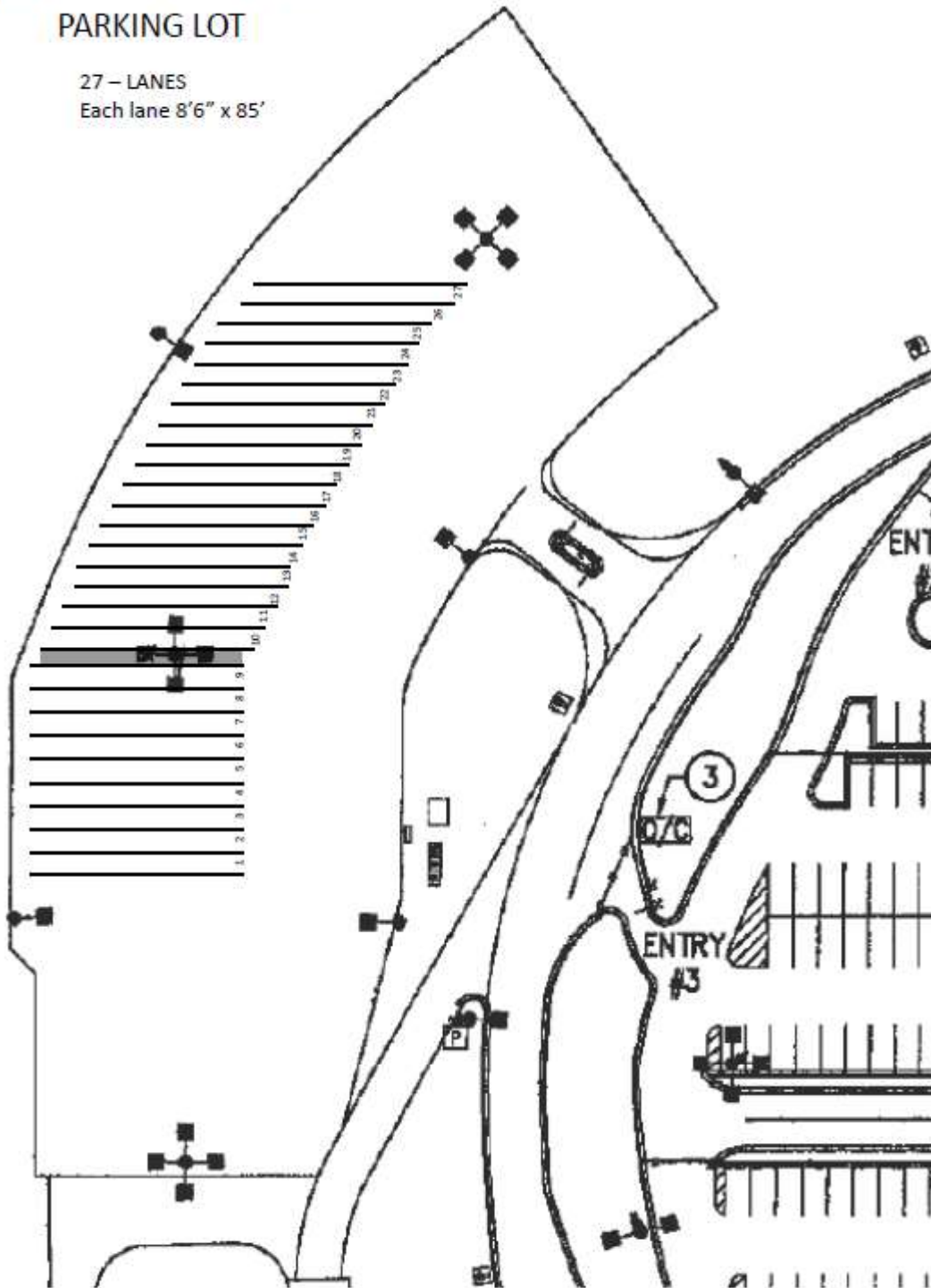


EXHIBIT B – Sample Monthly Reporting Form

KILLEEN – FORT HOOD REGIONAL AIRPORT

RENTAL CAR MONTHLY REPORT OF GROSS REVENUES

FOR MONTH OF _____

Concessionaire Name: _____

Address: _____

City, State, Zip: _____

Contact Name: _____

Phone # _____

GROSS RENTAL REVENUE: _____

Airport Fee (10%) _____

Less Monthly Guarantee paid 1st of month: _____

(1) Privilege Fee Balance Due: _____

Number of Transaction: _____

Number of Transaction Days: _____

(2) CFC Due (@ \$3.00 per Transaction Day): _____

Amount Due with this report (1) +(2): \$ _____

Concessionaire Official Signing and Certifying accuracy of Information on this report:

Signature _____

Typed Name & Title _____

Date signed _____

REMIT THIS FORM AND PAYMENT TO: City of Killeen Finance Department
Attn: Accounts Receivable
P.O. Box 1329
Killeen, TX 76540

EXHIBIT C – Sample ACDBE Reporting Form

KILLEEN – FORT HOOD REGIONAL AIRPORT ACDBE PROGRAM TRACKING FORM
Tracking for Airport Concessionaires ACDBE products and/or services payments
Information required in accordance with 49 CFR §23

☐ Check here for Rental Car Concessions

☐ Check here for Other-than-Rental Car Concessions

Name of GRK Airport Concessionaire: _____

Concessionaire Prime Point of Contact: _____

Lease Agreement Date: _____

Lease Renewal Date: _____

Current Reporting Period (Fiscal Year): _____

Quarter (Current Year): _____ Amount paid to ACDBE during this time period: _____

Certified ACDBE Vendor Name: _____

Address: _____

Contact Email: _____

Goods / Service category: _____

NAICS Code(s): _____

ACDBE category (BLK/HISP/NAAM/WMN, etc.): _____

NAICS Code(s): _____

Description of goods or services provided by the certified ACDBE firm (examples include vehicle repairs, auto parts, insurance, baked goods, beverages, gifts, novelties, restaurant supplies, etc.): _____

☐ Check here if goods or services procured from the ACDBE are only a one-time transaction

☐ Check here if goods or services procured from the ACDBE are part of an on-going contract or agreement

☐ Check here if the ACDBE firm's Texas certification has been confirmed and/or verified

Total amount paid to ACDBE Provider to date this calendar year: _____

☐ Check if payments to ACDBE has been made promptly (within 30 days of completed delivery of goods or services).

As the authorized representative of the above Concessionaire, I state that, the above information is accurate and the amounts were paid in accordance to lease or contractual obligations, and that documentation of these payments, any canceled checks, or supporting information is available within 5 businessdays of request.

GRK Concessionaire 's Authorized Representative: _____

Title: _____

Signature: _____

Email address: _____

Date: _____

KILLEEN – FORT HOOD REGIONAL AIRPORT ACDBE PROGRAM TRACKING FORM
Tracking for Airport Concessionaires ACDBE products and/or services payments
Information required in accordance with 49 CFR §23

This section to be completed by the authorized GRK ACDBE TEAM only:

GRK ACDBE Specialist:	_____
Signature:	_____
Date Received:	_____
Comments:	_____

Instructions: Use additional sheets as needed.

ACDBE Category acronyms:

- BLK = Black Americans
- HISP = Hispanic Americans
- NAAM = Native Americans
- WMN = Women
- ASPA = Asian-Pacific Americans
- SAAM = Subcontinent Asian Americans
- OTH = Others

A firm's ACDBE certification can be verified by searching the following database: <https://txdot.txdotcms.com>

EXHIBIT D – Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the “Concessionaire”) 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).

CONCESSION AGREEMENT

NON-EXCLUSIVE RENTAL CAR CONCESSION
Killeen - Fort Hood Regional Airport
Killeen, Texas

between

Killeen - Fort Hood Regional Airport
City of Killeen, Texas

and

EAN Holdings, LLC d/b/a Enterprise Rent-A-Car
Concessionaire

<u>Section</u>	<u>Page</u>
DEFINITIONS	5
SECTION 1 – LEASED PREMISES.....	8
SECTION 2 – TERM	8
SECTION 3 – USES, PRIVILEGES, COBRANDING AND OBLIGATIONS	8
SECTION 4 – RESTRICTIONS ON USES AND PRIVILEGES.....	10
SECTION 5 – PRIVILEGE FEE, RENTS, FEES AND ACCOUNTING RECORDS.....	11
Subsection 5.1 Privilege Fee, Rent and Fees.	11
Subsection 5.2 Statements, Books, and Records; Delinquent Rentals.	15
Subsection 5.3 Audit.....	16
SECTION 6 – INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES	16
Subsection 6.1 Building Services	16
Subsection 6.2 Approval of Plans and Specifications; Provision of Drawings.....	17
SECTION 7 – TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.	18
Subsection 7.1 Title.....	18
Subsection 7.2 Structural Alterations.....	18
Subsection 7.3 Alterations and Improvements to Airport.....	18
Subsection 7.4 Removal and Demolition.....	19
SECTION 8 – MAINTENANCE OF PREMISES AND UTILITIES.....	19
Subsection 8.1 Airport Maintenance Obligations.....	19
Subsection 8.2 Concessionaire's Maintenance Obligations.	20
Subsection 8.3 Utilities.	21
SECTION 9 – LIENS, PAYMENT, AND PERFORMANCE BONDS.....	21
Subsection 9.1 Construction Surety Bond.....	21
Subsection 9.2 Security.....	22
SECTION 10 – OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES	22
Subsection 10.1 Hours of Operation.....	22

Subsection 10.2 Delivery of Goods.	22
SECTION 11 – QUALITY AND CHARACTER OF SERVICE.....	22
Subsection 11.1 Type of Operation.	22
Subsection 11.2 Services to the General Public.....	22
Subsection 11.3 Additional Compliance.	22
Subsection 11.4 Personnel.....	23
Subsection 11.5 Operations Violations.....	23
SECTION 12 – NON-DISCRIMINATION.....	24
Subsection 12.1 General Civil Rights Provisions.....	24
Subsection 12.2 Compliance with Nondiscrimination Requirements	24
SECTION 13 – IDEMNIFICATION AND INSURANCE.....	26
Subsection 13.1 Indemnification.....	26
Subsection 13.2 Concessionaire to Provide General Liability and Automobile Insurance.	26
Subsection 13.3 Concessionaire to Provide Property and Fire Insurance.....	27
Subsection 13.4 Both Concessionaire and City to Carry Fire Insurance.	27
Subsection 13.5 Insurance Certificate.....	27
Subsection 13.6 Concessionaire Failure to Provide Certificates.	28
SECTION 14 – DAMAGE OR DESTRUCTION OF LEASED PREMISES	28
Subsection 14.1 Partial Damage.	28
Subsection 14.2 Extensive Damage.....	28
Subsection 14.3 Complete Destruction.	28
Subsection 14.4 Limits of City's Obligations Defined.....	29
SECTION 15 – CANCELLATION	29
Subsection 15.1 Cancellation by Concessionaire.....	29
Subsection 15.2 Cancellation by City.	29
Subsection 15.3 Termination.....	30
Subsection 15.4 Notice of Termination.....	30
SECTION 16 – NONWAIVER OF RIGHTS	30
SECTION 17 – SURRENDER OF POSSESSION	31

SECTION 18 – TAXES AND LICENSES	31
SECTION 19 – INSPECTION OF PREMISES	31
SECTION 20 – HOLDING OVER	31
SECTION 21 – QUIET ENJOYMENT	31
SECTION 22 – NO LIENS.....	32
SECTION 23 – SECURITY AGREEMENTS	32
SECTION 24 – AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES	32
SECTION 25 – RIGHTS AND PRIVILEGES OF CITY	32
SECTION 26 – ACCESS CONTROL	34
SECTION 27 – NO PERSONAL LIABILITY	34
SECTION 28 – GOVERNING LAW.....	34
SECTION 29 – NOTIFICATION	35
SECTION 30 – SEVERABILITY	35
SECTION 31 – ASSIGNMENT, SUBLET, AND TRANSFER	35
SECTION 32 – NO WAIVER.....	35
SECTION 33 – CONFLICTS OF INTEREST	36
SECTION 34 – POLITICAL ACTIVITIES.....	36
SECTION 35 – ENTIRE AND SUPERSEDING AGREEMENT	36
SECTION 36 – AMENDMENT	36
SECTION 37 – TIME COMPUTATION	36
SECTION 38 – NOTICES	37
SECTION 39 – CONSTRUCTION.....	37
SECTION 40 – NO THIRD PARTY BENEFICIARY	37
SECTION 41 – COMPLIANCE WITH LAW	37
SECTION 42 – FORCE MAJEURE.....	38
SECTION 43 – GOOD STANDING	38
SECTION 44 – INDEPENDENT CONTRACTORS	38
SECTION 45 – GOVERNMENTAL APPROVALS.....	38
SECTION 46 – AUTHORITY.....	39

SECTION 47 – COUNTERPARTS.....	39
SECTION 48 – SURVIVAL.....	39
SECTION 49 – MORE FAVORABLE TERMS.....	39
SECTION 50 – ENVIRONMENTAL.....	39
SECTION 51 – CONTRACT VERIFICATION	42
EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS	44
EXHIBIT A2 - READY/RETURN BLOCKS AND SERVICE BAYS	45
EXHIBIT A3 – STORAGE AREA.....	46
EXHIBIT A4 – OVERFLOW PARKING LANES.....	47
EXHIBIT B – Sample Monthly Reporting Form	48
EXHIBIT C – Sample ACDBE Reporting Form	49
EXHIBIT D – Title VI List of Pertinent Nondiscrimination Acts and Authorities.....	51

RENTAL CAR CONCESSION
Killeen - Fort Hood Regional Airport
Killeen, Texas

THIS CONCESSION AGREEMENT ("**Agreement**"), made and entered into this ____ day of November, 2023, by and between the City of Killeen (the "**City**"), a municipal corporation and existing under the laws of the State of Texas, whose address is 8101 S. Clear Creek Rd, Box C, Killeen, Texas 76549, hereinafter referred to as "City" and EAN Holdings, LLC operating as Enterprise Rent-A-Car, (hereinafter referred to as "**Concessionaire**"), a limited liability company with its office and address being 4210 South Congress Avenue, Austin TX 78745, with a mailing address of 4210 South Congress Avenue, Austin TX 78745.

WITNESSETH:

WHEREAS City controls, owns, operates, and maintains an airport in the City of Killeen, County of Bell, State of Texas, known as Killeen - Fort Hood Regional Airport (hereinafter referred to as "Airport"), and has the power to grant rights and privileges with respect thereto, and

WHEREAS, the City has determined it to be in the best interests of the public and the City to enter into this Agreement with Concessionaire to provide rental car concession services at the Airport pursuant and subject to the terms and conditions hereunder,

NOW, THEREFORE, THE PARTIES AGREE:

DEFINITIONS

The following terms and phrases shall have the following meanings for purposes of this Agreement:

1. "ACDBE" shall mean airport concession disadvantaged business enterprise as that term is defined by 49 CFR Part 23.
2. "City" shall mean the municipal corporation existing under the laws of the State of Texas which controls, operates, and maintains the Killeen - Fort Hood Regional Airport.
3. "Environmental Law" shall mean any federal, state, or local law, rule, regulation, order, or requirement relating to protection of human health and safety or the environment.
4. "Executive Director of Aviation" shall mean the Executive Director of Aviation of the City's Airport, or his or her designee.
5. "Gross Revenues" as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Concessionaire for or

in connection with agreements it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Concessionaire. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Concessionaire 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 Concessionaire'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 Concessionaire'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 Concessionaire 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:

- Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Concessionaire's operations which are separately stated on customers' rental contracts and collected from customers of Concessionaire;
- Those fees referred to in this Agreement as Customer Facility Charges, "CFCs" which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City Resolution, as may be amended;
- Amounts received specifically for the actual loss of or damages of vehicles or other property of Concessionaire;
- 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 Concessionaire's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and
- Reimbursements for amounts actually paid for speeding tickets, parking tickets, red light tickets, tolls, and toll violations, and towing and impound fees from its customers to pass through without markup to an independent third party with no amount being retained by Concessionaire. However, any

amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

6. "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, and includes any material or substance identified, listed, or defined as a "hazardous waste" "hazardous substance," or "pollutant" or "contaminant" or term of similar import, or is otherwise regulated pursuant to Environmental Laws, including any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.
7. "Leasehold Improvements" shall mean all improvements and equipment which are affixed to the Leased Premises, and which cannot be removed without material damage to the Premises.
8. "Operations Year" shall mean January 1 through December 31 annually.
9. "Personal Property" shall mean all movable property of the Concessionaire not directly related to the rental car operations of the privileges granted hereunder, including, office furniture, office equipment, and office supplies.
10. "Refurbish" or "Refurbishment" shall mean the routine repainting or redecoration of public areas within the Leased Premises, as necessary, including the replacement or repair of worn carpet, tile, furniture, or furnishings.
11. "Rental Car" or "Motor Vehicles" shall mean motor vehicles designed primarily for the carriage of passengers and commonly classified as sedans, coupes, convertibles, four-wheel drive vehicles, passenger vans, sport utility vehicles, and pick-up trucks rated one-ton or less.
12. "Terminal Building" shall mean the terminal building at the Airport.
13. "Trade Fixtures" shall mean all non-affixed items, except expendables and Personal Property, which can be removed without damage to the Leased Premises, including cash registers, safes, patron tables and chairs, display fixtures, and the like.
14. "Transaction" shall mean the execution of an agreement or contract for the rental of a Motor Vehicle; or the payment of funds or completion of a cash or credit transaction for payment for rental of a Motor Vehicle; or delivery of a Motor Vehicle to a customer for use in exchange for cash, credit, or any other consideration.
15. "Transaction Day" shall mean each twenty-four (24) hour period or portion thereof, for which a customer of a Rental Car concessionaire rents, or otherwise enters into a similar arrangement for the use of a Motor Vehicle and for which the Rental Car concessionaire collects revenue from the customer. Late returns (after twenty-four

(24) hours) shall be considered a Transaction Day.

SECTION 1 – LEASED PREMISES

- A. City hereby leases to Concessionaire and Concessionaire hereby agrees to lease from City the following premises, which, collectively, are hereinafter called the "Leased Premises": Four Hundred and Forty-Four (444) square feet of counter/office/queuing area "D" in the terminal building, Block "RR-3" the ready return area containing approximately Thirty-Six (36) ready/return parking spaces outside and adjacent to the terminal building, and Service Bay "5". Said Leased Premises is more particularly shown on **Exhibits A1, A2, and A3** attached hereto and by this reference made a part hereof.
- B. Concessionaire agrees that its Leased Premises have been inspected by Concessionaire and are accepted and will be occupied by Concessionaire on an "as is" basis. The Concessionaire specifically waives any covenants or warranties regarding the Premises, including but not limited to any warranty of suitability and warranty of fitness.

SECTION 2 – TERM

The term of this Agreement is for a five (5) year period commencing on January 1, 2024, and terminating on December 31, 2028, unless sooner terminated or canceled as hereinafter provided.

SECTION 3 – USES, PRIVILEGES, COBRANDING AND OBLIGATIONS

Concessionaire shall have the following uses, privileges, and obligations in connection with its use of the Leased Premises:

- A. The non-exclusive right, privilege, and obligation to conduct and operate a rental car, van or truck rental concession at the Airport including all necessary and ancillary services customarily associated with car rental concessions at public airports within the United States of America or airport of similar size and capacity. Concessionaire 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 thirty-five (35)) to meet all reasonably foreseeable demands of the traveling public. Co-Branding by Concessionaire is limited to two brands per concession space specifically those listed in their submitted proposal. It being understood that no more than two brands under rental car agencies who are owned by the same parent company may operate from any one concession space during the term of this agreement. Concessionaire understands and agrees that it shall not engage in any other business on the Airport under this Agreement.
- B. The right, privilege, and obligation to rent and check-in rental vehicles, including the right to offer for sale related collision damage waiver protection, personal injury

and accident insurance, personal effects insurance, and such other travel or vehicle related coverage offered in connection with and incidental to the rental of a vehicle and occupy operations office, storage, and Ready and Return car parking spaces. It is the intent of this Agreement that rental car customers of Concessionaire will operate the vehicle rented only from the ready spaces provided herein, and Concessionaire shall not engage in customer shuttle operations of any kind to, from, or on the Airport. This does not prohibit the picking up of a customer from the Fixed Base Operator (FBO). No trucks larger than one-ton pickup type/style will be allowed in the ready lot unless approved in writing in advance by the Executive Director of Aviation. Concessionaire shall not park, store, or rent from Premises any vehicles except Motor Vehicles as defined herein that it owns or rents and are properly available for rental as provided herein.

- C. The non-exclusive right and privilege to wash vehicles rented by Concessionaire under the provisions of this Agreement in the City's car wash.
- D. The right and privilege to service vehicles rented by the Concessionaire under the provisions of this Agreement in the service bay identified in Section 1. Concessionaire shall use the service bay for the following activities only: vehicle automated and hand washing, cleaning, fluid replacement, vacuuming, and related activities as are necessary for preparing its vehicles for rental. No washing or vehicle maintenance may be conducted in the rental car parking lot or overflow parking areas.
- E. The right of ingress and egress to and from the Premises, over Airport roadways, are subject to such reasonable rules and regulations as may be established by Airport as respecting such use and subject to law.
- F. Concessionaire shall install no signs on or about the Premises without the prior written approval of the Executive Director of Aviation, said approval being solely discretionary with the Executive Director of Aviation. For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising or promotions, photographs, art displays, and the like. Such signs shall be substantially uniform in size, types, and location with those of other concessionaries, and subject to Executive Director of Aviation's approval, Rules, and Regulations, and in compliance with all applicable laws and resolutions. No temporary signs or displays shall be permitted on the backwall or the counter surfaces without the prior written approval of the Executive Director of Aviation. Handwritten, or hand lettered signs are prohibited. Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Executive Director of Aviation.
- G. The right for Concessionaire's employees, in common with other employees of tenants of the Terminal Building, to use vehicular parking space provided by City, subject to the payment of reasonable charges therefore, as set by the City.

Employee parking shall only be allowed in those areas designated by the Airport. Concessionaire employees shall not park personal vehicles in the Leased Premises.

H. Airport Concession Disadvantaged Business Enterprise Program

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulation 49 CFR Parts 23 related to the airport concession disadvantaged business enterprises (ACDBE) program. The concessionaire or contractor 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.
 2. The concessionaire or contractor 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 businesses to similarly include the statements in further agreements.
 3. Each year Concessionaire no later January 10th shall provide to City the following annual ACDBE information: the name and address of each certified ACDBE with which it has done business during the past federal fiscal year (October 1 – September 30), a description of the nature of the services performed by and/or items purchased from each firm named, and the dollar value of each transaction. The ACDBE must be certified by the Texas Unified Certification Program. A sample reporting form is provided as Exhibit C. Concessionaire may use the sample report provided or a form of similar level of detail satisfactory to the City.
- I. Compliance with Federal Aviation Regulations, 14 CFR Part 139, and Transportation Security Administration security requirements 49 CFR Part 1542. Concessionaire agrees to comply with Federal Aviation Regulations, and 1542 (Airport Security), U.S. Army requirements, and the City's policies as outlined in City's approved Operations Plan and Airport Security Plan. Concessionaire further agrees that any fines levied upon the City or Concessionaire through enforcement of these regulations because of acts by Concessionaire's employees, agents, suppliers, guests, or patrons shall be borne by Concessionaire to the extent said acts contributed to said fines.

SECTION 4 – RESTRICTIONS ON USES AND PRIVILEGES

The Leased Premises shall be used only for the purposes specified in this Agreement. Concessionaire understands and agrees that City has the right to grant up to five additional privileges under separate agreements for in-terminal rental car operations to other companies.

Prohibited Activities at the service bay include:

- A. Concessionaire shall not utilize the service bay for vehicle storage other than vehicles for rent in the process of being serviced.
- B. Concessionaire shall not utilize the service bay for any maintenance or for the storage of damaged vehicles.
- C. Concessionaire shall not allow its customers or the general public to enter the service bay.
- D. Concessionaire shall not permit its employees to vacuum, wash or fuel their personal vehicles or vehicles not part of the Concessionaire's fleet at the service bay or fueling area.

SECTION 5 – PRIVILEGE FEE, RENTS, FEES AND ACCOUNTING RECORDS

Subsection 5.1 Privilege Fee, Rent and Fees.

- A. **Privilege Fee.** As consideration for the privilege of operating the concession hereunder, Concessionaire shall pay to City each Operations Year, for the full term of this Agreement, a Privilege Fee. Said Privilege Fee shall be the greater of either the guaranteed Minimum Annual Privilege Fee or the Percentage Fee applicable to Gross Revenue, hereinafter defined, as follows:

- 1. Privilege Fee – the greater of either:
 - a. ten percent (10%) of the Concessionaire's annual Gross Revenues ("Percentage Privilege Fee");

OR

- b. the respective yearly amount shown below as the Concessionaire's Minimum Annual Guaranteed fee ("MAG"):

January 1, 2024, to December 31, 2024	\$ 155,065.00
January 1, 2025, to December 31, 2025	\$ 155,065.00
January 1, 2026, to December 31, 2026	\$ 155,065.00
January 1, 2027, to December 31, 2027	\$ 155,065.00
January 1, 2028, to December 31, 2028	\$ 155,065.00

- 2. Monthly payment shall be the greater of 1/12th of the respective year's MAG or 10% of reported gross revenues for the previous month. The MAG payment shall be paid in advance on the first (1st) day of each month during each Operations Year, until such time as the Concessionaire has paid to the Airport an amount equal to the respective annual MAG identified in Section 5.1(A)(1)(b) above. On or before the 20th of each

month the Concessionaire shall provide the Airport with: i) a signed and certified Report of Gross Revenues for the preceding month and ii) payment of any percentage Privilege Fee shown to be due for the preceding month, as designated on Exhibit B, attached hereto, and made a part hereof. Once the sum of Privilege Fee payments remitted has reached the MAG in any given Operations Year, the Concessionaire may cease remittance of the 1/12th of the respective year's MAG on the first (1st) day of each month for the remainder of that Operations Year. The Concessionaire shall continue to report and remit each and every month after the annual MAG has been reached the full 10% of reported gross revenues for the previous month.

3. In any Operations Year where the total deplanements at the Airport decline by 15% or more as compared to the prior Operations Year, the Concessionaire's MAG for such Operations Year shall be reduced proportionate to the decline in deplanements as part of the year end reconciliation process. Where the City reasonably determines during any Operations Year that a MAG reduction is likely, the City may waive the Concessionaire's obligations to remit the monthly 1/12th MAG installment payments for any period of time the City deems appropriate in its sole discretion, but Concessionaire shall continue to remit the Percentage Privilege Fee each month regardless.
4. Concessionaire acknowledges that Privilege Fee payments by Concessionaire to City under this Agreement are for Concessionaire's privilege to use the Airport facilities and access the Airport market and are not fees imposed by City upon Concessionaire's customers. City does not require, but will not prohibit, a separate statement of and charge for the Privilege Fee on customer invoices or rental agreements ("Recovery Fee"), provided that such Recovery Fee meets all of the following conditions: (a) such Recovery Fee must be titled "Concession Recovery Fee," "Concession Recoupment Fee" or such other name first approved by the Executive Director of Aviation in writing; (b) the Recovery Fee must be shown on the customer rental car agreement and invoiced with other Concessionaire charges (i.e. "above the line"); (c) the Recovery Fee as stated on the invoice and charged to the customer shall be no more than 11.11% of Gross Revenues and shall be specifically included in the Definition of Gross Revenues for purposes of remittance to City; (d) Concessionaire shall neither identify, treat, or refer to the Recovery Fee as a tax, nor imply that City is requiring the pass through of such fee; (e) Concessionaire shall comply with all applicable laws, including Federal Trade Commission requirements, any Texas Consumer Protection legislation and any commitment to or contractual obligation by Concessionaire with any governmental agency or officer with authority over Concessionaire's activities.

B. Rent -

1. Rent for Premises

Concessionaire shall pay to the City, in advance, on the 1st day of each month, one twelfth the following annual rents or the monthly rent as applicable:

- a) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Thirty-Six Dollars and (\$36.00) per square foot per annum for Four Hundred and Forty-Four (444) square feet of counter/office/queuing position in the Terminal Building.
- b) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Thirty-Eight Thousand Eight Hundred Eighty Dollars (\$38,880), per annum for Ready Return Block "RR-3" as shown on Exhibit A2.
- c) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Six Thousand Dollars (\$6,000), per annum for service bay "5" as shown on Exhibit A2.
- d) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire declined lease of a storage area as shown on Exhibit A3.
- e) If requested by Concessionaire, overflow parking lanes as agreed upon with the Executive Director of Aviation on a month-to-month basis in the amount of Two Hundred (\$200) per lane per month through December 31, 2028. Overflow lanes are shown on Exhibit A4.

C. Additional Fees –

- 1. The Concessionaire shall collect the CFCs on behalf of the Airport and remit to the Airport, in accordance with the City's CFC resolution, the full amount of the Transaction Day fee collected from each Rental Car customer.
- 2. The Concessionaire shall pay to the City for telephone system/service access to the Internet via a T-1 as follows:

Local service	\$23.50 per line per month
Voice mail	\$4.25 per line per month
Phone rental	\$6.00 per phone per month
Maintenance fee	\$15.50 per line per month

Above telecommunication fees are subject to change as determined by the City. Payment shall be due within thirty (30) days of invoice date.

3. The Concessionaire shall pay to the City a per wash fee of \$3.00 per automated wash. The Concessionaire shall pay to the City, for use of the manual car wash, a rate of \$2.00 per 5-minute session.

Car wash fees are subject to change as determined by the City with advance written notice. Payment shall be due within thirty (30) days of invoice date.

4. The Concessionaire shall pay to the City, based on actual gallons of fuel pumped, a per gallon fuel rate equal to the City's purchase price of the fuel plus \$0.30 cents, as may be adjusted by the City with advance written notice.

Payment shall be due within thirty (30) days of invoice date.

5. If the Concessionaire's bid reflected the operation of two brands in its concession, Concessionaire shall pay to the City a fee of One Thousand Dollars (\$1,000) per month which shall be paid in advance on the first (1st) of each month.
6. Additional fees may include charges for special items or activities including, but not limited to, employee parking, monthly electronic access card fees, badging fees, and disposal of debris left in service bay area and assigned parking areas. The City may assess reasonable, non-discriminatory charges for these special items or activities. All new charges will be reviewed with Concessionaire prior to implementation. Other charges payable by Concessionaire, shall be paid by Concessionaire to City no later than thirty (30) days following receipt by Concessionaire of billing therefor.
7. Concessionaire shall be charged at the current short term parking rate, for any of its vehicles found to be parked in a parking space not specifically leased by the Concessionaire or without the approval of the Executive Director of Aviation.

