

**Rochester International Airport, MN  
City of Rochester/Rochester Airport Company**

**REQUEST FOR PROPOSALS**

**Non-Exclusive Rental Car Concession**

**ADDENDUM 1**

**Distribution Date: September 7, 2021**

**Proposals Due: September 28, 2021, by 1:00 p.m.**

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## City of Rochester/Rochester Airport Company

### Non-Exclusive Rental Car Concession at the Rochester International Airport, MN

## REQUEST FOR PROPOSALS

### ADDENDUM 1 - Questions and Answers for above RFP

In the answers of these questions the City of Rochester/Rochester Airport Company shall be noted as "City/Airport Company."

Dated September 7, 2021

#### **The following changes are hereby made to the Request for Proposals – Attachments and Exhibits:**

1. Sec. 12.5 (pg 20) Operations Violations – We are your partners. We will always work with you quickly and in good faith when any operational issues come up. It is punitive to simply issue fines to your partners rather than working together to identify/fix any problems we encounter. Our mutual goal is to provide excellent customer service. We don't need to be fined to try to achieve this goal.

**QUESTION:** Please eliminate the "Liquidated Damages" provision in its entirety.

**Response:** No Change.

**QUESTION:** If the City will not eliminate "Operations Violations" provision, then please establish a reasonable "cure" period (e.g., 14 days) before implementing these punitive financial penalties.

**Response:** See Revised Subsection 12.5 in the Revised Sample Agreement.

2. **Sample Concession Agreement, Section 21** – In the event that this Concession Agreement, for any reason, goes into holdover, we should not be penalized by having a minimum annual guarantee that is 1.10 times the amount of our third year minimum annual guarantee. As such, we request that this section be removed in its entirety.

**Response:** See Revised Section 21 in the Revised Sample Agreement.

3. Sec. 21 (pg 28) Holdover – If we are holding over due to the City not having provided incumbents with a new agreement or not conducting a bid, then it is unfair to require the incumbents to pay a MAG, let alone an increased MAG.

**QUESTION:** Will the City please include language in this section stating that there will be no MAG obligation during holdover, and that concessionaire will pay only the premises rents and the 10% of its gross revenues' fee during such time?

Response: See Response to Question #2.

**Questions Received NOT Resulting in Changes to RFP documents:**

**General Questions**

4. As a general matter ABG vehemently opposes any Airport Bid-Process during this ongoing Global Pandemic which continues to be fraught with tremendous uncertainty. Like you, many of are trying to understand the extent and depth to which this latest iteration of the Coronavirus will affect our revenues. Although we have great confidence that this situation will improve and eventually normalize, it is imperative that we work together in the near term to collect good data so that we all can all make well thought-out decisions that will enable us to ensure our long term financial viability. Toward this end, my company requests that we delay this RFP process for at least one year so that we can monitor this situation and get a more accurate assessment of the key metrics that will inform our respective bids.

Response: No Change.

5. **QUESTION:** Please confirm that only the two incumbent RST concessionaires participated in, logged in, and/or called in to the 8/25 pre-bid meeting.

Response: Confirmed. Rental car attendees at the non-mandatory August 25, 2021 pre-proposal meeting included representatives from Avis Budget and EAN.

6. **QUESTION:** Please confirm that both incumbent RST concessionaire entities are eligible and qualified (e.g., no outstanding arrearages) to submit a bid.

Response: Confirmed. Both incumbent concessionaires currently operating at RST are eligible and qualified to submit a proposal. As a reminder, if a proposal is submitted by a legal entity which is not currently a party to a concession agreement at RST, that entity would not be considered an incumbent.

7. **QUESTION:** Please confirm whether the Hertz corporate concession that had previously operated at RST is eligible and qualified (e.g., no outstanding arrearages) to submit a bid.

Response: The Hertz Corporation is considered eligible and qualified to submit a proposal. A franchisee of Hertz would also be eligible to proposal if they meet the minimum qualifications.

8. **Instructions to Proposers, Paragraph 11**– Are there any companies that are precluded from bidding on this Concession due to their previous bankruptcy issues or for any other reason? If so, please specify which company or companies.

Response: Any company proposing must meet the minimum qualifications in Section 11 of the Request for Proposals.

9. **QUESTION:** Please provide the linear footage (length) of each counter.

Response: The length of each rental car counter is 6 feet 7 inches long from the edge of the wall to the edge of the counter.

10. We respectfully request that all modes of car rental be held to a level playing field with regard to all access and fee (e.g., concession fee, rent, CFC) requirements. This level-playing field should include all off-airport rental car operators and peer-to-peer (“P2P”) rental car operators.

**QUESTION:** Will the City please provide a copy of RST’s current off-airport rental car agreement?

Response: There are no current RST off-airport rental car agreements.

**QUESTION:** Will the City please confirm all access and fee requirements for off-airport rental car operators at RST?

Response: The City has addressed off-airport rental car business including access and fee requirements in Chapter 9-13 of the Rochester Code of Ordinances.

**QUESTION:** Will the City please provide a copy of the RST’s current P2P rental car agreement?

Response: The City/Airport Company does not currently have a P2P rental car agreement.

**QUESTION:** If there is not a signed P2P agreement in place today at RST, will the City please confirm what access and fee requirements will be implemented for P2P rental car operators going forward?

Response: The City/Airport Company cannot confirm what access and fee requirements will be implemented for P2P rental car operations going forward.

11. In recent years, there have been several companies that have been interested in providing car sharing services on-airport, whether they are actual car sharing companies or a branded service that rental car companies offer. These car sharing companies/services have membership fees.

**QUESTION:** If the City intends to allow car sharing anywhere on airport property (whether offering limited parking spaces on-airport, curbside pick-up, etc.), please confirm that the City is collecting a portion of these membership fees along with the off-airport revenue percentage fee.

Response: The City/Airport Company cannot confirm what access and fee requirements will be implemented for car sharing services.

## **RFP**

12. **QUESTION (Two Parts):** Please confirm that all the terms and conditions specified in the RFP and any/all issued addenda will be incorporated herein and made a part of the Concession Agreement. Specifically, please add language to the RFP and to the Concession Agreement which states: *“The Request for Proposals, including all issued addenda and questions and answers, are hereby incorporated into and made a part of the Concession Agreement.”*

Response: No. The Sample Concession Agreement will be updated as appropriate to incorporate addenda changes to include all terms and conditions prior to execution by either party.

13. Sec. 1.A (pg 2) & 13 (pg 7) Submission of proposals - We have seen numerous airports require an online or email submission in recent months. In the interest of being good stewards of the environment and in line with sustainability principles, please do not require physical submittals. The original proposal guaranty can be mailed to the City by the due date, but without the need for all of the additional paperwork.

**QUESTION:** Will the City please allow an email or online submission, rather than physical copies?

Response: No Change.

14. **Instructions to Proposers, Paragraph 13** – The Notice Inviting Proposals (the “Notice”) specifies that one original and one electronic copy in PDF format on a flash drive be received at the Airport by the aforementioned date. While we understand that the Airport may not be equipped to receive our bids in an electronic format, is it possible that the City of Rochester’s Information Technology Department is able to assist the Airport in establishing a drop box or alternative secured means by which to accept bids electronically?

Response: No.

15. Sec. 2.B (pg 2) Counter/office location – Choice of counter/office location determined by MAG. All counters are substantially the same, and it is both disruptive and unnecessarily expensive to move counters.

**QUESTION:** Will the City please “grandfather” counters to incumbent operators?

Response: No Change.

**QUESTION:** If the City will not “grandfather” counters, will the City allow the use of CFC funds to pay for post-bid counter space reallocation?

Response: No.

16. **Instructions to Proposers, Paragraph 3** – The rental rates for the ready/return spaces are increasing 11% effective January 1, 2022. This is a very significant cost increase during a

time of tremendous uncertainty. As such, we request that the City maintain the current rate, or at the very least gradually phase in the increase over the three year term.

Response: No Change.

17. **Instructions to Proposers, Paragraph 3** – Due to the manner in which the Notice is structured there is a possibility, depending upon the number of companies who submit bids, that at least one of us may become obligated to lease more ready/return spaces than our company requires to support its operational requirements. Furthermore, factoring in the 11% cost increase associated with ready/return parking, being required to lease more spaces than any company may require creates an additional financial burden. Therefore, please revise the Notice to provide that the successful bidders will be entitled to lease “**up to**” the number of ready/return spaces reflected on Exhibits B(1), B(2) and B(3).

Response: No Change.

18. **Instructions to Proposers, Paragraph 3** – With respect to any resulting unallocated ready/return spaces, is it possible that those spaces may be repurposed for alternate uses such as short term or employee parking throughout the entire three year term?

Response: No.

19. As discussed in the pre-proposal meeting, RST has created space blocks that allocate 100% of all ready/return space --- regardless of whether there are 2, 3 or 4 concessions awarded from this proposal. Accordingly, it is our understanding 100% of all available ready/return will be 100% fully-allocated after the award of concessions from this proposal. We wanted to confirm this question/answer in writing.