- D. Any and all payments due to the City by Concessionaire shall be remitted to the following address:

City of Killeen Finance Department
Attn: Accounts Receivable
P.O. Box 1329
Killeen, TX 76540

E. Year End Adjustments to Privilege Fees, Rents and Fees.

In the event the amount of payments made during the preceding Operations Year exceeds the total of any payments due for such Operations Year, the excess payment shall be credited against the payments for the next Operations Year, except that any excess payment during the final Operations Year of this Agreement will be returned to the Concessionaire within thirty (30) days after the Airport's acceptance of the final Certified Statement described in this Section. Concessionaire shall submit separate system generated reports for each brand name operated.

Subsection 5.2 Statements, Books, and Records; Delinquent Rentals.

- A. Monthly Statements; Books and Records. Within twenty (20) days after the close of each calendar month of the term of this Agreement, Concessionaire shall submit to City, in such detail and on the statement form designated as Exhibit B or as may reasonably be specified by City, certain information, including but not limited to, the number of Transactions executed during the preceding month, the number of Transaction Days Motor Vehicles were rented during the preceding month, and the statement of its Gross Revenues during the preceding month upon which the percentage payments to City set forth in Subsection 5.1 A(1) are to be computed, and said Exhibit B statement to be signed by a responsible accounting officer of Concessionaire. City reserves the right to change the form of the monthly statement and to require the submission by Concessionaire of other information pertaining to the Gross Revenues hereunder, and Concessionaire agrees to change the form of its statements to that requested by City and to provide any such additional information City may reasonably request. Concessionaire shall keep full and accurate books and records showing all of its Gross Revenues hereunder, and City shall have the right, through its representatives and at reasonable times, at its own expense, to inspect, examine, copy, and audit such books and records, including State of Texas sales tax return records. Concessionaire hereby agrees that all such books and records will be made available to City for at least three (3) years following the period covered by such books and records.
- B. Annual Certified Statements. Each year during the term of this Agreement, Concessionaire shall provide to City a written statement, certified by an independent Certified Public Accountant, to City stating that in his or her opinion the Percentage Fees paid by Concessionaire 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 Concessionaire, to be received by City within ninety (90) days of the end of each Operations Year. Such statement shall also contain a list of the Gross Revenues, by month, as shown on the books and records of Concessionaire and which were used to compute the Percentage Fee payments made to City during the period covered by said statement.

- C. Delinquent Rentals and Fees. Without waiving any other right or action available to City in the event of default in the payment of charges or fees payable to City, pursuant to this Agreement, a late fee of one and a half percent (1.5%) of the total amount due will be assessed to the Concessionaire if payments prescribed above are not received by the dates prescribed therein. An additional one and a half percent (1.5%) of the outstanding amount will be assessed each month that all or a portion of the Concessionaire's obligations remain unpaid.

Subsection 5.3 Audit. City reserves the right to audit Concessionaire's books and records pertaining to the Leased Premises, at its own expense, at any time for the purpose of verifying the Gross Revenues, Privilege Fee, and CFC calculation hereunder for any period three (3) years prior to such audit. If, however, as a result of such audit, it is established that Concessionaire has understated the Gross Revenues received from all operations at the Leased Premises by two percent (2%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall forthwith be paid by Concessionaire to City with interest thereon at one and one-half percent (1.5%) per month from the date such additional Privilege Fee became due.

SECTION 6 – INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES

Subsection 6.1 Building Services

- A. City Improvements and Services. City shall initially insure and provide occupancy of the Leased Premises to Concessionaire with said Leased Premises meeting all federal, state, and local code requirements for the operation of a rental car concession. City shall provide and maintain, water, sewer, general lighting, electrical power, heating and air-conditioning, and telephone system/service access to the Internet via a T-1 for the Terminal Building. Heating and air conditioning, electrical service, and telephone system/service access to the Internet via T-1 are provided to the Leased Premises only. If Concessionaire requires additional lighting, electrical power, water, or adjustments to the air-conditioning system or telephone system, such additional improvements or services shall be subject to the prior written approval of Executive Director of Aviation, and any such approved improvements or services shall be made at Concessionaire's expense.
- B. Concessionaire's Right to Additional Services. Concessionaire shall have the right, at its own expense, to request and receive additional services or systems, provided that any such services or systems shall require the written approval of Executive Director of Aviation before installation.

Subsection 6.2 Approval of Plans and Specifications; Provision of Drawings.

- A. General. Any improvements to be made to or upon the Leased Premises by Concessionaire, and any subsequent alterations or additions to such improvements, shall be subject to the prior written approval of Executive Director of Aviation. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of Executive Director of Aviation before any work or construction is commenced, which shall not be unreasonably withheld or delayed. First-class standards of design and construction shall be complied with in connection with all such work, facilities, and improvements; and all construction shall conform to the general architectural requirements of Executive Director of Aviation as established for each improvement program. Two (2) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to Executive Director of Aviation for review prior to commencement of construction; after final approval by Executive Director of Aviation, Executive Director of Aviation shall return to Concessionaire one (1) approved copy for Concessionaire's records and shall retain one (1) approved copy as an official record thereof.
- B. Improvements Conform to Statutes, Ordinances, Etc. All improvements, furniture, fixtures, equipment, and finishes, including the plans and specifications therefore, constructed or installed by Concessionaire, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations, and public bidding laws. Any approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Concessionaire.
- C. Approvals Extend to Architectural and Aesthetic Matters. Approval of City shall extend to and include architectural and aesthetic matters and City reserves the right to reasonably reject any layout or design proposals submitted and to require Concessionaire to resubmit any such layout or design proposals until they meet Executive Director of Aviation approval.
- D. Disapprovals. In the event of disapproval by City of any portion of any plans or specifications, Concessionaire shall promptly submit necessary modifications and revisions thereof for approval by Executive Director of Aviation. City agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. No substantial changes or alterations shall be made in said plans or specifications after initial approval by City, and no alterations or improvements shall be made to or upon the Leased Premises without the prior written approval of Executive Director of Aviation.

- E. Provision of As-Built Drawings. Upon completion of any construction project, Concessionaire shall provide City two (2) completed sets of as-built drawings in reproducible form as specified by City. Concessionaire agrees that, upon the request of City, Concessionaire will inspect the Leased Premises jointly with City to verify the as-built drawings.
- F. In accordance with Sec. 2252.909 of the Texas Government Code, Concessionaire must provide to the City a notice of commencement consistent with Section 2252.909 at least ninety (90) days before the date of construction, alteration, or repair of any improvement to the leased property begins. A notice of commencement must:
1. Identify the public property where the work will be performed;
 2. describe the work to be performed;
 3. state the total cost of the work to be performed;
 4. include copies of the performance and payment bonds required under Section 2252.909 (See Subsection 9.1 of this Agreement);
 5. include a written acknowledgement signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth (5th) day after the subcontract is executed.

On or before the tenth (10th) day after the date a governmental entity receives a notice of commencement for the construction, alteration, or repair of an improvement to leased property required under this section, the governmental entity may notify the leaseholder that the construction, alteration, or repair may not proceed. A person commits an offense if the person materially misrepresents information in a notice of commencement. An offense under this subsection is a Class A misdemeanor.

SECTION 7 – TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.

Subsection 7.1 Title. All improvements made to the Leased Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, shall be and remain the property of Concessionaire until the termination of this Agreement (whether by expiration of the term, cancellation, forfeiture or otherwise), at which time said improvements, except for Trade Fixtures, personal property, and expendables, shall become the property of City, at no cost to City.

Subsection 7.2 Structural Alterations. Concessionaire shall make no structural alterations to the Leased Premises without the prior written consent of Executive Director of Aviation.

Subsection 7.3 Alterations and Improvements to Airport. Concessionaire acknowledges that from time-to-time City may undertake construction, repair, or other activities related to the operation, maintenance and repair of the Terminal Building which

may temporarily affect Concessionaire's operations hereunder. Concessionaire agrees to accommodate City in such matters, even though Concessionaire's own activities may be inconvenienced, and Concessionaire agrees that no liability shall attach to City, its members, employees, or agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of City substantially impair the operations of Concessionaire under this Agreement, the Minimum Privilege Fee shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being reasonably determined by Executive Director of Aviation after consultation with Concessionaire. Concessionaire agrees that if relocation is required that Concessionaire shall move its operations as reasonably directed by Executive Director of Aviation.

Subsection 7.4 Removal and Demolition. Concessionaire shall not remove or demolish, in whole or in part, any Leasehold Improvements upon the Leased Premises without the prior written consent of City which may, at its sole discretion, condition such consent upon the obligation of Concessionaire, at Concessionaire's cost, to replace the same by an improvement specified in such consent.

SECTION 8 – MAINTENANCE OF PREMISES AND UTILITIES

Subsection 8.1 Airport Maintenance Obligations.

- A. General Maintenance and Operation. City agrees that it will, with reasonable diligence, maintain, operate, and keep in good repair the Airport, including the Terminal Building and all appurtenances, facilities, and services now or hereafter connected therewith. Airport shall keep the car rental parking lot and the overflow parking area in suitable repair and provide general lighting for these areas.
- B. Structural Maintenance. City shall provide, or cause to be provided, structural maintenance of the Terminal Building.
- C. Maintain Access. City shall, throughout the term of this Agreement, maintain all airport-owned roads on the Airport giving access to the Terminal Building in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal Building over said road at all times. City reserves the right to reasonably restrict access to the Terminal Building area for automobile deliveries during peak activity periods.
- D. Car Wash. City will maintain and inspect the car wash facilities as recommended by the manufacturer including routine maintenance of the car wash for normal activities, wear, and tear. Normal and routine maintenance of roofs, walls, utility infrastructure, building mechanical systems and structural building components will be performed by City. Wash soaps, rinses, brushes, hoses, and utilities will be provided by the City. City has the exclusive authority to stop the use of the car wash for maintenance and inspections as is necessary, at City's sole discretion, without damage or liability to

Concessionaire. City will take reasonable action to notify Concessionaire for closure of the car wash.

- E. Telephone System/Service Access to the Internet via a T-1. The Airport shall furnish telephone system/service access to the Internet via a T-1. Rates for these services will be in accordance with Section 5.1(C). A letter of agreement or other suitable document will be executed between the Airport's Executive Director of Aviation or his/her designated representative and the local designated representative of the Concessionaire to document exactly which services are agreed to between the two parties. Airport reserves the right to change or terminate said telephone and/or internet service at some point during the term of this Agreement. Airport will provide at least a ninety (90) day notice to Concessionaire of any service changes and assist in facilitating replacement services via a local communication provider.

Subsection 8.2 Concessionaire's Maintenance Obligations.

- A. Concessionaire's General Obligations. Except for maintenance of the Terminal Building, Car Wash, and Telephone System, as provided in Subsection 8.1, Concessionaire shall be obligated, without cost to City, to maintain the Leased Premises and every part thereof in good appearance, repair, and safe condition. Concessionaire shall maintain and repair all Leasehold Improvements on the Leased Premises and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or furnishings. All such maintenance and repairs shall be at least of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of Executive Director of Aviation. Concessionaire shall be obligated, without cost to City, to provide custodial service to Leased Premises. Concessionaire shall be responsible for the replacement cost of lost keys and floor finish restoration.
- B. Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to Airport of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Leased Premises shall be corrected immediately upon receipt of oral notice from the Executive Director of Aviation. At the direction of said Director, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.
- C. Trash and Refuse. City shall provide, at no cost to Concessionaire, a container for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Leased Premises. Concessionaire shall be responsible for disposal of its own trash accumulations by depositing it in the nearest exterior trash dumpster on a daily basis. Concessionaire will regularly inspect exterior areas assigned to them and will remove all trash and debris.

Failure to do so will result in the City completing this task and a fee assessed to the Concessionaire for the service. Trash receptacles inside the terminal building are for customer use only. Piling of boxes, cartons, barrels, or other similar items in view of a public area is prohibited. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from Airport in a reasonably clean and orderly condition so as not to unduly attract rodents, pests, or birds, or create an offensive odor. Concessionaire also agrees to participate in the City's recycling program by depositing all recyclable products in the appropriate outside recycling containers in lieu of the trash dumpster.

- D. Transporting Trash and Refuse. In transporting trash and refuse from the Leased Premises, Concessionaire shall ensure that trash is not strewn around while taking refuse to the dump site. Such disposal shall take place during hours as may be approved by the City.
- E. Damage to Equipment. Concessionaire will be responsible for the cost of replacement equipment deemed to be damaged by their employees due to negligence.

Subsection 8.3 Utilities.

- A. City shall provide the Leased Premises with heat and air-conditioning to keep the Leased Premises at reasonable temperatures for the conduct of Concessionaire's activities. City shall have the right to set, monitor, adjust and restrict thermostat settings to levels it determines to be appropriate.
- B. City shall provide electricity to the Leased Premises by means of wiring installations, and Concessionaire shall make such connections as required and permitted by building code. At no time shall Concessionaire's use of electric current exceed the capacity of the wiring installation in place.

SECTION 9 – LIENS, PAYMENT, AND PERFORMANCE BONDS

Subsection 9.1 Construction Surety Bond. Concessionaire shall not allow any liens or encumbrances to be attached to the Leased Premises. Prior to the commencement of any construction or alteration hereunder which exceeds \$10,000 in cost, Concessionaire or its contractor shall furnish to City, and without expense to City, a surety bond, issued by a surety company licensed to transact business in the State of Texas and satisfactory to and approved by City with Concessionaire's contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction or alteration of the improvements and facilities mentioned herein. Said bond shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by said contractor, subcontractor(s), and suppliers in the prosecution of the work provided for in said construction contract and shall protect City from any liability, losses, or damages arising there from.

Subsection 9.2 Security. During the term of this Agreement, the City shall require the Operator to deliver (and thereafter maintain current for the entire term of this Agreement) an instrument of security in a form satisfactory to the City, in its sole discretion, in the amount of twenty-five percent (25%) of the average of Concessionaire's five years Minimum Annual Guarantee bids reflected in Subsection 5.1(A)(1)(b), in order to secure the performance of all of Concessionaire's obligations under this Agreement, including without limitation, the payment of all the percentages, minimums, fees, charges and costs set out herein. Said security may be in the form of a bond.

SECTION 10 – OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES

Subsection 10.1 Hours of Operation. Concessionaire shall actively operate in the Leased Premises and shall use a business-like operation therein. The Concessionaire shall be open to serve the public seven (7) days per week and hours of operation shall be such that passengers of flights arriving from the terminal will be accommodated. Concessionaire's facilities will be adequately staffed and open at least thirty (30) minutes before and after every arriving flight. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Concessionaire may advise the Executive Director of Aviation of Concessionaire's analysis of the optimum arrangements, but the final determination shall be made by the Executive Director of Aviation based on their analysis of necessary service to the public.

Subsection 10.2 Delivery of Goods. Concessionaire shall arrange for the timely delivery of all motor vehicles and supplies, at such times, in such locations(s), and by such routes as determined by City. Concessionaire shall abide by all Transportation Security Administration (TSA) requirements for parking of motor vehicles near the terminal building.

SECTION 11 – QUALITY AND CHARACTER OF SERVICE

Subsection 11.1 Type of Operation. Concessionaire shall maintain and operate the concession privileges granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of Executive Director of Aviation, does not unduly annoy, disturb, or offend others at the Airport.

Subsection 11.2 Services to the General Public. Concessionaire understands and agrees that its operation at the Airport necessitates the rendering of public services such as giving directions, and generally assisting the public.

Subsection 11.3 Additional Compliance. Concessionaire shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Agreement.

Subsection 11.4 Personnel.

- A. General. Concessionaire shall maintain a sufficient number of properly trained personnel to ensure that all customers of Concessionaire receive prompt and courteous service. All such personnel, while on or about the Leased Premises, shall be polite, clean, appropriately attired, and neat in appearance. Clothing will be neat and clean and present a professional appearance. Executive Director of Aviation shall have the right to object to the demeanor, conduct, and appearance of any employee of Concessionaire, or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection. Concessionaire will ensure that its counter is staffed at all times during the posted hours of operation.
- B. Manager. The management, maintenance, and operation of the Leased Premises and the concession conducted thereon shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Concessionaire. Concessionaire shall cause such manager to be available during normal business hours, and Concessionaire will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties.

Subsection 11.5 Operations Violations.

Concessionaire'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 City. Additionally, City resources will be expended in dealing with violations of this Agreement by Concessionaire. The parties hereby agree that total damages sustained by to 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 City. Concessionaire, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Concessionaire agrees to pay immediately upon demand by to City the following amounts as liquidated damages upon the occurrence of breaches, in any Operations Year, related to operation violations:

- \$100 per occurrence - first occurrence
- \$200 per occurrence – second occurrence
- \$300 per occurrence - third occurrence
- \$1,000 per occurrence – fourth or more occurrences

Liquidated damage amounts shall not be imposed unless the violation continues for more than three (3) calendar days after City has given Concessionaire written notice (and this

written notice may be in the form of an email) of the violation; provided, however, after City has given Concessionaire notice of the same violation more than twice during any calendar year, the liquidated damage amount shall be immediately imposed with no opportunity to cure in order to avoid the sanction.

For hours of operations violations, liquidated damages shall be 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 - second occurrence
- \$300 per hour or portion thereof, during which location is not open - third occurrence
- \$1,000 per hour or a portion thereof, during which location is not open – fourth or more occurrences

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

City's failure to impose liquidated damages for any violation of the requirements set forth above shall not waive any right or prohibit City from doing so for subsequent violations. After two (2) violations of the same type in the same Operations Years, City reserves the right, at its sole option, not to impose the liquidated damage and instead seek any other remedies available to it for an event of Default, including termination of this Agreement.

SECTION 12 – NON-DISCRIMINATION

Subsection 12.1 General Civil Rights Provisions. The Concessionaire 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 Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

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

Subsection 12.2 Compliance with Nondiscrimination Requirements. During the performance of this Agreement, the Concessionaire, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: Concessionaire 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 D, and which are herein incorporated by reference and made a part of this Agreement.

- B. Nondiscrimination: Concessionaire, 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. Concessionaire 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.
- C. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Concessionaire 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 Concessionaire of the Concessionaire's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.
- D. Information and Reports: Concessionaire 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 FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the FAA may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.
- F. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

SECTION 13 – IDEMNIFICATION AND INSURANCE

Subsection 13.1 Indemnification. To the fullest extent allowable by law, Concessionaire hereby indemnifies and shall defend and hold harmless, at Concessionaire's expense, City, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Concessionaire, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on City. Concessionaire's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the negligent or willful misconduct of City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as City waiving its statutory limitation and/or immunities as set forth in the applicable Texas Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Concessionaire shall reimburse City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Concessionaire's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

To the extent allowed by law, except for damage or injury caused by the willful or negligent act or omission of Concessionaire, its agents or employees, City shall indemnify, defend and save Concessionaire, its agents, representatives, and employees from any and all lawsuits, claims, loss and damages of any nature whatsoever, including damage to property of any Concessionaire and the injury, including death, of employees, agents, or customers of Concessionaire, arising either directly or indirectly out of any operations of the City hereunder, except lawsuits, claims, loss and damages arising out of the sole negligence of the Concessionaire, their employees, or agents.

Subsection 13.2 Concessionaire to Provide General Liability and Automobile Insurance. Concessionaire shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage;
- B. Automobile Insurance of not less than \$5,000,000 per occurrence;

C. To the extent that Concessionaire employs any employees or as otherwise required by law, Workers' Compensation and Employers' Liability Insurance with Texas statutory limits.

Subsection 13.3 Concessionaire to Provide Property and Fire Insurance. Concessionaire, at its own expense, shall insure all Leasehold Improvements and furnishings, fixtures and equipment for fire, extended coverage, vandalism, and malicious mischief. Such insurance shall be in an amount equal to the full insurable replacement value of such improvements. All property insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder and shall contain a waiver of subrogation provision in favor of the City. Concessionaire and City agree that any payments received by either from such insuring companies by reason of loss under such policy or policies shall be applied toward repair and reconstruction of said Leasehold Improvements and repair or replacement of leasehold improvements, furnishings, fixtures, and equipment.

Subsection 13.4 Both Concessionaire and City to Carry Fire Insurance. It is understood that both Concessionaire and City carry insurance in the form of fire, extended coverage, vandalism, and malicious mischief (hereinafter called "Insurance Coverage") on the leased structural part of the premises, permanent improvements and loss of income, (in the case of City) and on Leasehold Improvements, furniture, furnishings, equipment, inventory and loss of income, (in the case of Concessionaire), and said Insurance Coverage authorizes a waiver of subrogation between City and Concessionaire, and the parties wish to enter into such waiver of subrogation to the extent of the said Insurance Coverage; therefore, to the extent that City collects under its Insurance Coverage, City waives any and all claims against Concessionaire, its agents, servants, and employees, for loss or damage to City's property resulting from risks included in said Insurance Coverage; and, to the extent that Concessionaire collects under its Insurance Coverage, Concessionaire waives any and all claims against City, its agents, servants, and employees, for loss or damage to Concessionaire's property resulting from risks included in said Insurance Coverage. If this waiver by the parties shall render fully any such insurance policy or shall result in the denial of coverage for a party under such policy, then the provision paragraph shall be deemed to be null and void.

Subsection 13.5 Insurance Certificate. A certificate evidencing insurance required by Subsection 13.2 and 13.3, and listing the City of Killeen as additional insured, excluding Workers' Compensation and Property and Fire Insurance, shall be filed with City prior to the commencement of construction, furnishing and equipping of Leasehold Improvements by Concessionaire upon the Leased Premises, and such certificate shall provide that such Insurance Coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. Prior to the expiration of any such policy, a certificate showing that such Insurance Coverage has been renewed shall be filed with City. If such Insurance Coverage is canceled or reduced, Concessionaire shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been

reinstated or provided through another insurance company or companies.

Subsection 13.6 Concessionaire Failure to Provide Certificates. In the event that Concessionaire shall at any time fail to furnish City with the certificate or certificates required under this Section, City, upon written notice to Concessionaire of its intention so to do, shall have the right to obtain the required insurance, at the cost and expense of Concessionaire, and Concessionaire agrees to promptly reimburse City for the cost thereof, plus fifteen percent (15%) thereof for administrative overhead.

SECTION 14 – DAMAGE OR DESTRUCTION OF LEASED PREMISES

Subsection 14.1 Partial Damage. If all or a portion of the Leased Premises is partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered untenable, the same will be repaired with due diligence by City subject to the limitations of Subsection 14.4; provided, however, to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the cost and expenses insured in such repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees.

Subsection 14.2 Extensive Damage. If the damages referred to in Subsection 14.1 shall be so extensive as to render the Terminal Building Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City subject to the limitations of Subsection 14.4; and the charges payable herein for the MAG and Rent under Section 5.1 shall abate from the time of such damage or destruction until such time as the said Leased Premises are fully restored and certified by City's Engineers as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees.

Subsection 14.3 Complete Destruction. In the event the Terminal Building Premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty, or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, City shall undertake the repair, replacement, and reconstruction of said Leased Premises; and charges payable herein for the MAG and Rent under Section 5.1, shall abate as of the time of such damage or destruction until such time as the said Premises are fully restored and certified by City's Executive Director of Aviation as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the costs and expenses incurred in said repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees; provided further, however, if within twelve (12) months after the time of such damage or destruction said Leased Premises shall not have been repaired or reconstructed, Concessionaire may

cancel this Agreement in its entirety. Rents payable for the leased areas in the Terminal Building and/or Ready/Return Block will only abate if the City is unable to provide alternative space for Concessionaire to conduct its business.

Subsection 14.4 Limits of City's Obligations Defined. It is understood that, in the application of the foregoing Subsections, City's obligations shall be limited to repair or reconstruction of the Leased Premises to the same extent and of equal quality as obtained at the commencement of operations hereunder, subject to funding and appropriation. Redecoration and replacement of furniture, fixtures, equipment, and supplies shall be the responsibility of Concessionaire and any such redecoration and refurnishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

SECTION 15 – CANCELLATION

Subsection 15.1 Cancellation by Concessionaire. Concessionaire may cancel this Agreement and terminate all its obligations hereunder upon or after the happening of one or more of the following events and provided that Concessionaire is not in default in the payment of any fees or charges to City:

- A. The abandonment of the Airport as an airline terminal or the removal of all certificated passenger airline service from the Airport for a period of no less than thirty (30) consecutive days.
- B. The inability of Concessionaire to use the Airport for a period of longer than ninety (90) days, because of the issuance of any order, rule, or regulation by any competent governmental authority or court having jurisdiction over Concessionaire or City, preventing Concessionaire from operating its business; provided, however, that such inability or such order, rule, or regulation is not primarily due to any fault of Concessionaire.
- C. The material breach by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such breach for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy the same.

Subsection 15.2 Cancellation by City. City may cancel this Agreement and terminate all of its obligations hereunder at any time that City is not in default, upon or after the happening of any of the following events:

- A. Concessionaire shall file a voluntary petition in bankruptcy; or
- B. Proceedings in bankruptcy shall be instituted against Concessionaire and Concessionaire is thereafter adjudicated bankrupt pursuant to such proceedings; or
- C. A court shall take jurisdiction of Concessionaire and its assets pursuant to

- proceedings brought under the provisions of any federal reorganization act; or
- D. A receiver of Concessionaire's assets shall be appointed; or
 - E. Concessionaire voluntarily abandons its conduct of its business at the Airport for a period of thirty (30) days, except if such is due to a labor strike or labor dispute in which Concessionaire is involved; or
 - F. Any assignment is made by Concessionaire for the benefit of its creditors; or
 - G. The material breach by Concessionaire of any of the covenants or agreements herein contained and the failure of Concessionaire to remedy such breach as hereinafter provided. In this regard it is understood that nonpayment of fees or charges hereunder is a material breach. In the event of such material breach, City shall give to Concessionaire notice in writing to correct such breach and if such breach shall continue for fifteen (15) days after the receipt of such notice by Concessionaire, City may, after the lapse of said fifteen (15) day period, cancel this Agreement, without forfeiture, waiver, or release of City's rights to any sum of money due or to become due under the provisions of this Agreement.
 - H. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as to substantially restrict Concessionaire, for a period of at least thirty (30) days, from its Airport operation.

Subsection 15.3 Termination. Should an early termination of this Agreement occur pursuant to the terms of Subsection 15.2 hereof, City shall have the right to re-enter the Leased Premises, make repairs as necessary, and enter into another agreement for the Leased Premises and privileges, or any part thereof, for the remainder of the term hereof.

Subsection 15.4 Notice of Termination. If any of the events enumerated in Subsections 15.1 and 15.2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

SECTION 16 – NONWAIVER OF RIGHTS

Continued performance by either party hereto pursuant to the terms of this Agreement after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, or observed by the other party hereto shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default; and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

SECTION 17 – SURRENDER OF POSSESSION

Concessionaire shall, upon termination of this Agreement or cancellation, quit and deliver up the Leased Premises and privileges to City peaceably and quietly, with the Leased Premises being in as good order and condition as the same now are or may be hereafter improved by Concessionaire or City, reasonable use, and wear thereof excepted. In addition to any lien provided by Texas law, City shall have a specific lien on all property of Concessionaire, and related equipment on the Leased Premises as security for nonpayment. Concessionaire shall have the right to remove all of its trade fixtures and equipment installed or placed by it at its own expense, in, on or about the Premises; subject however, to any valid lien which City may have thereon for unpaid charges or fees. Provided however, the City will not claim or have a lien of any kind, be it contractual or statutory, on or against Concessionaire's motor vehicles for non-payment of any rent or fees due under the Agreement, or for any default of Concessionaire or any other reason, and the City hereby waives all such liens available to the City.

SECTION 18 – TAXES AND LICENSES

Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder.

SECTION 19 – INSPECTION OF PREMISES

City or its duly authorized representatives, or agents, and other persons for it, may enter upon said Leased Premises at any and all reasonable times during the term of this Agreement for the purpose and conditions hereof or for any other purpose incidental to rights of City.

SECTION 20 – HOLDING OVER

Should Concessionaire holdover said Leased Premises after this Agreement has terminated in any manner, Concessionaire shall continue such holding over only at sufferance to City. In the event of such holding over, Concessionaire shall pay to the City the amounts specified in Subsection 5.1, the amounts being the amounts in effect immediately prior to the commencement of such holdover." All other terms and conditions in such holdover shall be the same as herein provided.

SECTION 21 – QUIET ENJOYMENT

City agrees that Concessionaire, upon payment of the fees and charges and all other payments to be paid by Concessionaire under the terms of this Agreement, and upon observing and keeping the agreements and covenants of this Agreement on the part of Concessionaire to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of this Agreement.

SECTION 22 – NO LIENS

Concessionaire shall pay for all labor done or materials furnished in the repair, replacement, development, or improvement of the Premises by Concessionaire, and shall keep said Leased Premises and Concessionaire's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Concessionaire's act or omission.

SECTION 23 – SECURITY AGREEMENTS

City shall provide, or cause to be provided, during the term of this Agreement, all proper and appropriate public fire, and police protection similar to that afforded to other Landside tenants or licensees at the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Concessionaire shall comply with the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Concessionaire, shall not in any way be construed to limit or reduce the obligations of City hereunder.

SECTION 24 – AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the Killeen - Fort Hood Regional Airport. Should the effect of such Agreement with the United States government be to take any of the property under lease or substantially destroy the commercial value of such improvements, City shall terminate this Agreement.

SECTION 25 – RIGHTS AND PRIVILEGES OF CITY

- A. City shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, which Concessionaire agrees to observe and obey, with respect to the use of the Airport, Airport Terminal Building, and appurtenances, provided that such rules and regulations shall not be inconsistent with safety, current rules and regulations of the FAA, and any future changes prescribed from time to time by the FAA.
- B. The City Manager or designee is hereby designated as its official representative for the enforcement of all provisions in this Agreement with full power to represent City with dealings with Concessionaire in connection with the rights herein granted.

- C. All actions relating to policy determination, modification of this Agreement, termination of this contract, and any similar matters affecting the terms of this Agreement shall emanate from the City Council, their successors or assigns.
- D. The Executive Director of Aviation or designee may enter upon the Leased Premises, now or hereafter leased to Concessionaire hereunder, at any reasonable time, for any purpose necessary, incidental to, or connected with, the performance of its obligations hereunder, or in the exercise of its governmental functions.
- E. City reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, including the Leased Premises and existing vehicle and pedestrian traffic patterns, as the City deems appropriate, regardless of the desires or views of Concessionaire, and without interference or hindrance.
- F. City hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of Killeen - Fort Hood Regional Airport, and the right to pursue all operations of the Killeen - Fort Hood Regional Airport.
- G. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Airport, which, in the opinion of the City, would limit the usefulness of the Airport, or constitute a hazard to aircraft.
- H. City may from time to time increase the size or capacity of any such Public Aircraft Facilities or Passenger Terminal Building or Common Use Portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided notice is given to Concessionaire.
- I. This Agreement at any time may be reopened for renegotiation if Federal Aviation Administration (FAA) Airport Certification (FAR Part 139), Transportation Security Administration (TSA) Security Requirements (49 CFR, Part 1542), or U.S. Army regulations result in major expenditures to City due to Concessionaire's tenancy on the Killeen - Fort Hood Regional Airport. If said renegotiation is desired, written notice must be given to Concessionaire sixty (60) days prior to such renegotiations.
- J. City reserves the right to relocate the Leased Premises upon the completion of any Terminal area remodeling or expansion. City will not be liable for the costs associated with the moving or reinstallation of Concessionaire's equipment. In

the event the City requires a move by the Concessionaire, the City will reimburse actual out-of-pocket costs associated with the relocation as approved in advance subject to a maximum amount as established by the City.