**QUESTION:** Please confirm that if the City/Airport Company accepts fewer than 4 Proposals, the City will allocate 100% of all available ready/return space in space blocks based on the number of concessions awarded from this proposal.

Response: Confirmed. The City/Airport Company does not intend on adding any ready/return parking blocks during the term of the agreement.

20. Sec. 4 (pg 4) – Dual Branding – This language requires companies that operate more than 2 brands to submit at least two bids to operate all their brands.

**QUESTION:** Please confirm that proposers are permitted to submit more than one proposal, so long as each proposal names/includes different brands.

Response: Yes. A single legal entity may submit more than one proposal as long as each proposal contains different brands.

21. **QUESTION:** Please confirm that no additional brand can be added to any proposer’s concession agreement during the term of the agreement and that operator may only operate the brand or brands that it specified in its proposal.

Response: As described in Section 4 of the Request for Proposals, “Any successful Proposer shall be prohibited from operating at the Airport under any brand other than the brand(s) it designates on its “Qualification Form - Attachment #3.” Approval of any requests for any changes from this arrangement will not be accepted.”

22. Sec. 14 (pg 7) – Opening of Proposals – There is no indication that proposals will be opened publicly.

**QUESTION:** Will the City please confirm that there will be a public opening (e.g., Zoom meeting) and reading of the proposal amounts on the due date?

Response: There will be no public opening. Once the selection committee has reviewed the Proposals received, all Proposers will be notified. We anticipate this notification no later than September 30<sup>th</sup>.

23. Sec. 14.3 (pg 7)

**QUESTION:** Will the City please confirm that Enterprise Leasing Company of Minnesota, LLC is not in default or arrears?

Response: As of September 3, 2021, Enterprise Leasing Company of Minnesota, LLC is not in default or arrears.

24. **Instructions to Proposers, Paragraph 22** –The statistical data provided in the Notice only includes deplanement and gross revenue through June, 2021. Please provide any additional data that is available.

Response: Gross revenues and deplanement information for July 2021 are provided below.

Enterprise/National	\$261,773.06
Avis/Budget	\$226,801.92
Total Gross Revenues	\$488,574.98
Total Deplanements	11,737

### **Concession Agreement**

25. DEFINITIONS:

#3 (pg 5-6) “Gross Revenues” – If there is a promotional and/or “preferred member” discount/coupon earned and used by a customer, the only amount concessionable should be the amount that the Operator actually receives as compensation for the rental.

**QUESTION:** Will the City please add language in the 4th line as follows: “... received by Concessionaire, **net of any discounts, coupons or credits at the time the rental contract is closed.**”

Response: No Change.

**QUESTION:** As to “retroactive adjustment”, will the City please confirm this means that if we apply the discount/coupon at the time of rental, the only amount concessionable is the amount we actually receive as compensation, net of said discount/coupon?

Response: No, we cannot confirm. As provided in the definition of Gross Revenues, Gross Revenues shall mean “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 or received by Concessionaire.”

26. #3 (pg 6) “Gross Revenues” – as to the stated exclusions:

**QUESTION:** Will the City please insert additional exclusions for fuel and carbon offset (as these are not revenue-generating items)?

- Fuel: Fuel should be excluded from gross revenues as there is no profit or additional revenue resulting from the cost we recover from the customer for furnishing or replacing fuel. “Pre-paid” fuel is the cost of furnishing fuel and is at the commencement of the contract and is not revenue as the amount we charge for fuel is at or below the cost of the nearest gas station. The cost to replace fuel is at the conclusion of the contract and should also be excluded as this does not result in any profit or additional revenue, but is our administrative cost to be “made whole” when a customer returns the vehicle with a lesser amount of fuel than when they rented it.
- Carbon Offsets: This fee is optional for our customers and is to allow them to make their rental carbon neutral. There is no profit in this fee as 100% of all fees collected are passed through to a 3<sup>rd</sup>-party to fund environmental initiatives.

Response: No Change.

27. #11 (pg 7) “Transaction Day”. Typically, there is a “grace period” associated with the definition of a transaction day.

**QUESTION:** Will the City please include language here stating “...except that a partial day that is a grace period of no more than one (1) hour after the last 24-hour day booked shall not be considered a Transaction Day.”

Response: No Change.

28. Due to the influx of various modes of non-traditional car rental in recent years, it is important to **define a “Rental Car Company”** in the agreement.

**QUESTION:** Will the City please incorporate the following definition into the agreement as follows? “A “*Rental Car Company*” is any business that, directly or indirectly, provides, procures and/or brokers rental vehicles as part of its business and/or conducts, facilitates, and/or manages vehicle rental activities as part of its business. This includes, but is not limited to, traditional rental car businesses, brokers for car rental businesses, rental car delivery companies, peer-to-peer car rental businesses and car sharing businesses.”

Response: No Change.

29. **Sample Concession Agreement, Section 2** – We request the City include a two year renewal option after the initial term of the proposed Concession Agreement.



Response: No Change.

30. Sec. 2 (pg 7) Renewal of Term – It would be very helpful to have a renewal option to avoid the time and disruption that accompanies a formal bid process every three years. It would also be very helpful to allow your business partners to be able to invest in concession/lease space at RST beyond three-year intervals.

**QUESTION:** Will the City please include a mutually agreeable renewal (e.g., 5-years) option with the upcoming new concession term?

Response: See Response to Question #29.

31. **Backwall Signage Question** – Please confirm that the cost of any new electronic backwall signage will be paid for by the Airport and also that any work associated with installing the signage will be performed by the Airport and/or its contractor. Likewise, if there is any financial responsibility on the part of any of the rental car companies or work that any of us will be required to perform, please specify what is required.

Response: No. The rental car concessionaire will be responsible for reimbursing the airport for the initial cost of acquiring and installing the backwall signage. That estimated cost is currently approximately \$3,000 to \$3,500 per counter. The Airport will pay for the ongoing maintenance of the electronic signage system.

32. **QUESTION:** Please confirm that the City will provide all necessary counter signage improvements (e.g., new electric signage) at the City's expense (or otherwise use CFC funds).

Response: No. See Response to Question #31.

33. **Stall Signage Question** – Please confirm that the Airport will be providing stall signage in the ready/return lot. Additionally, kindly verify that this cost will be paid for by the Airport and also that any work associated with installing the signage will be performed by the Airport and/or its contractor. Likewise, if there is any financial responsibility on the part of the rental car companies or work that any of us will be required to perform, please specify what will be required.

Response: No. The City/Airport Company will not be providing the signage. The Concessionaire is responsible for providing the signage. The City/Airport Company will install the Concessionaire provided signage on the existing mounting poles in place in the parking lot.

34. **QUESTION:** Please confirm that the City will provide all necessary ready/return improvements (e.g., signage, poles, paint, etc.) at the City's expense (or otherwise use CFC funds).

Response: See Response to Question #33.

35. Sec. 5.1.c (pg 11) CFCs – We would like full historical (and projected future) details regarding CFC uses and CFC annual accounting.

**QUESTION:** What is the current CFC fund balance?

Response: The current CFC fund balance is not available at this time. The CFC is not part of this RFP process and is charged to rental car customers per City Ordinance Chapter 9-13.

**QUESTION:** Will the City please provide historical annual accounting (in dollars) for both CFC collections and CFC uses since the CFC was first implemented?

Response: As time permits in the coming months, an analysis by the City/Airport Company of CFC collections and uses will be developed.

**QUESTION:** Please provide a summary narrative of all uses of CFC funds since original implementation.

Response: As described in City Ordinance, the City established a customer facility charge to be collected from a rental car business customer in order to offset the costs of operating, maintaining, and developing the airport.

**QUESTION:** What are the current uses of CFC funds (by category)?

Response: As described in City Ordinance, the City established a customer facility charge to be collected from a rental car business customer in order to offset the costs of operating, maintaining, and developing the airport.

**QUESTION:** For each category of CFC fund usage, will the City please identify the anticipated annual cost going forward for each category?

Response: This information is not currently available.

36. **CFC Question** – Please provide the current balance of the CFC account as well as relevant information related to what projects the CFC has funded as well as any future CFC projects that are being considered by the Airport which will enhance the customer experience and/or affect our cost structure at the Airport.

Response: See Response to Question #35.

37. Sec. 5.1.f (pg 12) Abatement – We request that the City follow standard “contractual MAG abatement” provisions and have a one month (year over year) look back with a 15% reduction while using 2019 as the “base year”. Using a three-month period and a 20% reduction delays abatement and makes it harder for the relief to be provided.

**QUESTION:** Will the City please change all references to the contractual MAG abatement trigger of 20% reduction to a 15% reduction?

Response: No Change.

**QUESTION:** Will the City please change all references to the contractual MAG abatement comparison period from 3 months to 1 month?

Response: No Change.

**QUESTION:** Will the City please use 2019 as the base year for comparing deplanements for the purpose of calculating contractual MAG abatement?

Response: No Change.