SECTION 26 – ACCESS CONTROL

- A. Concessionaire shall upon termination of this agreement return all issued keys and access cards to City. If all issued keys and access cards are not returned to City at the termination of this Agreement Concessionaire shall pay to City cost to re-core premises locks and cut new keys at the rate set at the time of such re-core and to pay for any lost access cards.
- B. Concessionaire is responsible for all keys and access cards issued to employees of Concessionaire. Concessionaire is responsible to insure every employee that has regular duty at the Airport is submitted for airport electronic access cards appropriate for that employee and that all employee data remains current. The Concessionaire will notify the appropriate representative of the Airport by telephone or other appropriate means as soon as possible following the termination of any employee, but will do so in writing no later than the end of the next working day after the employee's last day of employment at the Airport. The Concessionaire is further responsible for returning the employee's electronic access cards no later than three (3) working days after the last day of employment at the Airport. Any lost electronic access cards must be reported in writing to the Airport's representative as soon as possible, but no later than the end of the next working day from the date of the loss. Concessionaire is responsible for any charges or damages incurred by the use of electronic access cards issued to its employees unless more than 24 hours (excluding weekends and City of Killeen recognized holidays) have passed from the time the Concessionaire provides written notification to the Airport's representative to cancel any access these electronic access cards allow. A monthly fee will be charged for active employee electronic access cards and for lost cards at the current rates adopted by the City.
- C. Concessionaire may not install additional locks or change locks to Leased Premises without the written approval of the Executive Director of Aviation.

SECTION 27 – NO PERSONAL LIABILITY

Under no circumstances shall any trustee, officer, official, commissioner, Director, member, partner, or employee of City have any personal liability arising out of this Agreement, and Concessionaire shall not seek or claim any such personal liability.

SECTION 28 – GOVERNING LAW

This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Texas. Venue for

any action arising out of or in any way related to this Agreement shall be exclusively in Bell County, Texas. Each party waives its right to challenge venue.

SECTION 29 – NOTIFICATION

Concessionaire shall:

- A. As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Concessionaire with respect thereto.
- B. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Concessionaire contained in this Agreement to be untrue.
- C. Notify City, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Concessionaire or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Concessionaire or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Concessionaire or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

SECTION 30 – SEVERABILITY

The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

SECTION 31 – ASSIGNMENT, SUBLET, AND TRANSFER

Concessionaire shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of City, which shall not be unreasonably withheld or delayed. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Concessionaire shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

SECTION 32 – NO WAIVER

The failure of any party to insist, in any one or more instance, upon performance of any

of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

SECTION 33 – CONFLICTS OF INTEREST

Concessionaire covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Concessionaire further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Concessionaire or its employee must be disclosed to City.

SECTION 34 – POLITICAL ACTIVITIES

Concessionaire shall not engage in any political activities while in performance of any and all services and work under this Agreement.

SECTION 35 – ENTIRE AND SUPERSEDING AGREEMENT

This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions, and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of City, granting approvals or conditions attendant with such approval, the specific action of City shall be deemed controlling.

SECTION 36 – AMENDMENT

This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

SECTION 37 – TIME COMPUTATION

Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

SECTION 38 – NOTICES

NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City: Killeen - Fort Hood Regional Airport Attn: Executive Director of Aviation 8101 S. Clear Creek Rd, Box C Killeen, TX 76549	Copy to: Attn. City Attorney City of Killeen 101 N. College St., 1 st Floor Killeen, TX 76541
---	---

To the Concessionaire: EAN Holdings, LLC d/b/a Enterprise Rent-A-Car
4210 South Congress Avenue
Austin, TX 78745

The parties may designate other addresses from time to time in writing. Concessionaire must provide a valid new address for notices within ten (10) days if the above address becomes invalid.

SECTION 39 – CONSTRUCTION

This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

SECTION 40 – NO THIRD PARTY BENEFICIARY

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

SECTION 41 – COMPLIANCE WITH LAW

The parties shall comply in all material respects with any and all applicable federal, state, and local laws, regulations, and ordinances.

SECTION 42 – FORCE MAJEURE

City shall not be responsible to Concessionaire and Concessionaire shall not be responsible to City for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

SECTION 43 – GOOD STANDING

Concessionaire affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Texas and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Concessionaire is duly licensed or qualified to do business and is in good standing in the State of Texas and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

SECTION 44 – INDEPENDENT CONTRACTORS

The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

SECTION 45 – GOVERNMENTAL APPROVALS

Concessionaire acknowledges that various of the specific undertakings of City described in this Agreement may require approvals from the City of Killeen City Council, City of Killeen bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Concessionaire further acknowledges that this Agreement is subject to appropriation by the Killeen City Council. City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. City cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

SECTION 46 – AUTHORITY

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

SECTION 47 – COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

SECTION 48 – SURVIVAL

All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

SECTION 49 – MORE FAVORABLE TERMS

In the event the City shall enter into any lease or agreement with any other rental car operator within the Airline Terminal building, that agreement will not contain more favorable terms than this Agreement, unless the same rights, privileges, and more favorable terms are concurrently made available to Concessionaire.

SECTION 50 – ENVIRONMENTAL

Subsection 50.1 Disposal, Use and Storage of Hazardous Materials. Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except:

- A. Concessionaire may store and use Hazardous Materials on the Leased Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Agreement. Storage shall be in an approved Hazardous Materials cabinet or storage container. Concessionaire shall provide Executive Director of Aviation with a copy of any application for a permit for use or storage of Hazardous Materials on the Leased Premises from any regulatory agency responsible for enforcement of Environmental Laws, and shall also a copy of any permit received from such agency; and
- B. Concessionaire may use Hazardous Materials on the Airport other than the Leased Premises only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement.

Subsection 50.2 Liability. Concessionaire shall be solely and fully responsible and liable for:

- A. Storage, use or disposal of Hazardous Materials on the Leased Premises or the Airport, by Concessionaire, Concessionaire's officers, agents, employees, or contractors,
- B. Any Hazardous Material release which is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, or contractors on the Leased Premises or the Airport.

Subsection 50.3 Prevention of Release. Concessionaire shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Leased Premises or the Airport, including, but not limited to any release into soil, groundwater, or City's sewage or storm drainage system.

Subsection 50.4 Obligation to Investigate and Remediate. Concessionaire, at Concessionaire's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:

- A. Any release or threat of release of Hazardous Material on the Leased Premises or the Airport, including, but not limited to, into soil or groundwater, or City's sewage or storm drainage system which was caused or results in whole or in part from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees; except that Concessionaire shall have no responsibility for any release or threat of release of Hazardous Material which Concessionaire establishes was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees by any third party, or by migration of Hazardous Materials onto the premises from a specifically identifiable source off the use premises. In addition to all other rights and remedies of City hereunder, if Concessionaire does not promptly commence, and diligently pursue to remediate, to the extent required, any such release, or threat of release, of Hazardous Materials for which it has responsibility under this section, City, in its discretion, may pay to have same remediated and Concessionaire shall reimburse City plus a fifteen percent administration fee within fifteen (15) business days of City's demand for payment. The failure to commence investigation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or threat of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that expense was incurred by City.

Subsection 50.5 Records and Inspections.

- A. Concessionaire will maintain a chemical inventory list and material safety data sheets of hazardous materials stored on site in accordance with state and federal regulations. The Concessionaire will also maintain manifests for all hazardous or regulated wastes transported and disposed of off-site.
- B. Upon reasonable notice by City, Concessionaire shall make available for review by City such records pertaining to the use, handling and disposal of any Hazardous Material(s) as Concessionaire is required to maintain under this section.
- C. City shall have the right, under the terms hereof, and upon reasonable notice for exclusive use space, to enter the Leased Premises during the Term hereof to conduct periodic environmental inspections and testing. City shall conduct each inspection or test in a manner that does not unreasonably interfere with Concessionaire's operations.

Subsection 50.6 Concessionaire Obligations upon Termination. Prior to vacating the Leased Premises, and in addition to all other requirements under this Agreement, Concessionaire shall remove any containers of Hazardous Materials placed on the Leased Premises during the Term by Concessionaire or as a result of Concessionaire's use or occupancy of the Leased Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws, including without limitation conducting any environmental audits as may be required by City.

Subsection 50.7 Storm Water.

- A. Notwithstanding any other provisions or terms of this Agreement, Concessionaire acknowledges that certain properties within the Airport, or on City-owned land, are subject to storm water rules and regulations. Concessionaire agrees to observe and abide by such storm water rules and regulations as may be applicable to City's property and Concessionaire's uses thereof.
- B. Concessionaire acknowledges that any storm water discharge permit issued to City may name Concessionaire as a co-permittee. City and Concessionaire both acknowledge that close cooperation is necessary to insure compliance with any storm water discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Concessionaire acknowledges further that it may be necessary to undertake such actions to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by Concessionaire, as such term may be defined by applicable storm water rules and regulations, by implementing and

maintaining "best management practices" as that term may be defined in applicable storm water rules and regulations.

- C. City will provide Concessionaire with written notice of any storm water discharge permit requirements applicable to Concessionaire and with which Concessionaire will be obligated to comply from time-to-time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Concessionaire agrees that within thirty (30) days of receipt of such written notice it shall notify City in writing if it disputes any of the storm water permit requirements it is being directed to undertake. If Concessionaire does not provide such timely notice, Concessionaire will be deemed to assent to undertake such storm water permit requirements. In that event, Concessionaire agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Concessionaire, those storm water permit requirements for which it has received written notice from City, and Concessionaire agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements.

SECTION 51 – CONTRACT VERIFICATION

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on this ____ day of November, 2023.

ATTEST:

CITY OF KILLEEN:

Laura Calcote
City Secretary

Kent Cagle
City Manager

ATTEST:

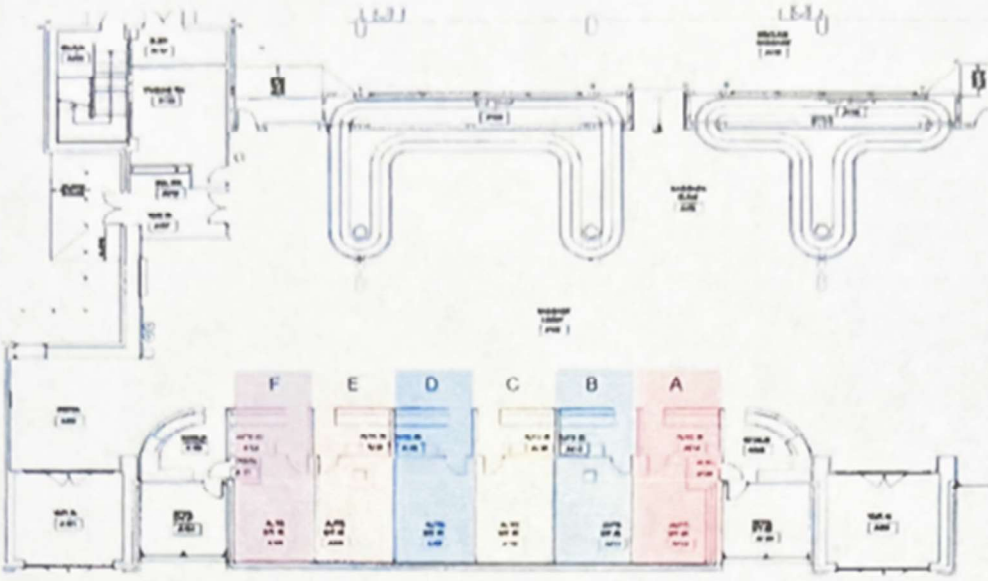
CONCESSIONAIRE:

(Signature of signing authority)

(Printed Name of signing authority)

(Title)

EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS



Space	Office	Counter Area	Queuing	Total Square Footage	Counter Length
A	199	107	102	408	12' 9"
B	232	109	103	444	12' 10"
C	232	109	103	444	12' 10"
D	232	109	103	444	12' 10"
E	232	109	103	444	12' 10"
F	199	104	102	405	12' 9"

Acknowledged By:

Space A Selected By: Avis / Budget 11/1/23
Date

Space C Selected By: Hertz / Dollar 11/2/2023
Date

Space D Selected By: Enterprise 10/31/23
Date

Space E Selected By: Alamo / National 10/31/23
Date

Space B and Space F were not selected.

EXHIBIT A2 - READY/RETURN BLOCKS AND SERVICE BAYS

Blocks:

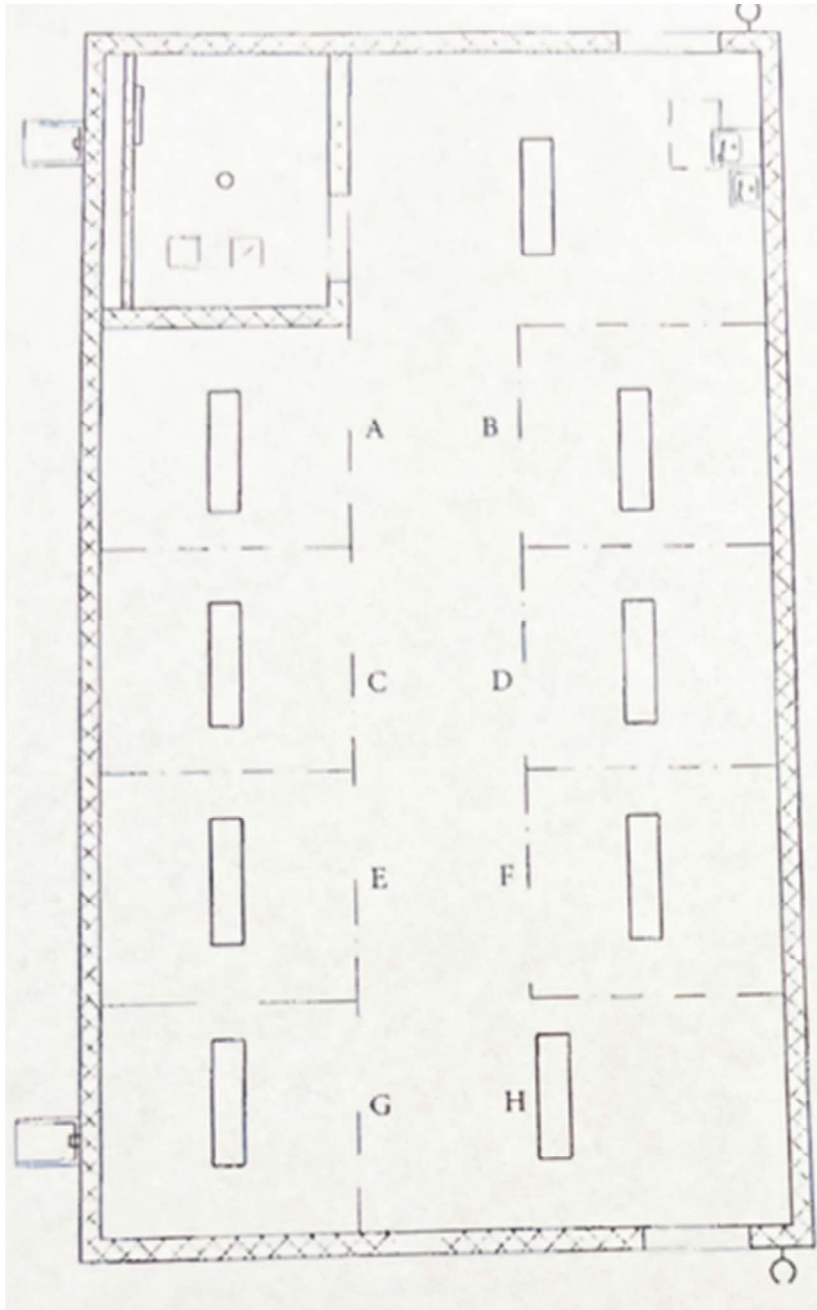
- RR-2 = 36 spaces
- RR-3 = 36 spaces
- RR-4 = 36 spaces

← Terminal Building

Space RR-3 and SB-5 Selected By: Enterprise	<p>Acknowledged By: <i>[Signature]</i></p> <p>GAN Holdings LLC</p>	<p>11/2/23</p> <p>Date</p>
Space RR-2 and SB-2 Selected By: Avis / Budget	<p><i>[Signature]</i></p> <p>Avis Budget Car Rental LLC</p>	<p>11/1/23</p> <p>Date</p>
Space RR-4 and SB-3 Selected By: Hertz / Dollar	<p><i>[Signature]</i></p> <p>The Hertz Corporation</p>	<p>11/2/2023</p> <p>Date</p>
Space RR-1 and SB-4 Selected By: Alamo / National	<p><i>[Signature]</i></p> <p>GAN Holdings LLC</p>	<p>10/31/23</p> <p>Date</p>

SB-1 and SB-6 were not selected.

EXHIBIT A3 – STORAGE AREA



Acknowledged By: *[Signature]* Date: 11/2/2023
The Hertz Corporation
Avis Budget Car Rental LLC

Cage A Selected By: Hertz / Dollar
Cage D Selected By: Avis / Budget
Cages B, C, E, F, G, and H were not selected.

EXHIBIT A4 – OVERFLOW PARKING LANES

RENTAL CAR OVERFLOW PARKING LOT

27 – LANES
Each lane 8'6" x 85'

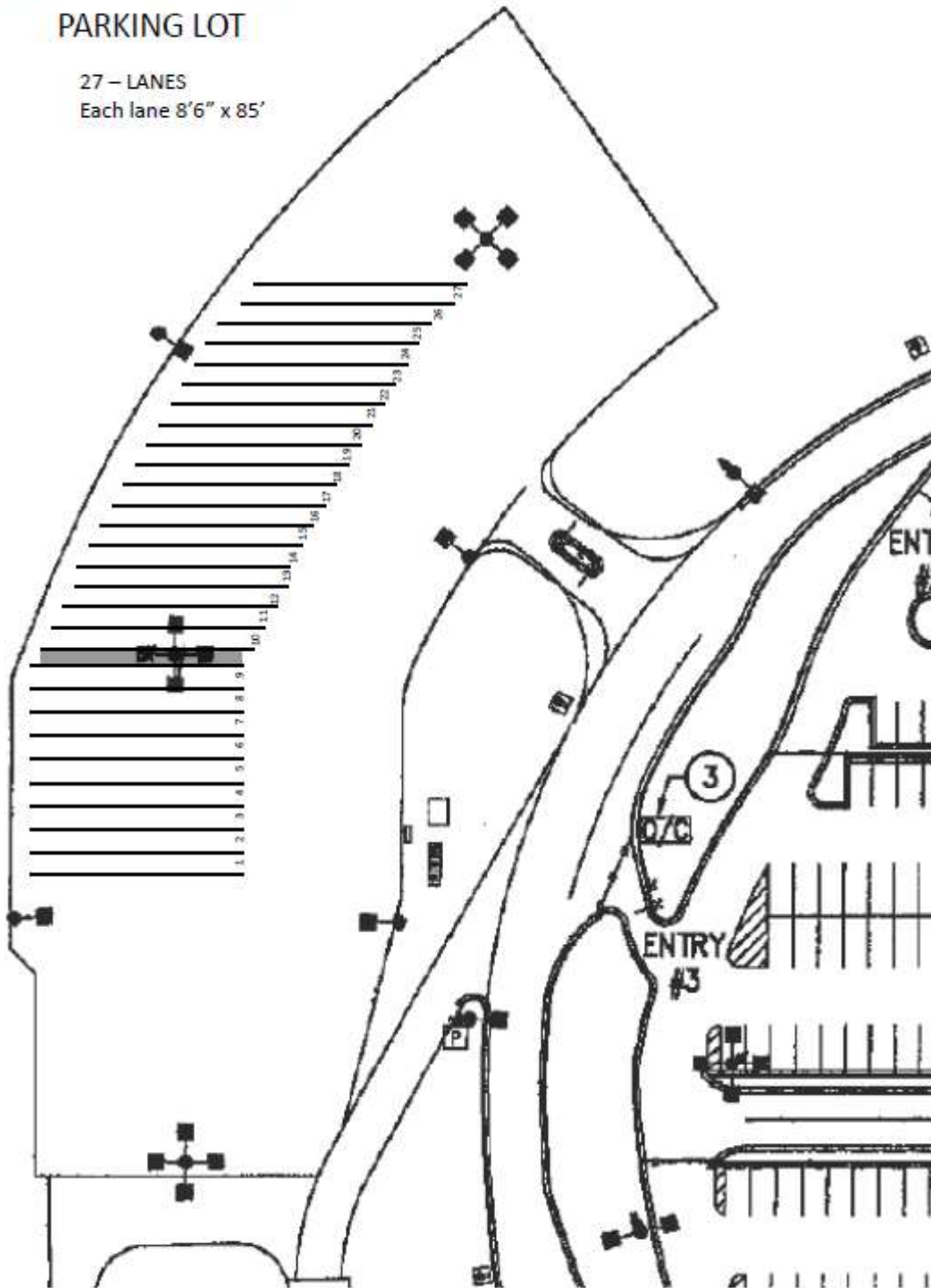


EXHIBIT B – Sample Monthly Reporting Form

KILLEEN – FORT HOOD REGIONAL AIRPORT

RENTAL CAR MONTHLY REPORT OF GROSS REVENUES

FOR MONTH OF _____

Concessionaire Name: _____

Address: _____

City, State, Zip: _____

Contact Name: _____

Phone # _____

GROSS RENTAL REVENUE: _____

Airport Fee (10%) _____

Less Monthly Guarantee paid 1st of month: _____

(1) Privilege Fee Balance Due: _____

Number of Transaction: _____

Number of Transaction Days: _____

(2) CFC Due (@ \$3.00 per Transaction Day): _____

Amount Due with this report (1) +(2): \$ _____

Concessionaire Official Signing and Certifying accuracy of Information on this report:

Signature _____

Typed Name & Title _____

Date signed _____

REMIT THIS FORM AND PAYMENT TO: City of Killeen Finance Department
Attn: Accounts Receivable
P.O. Box 1329
Killeen, TX 76540

EXHIBIT C – Sample ACDBE Reporting Form

KILLEEN – FORT HOOD REGIONAL AIRPORT ACDBE PROGRAM TRACKING FORM
Tracking for Airport Concessionaires ACDBE products and/or services payments
Information required in accordance with 49 CFR §23

☐ Check here for Rental Car Concessions

☐ Check here for Other-than-Rental Car Concessions

Name of GRK Airport Concessionaire: _____

Concessionaire Prime Point of Contact: _____

Lease Agreement Date: _____

Lease Renewal Date: _____

Current Reporting Period (Fiscal Year): _____

Quarter (Current Year): _____ Amount paid to ACDBE during this time period: _____

Certified ACDBE Vendor Name: _____

Address: _____

Contact Email: _____

Goods / Service category: _____

NAICS Code(s): _____

ACDBE category (BLK/HISP/NAAM/WMN, etc.): _____

NAICS Code(s): _____

Description of goods or services provided by the certified ACDBE firm (examples include vehicle repairs, auto parts, insurance, baked goods, beverages, gifts, novelties, restaurant supplies, etc.): _____

☐ Check here if goods or services procured from the ACDBE are only a one-time transaction

☐ Check here if goods or services procured from the ACDBE are part of an on-going contract or agreement

☐ Check here if the ACDBE firm's Texas certification has been confirmed and/or verified

Total amount paid to ACDBE Provider to date this calendar year: _____

☐ Check if payments to ACDBE has been made promptly (within 30 days of completed delivery of goods or services).

As the authorized representative of the above Concessionaire, I state that, the above information is accurate and the amounts were paid in accordance to lease or contractual obligations, and that documentation of these payments, any canceled checks, or supporting information is available within 5 businessdays of request.

GRK Concessionaire 's Authorized Representative: _____

Title: _____

Signature: _____

Email address: _____

Date: _____

KILLEEN – FORT HOOD REGIONAL AIRPORT ACDBE PROGRAM TRACKING FORM
Tracking for Airport Concessionaires ACDBE products and/or services payments
Information required in accordance with 49 CFR §23

This section to be completed by the authorized GRK ACDBE TEAM only:

GRK ACDBE Specialist:	_____
Signature:	_____
Date Received:	_____
Comments:	_____

Instructions: Use additional sheets as needed.

ACDBE Category acronyms:

- BLK = Black Americans
- HISP = Hispanic Americans
- NAAM = Native Americans
- WMN = Women
- ASPA = Asian-Pacific Americans
- SAAM = Subcontinent Asian Americans
- OTH = Others

A firm's ACDBE certification can be verified by searching the following database: <https://txdot.txdotcms.com>

EXHIBIT D – Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the “Concessionaire”) 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).

CONCESSION AGREEMENT

NON-EXCLUSIVE RENTAL CAR CONCESSION
Killeen - Fort Hood Regional Airport
Killeen, Texas

between

Killeen - Fort Hood Regional Airport
City of Killeen, Texas

and

EAN Holdings, LLC d/b/a Alamo Rent A Car and National Car Rental
Concessionaire

<u>Section</u>	<u>Page</u>
DEFINITIONS	5
SECTION 1 – LEASED PREMISES.....	8
SECTION 2 – TERM	8
SECTION 3 – USES, PRIVILEGES, COBRANDING AND OBLIGATIONS	8
SECTION 4 – RESTRICTIONS ON USES AND PRIVILEGES.....	10
SECTION 5 – PRIVILEGE FEE, RENTS, FEES AND ACCOUNTING RECORDS.....	11
Subsection 5.1 Privilege Fee, Rent and Fees.	11
Subsection 5.2 Statements, Books, and Records; Delinquent Rentals.	15
Subsection 5.3 Audit.....	16
SECTION 6 – INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES	16
Subsection 6.1 Building Services	16
Subsection 6.2 Approval of Plans and Specifications; Provision of Drawings.....	17
SECTION 7 – TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.	18
Subsection 7.1 Title.....	18
Subsection 7.2 Structural Alterations.....	18
Subsection 7.3 Alterations and Improvements to Airport.....	18
Subsection 7.4 Removal and Demolition.....	19
SECTION 8 – MAINTENANCE OF PREMISES AND UTILITIES.....	19
Subsection 8.1 Airport Maintenance Obligations.....	19
Subsection 8.2 Concessionaire's Maintenance Obligations.	20
Subsection 8.3 Utilities.	21
SECTION 9 – LIENS, PAYMENT, AND PERFORMANCE BONDS.....	21
Subsection 9.1 Construction Surety Bond.....	21
Subsection 9.2 Security.....	22
SECTION 10 – OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES	22
Subsection 10.1 Hours of Operation.....	22

Subsection 10.2 Delivery of Goods.	22
SECTION 11 – QUALITY AND CHARACTER OF SERVICE.....	22
Subsection 11.1 Type of Operation.	22
Subsection 11.2 Services to the General Public.....	22
Subsection 11.3 Additional Compliance.	22
Subsection 11.4 Personnel.....	23
Subsection 11.5 Operations Violations.....	23
SECTION 12 – NON-DISCRIMINATION.....	24
Subsection 12.1 General Civil Rights Provisions.....	24
Subsection 12.2 Compliance with Nondiscrimination Requirements	24
SECTION 13 – IDEMNIFICATION AND INSURANCE.....	26
Subsection 13.1 Indemnification.....	26
Subsection 13.2 Concessionaire to Provide General Liability and Automobile Insurance.	26
Subsection 13.3 Concessionaire to Provide Property and Fire Insurance.....	27
Subsection 13.4 Both Concessionaire and City to Carry Fire Insurance.	27
Subsection 13.5 Insurance Certificate.....	27
Subsection 13.6 Concessionaire Failure to Provide Certificates.	28
SECTION 14 – DAMAGE OR DESTRUCTION OF LEASED PREMISES	28
Subsection 14.1 Partial Damage.	28
Subsection 14.2 Extensive Damage.....	28
Subsection 14.3 Complete Destruction.	28
Subsection 14.4 Limits of City's Obligations Defined.....	29
SECTION 15 – CANCELLATION	29
Subsection 15.1 Cancellation by Concessionaire.....	29
Subsection 15.2 Cancellation by City.	29
Subsection 15.3 Termination.....	30
Subsection 15.4 Notice of Termination.....	30
SECTION 16 – NONWAIVER OF RIGHTS	30
SECTION 17 – SURRENDER OF POSSESSION	31

SECTION 18 – TAXES AND LICENSES	31
SECTION 19 – INSPECTION OF PREMISES	31
SECTION 20 – HOLDING OVER	31
SECTION 21 – QUIET ENJOYMENT	31
SECTION 22 – NO LIENS.....	32
SECTION 23 – SECURITY AGREEMENTS	32
SECTION 24 – AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES	32
SECTION 25 – RIGHTS AND PRIVILEGES OF CITY	32
SECTION 26 – ACCESS CONTROL	34
SECTION 27 – NO PERSONAL LIABILITY	34
SECTION 28 – GOVERNING LAW.....	34
SECTION 29 – NOTIFICATION	35
SECTION 30 – SEVERABILITY	35
SECTION 31 – ASSIGNMENT, SUBLET, AND TRANSFER	35
SECTION 32 – NO WAIVER.....	35
SECTION 33 – CONFLICTS OF INTEREST	36
SECTION 34 – POLITICAL ACTIVITIES.....	36
SECTION 35 – ENTIRE AND SUPERSEDING AGREEMENT	36
SECTION 36 – AMENDMENT	36
SECTION 37 – TIME COMPUTATION	36
SECTION 38 – NOTICES	37
SECTION 39 – CONSTRUCTION.....	37
SECTION 40 – NO THIRD PARTY BENEFICIARY	37
SECTION 41 – COMPLIANCE WITH LAW	37
SECTION 42 – FORCE MAJEURE.....	38
SECTION 43 – GOOD STANDING	38
SECTION 44 – INDEPENDENT CONTRACTORS	38
SECTION 45 – GOVERNMENTAL APPROVALS.....	38
SECTION 46 – AUTHORITY.....	39

SECTION 47 – COUNTERPARTS.....	39
SECTION 48 – SURVIVAL.....	39
SECTION 49 – MORE FAVORABLE TERMS.....	39
SECTION 50 – ENVIRONMENTAL.....	39
SECTION 51 – CONTRACT VERIFICATION	42
EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS	44
EXHIBIT A2 - READY/RETURN BLOCKS AND SERVICE BAYS	45
EXHIBIT A3 – STORAGE AREA.....	46
EXHIBIT A4 – OVERFLOW PARKING LANES.....	47
EXHIBIT B – Sample Monthly Reporting Form	48
EXHIBIT C – Sample ACDBE Reporting Form	49
EXHIBIT D – Title VI List of Pertinent Nondiscrimination Acts and Authorities.....	51

RENTAL CAR CONCESSION
Killeen - Fort Hood Regional Airport
Killeen, Texas

THIS CONCESSION AGREEMENT ("**Agreement**"), made and entered into this ____ day of November, 2023, by and between the City of Killeen (the "**City**"), a municipal corporation and existing under the laws of the State of Texas, whose address is 8101 S. Clear Creek Rd, Box C, Killeen, Texas 76549, hereinafter referred to as "**City**" and EAN Holdings, LLC operating as Alamo Rent A Car and National Car Rental, (hereinafter referred to as "**Concessionaire**"), a limited liability company with its office and address being 4210 South Congress Avenue, Austin TX 78745, with a mailing address of 4210 South Congress Avenue, Austin TX 78745.

WITNESSETH:

WHEREAS City controls, owns, operates, and maintains an airport in the City of Killeen, County of Bell, State of Texas, known as Killeen - Fort Hood Regional Airport (hereinafter referred to as "**Airport**"), and has the power to grant rights and privileges with respect thereto, and

WHEREAS, the City has determined it to be in the best interests of the public and the City to enter into this Agreement with Concessionaire to provide rental car concession services at the Airport pursuant and subject to the terms and conditions hereunder,

NOW, THEREFORE, THE PARTIES AGREE:

DEFINITIONS

The following terms and phrases shall have the following meanings for purposes of this Agreement:

1. "ACDBE" shall mean airport concession disadvantaged business enterprise as that term is defined by 49 CFR Part 23.
2. "City" shall mean the municipal corporation existing under the laws of the State of Texas which controls, operates, and maintains the Killeen - Fort Hood Regional Airport.
3. "Environmental Law" shall mean any federal, state, or local law, rule, regulation, order, or requirement relating to protection of human health and safety or the environment.
4. "Executive Director of Aviation" shall mean the Executive Director of Aviation of the City's Airport, or his or her designee.
5. "Gross Revenues" as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Concessionaire for or

in connection with agreements it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Concessionaire. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Concessionaire 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 Concessionaire'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 Concessionaire'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 Concessionaire 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:

- Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Concessionaire's operations which are separately stated on customers' rental contracts and collected from customers of Concessionaire;
- Those fees referred to in this Agreement as Customer Facility Charges, "CFCs" which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City Resolution, as may be amended;
- Amounts received specifically for the actual loss of or damages of vehicles or other property of Concessionaire;
- 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 Concessionaire's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and
- Reimbursements for amounts actually paid for speeding tickets, parking tickets, red light tickets, tolls, and toll violations, and towing and impound fees from its customers to pass through without markup to an independent third party with no amount being retained by Concessionaire. However, any

amounts collected above the pass-through amount shall be included as Gross Revenue under this Agreement.

6. "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, and includes any material or substance identified, listed, or defined as a "hazardous waste" "hazardous substance," or "pollutant" or "contaminant" or term of similar import, or is otherwise regulated pursuant to Environmental Laws, including any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.
7. "Leasehold Improvements" shall mean all improvements and equipment which are affixed to the Leased Premises, and which cannot be removed without material damage to the Premises.
8. "Operations Year" shall mean January 1 through December 31 annually.
9. "Personal Property" shall mean all movable property of the Concessionaire not directly related to the rental car operations of the privileges granted hereunder, including, office furniture, office equipment, and office supplies.
10. "Refurbish" or "Refurbishment" shall mean the routine repainting or redecoration of public areas within the Leased Premises, as necessary, including the replacement or repair of worn carpet, tile, furniture, or furnishings.
11. "Rental Car" or "Motor Vehicles" shall mean motor vehicles designed primarily for the carriage of passengers and commonly classified as sedans, coupes, convertibles, four-wheel drive vehicles, passenger vans, sport utility vehicles, and pick-up trucks rated one-ton or less.
12. "Terminal Building" shall mean the terminal building at the Airport.
13. "Trade Fixtures" shall mean all non-affixed items, except expendables and Personal Property, which can be removed without damage to the Leased Premises, including cash registers, safes, patron tables and chairs, display fixtures, and the like.
14. "Transaction" shall mean the execution of an agreement or contract for the rental of a Motor Vehicle; or the payment of funds or completion of a cash or credit transaction for payment for rental of a Motor Vehicle; or delivery of a Motor Vehicle to a customer for use in exchange for cash, credit, or any other consideration.
15. "Transaction Day" shall mean each twenty-four (24) hour period or portion thereof, for which a customer of a Rental Car concessionaire rents, or otherwise enters into a similar arrangement for the use of a Motor Vehicle and for which the Rental Car concessionaire collects revenue from the customer. Late returns (after twenty-four

(24) hours) shall be considered a Transaction Day.

SECTION 1 – LEASED PREMISES

- A. City hereby leases to Concessionaire and Concessionaire hereby agrees to lease from City the following premises, which, collectively, are hereinafter called the "Leased Premises": Four Hundred and Forty-Four (444) square feet of counter/office/queuing area "E" in the terminal building, Block "RR-1" the ready return area containing approximately Sixty-Seven (67) ready/return parking spaces outside and adjacent to the terminal building, and Service Bay "4". Said Leased Premises is more particularly shown on **Exhibits A1, A2, and A3** attached hereto and by this reference made a part hereof.
- B. Concessionaire agrees that its Leased Premises have been inspected by Concessionaire and are accepted and will be occupied by Concessionaire on an "as is" basis. The Concessionaire specifically waives any covenants or warranties regarding the Premises, including but not limited to any warranty of suitability and warranty of fitness.

SECTION 2 – TERM

The term of this Agreement is for a five (5) year period commencing on January 1, 2024, and terminating on December 31, 2028, unless sooner terminated or canceled as hereinafter provided.

SECTION 3 – USES, PRIVILEGES, COBRANDING AND OBLIGATIONS

Concessionaire shall have the following uses, privileges, and obligations in connection with its use of the Leased Premises:

- A. The non-exclusive right, privilege, and obligation to conduct and operate a rental car, van or truck rental concession at the Airport including all necessary and ancillary services customarily associated with car rental concessions at public airports within the United States of America or airport of similar size and capacity. Concessionaire 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 thirty-five (35)) to meet all reasonably foreseeable demands of the traveling public. Co-Branding by Concessionaire is limited to two brands per concession space specifically those listed in their submitted proposal. It being understood that no more than two brands under rental car agencies who are owned by the same parent company may operate from any one concession space during the term of this agreement. Concessionaire understands and agrees that it shall not engage in any other business on the Airport under this Agreement.
- B. The right, privilege, and obligation to rent and check-in rental vehicles, including the right to offer for sale related collision damage waiver protection, personal injury

and accident insurance, personal effects insurance, and such other travel or vehicle related coverage offered in connection with and incidental to the rental of a vehicle and occupy operations office, storage, and Ready and Return car parking spaces. It is the intent of this Agreement that rental car customers of Concessionaire will operate the vehicle rented only from the ready spaces provided herein, and Concessionaire shall not engage in customer shuttle operations of any kind to, from, or on the Airport. This does not prohibit the picking up of a customer from the Fixed Base Operator (FBO). No trucks larger than one-ton pickup type/style will be allowed in the ready lot unless approved in writing in advance by the Executive Director of Aviation. Concessionaire shall not park, store, or rent from Premises any vehicles except Motor Vehicles as defined herein that it owns or rents and are properly available for rental as provided herein.

- C. The non-exclusive right and privilege to wash vehicles rented by Concessionaire under the provisions of this Agreement in the City's car wash.
- D. The right and privilege to service vehicles rented by the Concessionaire under the provisions of this Agreement in the service bay identified in Section 1. Concessionaire shall use the service bay for the following activities only: vehicle automated and hand washing, cleaning, fluid replacement, vacuuming, and related activities as are necessary for preparing its vehicles for rental. No washing or vehicle maintenance may be conducted in the rental car parking lot or overflow parking areas.
- E. The right of ingress and egress to and from the Premises, over Airport roadways, are subject to such reasonable rules and regulations as may be established by Airport as respecting such use and subject to law.
- F. Concessionaire shall install no signs on or about the Premises without the prior written approval of the Executive Director of Aviation, said approval being solely discretionary with the Executive Director of Aviation. For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising or promotions, photographs, art displays, and the like. Such signs shall be substantially uniform in size, types, and location with those of other concessionaries, and subject to Executive Director of Aviation's approval, Rules, and Regulations, and in compliance with all applicable laws and resolutions. No temporary signs or displays shall be permitted on the backwall or the counter surfaces without the prior written approval of the Executive Director of Aviation. Handwritten, or hand lettered signs are prohibited. Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Executive Director of Aviation.
- G. The right for Concessionaire's employees, in common with other employees of tenants of the Terminal Building, to use vehicular parking space provided by City, subject to the payment of reasonable charges therefore, as set by the City.

Employee parking shall only be allowed in those areas designated by the Airport. Concessionaire employees shall not park personal vehicles in the Leased Premises.

H. Airport Concession Disadvantaged Business Enterprise Program

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulation 49 CFR Parts 23 related to the airport concession disadvantaged business enterprises (ACDBE) program. The concessionaire or contractor 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.
 2. The concessionaire or contractor 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 businesses to similarly include the statements in further agreements.
 3. Each year Concessionaire no later January 10th shall provide to City the following annual ACDBE information: the name and address of each certified ACDBE with which it has done business during the past federal fiscal year (October 1 – September 30), a description of the nature of the services performed by and/or items purchased from each firm named, and the dollar value of each transaction. The ACDBE must be certified by the Texas Unified Certification Program. A sample reporting form is provided as Exhibit C. Concessionaire may use the sample report provided or a form of similar level of detail satisfactory to the City.
- I. Compliance with Federal Aviation Regulations, 14 CFR Part 139, and Transportation Security Administration security requirements 49 CFR Part 1542. Concessionaire agrees to comply with Federal Aviation Regulations, and 1542 (Airport Security), U.S. Army requirements, and the City's policies as outlined in City's approved Operations Plan and Airport Security Plan. Concessionaire further agrees that any fines levied upon the City or Concessionaire through enforcement of these regulations because of acts by Concessionaire's employees, agents, suppliers, guests, or patrons shall be borne by Concessionaire to the extent said acts contributed to said fines.

SECTION 4 – RESTRICTIONS ON USES AND PRIVILEGES

The Leased Premises shall be used only for the purposes specified in this Agreement. Concessionaire understands and agrees that City has the right to grant up to five additional privileges under separate agreements for in-terminal rental car operations to other companies.

Prohibited Activities at the service bay include:

- A. Concessionaire shall not utilize the service bay for vehicle storage other than vehicles for rent in the process of being serviced.
- B. Concessionaire shall not utilize the service bay for any maintenance or for the storage of damaged vehicles.
- C. Concessionaire shall not allow its customers or the general public to enter the service bay.
- D. Concessionaire shall not permit its employees to vacuum, wash or fuel their personal vehicles or vehicles not part of the Concessionaire's fleet at the service bay or fueling area.

SECTION 5 – PRIVILEGE FEE, RENTS, FEES AND ACCOUNTING RECORDS

Subsection 5.1 Privilege Fee, Rent and Fees.

- A. **Privilege Fee.** As consideration for the privilege of operating the concession hereunder, Concessionaire shall pay to City each Operations Year, for the full term of this Agreement, a Privilege Fee. Said Privilege Fee shall be the greater of either the guaranteed Minimum Annual Privilege Fee or the Percentage Fee applicable to Gross Revenue, hereinafter defined, as follows:

- 1. Privilege Fee – the greater of either:
 - a. ten percent (10%) of the Concessionaire's annual Gross Revenues ("Percentage Privilege Fee");

OR

- b. the respective yearly amount shown below as the Concessionaire's Minimum Annual Guaranteed fee ("MAG"):

January 1, 2024, to December 31, 2024	\$ 95,765.00
January 1, 2025, to December 31, 2025	\$ 95,765.00
January 1, 2026, to December 31, 2026	\$ 95,765.00
January 1, 2027, to December 31, 2027	\$ 95,765.00
January 1, 2028, to December 31, 2028	\$ 95,765.00

- 2. Monthly payment shall be the greater of 1/12th of the respective year's MAG or 10% of reported gross revenues for the previous month. The MAG payment shall be paid in advance on the first (1st) day of each month during each Operations Year, until such time as the Concessionaire has paid to the Airport an amount equal to the respective annual MAG identified in Section 5.1(A)(1)(b) above. On or before the 20th of each

month the Concessionaire shall provide the Airport with: i) a signed and certified Report of Gross Revenues for the preceding month and ii) payment of any percentage Privilege Fee shown to be due for the preceding month, as designated on Exhibit B, attached hereto, and made a part hereof. Once the sum of Privilege Fee payments remitted has reached the MAG in any given Operations Year, the Concessionaire may cease remittance of the 1/12th of the respective year's MAG on the first (1st) day of each month for the remainder of that Operations Year. The Concessionaire shall continue to report and remit each and every month after the annual MAG has been reached the full 10% of reported gross revenues for the previous month.

3. In any Operations Year where the total deplanements at the Airport decline by 15% or more as compared to the prior Operations Year, the Concessionaire's MAG for such Operations Year shall be reduced proportionate to the decline in deplanements as part of the year end reconciliation process. Where the City reasonably determines during any Operations Year that a MAG reduction is likely, the City may waive the Concessionaire's obligations to remit the monthly 1/12th MAG installment payments for any period of time the City deems appropriate in its sole discretion, but Concessionaire shall continue to remit the Percentage Privilege Fee each month regardless.
4. Concessionaire acknowledges that Privilege Fee payments by Concessionaire to City under this Agreement are for Concessionaire's privilege to use the Airport facilities and access the Airport market and are not fees imposed by City upon Concessionaire's customers. City does not require, but will not prohibit, a separate statement of and charge for the Privilege Fee on customer invoices or rental agreements ("Recovery Fee"), provided that such Recovery Fee meets all of the following conditions: (a) such Recovery Fee must be titled "Concession Recovery Fee," "Concession Recoupment Fee" or such other name first approved by the Executive Director of Aviation in writing; (b) the Recovery Fee must be shown on the customer rental car agreement and invoiced with other Concessionaire charges (i.e. "above the line"); (c) the Recovery Fee as stated on the invoice and charged to the customer shall be no more than 11.11% of Gross Revenues and shall be specifically included in the Definition of Gross Revenues for purposes of remittance to City; (d) Concessionaire shall neither identify, treat, or refer to the Recovery Fee as a tax, nor imply that City is requiring the pass through of such fee; (e) Concessionaire shall comply with all applicable laws, including Federal Trade Commission requirements, any Texas Consumer Protection legislation and any commitment to or contractual obligation by Concessionaire with any governmental agency or officer with authority over Concessionaire's activities.

B. Rent -

1. Rent for Premises

Concessionaire shall pay to the City, in advance, on the 1st day of each month, one twelfth the following annual rents or the monthly rent as applicable:

- a) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Thirty-Six Dollars and (\$36.00) per square foot per annum for Four Hundred and Forty-Four (444) square feet of counter/office/queuing position in the Terminal Building.
- b) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Seventy-Two Thousand Three Hundred Sixty Dollars (\$72,360), per annum for Ready Return Block "RR-1" as shown on Exhibit A2.
- c) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Six Thousand Dollars (\$6,000), per annum for service bay "4" as shown on Exhibit A2.
- d) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire declined lease of a storage area as shown on Exhibit A3.
- e) If requested by Concessionaire, overflow parking lanes as agreed upon with the Executive Director of Aviation on a month-to-month basis in the amount of Two Hundred (\$200) per lane per month through December 31, 2028. Overflow lanes are shown on Exhibit A4.

C. Additional Fees –

- 1. The Concessionaire shall collect the CFCs on behalf of the Airport and remit to the Airport, in accordance with the City's CFC resolution, the full amount of the Transaction Day fee collected from each Rental Car customer.
- 2. The Concessionaire shall pay to the City for telephone system/service access to the Internet via a T-1 as follows:

Local service	\$23.50 per line per month
Voice mail	\$4.25 per line per month
Phone rental	\$6.00 per phone per month
Maintenance fee	\$15.50 per line per month

Above telecommunication fees are subject to change as determined by the City. Payment shall be due within thirty (30) days of invoice date.

3. The Concessionaire shall pay to the City a per wash fee of \$3.00 per automated wash. The Concessionaire shall pay to the City, for use of the manual car wash, a rate of \$2.00 per 5-minute session.

Car wash fees are subject to change as determined by the City with advance written notice. Payment shall be due within thirty (30) days of invoice date.

4. The Concessionaire shall pay to the City, based on actual gallons of fuel pumped, a per gallon fuel rate equal to the City's purchase price of the fuel plus \$0.30 cents, as may be adjusted by the City with advance written notice.

Payment shall be due within thirty (30) days of invoice date.

5. If the Concessionaire's bid reflected the operation of two brands in its concession, Concessionaire shall pay to the City a fee of One Thousand Dollars (\$1,000) per month which shall be paid in advance on the first (1st) of each month.
6. Additional fees may include charges for special items or activities including, but not limited to, employee parking, monthly electronic access card fees, badging fees, and disposal of debris left in service bay area and assigned parking areas. The City may assess reasonable, non-discriminatory charges for these special items or activities. All new charges will be reviewed with Concessionaire prior to implementation. Other charges payable by Concessionaire, shall be paid by Concessionaire to City no later than thirty (30) days following receipt by Concessionaire of billing therefor.
7. Concessionaire shall be charged at the current short term parking rate, for any of its vehicles found to be parked in a parking space not specifically leased by the Concessionaire or without the approval of the Executive Director of Aviation.

- D. Any and all payments due to the City by Concessionaire shall be remitted to the following address:

City of Killeen Finance Department
Attn: Accounts Receivable
P.O. Box 1329
Killeen, TX 76540

E. Year End Adjustments to Privilege Fees, Rents and Fees.

In the event the amount of payments made during the preceding Operations Year exceeds the total of any payments due for such Operations Year, the excess payment shall be credited against the payments for the next Operations Year, except that any excess payment during the final Operations Year of this Agreement will be returned to the Concessionaire within thirty (30) days after the Airport's acceptance of the final Certified Statement described in this Section. Concessionaire shall submit separate system generated reports for each brand name operated.

Subsection 5.2 Statements, Books, and Records; Delinquent Rentals.

- A. Monthly Statements; Books and Records. Within twenty (20) days after the close of each calendar month of the term of this Agreement, Concessionaire shall submit to City, in such detail and on the statement form designated as Exhibit B or as may reasonably be specified by City, certain information, including but not limited to, the number of Transactions executed during the preceding month, the number of Transaction Days Motor Vehicles were rented during the preceding month, and the statement of its Gross Revenues during the preceding month upon which the percentage payments to City set forth in Subsection 5.1 A(1) are to be computed, and said Exhibit B statement to be signed by a responsible accounting officer of Concessionaire. City reserves the right to change the form of the monthly statement and to require the submission by Concessionaire of other information pertaining to the Gross Revenues hereunder, and Concessionaire agrees to change the form of its statements to that requested by City and to provide any such additional information City may reasonably request. Concessionaire shall keep full and accurate books and records showing all of its Gross Revenues hereunder, and City shall have the right, through its representatives and at reasonable times, at its own expense, to inspect, examine, copy, and audit such books and records, including State of Texas sales tax return records. Concessionaire hereby agrees that all such books and records will be made available to City for at least three (3) years following the period covered by such books and records.
- B. Annual Certified Statements. Each year during the term of this Agreement, Concessionaire shall provide to City a written statement, certified by an independent Certified Public Accountant, to City stating that in his or her opinion the Percentage Fees paid by Concessionaire 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 Concessionaire, to be received by City within ninety (90) days of the end of each Operations Year. Such statement shall also contain a list of the Gross Revenues, by month, as shown on the books and records of Concessionaire and which were used to compute the Percentage Fee payments made to City during the period covered by said statement.

- C. Delinquent Rentals and Fees. Without waiving any other right or action available to City in the event of default in the payment of charges or fees payable to City, pursuant to this Agreement, a late fee of one and a half percent (1.5%) of the total amount due will be assessed to the Concessionaire if payments prescribed above are not received by the dates prescribed therein. An additional one and a half percent (1.5%) of the outstanding amount will be assessed each month that all or a portion of the Concessionaire's obligations remain unpaid.

Subsection 5.3 Audit. City reserves the right to audit Concessionaire's books and records pertaining to the Leased Premises, at its own expense, at any time for the purpose of verifying the Gross Revenues, Privilege Fee, and CFC calculation hereunder for any period three (3) years prior to such audit. If, however, as a result of such audit, it is established that Concessionaire has understated the Gross Revenues received from all operations at the Leased Premises by two percent (2%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall forthwith be paid by Concessionaire to City with interest thereon at one and one-half percent (1.5%) per month from the date such additional Privilege Fee became due.

SECTION 6 – INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES

Subsection 6.1 Building Services

- A. City Improvements and Services. City shall initially insure and provide occupancy of the Leased Premises to Concessionaire with said Leased Premises meeting all federal, state, and local code requirements for the operation of a rental car concession. City shall provide and maintain, water, sewer, general lighting, electrical power, heating and air-conditioning, and telephone system/service access to the Internet via a T-1 for the Terminal Building. Heating and air conditioning, electrical service, and telephone system/service access to the Internet via T-1 are provided to the Leased Premises only. If Concessionaire requires additional lighting, electrical power, water, or adjustments to the air-conditioning system or telephone system, such additional improvements or services shall be subject to the prior written approval of Executive Director of Aviation, and any such approved improvements or services shall be made at Concessionaire's expense.
- B. Concessionaire's Right to Additional Services. Concessionaire shall have the right, at its own expense, to request and receive additional services or systems, provided that any such services or systems shall require the written approval of Executive Director of Aviation before installation.

Subsection 6.2 Approval of Plans and Specifications; Provision of Drawings.

- A. General. Any improvements to be made to or upon the Leased Premises by Concessionaire, and any subsequent alterations or additions to such improvements, shall be subject to the prior written approval of Executive Director of Aviation. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of Executive Director of Aviation before any work or construction is commenced, which shall not be unreasonably withheld or delayed. First-class standards of design and construction shall be complied with in connection with all such work, facilities, and improvements; and all construction shall conform to the general architectural requirements of Executive Director of Aviation as established for each improvement program. Two (2) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to Executive Director of Aviation for review prior to commencement of construction; after final approval by Executive Director of Aviation, Executive Director of Aviation shall return to Concessionaire one (1) approved copy for Concessionaire's records and shall retain one (1) approved copy as an official record thereof.
- B. Improvements Conform to Statutes, Ordinances, Etc. All improvements, furniture, fixtures, equipment, and finishes, including the plans and specifications therefore, constructed or installed by Concessionaire, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations, and public bidding laws. Any approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Concessionaire.
- C. Approvals Extend to Architectural and Aesthetic Matters. Approval of City shall extend to and include architectural and aesthetic matters and City reserves the right to reasonably reject any layout or design proposals submitted and to require Concessionaire to resubmit any such layout or design proposals until they meet Executive Director of Aviation approval.
- D. Disapprovals. In the event of disapproval by City of any portion of any plans or specifications, Concessionaire shall promptly submit necessary modifications and revisions thereof for approval by Executive Director of Aviation. City agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. No substantial changes or alterations shall be made in said plans or specifications after initial approval by City, and no alterations or improvements shall be made to or upon the Leased Premises without the prior written approval of Executive Director of Aviation.

- E. Provision of As-Built Drawings. Upon completion of any construction project, Concessionaire shall provide City two (2) completed sets of as-built drawings in reproducible form as specified by City. Concessionaire agrees that, upon the request of City, Concessionaire will inspect the Leased Premises jointly with City to verify the as-built drawings.
- F. In accordance with Sec. 2252.909 of the Texas Government Code, Concessionaire must provide to the City a notice of commencement consistent with Section 2252.909 at least ninety (90) days before the date of construction, alteration, or repair of any improvement to the leased property begins. A notice of commencement must:
1. Identify the public property where the work will be performed;
 2. describe the work to be performed;
 3. state the total cost of the work to be performed;
 4. include copies of the performance and payment bonds required under Section 2252.909 (See Subsection 9.1 of this Agreement);
 5. include a written acknowledgement signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth (5th) day after the subcontract is executed.

On or before the tenth (10th) day after the date a governmental entity receives a notice of commencement for the construction, alteration, or repair of an improvement to leased property required under this section, the governmental entity may notify the leaseholder that the construction, alteration, or repair may not proceed. A person commits an offense if the person materially misrepresents information in a notice of commencement. An offense under this subsection is a Class A misdemeanor.

SECTION 7 – TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.

Subsection 7.1 Title. All improvements made to the Leased Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, shall be and remain the property of Concessionaire until the termination of this Agreement (whether by expiration of the term, cancellation, forfeiture or otherwise), at which time said improvements, except for Trade Fixtures, personal property, and expendables, shall become the property of City, at no cost to City.

Subsection 7.2 Structural Alterations. Concessionaire shall make no structural alterations to the Leased Premises without the prior written consent of Executive Director of Aviation.

Subsection 7.3 Alterations and Improvements to Airport. Concessionaire acknowledges that from time-to-time City may undertake construction, repair, or other activities related to the operation, maintenance and repair of the Terminal Building which

may temporarily affect Concessionaire's operations hereunder. Concessionaire agrees to accommodate City in such matters, even though Concessionaire's own activities may be inconvenienced, and Concessionaire agrees that no liability shall attach to City, its members, employees, or agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of City substantially impair the operations of Concessionaire under this Agreement, the Minimum Privilege Fee shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being reasonably determined by Executive Director of Aviation after consultation with Concessionaire. Concessionaire agrees that if relocation is required that Concessionaire shall move its operations as reasonably directed by Executive Director of Aviation.

Subsection 7.4 Removal and Demolition. Concessionaire shall not remove or demolish, in whole or in part, any Leasehold Improvements upon the Leased Premises without the prior written consent of City which may, at its sole discretion, condition such consent upon the obligation of Concessionaire, at Concessionaire's cost, to replace the same by an improvement specified in such consent.

SECTION 8 – MAINTENANCE OF PREMISES AND UTILITIES

Subsection 8.1 Airport Maintenance Obligations.

- A. General Maintenance and Operation. City agrees that it will, with reasonable diligence, maintain, operate, and keep in good repair the Airport, including the Terminal Building and all appurtenances, facilities, and services now or hereafter connected therewith. Airport shall keep the car rental parking lot and the overflow parking area in suitable repair and provide general lighting for these areas.
- B. Structural Maintenance. City shall provide, or cause to be provided, structural maintenance of the Terminal Building.
- C. Maintain Access. City shall, throughout the term of this Agreement, maintain all airport-owned roads on the Airport giving access to the Terminal Building in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal Building over said road at all times. City reserves the right to reasonably restrict access to the Terminal Building area for automobile deliveries during peak activity periods.
- D. Car Wash. City will maintain and inspect the car wash facilities as recommended by the manufacturer including routine maintenance of the car wash for normal activities, wear, and tear. Normal and routine maintenance of roofs, walls, utility infrastructure, building mechanical systems and structural building components will be performed by City. Wash soaps, rinses, brushes, hoses, and utilities will be provided by the City. City has the exclusive authority to stop the use of the car wash for maintenance and inspections as is necessary, at City's sole discretion, without damage or liability to

Concessionaire. City will take reasonable action to notify Concessionaire for closure of the car wash.

- E. Telephone System/Service Access to the Internet via a T-1. The Airport shall furnish telephone system/service access to the Internet via a T-1. Rates for these services will be in accordance with Section 5.1(C). A letter of agreement or other suitable document will be executed between the Airport's Executive Director of Aviation or his/her designated representative and the local designated representative of the Concessionaire to document exactly which services are agreed to between the two parties. Airport reserves the right to change or terminate said telephone and/or internet service at some point during the term of this Agreement. Airport will provide at least a ninety (90) day notice to Concessionaire of any service changes and assist in facilitating replacement services via a local communication provider.

Subsection 8.2 Concessionaire's Maintenance Obligations.

- A. Concessionaire's General Obligations. Except for maintenance of the Terminal Building, Car Wash, and Telephone System, as provided in Subsection 8.1, Concessionaire shall be obligated, without cost to City, to maintain the Leased Premises and every part thereof in good appearance, repair, and safe condition. Concessionaire shall maintain and repair all Leasehold Improvements on the Leased Premises and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or furnishings. All such maintenance and repairs shall be at least of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of Executive Director of Aviation. Concessionaire shall be obligated, without cost to City, to provide custodial service to Leased Premises. Concessionaire shall be responsible for the replacement cost of lost keys and floor finish restoration.
- B. Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to Airport of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Leased Premises shall be corrected immediately upon receipt of oral notice from the Executive Director of Aviation. At the direction of said Director, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.
- C. Trash and Refuse. City shall provide, at no cost to Concessionaire, a container for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Leased Premises. Concessionaire shall be responsible for disposal of its own trash accumulations by depositing it in the nearest exterior trash dumpster on a daily basis. Concessionaire will regularly inspect exterior areas assigned to them and will remove all trash and debris.

Failure to do so will result in the City completing this task and a fee assessed to the Concessionaire for the service. Trash receptacles inside the terminal building are for customer use only. Piling of boxes, cartons, barrels, or other similar items in view of a public area is prohibited. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from Airport in a reasonably clean and orderly condition so as not to unduly attract rodents, pests, or birds, or create an offensive odor. Concessionaire also agrees to participate in the City's recycling program by depositing all recyclable products in the appropriate outside recycling containers in lieu of the trash dumpster.

- D. Transporting Trash and Refuse. In transporting trash and refuse from the Leased Premises, Concessionaire shall ensure that trash is not strewn around while taking refuse to the dump site. Such disposal shall take place during hours as may be approved by the City.
- E. Damage to Equipment. Concessionaire will be responsible for the cost of replacement equipment deemed to be damaged by their employees due to negligence.

Subsection 8.3 Utilities.

- A. City shall provide the Leased Premises with heat and air-conditioning to keep the Leased Premises at reasonable temperatures for the conduct of Concessionaire's activities. City shall have the right to set, monitor, adjust and restrict thermostat settings to levels it determines to be appropriate.
- B. City shall provide electricity to the Leased Premises by means of wiring installations, and Concessionaire shall make such connections as required and permitted by building code. At no time shall Concessionaire's use of electric current exceed the capacity of the wiring installation in place.