38. **Sample Concession Agreement, Section 5** – If any new Concession Agreement is to contain a Minimum Annual Guarantee, the financial risk of the MAG must be mitigated by simple and nimble abatement language. Toward this end, please replace your proposed language with something to the effect of the following:

*“Should the number of passengers deplaning on scheduled airline flights at the Airport during any given calendar month decline by more than fifteen (15) percent from the same calendar month of 2019, the obligation of the Concessionaire to pay the MAG Payment (1/12 of the MAG) for that calendar month will be abated in its entirety. Such abatement shall continue until such time as deplanement levels at the Airport increase such that there is no longer a decline of more than fifteen (15) percent compared to the same calendar month of 2019.”*

Response: No Change.

39. Sec. 6.1.b (pg 13) Annual Statements – It is very costly (thousands of dollars) to provide audited financial statements.

**QUESTION:** Will the City please include language that annual statements may be certified by a financial representative of the Concessionaire instead of requiring audited financials?

Response: No Change.

40. Sec. 11 (pg 18) Operating Hours – Required Operating Hours have been expanded without consultation with the Industry. We make ourselves available to take care of our customers. With flight delays and cancellations, required/fixed operating hours will not match up with posted flight schedules. Successful proposers should be allowed to meet with Staff and establish reasonable operating hours.

**QUESTION:** Please consult with the successful proposers and establish reasonable “operating hours” that take into consideration flight delays and flight cancellations.

Response: No Change.

41. **Sample Concession Agreement, Section 12.5** – As discussed during the August 25th meeting, we as an industry we are all highly incentivized to provide the highest level of customer service. However, as we have all experienced throughout the Pandemic, there are

some instances, including the current nation-wide staffing challenges and/or vehicle shortages that are beyond our control. During these tough times, which are not limited to rental car operations at the Airport, we hope that our business partners can afford us patience and support as we work through these issues. As such, in the spirit of partnership, we request that the Operation Violations language in this section be removed in its entirety.

Response: No. See Response to Question #1.

42. Sec. 14.1 (pg 22) Indemnification – Concessionaire should also be indemnified.

**QUESTION:** Will the City please include language for Concessionaire’s indemnification that mirrors the language in this section?

Response: No Change.

43. Sec. 40 (pg 33) Records retention – Seven years is excessive for retaining records.

**QUESTION:** Will the City please change this records retention period to 3 years?

Response: No Change.

44. **ACDBE Question** – Can you please provide clarification on how the ACDBE percentages are calculated, including whether (a) ACDBE spend includes or excludes fleet purchases; (b) percentage of Total Revenue or Total Goods & Services Spent; and whether the spend is required to be with ACDBE certified suppliers in Minnesota or from anywhere in the United States.

Response: There are no certified ACDBE’s in the Minnesota Unified Certification Program (MNUCP) that provide fleet purchasing options for car rental businesses. Therefore, the goal computation does not include fleet purchases. The goal is based on ACDBE’s providing goods and services to the car rental agencies operating at the Rochester International Airport. In order to be counted as ACDBE Participation the business needs to be a certified ACDBE in the Minnesota Unified Certification Program (MNUCP).

45. **ACDBE Question** – If a new ACDBE becomes available throughout the course of the year, does the airport need to be alerted to this and a proper submission form need to be submitted to count that spend towards the goal? For example, if Company A becomes ACDBE certified do we need to provide a letter of intent in order to count this new ACDBE’s spend?

Response: Concessionaires are not required to notify the City/Airport Company of any new ACDBE vendors identified throughout the course of the year, although such notification would be appreciated. The Concessionaire should report the new ACDBE spend in its required annual reporting along with documentation that the vendor is an ACDBE certified firm.

**REVISED CONCESSION AGREEMENT**

NON-EXCLUSIVE RENTAL CAR CONCESSION  
Rochester International Airport  
Rochester, Minnesota

between

City of Rochester & Rochester Airport Company  
Rochester, Minnesota

and

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Concessionaire

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SAMPLE

**RENTAL CAR CONCESSION**  
**Rochester International Airport**  
**Rochester, Minnesota**

THIS CONCESSION AGREEMENT ("Agreement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **CITY OF ROCHESTER** and **ROCHESTER AIRPORT COMPANY**, (hereinafter referred to as "City/Airport Company") and "\_\_\_\_\_", (hereinafter referred to as "Concessionaire"), a \_\_\_\_\_(entity type) d/b/a \_\_\_\_\_ brand(s).

WITNESSETH:

WHEREAS, City/Airport Company controls, owns, operates, and maintains an airport in Olmsted, County Minnesota, known as Rochester International Airport (hereinafter referred to as "**Airport**"), and has the power to grant rights and privileges with respect thereto, and

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

NOW, THEREFORE, it is mutually agreed as follows:

**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. "Executive Director" shall mean the Executive Director of the Rochester International Airport, or his or her designee.
3. "Gross Revenues" as used herein shall mean, as determined in the reasonable discretion of the City/Airport Company, 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 International 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 Chapter 42A of the City of Rochester Code of Ordinances, as may be amended;
- Amounts received specifically for loss, conversion and abandonment of or damages of vehicles or other property of Concessionaire, other than any administration fees;
- 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.