SECTION 9 – LIENS, PAYMENT, AND PERFORMANCE BONDS

Subsection 9.1 Construction Surety Bond. Concessionaire shall not allow any liens or encumbrances to be attached to the Leased Premises. Prior to the commencement of any construction or alteration hereunder which exceeds \$10,000 in cost, Concessionaire or its contractor shall furnish to City, and without expense to City, a surety bond, issued by a surety company licensed to transact business in the State of Texas and satisfactory to and approved by City with Concessionaire's contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction or alteration of the improvements and facilities mentioned herein. Said bond shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by said contractor, subcontractor(s), and suppliers in the prosecution of the work provided for in said construction contract and shall protect City from any liability, losses, or damages arising there from.

Subsection 9.2 Security. During the term of this Agreement, the City shall require the Operator to deliver (and thereafter maintain current for the entire term of this Agreement) an instrument of security in a form satisfactory to the City, in its sole discretion, in the amount of twenty-five percent (25%) of the average of Concessionaire's five years Minimum Annual Guarantee bids reflected in Subsection 5.1(A)(1)(b), in order to secure the performance of all of Concessionaire's obligations under this Agreement, including without limitation, the payment of all the percentages, minimums, fees, charges and costs set out herein. Said security may be in the form of a bond.

SECTION 10 – OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES

Subsection 10.1 Hours of Operation. Concessionaire shall actively operate in the Leased Premises and shall use a business-like operation therein. The Concessionaire shall be open to serve the public seven (7) days per week and hours of operation shall be such that passengers of flights arriving from the terminal will be accommodated. Concessionaire's facilities will be adequately staffed and open at least thirty (30) minutes before and after every arriving flight. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Concessionaire may advise the Executive Director of Aviation of Concessionaire's analysis of the optimum arrangements, but the final determination shall be made by the Executive Director of Aviation based on their analysis of necessary service to the public.

Subsection 10.2 Delivery of Goods. Concessionaire shall arrange for the timely delivery of all motor vehicles and supplies, at such times, in such locations(s), and by such routes as determined by City. Concessionaire shall abide by all Transportation Security Administration (TSA) requirements for parking of motor vehicles near the terminal building.

SECTION 11 – QUALITY AND CHARACTER OF SERVICE

Subsection 11.1 Type of Operation. Concessionaire shall maintain and operate the concession privileges granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of Executive Director of Aviation, does not unduly annoy, disturb, or offend others at the Airport.

Subsection 11.2 Services to the General Public. Concessionaire understands and agrees that its operation at the Airport necessitates the rendering of public services such as giving directions, and generally assisting the public.

Subsection 11.3 Additional Compliance. Concessionaire shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Agreement.

Subsection 11.4 Personnel.

- A. General. Concessionaire shall maintain a sufficient number of properly trained personnel to ensure that all customers of Concessionaire receive prompt and courteous service. All such personnel, while on or about the Leased Premises, shall be polite, clean, appropriately attired, and neat in appearance. Clothing will be neat and clean and present a professional appearance. Executive Director of Aviation shall have the right to object to the demeanor, conduct, and appearance of any employee of Concessionaire, or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection. Concessionaire will ensure that its counter is staffed at all times during the posted hours of operation.
- B. Manager. The management, maintenance, and operation of the Leased Premises and the concession conducted thereon shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Concessionaire. Concessionaire shall cause such manager to be available during normal business hours, and Concessionaire will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties.

Subsection 11.5 Operations Violations.

Concessionaire'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 City. Additionally, City resources will be expended in dealing with violations of this Agreement by Concessionaire. The parties hereby agree that total damages sustained by to 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 City. Concessionaire, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Concessionaire agrees to pay immediately upon demand by to City the following amounts as liquidated damages upon the occurrence of breaches, in any Operations Year, related to operation violations:

- \$100 per occurrence - first occurrence
- \$200 per occurrence – second occurrence
- \$300 per occurrence - third occurrence
- \$1,000 per occurrence – fourth or more occurrences

Liquidated damage amounts shall not be imposed unless the violation continues for more than three (3) calendar days after City has given Concessionaire written notice (and this

written notice may be in the form of an email) of the violation; provided, however, after City has given Concessionaire notice of the same violation more than twice during any calendar year, the liquidated damage amount shall be immediately imposed with no opportunity to cure in order to avoid the sanction.

For hours of operations violations, liquidated damages shall be 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 - second occurrence
- \$300 per hour or portion thereof, during which location is not open - third occurrence
- \$1,000 per hour or a portion thereof, during which location is not open – fourth or more occurrences

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

City's failure to impose liquidated damages for any violation of the requirements set forth above shall not waive any right or prohibit City from doing so for subsequent violations. After two (2) violations of the same type in the same Operations Years, City reserves the right, at its sole option, not to impose the liquidated damage and instead seek any other remedies available to it for an event of Default, including termination of this Agreement.

SECTION 12 – NON-DISCRIMINATION

Subsection 12.1 General Civil Rights Provisions. The Concessionaire 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 Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

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

Subsection 12.2 Compliance with Nondiscrimination Requirements. During the performance of this Agreement, the Concessionaire, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: Concessionaire 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 D, and which are herein incorporated by reference and made a part of this Agreement.

- B. Nondiscrimination: Concessionaire, 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. Concessionaire 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.
- C. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Concessionaire 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 Concessionaire of the Concessionaire's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.
- D. Information and Reports: Concessionaire 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 FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the FAA may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.
- F. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

SECTION 13 – IDEMNIFICATION AND INSURANCE

Subsection 13.1 Indemnification. To the fullest extent allowable by law, Concessionaire hereby indemnifies and shall defend and hold harmless, at Concessionaire's expense, City, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Concessionaire, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on City. Concessionaire's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the negligent or willful misconduct of City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as City waiving its statutory limitation and/or immunities as set forth in the applicable Texas Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Concessionaire shall reimburse City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Concessionaire's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

To the extent allowed by law, except for damage or injury caused by the willful or negligent act or omission of Concessionaire, its agents or employees, City shall indemnify, defend and save Concessionaire, its agents, representatives, and employees from any and all lawsuits, claims, loss and damages of any nature whatsoever, including damage to property of any Concessionaire and the injury, including death, of employees, agents, or customers of Concessionaire, arising either directly or indirectly out of any operations of the City hereunder, except lawsuits, claims, loss and damages arising out of the sole negligence of the Concessionaire, their employees, or agents.

Subsection 13.2 Concessionaire to Provide General Liability and Automobile Insurance. Concessionaire shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage;
- B. Automobile Insurance of not less than \$5,000,000 per occurrence;

C. To the extent that Concessionaire employs any employees or as otherwise required by law, Workers' Compensation and Employers' Liability Insurance with Texas statutory limits.

Subsection 13.3 Concessionaire to Provide Property and Fire Insurance. Concessionaire, at its own expense, shall insure all Leasehold Improvements and furnishings, fixtures and equipment for fire, extended coverage, vandalism, and malicious mischief. Such insurance shall be in an amount equal to the full insurable replacement value of such improvements. All property insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder and shall contain a waiver of subrogation provision in favor of the City. Concessionaire and City agree that any payments received by either from such insuring companies by reason of loss under such policy or policies shall be applied toward repair and reconstruction of said Leasehold Improvements and repair or replacement of leasehold improvements, furnishings, fixtures, and equipment.

Subsection 13.4 Both Concessionaire and City to Carry Fire Insurance. It is understood that both Concessionaire and City carry insurance in the form of fire, extended coverage, vandalism, and malicious mischief (hereinafter called "Insurance Coverage") on the leased structural part of the premises, permanent improvements and loss of income, (in the case of City) and on Leasehold Improvements, furniture, furnishings, equipment, inventory and loss of income, (in the case of Concessionaire), and said Insurance Coverage authorizes a waiver of subrogation between City and Concessionaire, and the parties wish to enter into such waiver of subrogation to the extent of the said Insurance Coverage; therefore, to the extent that City collects under its Insurance Coverage, City waives any and all claims against Concessionaire, its agents, servants, and employees, for loss or damage to City's property resulting from risks included in said Insurance Coverage; and, to the extent that Concessionaire collects under its Insurance Coverage, Concessionaire waives any and all claims against City, its agents, servants, and employees, for loss or damage to Concessionaire's property resulting from risks included in said Insurance Coverage. If this waiver by the parties shall render fully any such insurance policy or shall result in the denial of coverage for a party under such policy, then the provision paragraph shall be deemed to be null and void.

Subsection 13.5 Insurance Certificate. A certificate evidencing insurance required by Subsection 13.2 and 13.3, and listing the City of Killeen as additional insured, excluding Workers' Compensation and Property and Fire Insurance, shall be filed with City prior to the commencement of construction, furnishing and equipping of Leasehold Improvements by Concessionaire upon the Leased Premises, and such certificate shall provide that such Insurance Coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. Prior to the expiration of any such policy, a certificate showing that such Insurance Coverage has been renewed shall be filed with City. If such Insurance Coverage is canceled or reduced, Concessionaire shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been

reinstated or provided through another insurance company or companies.

Subsection 13.6 Concessionaire Failure to Provide Certificates. In the event that Concessionaire shall at any time fail to furnish City with the certificate or certificates required under this Section, City, upon written notice to Concessionaire of its intention so to do, shall have the right to obtain the required insurance, at the cost and expense of Concessionaire, and Concessionaire agrees to promptly reimburse City for the cost thereof, plus fifteen percent (15%) thereof for administrative overhead.

SECTION 14 – DAMAGE OR DESTRUCTION OF LEASED PREMISES

Subsection 14.1 Partial Damage. If all or a portion of the Leased Premises is partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered untenable, the same will be repaired with due diligence by City subject to the limitations of Subsection 14.4; provided, however, to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the cost and expenses insured in such repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees.

Subsection 14.2 Extensive Damage. If the damages referred to in Subsection 14.1 shall be so extensive as to render the Terminal Building Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City subject to the limitations of Subsection 14.4; and the charges payable herein for the MAG and Rent under Section 5.1 shall abate from the time of such damage or destruction until such time as the said Leased Premises are fully restored and certified by City's Engineers as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees.

Subsection 14.3 Complete Destruction. In the event the Terminal Building Premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty, or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, City shall undertake the repair, replacement, and reconstruction of said Leased Premises; and charges payable herein for the MAG and Rent under Section 5.1, shall abate as of the time of such damage or destruction until such time as the said Premises are fully restored and certified by City's Executive Director of Aviation as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the costs and expenses incurred in said repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees; provided further, however, if within twelve (12) months after the time of such damage or destruction said Leased Premises shall not have been repaired or reconstructed, Concessionaire may

cancel this Agreement in its entirety. Rents payable for the leased areas in the Terminal Building and/or Ready/Return Block will only abate if the City is unable to provide alternative space for Concessionaire to conduct its business.

Subsection 14.4 Limits of City's Obligations Defined. It is understood that, in the application of the foregoing Subsections, City's obligations shall be limited to repair or reconstruction of the Leased Premises to the same extent and of equal quality as obtained at the commencement of operations hereunder, subject to funding and appropriation. Redecoration and replacement of furniture, fixtures, equipment, and supplies shall be the responsibility of Concessionaire and any such redecoration and refurnishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

SECTION 15 – CANCELLATION

Subsection 15.1 Cancellation by Concessionaire. Concessionaire may cancel this Agreement and terminate all its obligations hereunder upon or after the happening of one or more of the following events and provided that Concessionaire is not in default in the payment of any fees or charges to City:

- A. The abandonment of the Airport as an airline terminal or the removal of all certificated passenger airline service from the Airport for a period of no less than thirty (30) consecutive days.
- B. The inability of Concessionaire to use the Airport for a period of longer than ninety (90) days, because of the issuance of any order, rule, or regulation by any competent governmental authority or court having jurisdiction over Concessionaire or City, preventing Concessionaire from operating its business; provided, however, that such inability or such order, rule, or regulation is not primarily due to any fault of Concessionaire.
- C. The material breach by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such breach for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy the same.

Subsection 15.2 Cancellation by City. City may cancel this Agreement and terminate all of its obligations hereunder at any time that City is not in default, upon or after the happening of any of the following events:

- A. Concessionaire shall file a voluntary petition in bankruptcy; or
- B. Proceedings in bankruptcy shall be instituted against Concessionaire and Concessionaire is thereafter adjudicated bankrupt pursuant to such proceedings; or
- C. A court shall take jurisdiction of Concessionaire and its assets pursuant to

- proceedings brought under the provisions of any federal reorganization act; or
- D. A receiver of Concessionaire's assets shall be appointed; or
 - E. Concessionaire voluntarily abandons its conduct of its business at the Airport for a period of thirty (30) days, except if such is due to a labor strike or labor dispute in which Concessionaire is involved; or
 - F. Any assignment is made by Concessionaire for the benefit of its creditors; or
 - G. The material breach by Concessionaire of any of the covenants or agreements herein contained and the failure of Concessionaire to remedy such breach as hereinafter provided. In this regard it is understood that nonpayment of fees or charges hereunder is a material breach. In the event of such material breach, City shall give to Concessionaire notice in writing to correct such breach and if such breach shall continue for fifteen (15) days after the receipt of such notice by Concessionaire, City may, after the lapse of said fifteen (15) day period, cancel this Agreement, without forfeiture, waiver, or release of City's rights to any sum of money due or to become due under the provisions of this Agreement.
 - H. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as to substantially restrict Concessionaire, for a period of at least thirty (30) days, from its Airport operation.

Subsection 15.3 Termination. Should an early termination of this Agreement occur pursuant to the terms of Subsection 15.2 hereof, City shall have the right to re-enter the Leased Premises, make repairs as necessary, and enter into another agreement for the Leased Premises and privileges, or any part thereof, for the remainder of the term hereof.

Subsection 15.4 Notice of Termination. If any of the events enumerated in Subsections 15.1 and 15.2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

SECTION 16 – NONWAIVER OF RIGHTS

Continued performance by either party hereto pursuant to the terms of this Agreement after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, or observed by the other party hereto shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default; and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

SECTION 17 – SURRENDER OF POSSESSION

Concessionaire shall, upon termination of this Agreement or cancellation, quit and deliver up the Leased Premises and privileges to City peaceably and quietly, with the Leased Premises being in as good order and condition as the same now are or may be hereafter improved by Concessionaire or City, reasonable use, and wear thereof excepted. In addition to any lien provided by Texas law, City shall have a specific lien on all property of Concessionaire, and related equipment on the Leased Premises as security for nonpayment. Concessionaire shall have the right to remove all of its trade fixtures and equipment installed or placed by it at its own expense, in, on or about the Premises; subject however, to any valid lien which City may have thereon for unpaid charges or fees. Provided however, the City will not claim or have a lien of any kind, be it contractual or statutory, on or against Concessionaire's motor vehicles for non-payment of any rent or fees due under the Agreement, or for any default of Concessionaire or any other reason, and the City hereby waives all such liens available to the City.

SECTION 18 – TAXES AND LICENSES

Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder.

SECTION 19 – INSPECTION OF PREMISES

City or its duly authorized representatives, or agents, and other persons for it, may enter upon said Leased Premises at any and all reasonable times during the term of this Agreement for the purpose and conditions hereof or for any other purpose incidental to rights of City.

SECTION 20 – HOLDING OVER

Should Concessionaire holdover said Leased Premises after this Agreement has terminated in any manner, Concessionaire shall continue such holding over only at sufferance to City. In the event of such holding over, Concessionaire shall pay to the City the amounts specified in Subsection 5.1, the amounts being the amounts in effect immediately prior to the commencement of such holdover." All other terms and conditions in such holdover shall be the same as herein provided.

SECTION 21 – QUIET ENJOYMENT

City agrees that Concessionaire, upon payment of the fees and charges and all other payments to be paid by Concessionaire under the terms of this Agreement, and upon observing and keeping the agreements and covenants of this Agreement on the part of Concessionaire to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of this Agreement.

SECTION 22 – NO LIENS

Concessionaire shall pay for all labor done or materials furnished in the repair, replacement, development, or improvement of the Premises by Concessionaire, and shall keep said Leased Premises and Concessionaire's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Concessionaire's act or omission.

SECTION 23 – SECURITY AGREEMENTS

City shall provide, or cause to be provided, during the term of this Agreement, all proper and appropriate public fire, and police protection similar to that afforded to other Landside tenants or licensees at the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Concessionaire shall comply with the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Concessionaire, shall not in any way be construed to limit or reduce the obligations of City hereunder.

SECTION 24 – AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the Killeen - Fort Hood Regional Airport. Should the effect of such Agreement with the United States government be to take any of the property under lease or substantially destroy the commercial value of such improvements, City shall terminate this Agreement.

SECTION 25 – RIGHTS AND PRIVILEGES OF CITY

- A. City shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, which Concessionaire agrees to observe and obey, with respect to the use of the Airport, Airport Terminal Building, and appurtenances, provided that such rules and regulations shall not be inconsistent with safety, current rules and regulations of the FAA, and any future changes prescribed from time to time by the FAA.
- B. The City Manager or designee is hereby designated as its official representative for the enforcement of all provisions in this Agreement with full power to represent City with dealings with Concessionaire in connection with the rights herein granted.

- C. All actions relating to policy determination, modification of this Agreement, termination of this contract, and any similar matters affecting the terms of this Agreement shall emanate from the City Council, their successors or assigns.
- D. The Executive Director of Aviation or designee may enter upon the Leased Premises, now or hereafter leased to Concessionaire hereunder, at any reasonable time, for any purpose necessary, incidental to, or connected with, the performance of its obligations hereunder, or in the exercise of its governmental functions.
- E. City reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, including the Leased Premises and existing vehicle and pedestrian traffic patterns, as the City deems appropriate, regardless of the desires or views of Concessionaire, and without interference or hindrance.
- F. City hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of Killeen - Fort Hood Regional Airport, and the right to pursue all operations of the Killeen - Fort Hood Regional Airport.
- G. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Airport, which, in the opinion of the City, would limit the usefulness of the Airport, or constitute a hazard to aircraft.
- H. City may from time to time increase the size or capacity of any such Public Aircraft Facilities or Passenger Terminal Building or Common Use Portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided notice is given to Concessionaire.
- I. This Agreement at any time may be reopened for renegotiation if Federal Aviation Administration (FAA) Airport Certification (FAR Part 139), Transportation Security Administration (TSA) Security Requirements (49 CFR, Part 1542), or U.S. Army regulations result in major expenditures to City due to Concessionaire's tenancy on the Killeen - Fort Hood Regional Airport. If said renegotiation is desired, written notice must be given to Concessionaire sixty (60) days prior to such renegotiations.
- J. City reserves the right to relocate the Leased Premises upon the completion of any Terminal area remodeling or expansion. City will not be liable for the costs associated with the moving or reinstallation of Concessionaire's equipment. In

the event the City requires a move by the Concessionaire, the City will reimburse actual out-of-pocket costs associated with the relocation as approved in advance subject to a maximum amount as established by the City.

SECTION 26 – ACCESS CONTROL

- A. Concessionaire shall upon termination of this agreement return all issued keys and access cards to City. If all issued keys and access cards are not returned to City at the termination of this Agreement Concessionaire shall pay to City cost to re-core premises locks and cut new keys at the rate set at the time of such re-core and to pay for any lost access cards.
- B. Concessionaire is responsible for all keys and access cards issued to employees of Concessionaire. Concessionaire is responsible to insure every employee that has regular duty at the Airport is submitted for airport electronic access cards appropriate for that employee and that all employee data remains current. The Concessionaire will notify the appropriate representative of the Airport by telephone or other appropriate means as soon as possible following the termination of any employee, but will do so in writing no later than the end of the next working day after the employee's last day of employment at the Airport. The Concessionaire is further responsible for returning the employee's electronic access cards no later than three (3) working days after the last day of employment at the Airport. Any lost electronic access cards must be reported in writing to the Airport's representative as soon as possible, but no later than the end of the next working day from the date of the loss. Concessionaire is responsible for any charges or damages incurred by the use of electronic access cards issued to its employees unless more than 24 hours (excluding weekends and City of Killeen recognized holidays) have passed from the time the Concessionaire provides written notification to the Airport's representative to cancel any access these electronic access cards allow. A monthly fee will be charged for active employee electronic access cards and for lost cards at the current rates adopted by the City.
- C. Concessionaire may not install additional locks or change locks to Leased Premises without the written approval of the Executive Director of Aviation.

SECTION 27 – NO PERSONAL LIABILITY

Under no circumstances shall any trustee, officer, official, commissioner, Director, member, partner, or employee of City have any personal liability arising out of this Agreement, and Concessionaire shall not seek or claim any such personal liability.

SECTION 28 – GOVERNING LAW

This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Texas. Venue for

any action arising out of or in any way related to this Agreement shall be exclusively in Bell County, Texas. Each party waives its right to challenge venue.

SECTION 29 – NOTIFICATION

Concessionaire shall:

- A. As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Concessionaire with respect thereto.
- B. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Concessionaire contained in this Agreement to be untrue.
- C. Notify City, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Concessionaire or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Concessionaire or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Concessionaire or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

SECTION 30 – SEVERABILITY

The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

SECTION 31 – ASSIGNMENT, SUBLET, AND TRANSFER

Concessionaire shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of City, which shall not be unreasonably withheld or delayed. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Concessionaire shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

SECTION 32 – NO WAIVER

The failure of any party to insist, in any one or more instance, upon performance of any

of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

SECTION 33 – CONFLICTS OF INTEREST

Concessionaire covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Concessionaire further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Concessionaire or its employee must be disclosed to City.

SECTION 34 – POLITICAL ACTIVITIES

Concessionaire shall not engage in any political activities while in performance of any and all services and work under this Agreement.

SECTION 35 – ENTIRE AND SUPERSEDING AGREEMENT

This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions, and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of City, granting approvals or conditions attendant with such approval, the specific action of City shall be deemed controlling.

SECTION 36 – AMENDMENT

This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

SECTION 37 – TIME COMPUTATION

Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

SECTION 38 – NOTICES

NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Killeen - Fort Hood Regional Airport Attn: Executive Director of Aviation 8101 S. Clear Creek Rd, Box C Killeen, TX 76549	Copy to: Attn. City Attorney City of Killeen 101 N. College St., 1 st Floor Killeen, TX 76541
--------------	--	---

To the Concessionaire: EAN Holdings, LLC d/b/a Alamo Rent A Car
 and National Car Rental
 4210 South Congress Avenue
 Austin, TX 78745

The parties may designate other addresses from time to time in writing. Concessionaire must provide a valid new address for notices within ten (10) days if the above address becomes invalid.

SECTION 39 – CONSTRUCTION

This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

SECTION 40 – NO THIRD PARTY BENEFICIARY

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

SECTION 41 – COMPLIANCE WITH LAW

The parties shall comply in all material respects with any and all applicable federal, state, and local laws, regulations, and ordinances.

SECTION 42 – FORCE MAJEURE

City shall not be responsible to Concessionaire and Concessionaire shall not be responsible to City for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

SECTION 43 – GOOD STANDING

Concessionaire affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Texas and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Concessionaire is duly licensed or qualified to do business and is in good standing in the State of Texas and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

SECTION 44 – INDEPENDENT CONTRACTORS

The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

SECTION 45 – GOVERNMENTAL APPROVALS

Concessionaire acknowledges that various of the specific undertakings of City described in this Agreement may require approvals from the City of Killeen City Council, City of Killeen bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Concessionaire further acknowledges that this Agreement is subject to appropriation by the Killeen City Council. City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. City cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

SECTION 46 – AUTHORITY

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

SECTION 47 – COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

SECTION 48 – SURVIVAL

All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

SECTION 49 – MORE FAVORABLE TERMS

In the event the City shall enter into any lease or agreement with any other rental car operator within the Airline Terminal building, that agreement will not contain more favorable terms than this Agreement, unless the same rights, privileges, and more favorable terms are concurrently made available to Concessionaire.

SECTION 50 – ENVIRONMENTAL

Subsection 50.1 Disposal, Use and Storage of Hazardous Materials. Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except:

- A. Concessionaire may store and use Hazardous Materials on the Leased Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Agreement. Storage shall be in an approved Hazardous Materials cabinet or storage container. Concessionaire shall provide Executive Director of Aviation with a copy of any application for a permit for use or storage of Hazardous Materials on the Leased Premises from any regulatory agency responsible for enforcement of Environmental Laws, and shall also a copy of any permit received from such agency; and
- B. Concessionaire may use Hazardous Materials on the Airport other than the Leased Premises only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds

and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement.

Subsection 50.2 Liability. Concessionaire shall be solely and fully responsible and liable for:

- A. Storage, use or disposal of Hazardous Materials on the Leased Premises or the Airport, by Concessionaire, Concessionaire's officers, agents, employees, or contractors,
- B. Any Hazardous Material release which is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, or contractors on the Leased Premises or the Airport.

Subsection 50.3 Prevention of Release. Concessionaire shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Leased Premises or the Airport, including, but not limited to any release into soil, groundwater, or City's sewage or storm drainage system.

Subsection 50.4 Obligation to Investigate and Remediate. Concessionaire, at Concessionaire's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:

- A. Any release or threat of release of Hazardous Material on the Leased Premises or the Airport, including, but not limited to, into soil or groundwater, or City's sewage or storm drainage system which was caused or results in whole or in part from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees; except that Concessionaire shall have no responsibility for any release or threat of release of Hazardous Material which Concessionaire establishes was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees by any third party, or by migration of Hazardous Materials onto the premises from a specifically identifiable source off the use premises. In addition to all other rights and remedies of City hereunder, if Concessionaire does not promptly commence, and diligently pursue to remediate, to the extent required, any such release, or threat of release, of Hazardous Materials for which it has responsibility under this section, City, in its discretion, may pay to have same remediated and Concessionaire shall reimburse City plus a fifteen percent administration fee within fifteen (15) business days of City's demand for payment. The failure to commence investigation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or threat of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that expense was incurred by City.

Subsection 50.5 Records and Inspections.

- A. Concessionaire will maintain a chemical inventory list and material safety data sheets of hazardous materials stored on site in accordance with state and federal regulations. The Concessionaire will also maintain manifests for all hazardous or regulated wastes transported and disposed of off-site.
- B. Upon reasonable notice by City, Concessionaire shall make available for review by City such records pertaining to the use, handling and disposal of any Hazardous Material(s) as Concessionaire is required to maintain under this section.
- C. City shall have the right, under the terms hereof, and upon reasonable notice for exclusive use space, to enter the Leased Premises during the Term hereof to conduct periodic environmental inspections and testing. City shall conduct each inspection or test in a manner that does not unreasonably interfere with Concessionaire's operations.

Subsection 50.6 Concessionaire Obligations upon Termination. Prior to vacating the Leased Premises, and in addition to all other requirements under this Agreement, Concessionaire shall remove any containers of Hazardous Materials placed on the Leased Premises during the Term by Concessionaire or as a result of Concessionaire's use or occupancy of the Leased Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws, including without limitation conducting any environmental audits as may be required by City.

Subsection 50.7 Storm Water.

- A. Notwithstanding any other provisions or terms of this Agreement, Concessionaire acknowledges that certain properties within the Airport, or on City-owned land, are subject to storm water rules and regulations. Concessionaire agrees to observe and abide by such storm water rules and regulations as may be applicable to City's property and Concessionaire's uses thereof.
- B. Concessionaire acknowledges that any storm water discharge permit issued to City may name Concessionaire as a co-permittee. City and Concessionaire both acknowledge that close cooperation is necessary to insure compliance with any storm water discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Concessionaire acknowledges further that it may be necessary to undertake such actions to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by Concessionaire, as such term may be

defined by applicable storm water rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable storm water rules and regulations.

- C. City will provide Concessionaire with written notice of any storm water discharge permit requirements applicable to Concessionaire and with which Concessionaire will be obligated to comply from time-to-time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Concessionaire agrees that within thirty (30) days of receipt of such written notice it shall notify City in writing if it disputes any of the storm water permit requirements it is being directed to undertake. If Concessionaire does not provide such timely notice, Concessionaire will be deemed to assent to undertake such storm water permit requirements. In that event, Concessionaire agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Concessionaire, those storm water permit requirements for which it has received written notice from City, and Concessionaire agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements.

SECTION 51 – CONTRACT VERIFICATION

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on this ____ day of November, 2023.

ATTEST:

CITY OF KILLEEN:

Laura Calcote
City Secretary

Kent Cagle
City Manager

ATTEST:

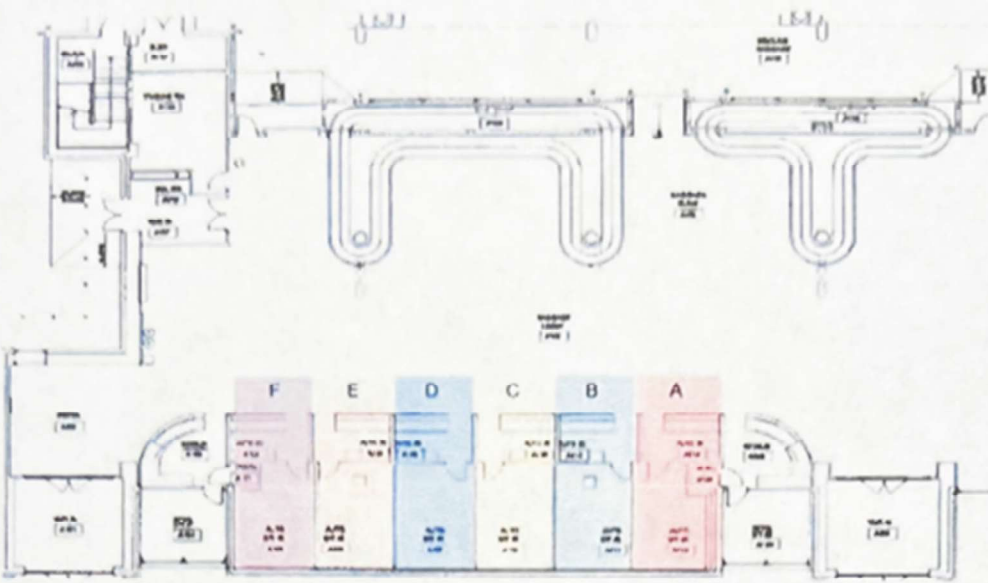
CONCESSIONAIRE:

(Signature of signing authority)

(Printed Name of signing authority)

(Title)

EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS



Space	Office	Counter Area	Queuing	Total Square Footage	Counter Length
A	199	107	102	408	12' 9"
B	232	109	103	444	12' 10"
C	232	109	103	444	12' 10"
D	232	109	103	444	12' 10"
E	232	109	103	444	12' 10"
F	199	104	102	405	12' 9"

Acknowledged By:

Space A Selected By: Avis / Budget 11/1/23
Date

Space C Selected By: Hertz / Dollar 11/2/2023
Date

Space D Selected By: Enterprise 10/31/23
Date

Space E Selected By: Alamo / National 10/31/23
Date

Space B and Space F were not selected.