4. "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.

5. "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.

6. "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.

7. "Rental Car" or "Motor Vehicles" shall mean motor vehicles designed primarily for the carriage of passengers and commonly classified as sedans, coupes, convertibles, station wagons, four-wheel drive vehicles, passenger vans, sport utility type vehicles, and pick-up trucks rated three-quarter-ton or less. 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. Employee parking shall only be allowed in those areas designated by the Airport.
8. "Terminal Building" shall mean the commercial terminal building at the Airport.
9. "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, signs and the like.
10. "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.
11. "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/Airport Company hereby leases to Concessionaire and Concessionaire hereby agrees to lease from City/Airport Company the following premises, which, collectively, are hereinafter called the "Leased Premises": Two hundred eight-three (283) square feet of counter/office/queuing area (Counter \_\_\_) in the Terminal Building and Block #\_\_\_ in the ready/return area containing approximately \_\_\_ ready/return parking spaces outside and adjacent to the Terminal Building. Said Leased Premises is more particularly shown on **Exhibit A1 and Exhibit A2** 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 three (3) year period commencing on January 1, 2022 and terminating on December 31, 2024 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 concession at the Airport. 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 parent 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 Concessionaire 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 the 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 FBO. No trucks larger than three-quarter-ton pickup type/style will be allowed in the ready/return lot unless approved in advance by the Executive Director.
- c. 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.
- d. Concessionaire shall utilize the Airport's standardized electronic signage for its back wall signage and reimburse the City/Airport Company for the cost and installation of such signage. Concessionaire shall provide the Airport with their graphics, in accordance with the procedures established by the Airport, for written approval by the Executive Director and programming into the electronic signage system. Concessionaire shall install no additional signs on or about the Premises without the prior written approval of the Executive Director, said approval being solely discretionary with the Executive Director. 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 concessionaires, and subject to Director'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. 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.

- e. 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/Airport Company, subject to the payment of reasonable charges as set by the City/Airport Company.
- f. *Airport Concession Disadvantaged Business Enterprise Program*
  - a. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 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.
  - b. 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.
  - c. Each year Concessionaire no later than February 1<sup>st</sup> shall provide to City/Airport Company 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 through September), a description of the nature of the services performed by and/or items purchased from each firm named, and the total amount spent with each firm named. 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/Airport Company.

#### **SECTION 4 - RESTRICTIONS ON USES AND PRIVILEGES**

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

#### **SECTION 5 - PRIVILEGE FEE, RENTS, AND FEES**

*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/Airport Company each calendar year, for the full term of this Agreement, a Privilege Fee. Said Privilege Fee shall be the greater of either the Minimum Annual Guarantee or the Percentage Fee applicable to Gross Revenues, hereinafter defined, as follows:

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

OR

- b. the respective yearly amount shown below as the Concessionaire’s Minimum Annual Guaranteed “MAG”:

January 1, 2022 to December 31, 2022	\$	
January 1, 2023 to December 31, 2023	\$	
January 1, 2024 to December 31, 2024	\$	

Each Concessionaire’s total MAG for the term of this Agreement shall be used to determine its relative order of selection of 1) Counter/Office/Queuing space in the Terminal and 2) Block of stalls in the Ready/Return area.

Monthly payment shall be the greater of 1/12<sup>th</sup> 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 (1<sup>st</sup>) day of each month. On or before the 20<sup>th</sup> of each month the Concessionaire shall provide the Airport with i) a signed and certified Report of Gross Revenues for the preceding month ii) payment of any Percentage 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 calendar year, the Concessionaire may cease remittance of the 1/12<sup>th</sup> of the respective year’s MAG on the first (1<sup>st</sup>) day of each month for the remainder of that calendar 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.