EXHIBIT A2 - READY/RETURN BLOCKS AND SERVICE BAYS

Blocks:

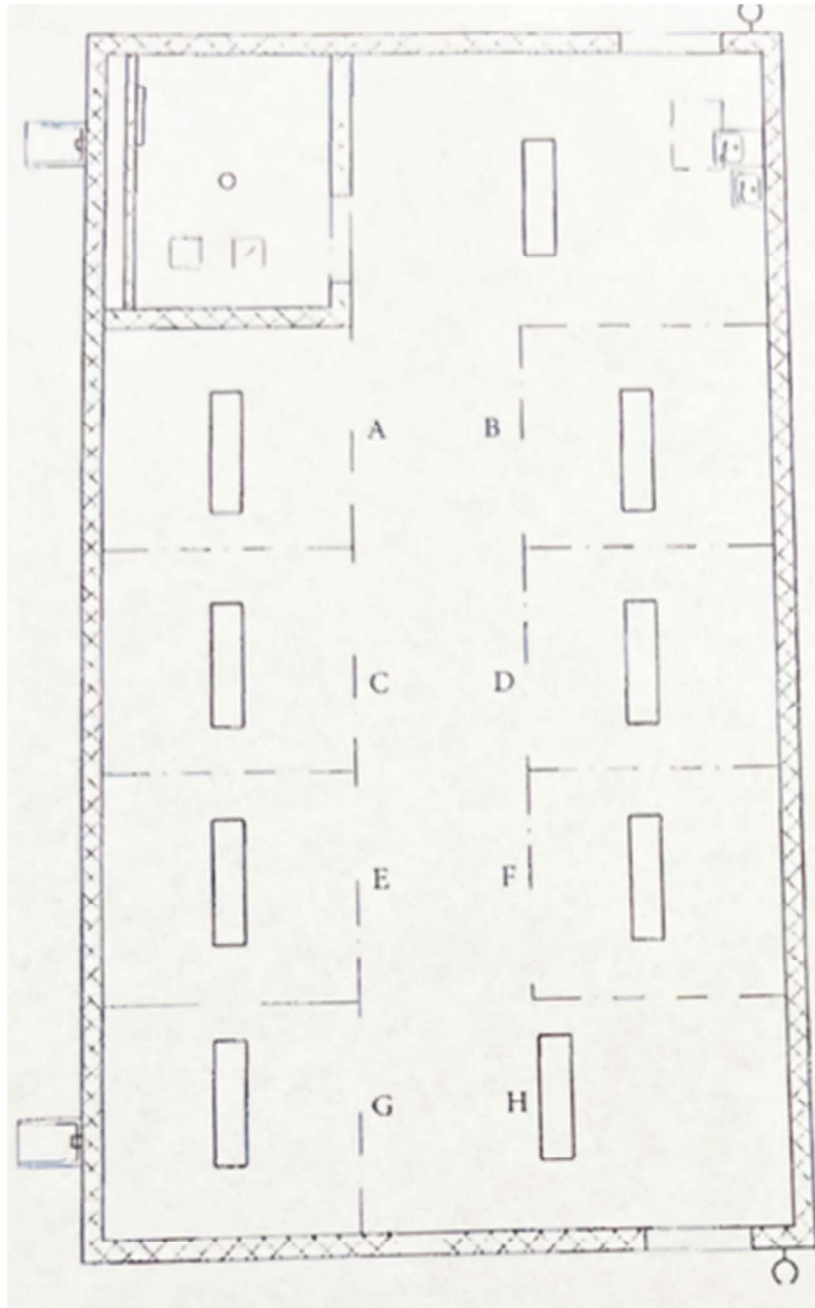
- RR-2 = 36 spaces
- RR-3 = 36 spaces
- RR-4 = 36 spaces

← Terminal Building

Space RR-3 and SB-5 Selected By: Enterprise	<p>Acknowledged By: <i>[Signature]</i></p> <p>GAN Holdings LLC</p>	<p>11/2/23</p> <p>Date</p>
Space RR-2 and SB-2 Selected By: Avis / Budget	<p><i>[Signature]</i></p> <p>Avis Budget Car Rental LLC</p>	<p>11/1/23</p> <p>Date</p>
Space RR-4 and SB-3 Selected By: Hertz / Dollar	<p><i>[Signature]</i></p> <p>The Hertz Corporation</p>	<p>11/2/2023</p> <p>Date</p>
Space RR-1 and SB-4 Selected By: Alamo / National	<p><i>[Signature]</i></p> <p>GAN Holdings LLC</p>	<p>10/31/23</p> <p>Date</p>

SB-1 and SB-6 were not selected.

EXHIBIT A3 – STORAGE AREA



Acknowledged By: *[Signature]* Date 11/2/2023
The Hertz Corporation
[Signature] Date 11/1/23
Avis Budget Car Rental LLC

Cage A Selected By: Hertz / Dollar
Cage D Selected By: Avis / Budget
Cages B, C, E, F, G, and H were not selected.

EXHIBIT A4 – OVERFLOW PARKING LANES

RENTAL CAR OVERFLOW PARKING LOT

27 – LANES
Each lane 8'6" x 85'

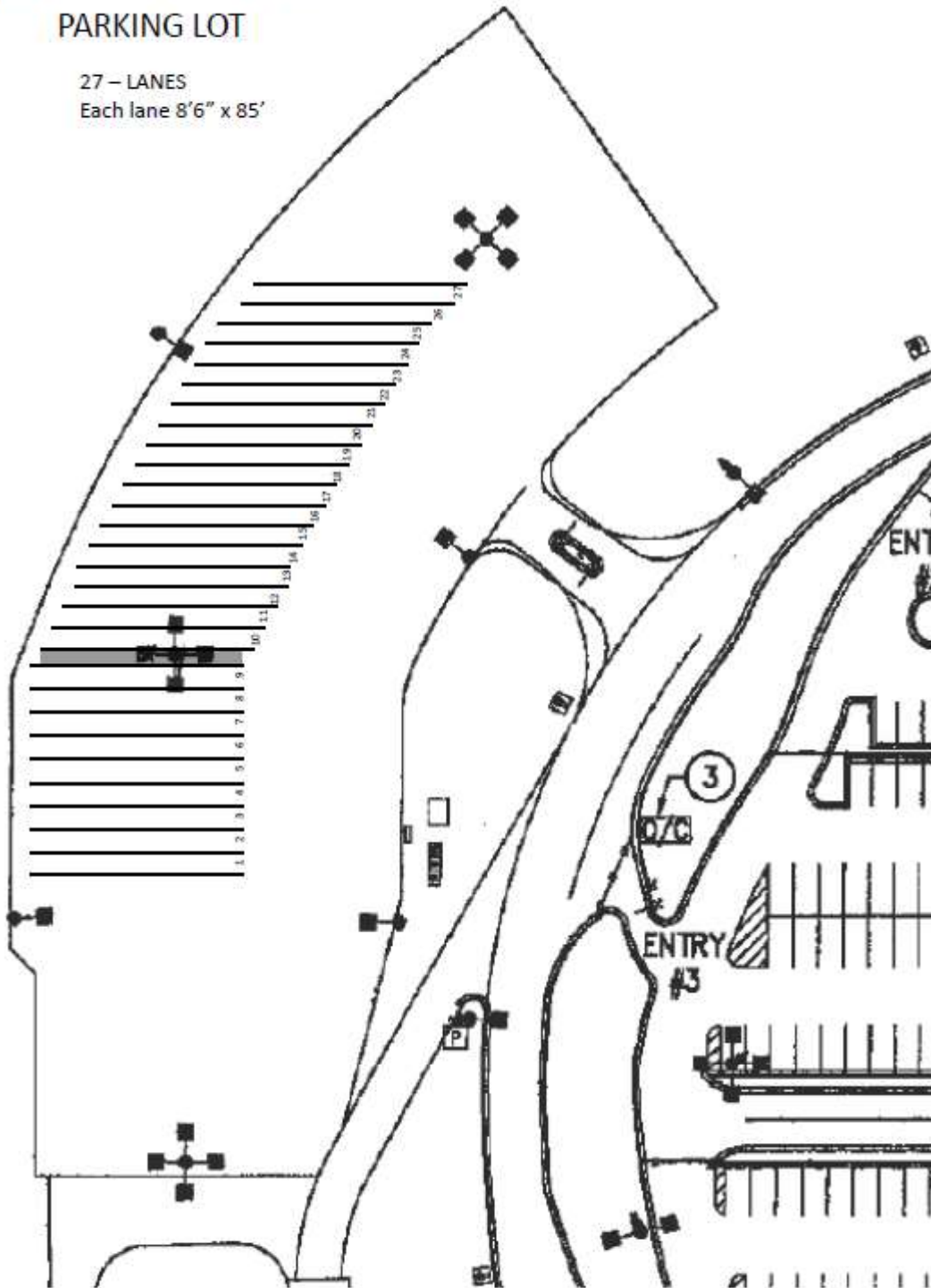


EXHIBIT B – Sample Monthly Reporting Form

KILLEEN – FORT HOOD REGIONAL AIRPORT

RENTAL CAR MONTHLY REPORT OF GROSS REVENUES

FOR MONTH OF _____

Concessionaire Name: _____

Address: _____

City, State, Zip: _____

Contact Name: _____

Phone # _____

GROSS RENTAL REVENUE: _____

Airport Fee (10%) _____

Less Monthly Guarantee paid 1st of month: _____

(1) Privilege Fee Balance Due: _____

Number of Transaction: _____

Number of Transaction Days: _____

(2) CFC Due (@ \$3.00 per Transaction Day): _____

Amount Due with this report (1) +(2): \$ _____

Concessionaire Official Signing and Certifying accuracy of Information on this report:

Signature _____

Typed Name & Title _____

Date signed _____

REMIT THIS FORM AND PAYMENT TO: City of Killeen Finance Department
Attn: Accounts Receivable
P.O. Box 1329
Killeen, TX 76540

EXHIBIT C – Sample ACDBE Reporting Form

KILLEEN – FORT HOOD REGIONAL AIRPORT ACDBE PROGRAM TRACKING FORM Tracking for Airport Concessionaires ACDBE products and/or services payments *Information required in accordance with 49 CFR §23*

☐ Check here for Rental Car Concessions ☐ Check here for Other-than-Rental Car Concessions

Name of GRK Airport Concessionaire: _____ Concessionaire Prime Point of Contact: _____

Lease Agreement Date: _____ Lease Renewal Date: _____

Current Reporting Period (Fiscal Year): _____ Quarter (Current Year): _____ Amount paid to ACDBE during this time period: _____

Certified ACDBE Vendor Name: _____ Contact Email: _____

Address: _____ NAICS Code(s): _____

Goods / Service category: _____ NAICS Code(s): _____

ACDBE category (BLK/HISP/NAAM/WMN, etc.): _____

Description of goods or services provided by the certified ACDBE firm (examples include vehicle repairs, auto parts, insurance, baked goods, beverages, gifts, novelties, restaurant supplies, etc.): _____

☐ Check here if goods or services procured from the ACDBE are only a one-time transaction

☐ Check here if goods or services procured from the ACDBE are part of an on-going contract or agreement

☐ Check here if the ACDBE firm's Texas certification has been confirmed and/or verified

Total amount paid to ACDBE Provider to date this calendar year: _____

☐ Check if payments to ACDBE has been made promptly (within 30 days of completed delivery of goods or services).

As the authorized representative of the above Concessionaire, I state that, the above information is accurate and the amounts were paid in accordance to lease or contractual obligations, and that documentation of these payments, any canceled checks, or supporting information is available within 5 businessdays of request.

GRK Concessionaire 's Authorized Representative: _____ Title: _____

Signature: _____ Email address: _____ Date: _____

GRK ACDBE Form 8-2022

KILLEEN – FORT HOOD REGIONAL AIRPORT ACDBE PROGRAM TRACKING FORM
Tracking for Airport Concessionaires ACDBE products and/or services payments
Information required in accordance with 49 CFR §23

This section to be completed by the authorized GRK ACDBE TEAM only:

GRK ACDBE Specialist:	_____
Signature:	_____
Date Received:	_____
Comments:	_____

Instructions: Use additional sheets as needed.

ACDBE Category acronyms:

BLK = Black Americans

HISP = Hispanic Americans

NAAM = Native Americans

WMN = Women

ASPA = Asian-Pacific Americans

SAAM = Subcontinent Asian Americans

OTH = Others

A firm's ACDBE certification can be verified by searching the following database: <https://txdot.txdotcms.com>

EXHIBIT D – Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the “Concessionaire”) 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).

CONCESSION AGREEMENT

NON-EXCLUSIVE RENTAL CAR CONCESSION

Killeen - Fort Hood Regional Airport
Killeen, Texas

between

Killeen - Fort Hood Regional Airport
City of Killeen, Texas

and

The Hertz Corporation dba Hertz and Dollar Rent A Car
Concessionaire

<u>Section</u>	<u>Page</u>
DEFINITIONS	5
SECTION 1 – LEASED PREMISES.....	8
SECTION 2 – TERM	8
SECTION 3 – USES, PRIVILEGES, COBRANDING AND OBLIGATIONS	8
SECTION 4 – RESTRICTIONS ON USES AND PRIVILEGES.....	10
SECTION 5 – PRIVILEGE FEE, RENTS, FEES AND ACCOUNTING RECORDS.....	11
Subsection 5.1 Privilege Fee, Rent and Fees.	11
Subsection 5.2 Statements, Books, and Records; Delinquent Rentals.	15
Subsection 5.3 Audit.....	16
SECTION 6 – INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES	16
Subsection 6.1 Building Services	16
Subsection 6.2 Approval of Plans and Specifications; Provision of Drawings.....	17
SECTION 7 – TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.	18
Subsection 7.1 Title.....	18
Subsection 7.2 Structural Alterations.....	18
Subsection 7.3 Alterations and Improvements to Airport.....	18
Subsection 7.4 Removal and Demolition.....	19
SECTION 8 – MAINTENANCE OF PREMISES AND UTILITIES.....	19
Subsection 8.1 Airport Maintenance Obligations.....	19
Subsection 8.2 Concessionaire's Maintenance Obligations.	20
Subsection 8.3 Utilities.	21
SECTION 9 – LIENS, PAYMENT, AND PERFORMANCE BONDS.....	21
Subsection 9.1 Construction Surety Bond.....	21
Subsection 9.2 Security.....	22
SECTION 10 – OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES	22
Subsection 10.1 Hours of Operation.....	22

Subsection 10.2 Delivery of Goods.	22
SECTION 11 – QUALITY AND CHARACTER OF SERVICE.....	22
Subsection 11.1 Type of Operation.	22
Subsection 11.2 Services to the General Public.....	22
Subsection 11.3 Additional Compliance.	22
Subsection 11.4 Personnel.....	23
Subsection 11.5 Operations Violations.....	23
SECTION 12 – NON-DISCRIMINATION.....	24
Subsection 12.1 General Civil Rights Provisions.....	24
Subsection 12.2 Compliance with Nondiscrimination Requirements.....	24
SECTION 13 – IDEMNIFICATION AND INSURANCE.....	26
Subsection 13.1 Indemnification.....	26
Subsection 13.2 Concessionaire to Provide General Liability and Automobile Insurance.	26
Subsection 13.3 Concessionaire to Provide Property and Fire Insurance.....	27
Subsection 13.4 Both Concessionaire and City to Carry Fire Insurance.	27
Subsection 13.5 Insurance Certificate.....	27
Subsection 13.6 Concessionaire Failure to Provide Certificates.	28
SECTION 14 – DAMAGE OR DESTRUCTION OF LEASED PREMISES	28
Subsection 14.1 Partial Damage.	28
Subsection 14.2 Extensive Damage.....	28
Subsection 14.3 Complete Destruction.	28
Subsection 14.4 Limits of City's Obligations Defined.....	29
SECTION 15 – CANCELLATION	29
Subsection 15.1 Cancellation by Concessionaire.....	29
Subsection 15.2 Cancellation by City.	29
Subsection 15.3 Termination.....	30
Subsection 15.4 Notice of Termination.....	30
SECTION 16 – NONWAIVER OF RIGHTS	30
SECTION 17 – SURRENDER OF POSSESSION	31

SECTION 18 – TAXES AND LICENSES	31
SECTION 19 – INSPECTION OF PREMISES	31
SECTION 20 – HOLDING OVER	31
SECTION 21 – QUIET ENJOYMENT	31
SECTION 22 – NO LIENS.....	32
SECTION 23 – SECURITY AGREEMENTS	32
SECTION 24 – AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES	32
SECTION 25 – RIGHTS AND PRIVILEGES OF CITY	32
SECTION 26 – ACCESS CONTROL	34
SECTION 27 – NO PERSONAL LIABILITY	34
SECTION 28 – GOVERNING LAW.....	34
SECTION 29 – NOTIFICATION	35
SECTION 30 – SEVERABILITY	35
SECTION 31 – ASSIGNMENT, SUBLET, AND TRANSFER	35
SECTION 32 – NO WAIVER.....	35
SECTION 33 – CONFLICTS OF INTEREST	36
SECTION 34 – POLITICAL ACTIVITIES.....	36
SECTION 35 – ENTIRE AND SUPERSEDING AGREEMENT	36
SECTION 36 – AMENDMENT	36
SECTION 37 – TIME COMPUTATION	36
SECTION 38 – NOTICES	37
SECTION 39 – CONSTRUCTION.....	37
SECTION 40 – NO THIRD PARTY BENEFICIARY	37
SECTION 41 – COMPLIANCE WITH LAW	37
SECTION 42 – FORCE MAJEURE.....	38
SECTION 43 – GOOD STANDING	38
SECTION 44 – INDEPENDENT CONTRACTORS	38
SECTION 45 – GOVERNMENTAL APPROVALS.....	38
SECTION 46 – AUTHORITY.....	39

SECTION 47 – COUNTERPARTS.....	39
SECTION 48 – SURVIVAL.....	39
SECTION 49 – MORE FAVORABLE TERMS.....	39
SECTION 50 – ENVIRONMENTAL.....	39
SECTION 51 – CONTRACT VERIFICATION	42
EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS	44
EXHIBIT A2 - READY/RETURN BLOCKS AND SERVICE BAYS	45
EXHIBIT A3 – STORAGE AREA.....	46
EXHIBIT A4 – OVERFLOW PARKING LANES.....	47
EXHIBIT B – Sample Monthly Reporting Form	48
EXHIBIT C – Sample ACDBE Reporting Form	49
EXHIBIT D – Title VI List of Pertinent Nondiscrimination Acts and Authorities.....	51

RENTAL CAR CONCESSION
Killeen - Fort Hood Regional Airport
Killeen, Texas

THIS CONCESSION AGREEMENT ("**Agreement**"), made and entered into this ____ day of November, 2023, by and between the City of Killeen (the "**City**"), a municipal corporation and existing under the laws of the State of Texas, whose address is 8101 S. Clear Creek Rd, Box C, Killeen, Texas 76549, hereinafter referred to as "City" and The Hertz Corporation operating as Hertz and Dollar Rent A Car, (hereinafter referred to as "**Concessionaire**"), a corporation with its office and address being 8501 Williams Road, Estero, FL 33928, with a mailing address of 8501 Williams Road, Estero, FL 33928.

WITNESSETH:

WHEREAS City controls, owns, operates, and maintains an airport in the City of Killeen, County of Bell, State of Texas, known as Killeen - Fort Hood Regional Airport (hereinafter referred to as "Airport"), and has the power to grant rights and privileges with respect thereto, and

WHEREAS, the City has determined it to be in the best interests of the public and the City to enter into this Agreement with Concessionaire to provide rental car concession services at the Airport pursuant and subject to the terms and conditions hereunder,

NOW, THEREFORE, THE PARTIES AGREE:

DEFINITIONS

The following terms and phrases shall have the following meanings for purposes of this Agreement:

1. "ACDBE" shall mean airport concession disadvantaged business enterprise as that term is defined by 49 CFR Part 23.
2. "City" shall mean the municipal corporation existing under the laws of the State of Texas which controls, operates, and maintains the Killeen - Fort Hood Regional Airport.
3. "Environmental Law" shall mean any federal, state, or local law, rule, regulation, order, or requirement relating to protection of human health and safety or the environment.
4. "Executive Director of Aviation" shall mean the Executive Director of Aviation of the City's Airport, or his or her designee.
5. "Gross Revenues" as used herein shall mean, as determined in the reasonable discretion of the City, all amounts charged to its customers by Concessionaire for or in connection with agreements it secures through its operations and business at the

Airport, regardless of whether such amount is actually paid to or received by Concessionaire. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Concessionaire 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 Concessionaire'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 Concessionaire'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 Concessionaire 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:

- Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Concessionaire's operations which are separately stated on customers' rental contracts and collected from customers of Concessionaire;
- Those fees referred to in this Agreement as Customer Facility Charges, "CFCs" which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City Resolution, as may be amended;
- Amounts received specifically for the actual loss of or damages of vehicles or other property of Concessionaire;
- 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 Concessionaire's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and
- Reimbursements for amounts actually paid for speeding tickets, parking tickets, red light tickets, tolls, and toll violations, and towing and impound fees from its customers to pass through without markup to an independent third party with no amount being retained by Concessionaire. However, any amounts collected above the pass-through amount shall be included as

Gross Revenue under this Agreement.

6. "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, and includes any material or substance identified, listed, or defined as a "hazardous waste" "hazardous substance," or "pollutant" or "contaminant" or term of similar import, or is otherwise regulated pursuant to Environmental Laws, including any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.
7. "Leasehold Improvements" shall mean all improvements and equipment which are affixed to the Leased Premises, and which cannot be removed without material damage to the Premises.
8. "Operations Year" shall mean January 1 through December 31 annually.
9. "Personal Property" shall mean all movable property of the Concessionaire not directly related to the rental car operations of the privileges granted hereunder, including, office furniture, office equipment, and office supplies.
10. "Refurbish" or "Refurbishment" shall mean the routine repainting or redecoration of public areas within the Leased Premises, as necessary, including the replacement or repair of worn carpet, tile, furniture, or furnishings.
11. "Rental Car" or "Motor Vehicles" shall mean motor vehicles designed primarily for the carriage of passengers and commonly classified as sedans, coupes, convertibles, four-wheel drive vehicles, passenger vans, sport utility vehicles, and pick-up trucks rated one-ton or less.
12. "Terminal Building" shall mean the terminal building at the Airport.
13. "Trade Fixtures" shall mean all non-affixed items, except expendables and Personal Property, which can be removed without damage to the Leased Premises, including cash registers, safes, patron tables and chairs, display fixtures, and the like.
14. "Transaction" shall mean the execution of an agreement or contract for the rental of a Motor Vehicle; or the payment of funds or completion of a cash or credit transaction for payment for rental of a Motor Vehicle; or delivery of a Motor Vehicle to a customer for use in exchange for cash, credit, or any other consideration.
15. "Transaction Day" shall mean each twenty-four (24) hour period or portion thereof, for which a customer of a Rental Car concessionaire rents, or otherwise enters into a similar arrangement for the use of a Motor Vehicle and for which the Rental Car concessionaire collects revenue from the customer. Late returns (after twenty-four (24) hours) shall be considered a Transaction Day.

SECTION 1 – LEASED PREMISES

- A. City hereby leases to Concessionaire and Concessionaire hereby agrees to lease from City the following premises, which, collectively, are hereinafter called the "Leased Premises": Four Hundred and Forty-Four (444) square feet of counter/office/queuing area "C" in the terminal building, Block "RR-4" the ready return area containing approximately thirty-six (36) ready/return parking spaces outside and adjacent to the terminal building, Service Bays "1" and "3" and the associated queuing lane, and Storage Cage "A". Said Leased Premises is more particularly shown on **Exhibits A1, A2, and A3** attached hereto and by this reference made a part hereof.
- B. Concessionaire agrees that its Leased Premises have been inspected by Concessionaire and are accepted and will be occupied by Concessionaire on an "as is" basis. The Concessionaire specifically waives any covenants or warranties regarding the Premises, including but not limited to any warranty of suitability and warranty of fitness.

SECTION 2 – TERM

The term of this Agreement is for a five (5) year period commencing on January 1, 2024, and terminating on December 31, 2028, unless sooner terminated or canceled as hereinafter provided.

SECTION 3 – USES, PRIVILEGES, COBRANDING AND OBLIGATIONS

Concessionaire shall have the following uses, privileges, and obligations in connection with its use of the Leased Premises:

- A. The non-exclusive right, privilege, and obligation to conduct and operate a rental car, van or truck rental concession at the Airport including all necessary and ancillary services customarily associated with car rental concessions at public airports within the United States of America or airport of similar size and capacity. Concessionaire 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 thirty-five (35)) to meet all reasonably foreseeable demands of the traveling public. Co-Branding by Concessionaire is limited to two brands per concession space specifically those listed in their submitted proposal. It being understood that no more than two brands under rental car agencies who are owned by the same parent company may operate from any one concession space during the term of this agreement. Concessionaire understands and agrees that it shall not engage in any other business on the Airport under this Agreement.
- B. The right, privilege, and obligation to rent and check-in rental vehicles, including the right to offer for sale related collision damage waiver protection, personal injury

and accident insurance, personal effects insurance, and such other travel or vehicle related coverage offered in connection with and incidental to the rental of a vehicle and occupy operations office, storage, and Ready and Return car parking spaces. It is the intent of this Agreement that rental car customers of Concessionaire will operate the vehicle rented only from the ready spaces provided herein, and Concessionaire shall not engage in customer shuttle operations of any kind to, from, or on the Airport. This does not prohibit the picking up of a customer from the Fixed Base Operator (FBO). No trucks larger than one-ton pickup type/style will be allowed in the ready lot unless approved in writing in advance by the Executive Director of Aviation. Concessionaire shall not park, store, or rent from Premises any vehicles except Motor Vehicles as defined herein that it owns or rents and are properly available for rental as provided herein.

- C. The non-exclusive right and privilege to wash vehicles rented by Concessionaire under the provisions of this Agreement in the City's car wash.
- D. The right and privilege to service vehicles rented by the Concessionaire under the provisions of this Agreement in the service bay identified in Section 1. Concessionaire shall use the service bay for the following activities only: vehicle automated and hand washing, cleaning, fluid replacement, vacuuming, and related activities as are necessary for preparing its vehicles for rental. No washing or vehicle maintenance may be conducted in the rental car parking lot or overflow parking areas.
- E. The right of ingress and egress to and from the Premises, over Airport roadways, are subject to such reasonable rules and regulations as may be established by Airport as respecting such use and subject to law.
- F. Concessionaire shall install no signs on or about the Premises without the prior written approval of the Executive Director of Aviation, said approval being solely discretionary with the Executive Director of Aviation. For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising or promotions, photographs, art displays, and the like. Such signs shall be substantially uniform in size, types, and location with those of other concessionaries, and subject to Executive Director of Aviation's approval, Rules, and Regulations, and in compliance with all applicable laws and resolutions. No temporary signs or displays shall be permitted on the backwall or the counter surfaces without the prior written approval of the Executive Director of Aviation. Handwritten, or hand lettered signs are prohibited. Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Executive Director of Aviation.
- G. The right for Concessionaire's employees, in common with other employees of tenants of the Terminal Building, to use vehicular parking space provided by City, subject to the payment of reasonable charges therefore, as set by the City.

Employee parking shall only be allowed in those areas designated by the Airport. Concessionaire employees shall not park personal vehicles in the Leased Premises.

H. Airport Concession Disadvantaged Business Enterprise Program

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulation 49 CFR Parts 23 related to the airport concession disadvantaged business enterprises (ACDBE) program. The concessionaire or contractor 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.
 2. The concessionaire or contractor 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 businesses to similarly include the statements in further agreements.
 3. Each year Concessionaire no later January 10th shall provide to City the following annual ACDBE information: the name and address of each certified ACDBE with which it has done business during the past federal fiscal year (October 1 – September 30), a description of the nature of the services performed by and/or items purchased from each firm named, and the dollar value of each transaction. The ACDBE must be certified by the Texas Unified Certification Program. A sample reporting form is provided as Exhibit C. Concessionaire may use the sample report provided or a form of similar level of detail satisfactory to the City.
- I. Compliance with Federal Aviation Regulations, 14 CFR Part 139, and Transportation Security Administration security requirements 49 CFR Part 1542. Concessionaire agrees to comply with Federal Aviation Regulations, and 1542 (Airport Security), U.S. Army requirements, and the City's policies as outlined in City's approved Operations Plan and Airport Security Plan. Concessionaire further agrees that any fines levied upon the City or Concessionaire through enforcement of these regulations because of acts by Concessionaire's employees, agents, suppliers, guests, or patrons shall be borne by Concessionaire to the extent said acts contributed to said fines.

SECTION 4 – RESTRICTIONS ON USES AND PRIVILEGES

The Leased Premises shall be used only for the purposes specified in this Agreement. Concessionaire understands and agrees that City has the right to grant up to five additional privileges under separate agreements for in-terminal rental car operations to other companies.

Prohibited Activities at the service bay include:

- A. Concessionaire shall not utilize the service bay for vehicle storage other than vehicles for rent in the process of being serviced.
- B. Concessionaire shall not utilize the service bay for any maintenance or for the storage of damaged vehicles.
- C. Concessionaire shall not allow its customers or the general public to enter the service bay.
- D. Concessionaire shall not permit its employees to vacuum, wash or fuel their personal vehicles or vehicles not part of the Concessionaire's fleet at the service bay or fueling area.

SECTION 5 – PRIVILEGE FEE, RENTS, FEES AND ACCOUNTING RECORDS

Subsection 5.1 Privilege Fee, Rent and Fees.

- A. **Privilege Fee.** As consideration for the privilege of operating the concession hereunder, Concessionaire shall pay to City each Operations Year, for the full term of this Agreement, a Privilege Fee. Said Privilege Fee shall be the greater of either the guaranteed Minimum Annual Privilege Fee or the Percentage Fee applicable to Gross Revenue, hereinafter defined, as follows:

- 1. Privilege Fee – the greater of either:
 - a. ten percent (10%) of the Concessionaire's annual Gross Revenues ("Percentage Privilege Fee");

OR

- b. the respective yearly amount shown below as the Concessionaire's Minimum Annual Guaranteed fee ("MAG"):

January 1, 2024, to December 31, 2024	\$ 144,280.00
January 1, 2025, to December 31, 2025	\$ 144,281.00
January 1, 2026, to December 31, 2026	\$ 144,282.00
January 1, 2027, to December 31, 2027	\$ 144,283.00
January 1, 2028, to December 31, 2028	\$ 144,284.00

- 2. Monthly payment shall be the greater of 1/12th of the respective year's MAG or 10% of reported gross revenues for the previous month. The MAG payment shall be paid in advance on the first (1st) day of each month during each Operations Year, until such time as the Concessionaire has paid to the Airport an amount equal to the respective annual MAG identified in Section 5.1(A)(1)(b) above. On or before the 20th of each month the

Concessionaire shall provide the Airport with: i) a signed and certified Report of Gross Revenues for the preceding month and ii) payment of any percentage Privilege Fee shown to be due for the preceding month, as designated on Exhibit B, attached hereto, and made a part hereof. Once the sum of Privilege Fee payments remitted has reached the MAG in any given Operations Year, the Concessionaire may cease remittance of the 1/12th of the respective year's MAG on the first (1st) day of each month for the remainder of that Operations Year. The Concessionaire shall continue to report and remit each and every month after the annual MAG has been reached the full 10% of reported gross revenues for the previous month.

3. In any Operations Year where the total deplanements at the Airport decline by 15% or more as compared to the prior Operations Year, the Concessionaire's MAG for such Operations Year shall be reduced proportionate to the decline in deplanements as part of the year end reconciliation process. Where the City reasonably determines during any Operations Year that a MAG reduction is likely, the City may waive the Concessionaire's obligations to remit the monthly 1/12th MAG installment payments for any period of time the City deems appropriate in its sole discretion, but Concessionaire shall continue to remit the Percentage Privilege Fee each month regardless.
4. Concessionaire acknowledges that Privilege Fee payments by Concessionaire to City under this Agreement are for Concessionaire's privilege to use the Airport facilities and access the Airport market and are not fees imposed by City upon Concessionaire's customers. City does not require, but will not prohibit, a separate statement of and charge for the Privilege Fee on customer invoices or rental agreements ("Recovery Fee"), provided that such Recovery Fee meets all of the following conditions: (a) such Recovery Fee must be titled "Concession Recovery Fee," "Concession Recoupment Fee" or such other name first approved by the Executive Director of Aviation in writing; (b) the Recovery Fee must be shown on the customer rental car agreement and invoiced with other Concessionaire charges (i.e. "above the line"); (c) the Recovery Fee as stated on the invoice and charged to the customer shall be no more than 11.11% of Gross Revenues and shall be specifically included in the Definition of Gross Revenues for purposes of remittance to City; (d) Concessionaire shall neither identify, treat, or refer to the Recovery Fee as a tax, nor imply that City is requiring the pass through of such fee; (e) Concessionaire shall comply with all applicable laws, including Federal Trade Commission requirements, any Texas Consumer Protection legislation and any commitment to or contractual obligation by Concessionaire with any governmental agency or officer with authority over Concessionaire's activities.

B. Rent -

1. Rent for Premises

Concessionaire shall pay to the City, in advance, on the 1st day of each month, one twelfth the following annual rents or the monthly rent as applicable:

- a) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Thirty-Six Dollars and (\$36.00) per square foot per annum for Four Hundred and Forty-Four (444) square feet of counter/office/queuing position in the Terminal Building.
- b) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Thirty-Eight Thousand Eight Hundred Eighty Dollars (\$38,880), per annum for Ready Return Block "RR-4" as shown on Exhibit A2.
- c) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of Six Thousand Dollars (\$6,000), per annum for service bay "1" and the sum of Six Thousand Dollars (\$6,000), per annum for service bay "3" as shown on Exhibit A2.
- d) For the period commencing January 1, 2024, through December 31, 2028, Concessionaire shall pay the sum of One Thousand Five Hundred Dollars (\$1,500), per annum for storage cage "A" as shown on Exhibit A3.
- e) If requested by Concessionaire, overflow parking lanes as agreed upon with the Executive Director of Aviation on a month-to-month basis in the amount of Two Hundred (\$200) per lane per month through December 31, 2028. Overflow lanes are shown on Exhibit A4.

C. Additional Fees –

- 1. The Concessionaire shall collect the CFCs on behalf of the Airport and remit to the Airport, in accordance with the City's CFC resolution, the full amount of the Transaction Day fee collected from each Rental Car customer.
- 2. The Concessionaire shall pay to the City for telephone system/service access to the Internet via a T-1 as follows:

Local service	\$23.50 per line per month
Voice mail	\$4.25 per line per month
Phone rental	\$6.00 per phone per month

Maintenance fee \$15.50 per line per month

Above telecommunication fees are subject to change as determined by the City. Payment shall be due within thirty (30) days of invoice date.

3. The Concessionaire shall pay to the City a per wash fee of \$3.00 per automated wash. The Concessionaire shall pay to the City, for use of the manual car wash, a rate of \$2.00 per 5-minute session.

Car wash fees are subject to change as determined by the City with advance written notice. Payment shall be due within thirty (30) days of invoice date.

4. The Concessionaire shall pay to the City, based on actual gallons of fuel pumped, a per gallon fuel rate equal to the City's purchase price of the fuel plus \$0.30 cents, as may be adjusted by the City with advance written notice.

Payment shall be due within thirty (30) days of invoice date.

5. If the Concessionaire's bid reflected the operation of two brands in its concession, Concessionaire shall pay to the City a fee of One Thousand Dollars (\$1,000) per month which shall be paid in advance on the first (1st) of each month.
6. Additional fees may include charges for special items or activities including, but not limited to, employee parking, monthly electronic access card fees, badging fees, and disposal of debris left in service bay area and assigned parking areas. The City may assess reasonable, non-discriminatory charges for these special items or activities. All new charges will be reviewed with Concessionaire prior to implementation. Other charges payable by Concessionaire, shall be paid by Concessionaire to City no later than thirty (30) days following receipt by Concessionaire of billing therefor.
7. Concessionaire shall be charged at the current short term parking rate, for any of its vehicles found to be parked in a parking space not specifically leased by the Concessionaire or without the approval of the Executive Director of Aviation.

- D. Any and all payments due to the City by Concessionaire shall be remitted to the following address:

City of Killeen Finance Department
Attn: Accounts Receivable
P.O. Box 1329
Killeen, TX 76540

E. Year End Adjustments to Privilege Fees, Rents and Fees.

In the event the amount of payments made during the preceding Operations Year exceeds the total of any payments due for such Operations Year, the excess payment shall be credited against the payments for the next Operations Year, except that any excess payment during the final Operations Year of this Agreement will be returned to the Concessionaire within thirty (30) days after the Airport's acceptance of the final Certified Statement described in this Section. Concessionaire shall submit separate system generated reports for each brand name operated.

Subsection 5.2 Statements, Books, and Records; Delinquent Rentals.

- A. Monthly Statements; Books and Records. Within twenty (20) days after the close of each calendar month of the term of this Agreement, Concessionaire shall submit to City, in such detail and on the statement form designated as Exhibit B or as may reasonably be specified by City, certain information, including but not limited to, the number of Transactions executed during the preceding month, the number of Transaction Days Motor Vehicles were rented during the preceding month, and the statement of its Gross Revenues during the preceding month upon which the percentage payments to City set forth in Subsection 5.1 A(1) are to be computed, and said Exhibit B statement to be signed by a responsible accounting officer of Concessionaire. City reserves the right to change the form of the monthly statement and to require the submission by Concessionaire of other information pertaining to the Gross Revenues hereunder, and Concessionaire agrees to change the form of its statements to that requested by City and to provide any such additional information City may reasonably request. Concessionaire shall keep full and accurate books and records showing all of its Gross Revenues hereunder, and City shall have the right, through its representatives and at reasonable times, at its own expense, to inspect, examine, copy, and audit such books and records, including State of Texas sales tax return records. Concessionaire hereby agrees that all such books and records will be made available to City for at least three (3) years following the period covered by such books and records.
- B. Annual Certified Statements. Each year during the term of this Agreement, Concessionaire shall provide to City a written statement, certified by an independent Certified Public Accountant, to City stating that in his or her opinion the Percentage Fees paid by Concessionaire 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 Concessionaire, to be received by City within ninety (90) days of the end of each Operations Year. Such statement shall also contain a list of the Gross Revenues, by month, as shown on the books and records of Concessionaire and which were used to compute the Percentage Fee payments made to City during the period covered by said statement.

- C. Delinquent Rentals and Fees. Without waiving any other right or action available to City in the event of default in the payment of charges or fees payable to City, pursuant to this Agreement, a late fee of one and a half percent (1.5%) of the total amount due will be assessed to the Concessionaire if payments prescribed above are not received by the dates prescribed therein. An additional one and a half percent (1.5%) of the outstanding amount will be assessed each month that all or a portion of the Concessionaire's obligations remain unpaid.

Subsection 5.3 Audit. City reserves the right to audit Concessionaire's books and records pertaining to the Leased Premises, at its own expense, at any time for the purpose of verifying the Gross Revenues, Privilege Fee, and CFC calculation hereunder for any period three (3) years prior to such audit. If, however, as a result of such audit, it is established that Concessionaire has understated the Gross Revenues received from all operations at the Leased Premises by two percent (2%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall forthwith be paid by Concessionaire to City with interest thereon at one and one-half percent (1.5%) per month from the date such additional Privilege Fee became due.

SECTION 6 – INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES

Subsection 6.1 Building Services

- A. City Improvements and Services. City shall initially insure and provide occupancy of the Leased Premises to Concessionaire with said Leased Premises meeting all federal, state, and local code requirements for the operation of a rental car concession. City shall provide and maintain, water, sewer, general lighting, electrical power, heating and air-conditioning, and telephone system/service access to the Internet via a T-1 for the Terminal Building. Heating and air conditioning, electrical service, and telephone system/service access to the Internet via T-1 are provided to the Leased Premises only. If Concessionaire requires additional lighting, electrical power, water, or adjustments to the air-conditioning system or telephone system, such additional improvements or services shall be subject to the prior written approval of Executive Director of Aviation, and any such approved improvements or services shall be made at Concessionaire's expense.
- B. Concessionaire's Right to Additional Services. Concessionaire shall have the right, at its own expense, to request and receive additional services or systems, provided that any such services or systems shall require the written approval of Executive Director of Aviation before installation.

Subsection 6.2 Approval of Plans and Specifications; Provision of Drawings.

- A. General. Any improvements to be made to or upon the Leased Premises by Concessionaire, and any subsequent alterations or additions to such improvements, shall be subject to the prior written approval of Executive Director of Aviation. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of Executive Director of Aviation before any work or construction is commenced, which shall not be unreasonably withheld or delayed. First-class standards of design and construction shall be complied with in connection with all such work, facilities, and improvements; and all construction shall conform to the general architectural requirements of Executive Director of Aviation as established for each improvement program. Two (2) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to Executive Director of Aviation for review prior to commencement of construction; after final approval by Executive Director of Aviation, Executive Director of Aviation shall return to Concessionaire one (1) approved copy for Concessionaire's records and shall retain one (1) approved copy as an official record thereof.
- B. Improvements Conform to Statutes, Ordinances, Etc. All improvements, furniture, fixtures, equipment, and finishes, including the plans and specifications therefore, constructed or installed by Concessionaire, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations, and public bidding laws. Any approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Concessionaire.
- C. Approvals Extend to Architectural and Aesthetic Matters. Approval of City shall extend to and include architectural and aesthetic matters and City reserves the right to reasonably reject any layout or design proposals submitted and to require Concessionaire to resubmit any such layout or design proposals until they meet Executive Director of Aviation approval.
- D. Disapprovals. In the event of disapproval by City of any portion of any plans or specifications, Concessionaire shall promptly submit necessary modifications and revisions thereof for approval by Executive Director of Aviation. City agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. No substantial changes or alterations shall be made in said plans or specifications after initial approval by City, and no alterations or improvements shall be made to or upon the Leased Premises without the prior written approval of Executive Director of Aviation.

- E. Provision of As-Built Drawings. Upon completion of any construction project, Concessionaire shall provide City two (2) completed sets of as-built drawings in reproducible form as specified by City. Concessionaire agrees that, upon the request of City, Concessionaire will inspect the Leased Premises jointly with City to verify the as-built drawings.
- F. In accordance with Sec. 2252.909 of the Texas Government Code, Concessionaire must provide to the City a notice of commencement consistent with Section 2252.909 at least ninety (90) days before the date of construction, alteration, or repair of any improvement to the leased property begins. A notice of commencement must:
1. Identify the public property where the work will be performed;
 2. describe the work to be performed;
 3. state the total cost of the work to be performed;
 4. include copies of the performance and payment bonds required under Section 2252.909 (See Subsection 9.1 of this Agreement);
 5. include a written acknowledgement signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth (5th) day after the subcontract is executed.

On or before the tenth (10th) day after the date a governmental entity receives a notice of commencement for the construction, alteration, or repair of an improvement to leased property required under this section, the governmental entity may notify the leaseholder that the construction, alteration, or repair may not proceed. A person commits an offense if the person materially misrepresents information in a notice of commencement. An offense under this subsection is a Class A misdemeanor.

SECTION 7 – TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.

Subsection 7.1 Title. All improvements made to the Leased Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, shall be and remain the property of Concessionaire until the termination of this Agreement (whether by expiration of the term, cancellation, forfeiture or otherwise), at which time said improvements, except for Trade Fixtures, personal property, and expendables, shall become the property of City, at no cost to City.

Subsection 7.2 Structural Alterations. Concessionaire shall make no structural alterations to the Leased Premises without the prior written consent of Executive Director of Aviation.

Subsection 7.3 Alterations and Improvements to Airport. Concessionaire

acknowledges that from time-to-time City may undertake construction, repair, or other activities related to the operation, maintenance and repair of the Terminal Building which may temporarily affect Concessionaire's operations hereunder. Concessionaire agrees to accommodate City in such matters, even though Concessionaire's own activities may be inconvenienced, and Concessionaire agrees that no liability shall attach to City, its members, employees, or agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of City substantially impair the operations of Concessionaire under this Agreement, the Minimum Privilege Fee shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being reasonably determined by Executive Director of Aviation after consultation with Concessionaire. Concessionaire agrees that if relocation is required that Concessionaire shall move its operations as reasonably directed by Executive Director of Aviation.

Subsection 7.4 Removal and Demolition. Concessionaire shall not remove or demolish, in whole or in part, any Leasehold Improvements upon the Leased Premises without the prior written consent of City which may, at its sole discretion, condition such consent upon the obligation of Concessionaire, at Concessionaire's cost, to replace the same by an improvement specified in such consent.

SECTION 8 – MAINTENANCE OF PREMISES AND UTILITIES

Subsection 8.1 Airport Maintenance Obligations.

- A. General Maintenance and Operation. City agrees that it will, with reasonable diligence, maintain, operate, and keep in good repair the Airport, including the Terminal Building and all appurtenances, facilities, and services now or hereafter connected therewith. Airport shall keep the car rental parking lot and the overflow parking area in suitable repair and provide general lighting for these areas.
- B. Structural Maintenance. City shall provide, or cause to be provided, structural maintenance of the Terminal Building.
- C. Maintain Access. City shall, throughout the term of this Agreement, maintain all airport-owned roads on the Airport giving access to the Terminal Building in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal Building over said road at all times. City reserves the right to reasonably restrict access to the Terminal Building area for automobile deliveries during peak activity periods.
- D. Car Wash. City will maintain and inspect the car wash facilities as recommended by the manufacturer including routine maintenance of the car wash for normal activities, wear, and tear. Normal and routine maintenance of roofs, walls, utility infrastructure, building mechanical systems and structural building components will be performed by City. Wash soaps, rinses, brushes, hoses, and utilities will be provided by the City. City has the exclusive authority

to stop the use of the car wash for maintenance and inspections as is necessary, at City's sole discretion, without damage or liability to Concessionaire. City will take reasonable action to notify Concessionaire for closure of the car wash.

- E. Telephone System/Service Access to the Internet via a T-1. The Airport shall furnish telephone system/service access to the Internet via a T-1. Rates for these services will be in accordance with Section 5.1(C). A letter of agreement or other suitable document will be executed between the Airport's Executive Director of Aviation or his/her designated representative and the local designated representative of the Concessionaire to document exactly which services are agreed to between the two parties. Airport reserves the right to change or terminate said telephone and/or internet service at some point during the term of this Agreement. Airport will provide at least a ninety (90) day notice to Concessionaire of any service changes and assist in facilitating replacement services via a local communication provider.

Subsection 8.2 Concessionaire's Maintenance Obligations.

- A. Concessionaire's General Obligations. Except for maintenance of the Terminal Building, Car Wash, and Telephone System, as provided in Subsection 8.1, Concessionaire shall be obligated, without cost to City, to maintain the Leased Premises and every part thereof in good appearance, repair, and safe condition. Concessionaire shall maintain and repair all Leasehold Improvements on the Leased Premises and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or furnishings. All such maintenance and repairs shall be at least of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of Executive Director of Aviation. Concessionaire shall be obligated, without cost to City, to provide custodial service to Leased Premises. Concessionaire shall be responsible for the replacement cost of lost keys and floor finish restoration.
- B. Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to Airport of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Leased Premises shall be corrected immediately upon receipt of oral notice from the Executive Director of Aviation. At the direction of said Director, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.
- C. Trash and Refuse. City shall provide, at no cost to Concessionaire, a container for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Leased Premises. Concessionaire shall be responsible for disposal of its own trash accumulations by depositing it in the

nearest exterior trash dumpster on a daily basis. Concessionaire will regularly inspect exterior areas assigned to them and will remove all trash and debris. Failure to do so will result in the City completing this task and a fee assessed to the Concessionaire for the service. Trash receptacles inside the terminal building are for customer use only. Piling of boxes, cartons, barrels, or other similar items in view of a public area is prohibited. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from Airport in a reasonably clean and orderly condition so as not to unduly attract rodents, pests, or birds, or create an offensive odor. Concessionaire also agrees to participate in the City's recycling program by depositing all recyclable products in the appropriate outside recycling containers in lieu of the trash dumpster.

- D. Transporting Trash and Refuse. In transporting trash and refuse from the Leased Premises, Concessionaire shall ensure that trash is not strewn around while taking refuse to the dump site. Such disposal shall take place during hours as may be approved by the City.
- E. Damage to Equipment. Concessionaire will be responsible for the cost of replacement equipment deemed to be damaged by their employees due to negligence.

Subsection 8.3 Utilities.

- A. City shall provide the Leased Premises with heat and air-conditioning to keep the Leased Premises at reasonable temperatures for the conduct of Concessionaire's activities. City shall have the right to set, monitor, adjust and restrict thermostat settings to levels it determines to be appropriate.
- B. City shall provide electricity to the Leased Premises by means of wiring installations, and Concessionaire shall make such connections as required and permitted by building code. At no time shall Concessionaire's use of electric current exceed the capacity of the wiring installation in place.

SECTION 9 – LIENS, PAYMENT, AND PERFORMANCE BONDS

Subsection 9.1 Construction Surety Bond. Concessionaire shall not allow any liens or encumbrances to be attached to the Leased Premises. Prior to the commencement of any construction or alteration hereunder which exceeds \$10,000 in cost, Concessionaire or its contractor shall furnish to City, and without expense to City, a surety bond, issued by a surety company licensed to transact business in the State of Texas and satisfactory to and approved by City with Concessionaire's contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction or alteration of the improvements and facilities mentioned herein. Said bond shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by said contractor, subcontractor(s), and suppliers in the prosecution of the work provided

for in said construction contract and shall protect City from any liability, losses, or damages arising there from.

Subsection 9.2 Security. During the term of this Agreement, the City shall require the Operator to deliver (and thereafter maintain current for the entire term of this Agreement) an instrument of security in a form satisfactory to the City, in its sole discretion, in the amount of twenty-five percent (25%) of the average of Concessionaire's five years Minimum Annual Guarantee bids reflected in Subsection 5.1(A)(1)(b), in order to secure the performance of all of Concessionaire's obligations under this Agreement, including without limitation, the payment of all the percentages, minimums, fees, charges and costs set out herein. Said security may be in the form of a bond.

SECTION 10 – OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES

Subsection 10.1 Hours of Operation. Concessionaire shall actively operate in the Leased Premises and shall use a business-like operation therein. The Concessionaire shall be open to serve the public seven (7) days per week and hours of operation shall be such that passengers of flights arriving from the terminal will be accommodated. Concessionaire's facilities will be adequately staffed and open at least thirty (30) minutes before and after every arriving flight. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Concessionaire may advise the Executive Director of Aviation of Concessionaire's analysis of the optimum arrangements, but the final determination shall be made by the Executive Director of Aviation based on their analysis of necessary service to the public.

Subsection 10.2 Delivery of Goods. Concessionaire shall arrange for the timely delivery of all motor vehicles and supplies, at such times, in such locations(s), and by such routes as determined by City. Concessionaire shall abide by all Transportation Security Administration (TSA) requirements for parking of motor vehicles near the terminal building.

SECTION 11 – QUALITY AND CHARACTER OF SERVICE

Subsection 11.1 Type of Operation. Concessionaire shall maintain and operate the concession privileges granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of Executive Director of Aviation, does not unduly annoy, disturb, or offend others at the Airport.

Subsection 11.2 Services to the General Public. Concessionaire understands and agrees that its operation at the Airport necessitates the rendering of public services such as giving directions, and generally assisting the public.

Subsection 11.3 Additional Compliance. Concessionaire shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its

operations under this Agreement.

Subsection 11.4 Personnel.

- A. General. Concessionaire shall maintain a sufficient number of properly trained personnel to ensure that all customers of Concessionaire receive prompt and courteous service. All such personnel, while on or about the Leased Premises, shall be polite, clean, appropriately attired, and neat in appearance. Clothing will be neat and clean and present a professional appearance. Executive Director of Aviation shall have the right to object to the demeanor, conduct, and appearance of any employee of Concessionaire, or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection. Concessionaire will ensure that its counter is staffed at all times during the posted hours of operation.
- B. Manager. The management, maintenance, and operation of the Leased Premises and the concession conducted thereon shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Concessionaire. Concessionaire shall cause such manager to be available during normal business hours, and Concessionaire will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties.

Subsection 11.5 Operations Violations.

Concessionaire'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 City. Additionally, City resources will be expended in dealing with violations of this Agreement by Concessionaire. The parties hereby agree that total damages sustained by 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 City. Concessionaire, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Concessionaire agrees to pay immediately upon demand by City the following amounts as liquidated damages upon the occurrence of breaches, in any Operations Year, related to operation violations:

- \$100 per occurrence - first occurrence
- \$200 per occurrence – second occurrence
- \$300 per occurrence - third occurrence
- \$1,000 per occurrence – fourth or more occurrences

Liquidated damage amounts shall not be imposed unless the violation continues for more than three (3) calendar days after City has given Concessionaire written notice (and this written notice may be in the form of an email) of the violation; provided, however, after City has given Concessionaire notice of the same violation more than twice during any calendar year, the liquidated damage amount shall be immediately imposed with no opportunity to cure in order to avoid the sanction.

For hours of operations violations, liquidated damages shall be 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 - second occurrence
- \$300 per hour or portion thereof, during which location is not open - third occurrence
- \$1,000 per hour or a portion thereof, during which location is not open – fourth or more occurrences

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

City's failure to impose liquidated damages for any violation of the requirements set forth above shall not waive any right or prohibit City from doing so for subsequent violations. After two (2) violations of the same type in the same Operations Years, City reserves the right, at its sole option, not to impose the liquidated damage and instead seek any other remedies available to it for an event of Default, including termination of this Agreement.

SECTION 12 – NON-DISCRIMINATION

Subsection 12.1 General Civil Rights Provisions. The Concessionaire 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 Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

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

Subsection 12.2 Compliance with Nondiscrimination Requirements. During the performance of this Agreement, the Concessionaire, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: Concessionaire 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 D, and which are herein incorporated by reference and made a part of this Agreement.

- B. Nondiscrimination: Concessionaire, 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. Concessionaire 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.
- C. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Concessionaire 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 Concessionaire of the Concessionaire's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.
- D. Information and Reports: Concessionaire 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 FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the FAA may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.
- F. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

SECTION 13 – IDEMNIFICATION AND INSURANCE

Subsection 13.1 Indemnification. To the fullest extent allowable by law, Concessionaire hereby indemnifies and shall defend and hold harmless, at Concessionaire's expense, City, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Concessionaire, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on City. Concessionaire's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the negligent or willful misconduct of City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as City waiving its statutory limitation and/or immunities as set forth in the applicable Texas Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Concessionaire shall reimburse City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Concessionaire's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

To the extent allowed by law, except for damage or injury caused by the willful or negligent act or omission of Concessionaire, its agents or employees, City shall indemnify, defend and save Concessionaire, its agents, representatives, and employees from any and all lawsuits, claims, loss and damages of any nature whatsoever, including damage to property of any Concessionaire and the injury, including death, of employees, agents, or customers of Concessionaire, arising either directly or indirectly out of any operations of the City hereunder, except lawsuits, claims, loss and damages arising out of the sole negligence of the Concessionaire, their employees, or agents.

Subsection 13.2 Concessionaire to Provide General Liability and Automobile Insurance. Concessionaire shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage;
- B. Automobile Insurance of not less than \$5,000,000 per occurrence;

C. To the extent that Concessionaire employs any employees or as otherwise required by law, Workers' Compensation and Employers' Liability Insurance with Texas statutory limits.

Subsection 13.3 Concessionaire to Provide Property and Fire Insurance. Concessionaire, at its own expense, shall insure all Leasehold Improvements and furnishings, fixtures and equipment for fire, extended coverage, vandalism, and malicious mischief. Such insurance shall be in an amount equal to the full insurable replacement value of such improvements. All property insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder and shall contain a waiver of subrogation provision in favor of the City. Concessionaire and City agree that any payments received by either from such insuring companies by reason of loss under such policy or policies shall be applied toward repair and reconstruction of said Leasehold Improvements and repair or replacement of leasehold improvements, furnishings, fixtures, and equipment.

Subsection 13.4 Both Concessionaire and City to Carry Fire Insurance. It is understood that both Concessionaire and City carry insurance in the form of fire, extended coverage, vandalism, and malicious mischief (hereinafter called "Insurance Coverage") on the leased structural part of the premises, permanent improvements and loss of income, (in the case of City) and on Leasehold Improvements, furniture, furnishings, equipment, inventory and loss of income, (in the case of Concessionaire), and said Insurance Coverage authorizes a waiver of subrogation between City and Concessionaire, and the parties wish to enter into such waiver of subrogation to the extent of the said Insurance Coverage; therefore, to the extent that City collects under its Insurance Coverage, City waives any and all claims against Concessionaire, its agents, servants, and employees, for loss or damage to City's property resulting from risks included in said Insurance Coverage; and, to the extent that Concessionaire collects under its Insurance Coverage, Concessionaire waives any and all claims against City, its agents, servants, and employees, for loss or damage to Concessionaire's property resulting from risks included in said Insurance Coverage. If this waiver by the parties shall render fully any such insurance policy or shall result in the denial of coverage for a party under such policy, then the provision paragraph shall be deemed to be null and void.

Subsection 13.5 Insurance Certificate. A certificate evidencing insurance required by Subsection 13.2 and 13.3, and listing the City of Killeen as additional insured, excluding Workers' Compensation and Property and Fire Insurance, shall be filed with City prior to the commencement of construction, furnishing and equipping of Leasehold Improvements by Concessionaire upon the Leased Premises, and such certificate shall provide that such Insurance Coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. Prior to the expiration of any such policy, a certificate showing that such Insurance Coverage has been renewed shall be filed with City. If such Insurance Coverage is canceled or reduced, Concessionaire shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction

in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

Subsection 13.6 Concessionaire Failure to Provide Certificates. In the event that Concessionaire shall at any time fail to furnish City with the certificate or certificates required under this Section, City, upon written notice to Concessionaire of its intention so to do, shall have the right to obtain the required insurance, at the cost and expense of Concessionaire, and Concessionaire agrees to promptly reimburse City for the cost thereof, plus fifteen percent (15%) thereof for administrative overhead.

SECTION 14 – DAMAGE OR DESTRUCTION OF LEASED PREMISES

Subsection 14.1 Partial Damage. If all or a portion of the Leased Premises is partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered untenable, the same will be repaired with due diligence by City subject to the limitations of Subsection 14.4; provided, however, to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the cost and expenses insured in such repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees.

Subsection 14.2 Extensive Damage. If the damages referred to in Subsection 14.1 shall be so extensive as to render the Terminal Building Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City subject to the limitations of Subsection 14.4; and the charges payable herein for the MAG and Rent under Section 5.1 shall abate from the time of such damage or destruction until such time as the said Leased Premises are fully restored and certified by City's Engineers as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the cost and expenses incurred in such repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees.

Subsection 14.3 Complete Destruction. In the event the Terminal Building Premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty, or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, City shall undertake the repair, replacement, and reconstruction of said Leased Premises; and charges payable herein for the MAG and Rent under Section 5.1, shall abate as of the time of such damage or destruction until such time as the said Premises are fully restored and certified by City's Executive Director of Aviation as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City for the costs and expenses incurred in said repair to the extent that the damage is caused by the negligent act or omission of Concessionaire, its sublessees, agents, or employees; provided further, however, if within twelve (12) months after the time of such damage or destruction said

Leased Premises shall not have been repaired or reconstructed, Concessionaire may cancel this Agreement in its entirety. Rents payable for the leased areas in the Terminal Building and/or Ready/Return Block will only abate if the City is unable to provide alternative space for Concessionaire to conduct its business.

Subsection 14.4 Limits of City's Obligations Defined. It is understood that, in the application of the foregoing Subsections, City's obligations shall be limited to repair or reconstruction of the Leased Premises to the same extent and of equal quality as obtained at the commencement of operations hereunder, subject to funding and appropriation. Redecoration and replacement of furniture, fixtures, equipment, and supplies shall be the responsibility of Concessionaire and any such redecoration and refurnishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

SECTION 15 – CANCELLATION

Subsection 15.1 Cancellation by Concessionaire. Concessionaire may cancel this Agreement and terminate all its obligations hereunder upon or after the happening of one or more of the following events and provided that Concessionaire is not in default in the payment of any fees or charges to City:

- A. The abandonment of the Airport as an airline terminal or the removal of all certificated passenger airline service from the Airport for a period of no less than thirty (30) consecutive days.
- B. The inability of Concessionaire to use the Airport for a period of longer than ninety (90) days, because of the issuance of any order, rule, or regulation by any competent governmental authority or court having jurisdiction over Concessionaire or City, preventing Concessionaire from operating its business; provided, however, that such inability or such order, rule, or regulation is not primarily due to any fault of Concessionaire.
- C. The material breach by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such breach for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy the same.