Concessionaire acknowledges that Privilege Fee payments by Concessionaire to the City/Airport Company under this Agreement are for Concessionaire’s privilege to use the Airport facilities and access the Airport market and are not fees imposed by the City/Airport Company upon Concessionaire’s customers. The City/Airport Company 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 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 the City/Airport Company; (d) Concessionaire shall neither identify, treat, or refer to the Recovery Fee as a tax, nor imply that the City/Airport Company is requiring the pass through of such fee.

b. Rent for Premises located in the Terminal Building Area Concessionaire shall pay to the City/Airport Company, in advance, on the 1<sup>st</sup> day of each month the following rent:

1. For the period commencing January 1, 2022 through December 31, 2022, Concessionaire shall pay the sum of Twenty-One Dollars and Forty-Three Cents (\$21.43) per square foot per annum for \_\_\_\_\_ (\_\_\_) square feet of counter/office/queuing position in the Terminal Building. Thereafter, commencing January 1, 2023, and January 1, 2024 the per square foot per annum rent shall be the same per square foot per annum rate paid by other tenants at the Airport:

2. For the period commencing January 1, 2022 through December 31, 2022, Concessionaire shall pay the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), per month for Ready/Return Block # as shown on Exhibit A2. For the period commencing January 1, 2023 through December 31, 2023, Concessionaire shall pay the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), per month. For the period commencing January 1, 2024 through December 31, 2024, Concessionaire shall pay the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), per month.

c. Additional Fees

1. The Concessionaire shall collect the CFCs on behalf of the Airport and remit to the City/Airport Company, in accordance with the City/Airport Company's CFC resolution, the full amount of the Transaction Day fee collected from each Rental Car customer.
2. Additional fees may include charges for special items or activities including, but not limited to overflow parking, employee parking, badging fees and fees for rental car vehicles parked in spaces or areas not assigned to the Concessionaire. The City/Airport Company 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/Airport Company no later than fifteen (15) days following receipt by Concessionaire of billing therefor.

d. Any and all payments due to the City/Airport Company by Concessionaire shall be made payable to "Rochester Airport Company" and remitted to the following address:

Rochester International Airport  
Rochester Airport Company  
Attn: Executive Director  
7600 Helgerson Dr. SW



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

In the event the amount of payments made during the preceding calendar year exceeds the total of any payments due for such calendar year, the excess payment shall be credited against the payments for the next calendar year, except that any excess payment during the final calendar 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.

f. Concessionaire's Right of Abatement. In the event that the following condition exists during the term of this Agreement, the minimum annual guarantee hereinabove provided for in Section 5(a)(1)(b) shall be abated for the period of time the condition exists:

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a not less than twenty percent (20%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

2. The abatement amount for those months that are abated as defined in Section 5(f)(1) will be the prorated reduction of that month's 1/12th payment of the minimum annual guarantee. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12th minimum annual guarantee payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.

3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the 20% threshold, at which time the full minimum annual guarantee payment shall be made for such month.

4. This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than 20% reduction in passenger deplanements.

Overpayments of the MAG will be credited to the Concessionaire during the year-end reconciliation process described in Section 5(e).

## **SECTION 6 – ACCOUNTING RECORDS**

### *Subsection 6.1 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/Airport

- Company, in such detail and on the statement form designated as Exhibit B or as may reasonably be specified by City/Airport Company, 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/Airport Company set forth in Subsection 5.1(a) are to be computed, said Exhibit B statement to be signed by a responsible accounting officer of Concessionaire. City/Airport Company 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/Airport Company and to provide any such additional information City/Airport Company may reasonably request. Concessionaire shall keep full and accurate books and records showing all of its Gross Revenues hereunder, and City/Airport Company 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. Concessionaire hereby agrees that all such books and records will be made available to City/Airport Company for at least seven (7) 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/Airport Company a written statement, certified by an independent Certified Public Accountant, to City/Airport Company stating that in his or her opinion the Percentage Fees paid by Concessionaire to City/Airport Company 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/Airport Company within ninety (90) days of the end of each calendar 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/Airport Company during the period covered by said statement.
- c. Delinquent Rentals and Fees. Without waiving any other right or action available to City/Airport Company in the event of default in the payment of charges or fees payable to City/Airport Company, pursuant to this Agreement, Concessionaire shall pay to City/Airport Company a late payment fee of Fifty Dollars (\$50.00) per occurrence plus interest thereon at the rate of one and one-half percent (1.5%) per month from the date such payment was due and payable until paid.

*Subsection 6.2 Audit.* City/Airport Company 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 and Privilege Fee 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/Airport Company with interest thereon at one and one-half percent (1.5%) per month from the date such additional Privilege Fee became due.

## **SECTION 7 - INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING OF PREMISES**

### *Subsection 7.1 - Building Services*

- a. City/Airport Company Improvements and Services. City/Airport Company shall initially and upon any renovation or relocation 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/Airport Company shall provide and maintain, water, sewer, general lighting, electrical power, and heating and air-conditioning for the Terminal Building. Heating and air conditioning and electrical service are provided to the Leased Premises only. If Concessionaire requires additional lighting, electrical power, water, telephone outlets, or adjustments to the air-conditioning system, such additional improvements or services shall be subject to the prior written approval of Executive Director, 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 telephone services or communication systems, provided that any such services or systems shall require the written approval of Executive Director before installation.