Subsection 15.2 Cancellation by City. City may cancel this Agreement and terminate all of its obligations hereunder at any time that City is not in default, upon or after the happening of any of the following events:

- A. Concessionaire shall file a voluntary petition in bankruptcy; or
- B. Proceedings in bankruptcy shall be instituted against Concessionaire and Concessionaire is thereafter adjudicated bankrupt pursuant to such proceedings; or

- C. A court shall take jurisdiction of Concessionaire and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or
- D. A receiver of Concessionaire's assets shall be appointed; or
- E. Concessionaire voluntarily abandons its conduct of its business at the Airport for a period of thirty (30) days, except if such is due to a labor strike or labor dispute in which Concessionaire is involved; or
- F. Any assignment is made by Concessionaire for the benefit of its creditors; or
- G. The material breach by Concessionaire of any of the covenants or agreements herein contained and the failure of Concessionaire to remedy such breach as hereinafter provided. In this regard it is understood that nonpayment of fees or charges hereunder is a material breach. In the event of such material breach, City shall give to Concessionaire notice in writing to correct such breach and if such breach shall continue for fifteen (15) days after the receipt of such notice by Concessionaire, City may, after the lapse of said fifteen (15) day period, cancel this Agreement, without forfeiture, waiver, or release of City's rights to any sum of money due or to become due under the provisions of this Agreement.
- H. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as to substantially restrict Concessionaire, for a period of at least thirty (30) days, from its Airport operation.

Subsection 15.3 Termination. Should an early termination of this Agreement occur pursuant to the terms of Subsection 15.2 hereof, City shall have the right to re-enter the Leased Premises, make repairs as necessary, and enter into another agreement for the Leased Premises and privileges, or any part thereof, for the remainder of the term hereof.

Subsection 15.4 Notice of Termination. If any of the events enumerated in Subsections 15.1 and 15.2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

SECTION 16 – NONWAIVER OF RIGHTS

Continued performance by either party hereto pursuant to the terms of this Agreement after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, or observed by the other party hereto shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default; and no waiver of any such

default shall be construed or act as a waiver of any subsequent default.

SECTION 17 – SURRENDER OF POSSESSION

Concessionaire shall, upon termination of this Agreement or cancellation, quit and deliver up the Leased Premises and privileges to City peaceably and quietly, with the Leased Premises being in as good order and condition as the same now are or may be hereafter improved by Concessionaire or City, reasonable use, and wear thereof excepted. In addition to any lien provided by Texas law, City shall have a specific lien on all property of Concessionaire, and related equipment on the Leased Premises as security for nonpayment. Concessionaire shall have the right to remove all of its trade fixtures and equipment installed or placed by it at its own expense, in, on or about the Premises; subject however, to any valid lien which City may have thereon for unpaid charges or fees. Provided however, the City will not claim or have a lien of any kind, be it contractual or statutory, on or against Concessionaire's motor vehicles for non-payment of any rent or fees due under the Agreement, or for any default of Concessionaire or any other reason, and the City hereby waives all such liens available to the City.

SECTION 18 – TAXES AND LICENSES

Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder.

SECTION 19 – INSPECTION OF PREMISES

City or its duly authorized representatives, or agents, and other persons for it, may enter upon said Leased Premises at any and all reasonable times during the term of this Agreement for the purpose and conditions hereof or for any other purpose incidental to rights of City.

SECTION 20 – HOLDING OVER

Should Concessionaire holdover said Leased Premises after this Agreement has terminated in any manner, Concessionaire shall continue such holding over only at sufferance to City. In the event of such holding over, Concessionaire shall pay to the City the amounts specified in Subsection 5.1, the amounts being the amounts in effect immediately prior to the commencement of such holdover." All other terms and conditions in such holdover shall be the same as herein provided.

SECTION 21 – QUIET ENJOYMENT

City agrees that Concessionaire, upon payment of the fees and charges and all other payments to be paid by Concessionaire under the terms of this Agreement, and upon observing and keeping the agreements and covenants of this Agreement on the part of Concessionaire to be observed and kept, shall lawfully and quietly hold, occupy, and

enjoy the Leased Premises during the term of this Agreement.

SECTION 22 – NO LIENS

Concessionaire shall pay for all labor done or materials furnished in the repair, replacement, development, or improvement of the Premises by Concessionaire, and shall keep said Leased Premises and Concessionaire's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Concessionaire's act or omission.

SECTION 23 – SECURITY AGREEMENTS

City shall provide, or cause to be provided, during the term of this Agreement, all proper and appropriate public fire, and police protection similar to that afforded to other Landside tenants or licensees at the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Concessionaire shall comply with the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Concessionaire, shall not in any way be construed to limit or reduce the obligations of City hereunder.

SECTION 24 – AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the Killeen - Fort Hood Regional Airport. Should the effect of such Agreement with the United States government be to take any of the property under lease or substantially destroy the commercial value of such improvements, City shall terminate this Agreement.

SECTION 25 – RIGHTS AND PRIVILEGES OF CITY

- A. City shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, which Concessionaire agrees to observe and obey, with respect to the use of the Airport, Airport Terminal Building, and appurtenances, provided that such rules and regulations shall not be inconsistent with safety, current rules and regulations of the FAA, and any future changes prescribed from time to time by the FAA.
- B. The City Manager or designee is hereby designated as its official representative for the enforcement of all provisions in this Agreement with full power to represent City with dealings with Concessionaire in connection with the rights herein granted.

- C. All actions relating to policy determination, modification of this Agreement, termination of this contract, and any similar matters affecting the terms of this Agreement shall emanate from the City Council, their successors or assigns.
- D. The Executive Director of Aviation or designee may enter upon the Leased Premises, now or hereafter leased to Concessionaire hereunder, at any reasonable time, for any purpose necessary, incidental to, or connected with, the performance of its obligations hereunder, or in the exercise of its governmental functions.
- E. City reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, including the Leased Premises and existing vehicle and pedestrian traffic patterns, as the City deems appropriate, regardless of the desires or views of Concessionaire, and without interference or hindrance.
- F. City hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of Killeen - Fort Hood Regional Airport, and the right to pursue all operations of the Killeen - Fort Hood Regional Airport.
- G. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Airport, which, in the opinion of the City, would limit the usefulness of the Airport, or constitute a hazard to aircraft.
- H. City may from time to time increase the size or capacity of any such Public Aircraft Facilities or Passenger Terminal Building or Common Use Portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided notice is given to Concessionaire.
- I. This Agreement at any time may be reopened for renegotiation if Federal Aviation Administration (FAA) Airport Certification (FAR Part 139), Transportation Security Administration (TSA) Security Requirements (49 CFR, Part 1542), or U.S. Army regulations result in major expenditures to City due to Concessionaire's tenancy on the Killeen - Fort Hood Regional Airport. If said renegotiation is desired, written notice must be given to Concessionaire sixty (60) days prior to such renegotiations.
- J. City reserves the right to relocate the Leased Premises upon the completion of any Terminal area remodeling or expansion. City will not be liable for the costs

associated with the moving or reinstallation of Concessionaire's equipment. In the event the City requires a move by the Concessionaire, the City will reimburse actual out-of-pocket costs associated with the relocation as approved in advance subject to a maximum amount as established by the City.

SECTION 26 – ACCESS CONTROL

- A. Concessionaire shall upon termination of this agreement return all issued keys and access cards to City. If all issued keys and access cards are not returned to City at the termination of this Agreement Concessionaire shall pay to City cost to re-core premises locks and cut new keys at the rate set at the time of such re-core and to pay for any lost access cards.
- B. Concessionaire is responsible for all keys and access cards issued to employees of Concessionaire. Concessionaire is responsible to insure every employee that has regular duty at the Airport is submitted for airport electronic access cards appropriate for that employee and that all employee data remains current. The Concessionaire will notify the appropriate representative of the Airport by telephone or other appropriate means as soon as possible following the termination of any employee, but will do so in writing no later than the end of the next working day after the employee's last day of employment at the Airport. The Concessionaire is further responsible for returning the employee's electronic access cards no later than three (3) working days after the last day of employment at the Airport. Any lost electronic access cards must be reported in writing to the Airport's representative as soon as possible, but no later than the end of the next working day from the date of the loss. Concessionaire is responsible for any charges or damages incurred by the use of electronic access cards issued to its employees unless more than 24 hours (excluding weekends and City of Killeen recognized holidays) have passed from the time the Concessionaire provides written notification to the Airport's representative to cancel any access these electronic access cards allow. A monthly fee will be charged for active employee electronic access cards and for lost cards at the current rates adopted by the City.
- C. Concessionaire may not install additional locks or change locks to Leased Premises without the written approval of the Executive Director of Aviation.

SECTION 27 – NO PERSONAL LIABILITY

Under no circumstances shall any trustee, officer, official, commissioner, Director, member, partner, or employee of City have any personal liability arising out of this Agreement, and Concessionaire shall not seek or claim any such personal liability.

SECTION 28 – GOVERNING LAW

This Agreement and all questions and issues arising in connection herewith shall be

governed by and construed in accordance with the laws of the State of Texas. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in Bell County, Texas. Each party waives its right to challenge venue.

SECTION 29 – NOTIFICATION

Concessionaire shall:

- A. As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Concessionaire with respect thereto.
- B. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Concessionaire contained in this Agreement to be untrue.
- C. Notify City, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Concessionaire or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Concessionaire or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Concessionaire or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

SECTION 30 – SEVERABILITY

The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

SECTION 31 – ASSIGNMENT, SUBLET, AND TRANSFER

Concessionaire shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of City, which shall not be unreasonably withheld or delayed. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Concessionaire shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

SECTION 32 – NO WAIVER

The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

SECTION 33 – CONFLICTS OF INTEREST

Concessionaire covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Concessionaire further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Concessionaire or its employee must be disclosed to City.

SECTION 34 – POLITICAL ACTIVITIES

Concessionaire shall not engage in any political activities while in performance of any and all services and work under this Agreement.

SECTION 35 – ENTIRE AND SUPERSEDING AGREEMENT

This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions, and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of City, granting approvals or conditions attendant with such approval, the specific action of City shall be deemed controlling.

SECTION 36 – AMENDMENT

This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

SECTION 37 – TIME COMPUTATION

Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday

or state or national holiday.

SECTION 38 – NOTICES

NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City: Killeen - Fort Hood Regional Airport
Attn: Executive Director of Aviation
8101 S. Clear Creek Rd, Box C
Killeen, TX 76549

Copy to: Attn. City Attorney
City of Killeen
101 N. College St., 1st Floor
Killeen, TX 76541

To the Concessionaire: The Hertz Corporation
8501 Williams Road
Estero, FL 33928

The parties may designate other addresses from time to time in writing. Concessionaire must provide a valid new address for notices within ten (10) days if the above address becomes invalid.

SECTION 39 – CONSTRUCTION

This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

SECTION 40 – NO THIRD PARTY BENEFICIARY

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

SECTION 41 – COMPLIANCE WITH LAW

The parties shall comply in all material respects with any and all applicable federal, state, and local laws, regulations, and ordinances.

SECTION 42 – FORCE MAJEURE

City shall not be responsible to Concessionaire and Concessionaire shall not be responsible to City for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

SECTION 43 – GOOD STANDING

Concessionaire affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Texas and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Concessionaire is duly licensed or qualified to do business and is in good standing in the State of Texas and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

SECTION 44 – INDEPENDENT CONTRACTORS

The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

SECTION 45 – GOVERNMENTAL APPROVALS

Concessionaire acknowledges that various of the specific undertakings of City described in this Agreement may require approvals from the City of Killeen City Council, City of Killeen bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Concessionaire further acknowledges that this Agreement is subject to appropriation by the Killeen City Council. City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. City cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

SECTION 46 – AUTHORITY

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

SECTION 47 – COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

SECTION 48 – SURVIVAL

All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

SECTION 49 – MORE FAVORABLE TERMS

In the event the City shall enter into any lease or agreement with any other rental car operator within the Airline Terminal building, that agreement will not contain more favorable terms than this Agreement, unless the same rights, privileges, and more favorable terms are concurrently made available to Concessionaire.

SECTION 50 – ENVIRONMENTAL

Subsection 50.1 Disposal, Use and Storage of Hazardous Materials. Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except:

- A. Concessionaire may store and use Hazardous Materials on the Leased Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Agreement. Storage shall be in an approved Hazardous Materials cabinet or storage container. Concessionaire shall provide Executive Director of Aviation with a copy of any application for a permit for use or storage of Hazardous Materials on the Leased Premises from any regulatory agency responsible for enforcement of Environmental Laws, and shall also a copy of any permit received from such agency; and
- B. Concessionaire may use Hazardous Materials on the Airport other than the Leased Premises only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds

and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement.

Subsection 50.2 Liability. Concessionaire shall be solely and fully responsible and liable for:

- A. Storage, use or disposal of Hazardous Materials on the Leased Premises or the Airport, by Concessionaire, Concessionaire's officers, agents, employees, or contractors,
- B. Any Hazardous Material release which is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, or contractors on the Leased Premises or the Airport.

Subsection 50.3 Prevention of Release. Concessionaire shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Leased Premises or the Airport, including, but not limited to any release into soil, groundwater, or City's sewage or storm drainage system.

Subsection 50.4 Obligation to Investigate and Remediate. Concessionaire, at Concessionaire's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:

- A. Any release or threat of release of Hazardous Material on the Leased Premises or the Airport, including, but not limited to, into soil or groundwater, or City's sewage or storm drainage system which was caused or results in whole or in part from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees; except that Concessionaire shall have no responsibility for any release or threat of release of Hazardous Material which Concessionaire establishes was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees by any third party, or by migration of Hazardous Materials onto the premises from a specifically identifiable source off the use premises. In addition to all other rights and remedies of City hereunder, if Concessionaire does not promptly commence, and diligently pursue to remediate, to the extent required, any such release, or threat of release, of Hazardous Materials for which it has responsibility under this section, City, in its discretion, may pay to have same remediated and Concessionaire shall reimburse City plus a fifteen percent administration fee within fifteen (15) business days of City's demand for payment. The failure to commence investigation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or threat of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that expense was incurred by City.

Subsection 50.5 Records and Inspections.

- A. Concessionaire will maintain a chemical inventory list and material safety data sheets of hazardous materials stored on site in accordance with state and federal regulations. The Concessionaire will also maintain manifests for all hazardous or regulated wastes transported and disposed of off-site.
- B. Upon reasonable notice by City, Concessionaire shall make available for review by City such records pertaining to the use, handling and disposal of any Hazardous Material(s) as Concessionaire is required to maintain under this section.
- C. City shall have the right, under the terms hereof, and upon reasonable notice for exclusive use space, to enter the Leased Premises during the Term hereof to conduct periodic environmental inspections and testing. City shall conduct each inspection or test in a manner that does not unreasonably interfere with Concessionaire's operations.

Subsection 50.6 Concessionaire Obligations upon Termination. Prior to vacating the Leased Premises, and in addition to all other requirements under this Agreement, Concessionaire shall remove any containers of Hazardous Materials placed on the Leased Premises during the Term by Concessionaire or as a result of Concessionaire's use or occupancy of the Leased Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws, including without limitation conducting any environmental audits as may be required by City.

Subsection 50.7 Storm Water.

- A. Notwithstanding any other provisions or terms of this Agreement, Concessionaire acknowledges that certain properties within the Airport, or on City-owned land, are subject to storm water rules and regulations. Concessionaire agrees to observe and abide by such storm water rules and regulations as may be applicable to City's property and Concessionaire's uses thereof.
- B. Concessionaire acknowledges that any storm water discharge permit issued to City may name Concessionaire as a co-permittee. City and Concessionaire both acknowledge that close cooperation is necessary to insure compliance with any storm water discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Concessionaire acknowledges further that it may be necessary to undertake such actions to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by Concessionaire, as such term may be

defined by applicable storm water rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable storm water rules and regulations.

- C. City will provide Concessionaire with written notice of any storm water discharge permit requirements applicable to Concessionaire and with which Concessionaire will be obligated to comply from time-to-time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Concessionaire agrees that within thirty (30) days of receipt of such written notice it shall notify City in writing if it disputes any of the storm water permit requirements it is being directed to undertake. If Concessionaire does not provide such timely notice, Concessionaire will be deemed to assent to undertake such storm water permit requirements. In that event, Concessionaire agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Concessionaire, those storm water permit requirements for which it has received written notice from City, and Concessionaire agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements.

SECTION 51 – CONTRACT VERIFICATION

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on this ____ day of November, 2023.

ATTEST:

CITY OF KILLEEN:

Laura Calcote
City Secretary

Kent Cagle
City Manager

ATTEST:

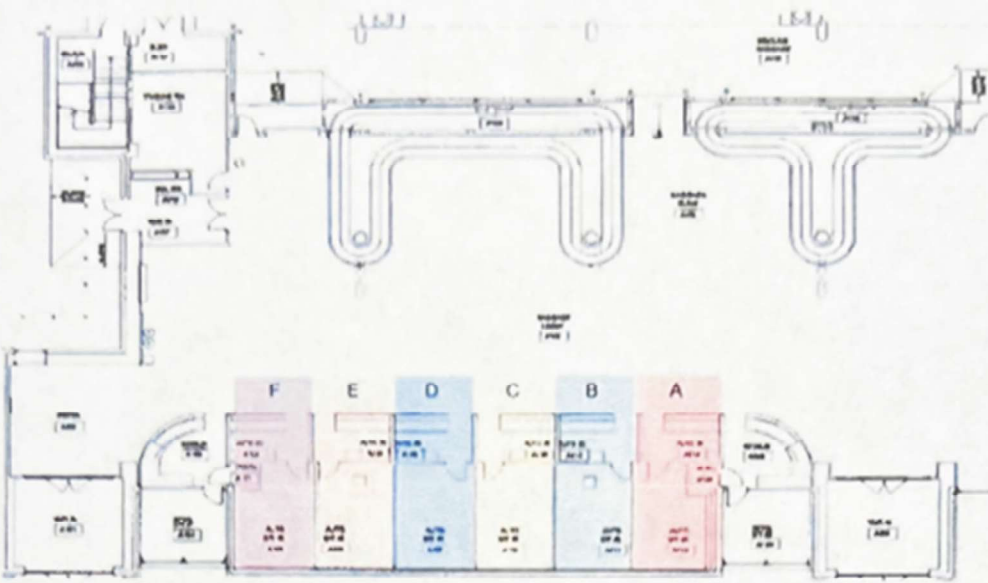
CONCESSIONAIRE:

(Signature of signing authority)

(Printed Name of signing authority)

(Title)

EXHIBIT A1 - COUNTER/OFFICE/QUEUING AREAS



Space	Office	Counter Area	Queuing	Total Square Footage	Counter Length
A	199	107	102	408	12' 9"
B	232	109	103	444	12' 10"
C	232	109	103	444	12' 10"
D	232	109	103	444	12' 10"
E	232	109	103	444	12' 10"
F	199	104	102	405	12' 9"

Acknowledged By:

Space A Selected By: Avis / Budget
 Space C Selected By: Hertz / Dollar
 Space D Selected By: Enterprise
 Space E Selected By: Alamo / National
 Space B and Space F were not selected.

Signature: [Signature]
 Avis Budget Car Rental LLC
 Date: 11/1/23

Signature: [Signature]
 The Hertz Corporation
 Date: 11/2/2023

Signature: [Signature]
 EAN Holdings LLC
 Date: 10/31/23

Signature: [Signature]
 EAN Holdings LLC
 Date: 10/31/23

EXHIBIT A2 - READY/RETURN BLOCKS AND SERVICE BAYS

Blocks:

- RR-2 = 36 spaces
- RR-3 = 36 spaces
- RR-4 = 36 spaces

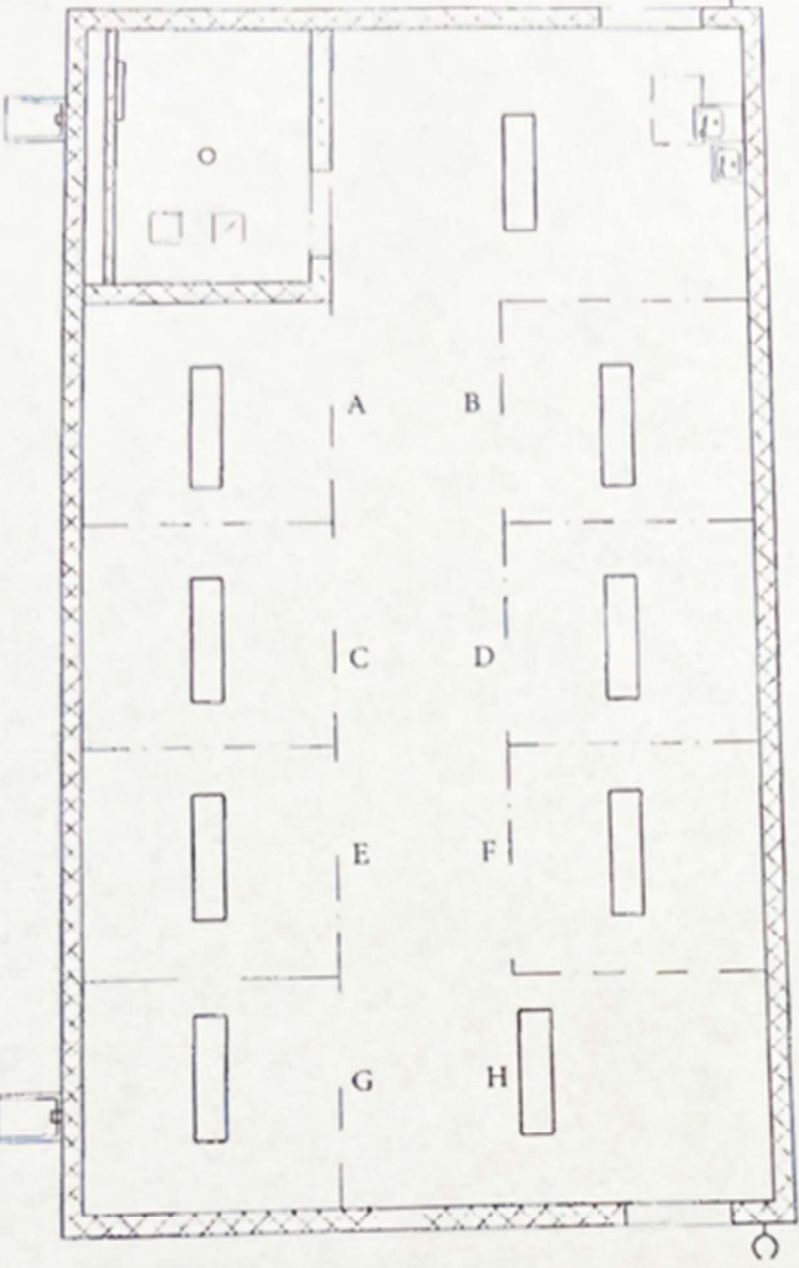
← Terminal Building

Space RR-3 and SB-5 Selected By: Enterprise	<i>[Signature]</i> GAN Holdings LLC	11/2/23	Date
Space RR-2 and SB-2 Selected By: Avis / Budget	<i>[Signature]</i> Avis Budget Car Rental LLC	11/1/23	Date
Space RR-4 and SB-3 Selected By: Hertz / Dollar	<i>[Signature]</i> The Hertz Corporation	11/2/2023	Date
Space RR-1 and SB-4 Selected By: Alamo / National	<i>[Signature]</i> GAN Holdings LLC	10/31/23	Date

SB-1 and SB-6 were not selected.

Concessionaire (Hertz/Dollar) subsequently requested that Service Bay "1" be added to their Leased Premises.

EXHIBIT A3 – STORAGE AREA



Acknowledged By: *Jackie Davis* Date 11/2/2023
The Hertz Corporation
Alan D. ... Date 11/1/23
Avis Budget Car Rental LLC

Cage A Selected By: Hertz / Dollar
Cage D Selected By: Avis / Budget
Cages B, C, E, F, G, and H were not selected.

EXHIBIT A4 – OVERFLOW PARKING LANES

RENTAL CAR OVERFLOW PARKING LOT

27 – LANES
Each lane 8'6" x 85'

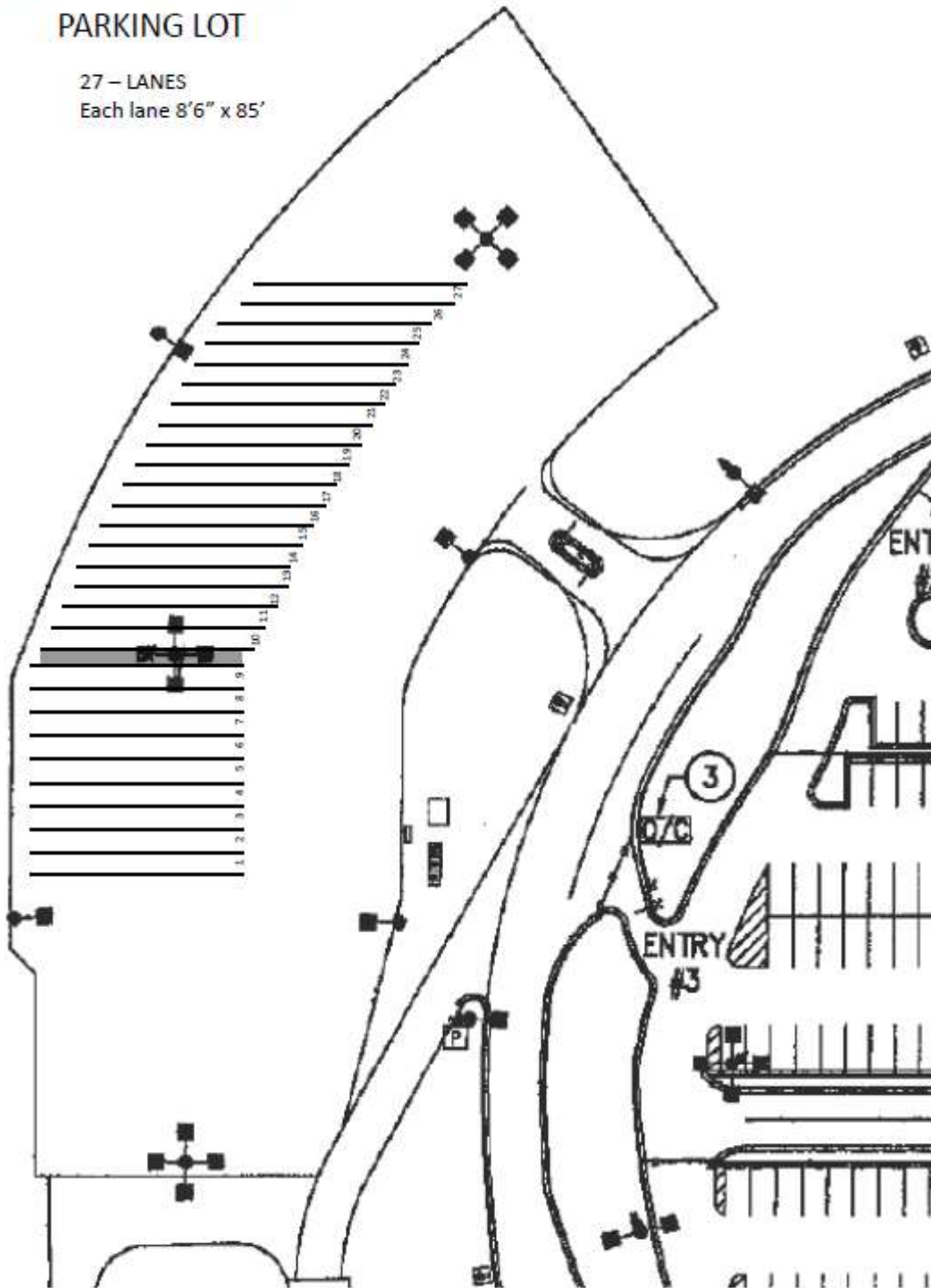


EXHIBIT B – Sample Monthly Reporting Form

KILLEEN – FORT HOOD REGIONAL AIRPORT

RENTAL CAR MONTHLY REPORT OF GROSS REVENUES

FOR MONTH OF _____

Concessionaire Name: _____

Address: _____

City, State, Zip: _____

Contact Name: _____

Phone # _____

GROSS RENTAL REVENUE: _____

Airport Fee (10%) _____

Less Monthly Guarantee paid 1st of month: _____

(1) Privilege Fee Balance Due: _____

Number of Transaction: _____

Number of Transaction Days: _____

(2) CFC Due (@ \$3.00 per Transaction Day): _____

Amount Due with this report (1) +(2): \$ _____

Concessionaire Official Signing and Certifying accuracy of Information on this report:

Signature _____

Typed Name & Title _____

Date signed _____

REMIT THIS FORM AND PAYMENT TO: City of Killeen Finance Department
Attn: Accounts Receivable
P.O. Box 1329
Killeen, TX 76540

EXHIBIT C – Sample ACDBE Reporting Form

KILLEEN – FORT HOOD REGIONAL AIRPORT ACDBE PROGRAM TRACKING FORM
Tracking for Airport Concessionaires ACDBE products and/or services payments
Information required in accordance with 49 CFR §23

☐ Check here for Rental Car Concessions

☐ Check here for Other-than-Rental Car Concessions

Name of GRK Airport Concessionaire: _____
Lease Agreement Date: _____

Concessionaire Prime Point of Contact: _____
Lease Renewal Date: _____

Current Reporting Period (Fiscal Year): _____ Quarter (Current Year): _____ Amount paid to ACDBE during this time period: _____

Certified ACDBE Vendor Name: _____
Address: _____
Goods / Service category: _____
ACDBE category (BLK/HISP/NAAM/WMN, etc.): _____

Contact Email: _____
NAICS Code(s): _____
NAICS Code(s): _____

Description of goods or services provided by the certified ACDBE firm (examples include vehicle repairs, auto parts, insurance, baked goods, beverages, gifts, novelties, restaurant supplies, etc.): _____

☐ Check here if goods or services procured from the ACDBE are only a one-time transaction

☐ Check here if goods or services procured from the ACDBE are part of an on-going contract or agreement

☐ Check here if the ACDBE firm's Texas certification has been confirmed and/or verified

Total amount paid to ACDBE Provider to date this calendar year: _____

☐ Check if payments to ACDBE has been made promptly (within 30 days of completed delivery of goods or services).

As the authorized representative of the above Concessionaire, I state that, the above information is accurate and the amounts were paid in accordance to lease or contractual obligations, and that documentation of these payments, any canceled checks, or supporting information is available within 5 businessdays of request.

GRK Concessionaire 's Authorized Representative: _____ Title: _____

Signature: _____ Email address: _____ Date: _____

KILLEEN – FORT HOOD REGIONAL AIRPORT ACDBE PROGRAM TRACKING FORM
Tracking for Airport Concessionaires ACDBE products and/or services payments
Information required in accordance with 49 CFR §23

This section to be completed by the authorized GRK ACDBE TEAM only:

GRK ACDBE Specialist:	_____
Signature:	_____
Date Received:	_____
Comments:	_____

Instructions: Use additional sheets as needed.

ACDBE Category acronyms:

- BLK = Black Americans
- HISP = Hispanic Americans
- NAAM = Native Americans
- WMN = Women
- ASPA = Asian-Pacific Americans
- SAAM = Subcontinent Asian Americans
- OTH = Others

A firm's ACDBE certification can be verified by searching the following database: <https://txdot.txdotcms.com>

EXHIBIT D – Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the “Concessionaire”) 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).