### *Subsection 7.2 - 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. 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 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. Two (2) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to Executive Director for review prior to commencement of construction; after final approval by the Executive Director, Executive Director 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, ul. Any approval given by City/Airport Company 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/Airport Company shall extend to and include architectural and aesthetic matters and City/Airport Company 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 approval.
  - d. Disapprovals. In the event of disapproval by City/Airport Company of any portion of any plans or specifications, Concessionaire shall promptly submit necessary modifications and revisions thereof for approval by Executive Director. City/Airport Company 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/Airport Company, and no alterations or improvements shall be made to or upon the Leased Premises without the prior written approval of Executive Director.
  - e. Provision of As-Built Drawings. Upon completion of any construction project, Concessionaire shall provide City/Airport Company two (2) completed sets of as-built drawings in reproducible form as specified by City/Airport Company. Concessionaire agrees that, upon the request of City/Airport Company, Concessionaire will inspect the Leased Premises jointly with City/Airport Company to verify the as-built drawings.

## **SECTION 8 - TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.**

*Subsection 8.1 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/Airport Company, at no cost to City/Airport Company.

*Subsection 8.2 Structural Alterations.* Concessionaire shall make no structural alterations to the Leased Premises without the prior written consent of Executive Director.

*Subsection 8.3 Alterations and Improvements to Airport.* Concessionaire acknowledges that from time to time City/Airport Company 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/Airport Company in such matters, even though Concessionaire's own activities may be inconvenienced, and Concessionaire agrees that no liability shall attach to City/Airport Company, its members, employees, or agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of City/Airport Company substantially impair the operations of Concessionaire under this Agreement, the Minimum Annual Guarantee shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being reasonably determined by Executive Director. Concessionaire agrees that if relocation is required that Concessionaire shall move its operations as reasonably directed by Executive Director and said move is at City/Airport Company's expense as determined by the Executive Director.

*Subsection 8.4 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 the Executive Director 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 9 - MAINTENANCE OF PREMISES**

### *Subsection 9.1 Airport Maintenance Obligations.*

- a. General Maintenance and Operation. City/Airport Company 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. Specifically included in this obligation is the maintenance of building systems, queuing space in front of the rental car concession counters, and pavement repair for the ready/return parking.
- b. Structural Maintenance. City/Airport Company shall provide, or cause to be provided, structural maintenance of the Terminal Building and shall provide, or cause to be provided, the washing of all windows (on the outside of the Terminal Building only) in the Leased Premises at periodic intervals.
- c. Maintain Access. City/Airport Company 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/Airport Company reserves the right to reasonably restrict access to the Terminal Building area for automobile deliveries during peak activity periods.

*Subsection 9.2 Concessionaire's Maintenance Obligations.*

- a. Concessionaire's General Obligations. Except for maintenance of the Terminal Building, as provided in Subsection 9.1, Concessionaire shall be obligated, without cost to City/Airport Company, 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. Concessionaire shall be obligated, without cost to City/Airport Company, to provide custodial service to Leased Premises, excluding the queuing space in front of the rental car concession counters for which the City/Airport Company will provide custodial services.
- b. Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to City/Airport Company of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition caused by the Concessionaire in the Leased Premises shall be corrected immediately by the Concessionaire upon receipt of oral notice from the Executive Director. At the direction of said Executive Director, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.
- c. Trash and Refuse. City/Airport Company 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. 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.
- 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/Airport Company.

**SECTION 10 - LIENS, PAYMENT, AND PERFORMANCE BONDS**

*Subsection 10.1 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 Ten Thousand Dollars (\$10,000) in cost, Concessionaire or its contractor shall furnish to City/Airport Company, and without expense to City/Airport Company, a surety bond, issued by a surety Concessionaire licensed to transact

business in the State of Minnesota and satisfactory to and approved by City/Airport Company 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/Airport Company from any liability, losses, or damages arising there from.

*Subsection 10.2 Compliance with Federal Aviation Regulations and Security Requirements Parts 14 CFR Part 139 and 49 CFR Part 1542.* Concessionaire agrees to comply with Federal Aviation Regulations, Part 1542 (Airport Security) and the Airport's policies as outlined in the Airport's Federal Aviation Administration approved Operations Plan and Airport Security Plan. Concessionaire further agrees that any fines levied upon the City/Airport Company 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.

*Subsection 10.3 Security, Performance Bond.* During the term of this Agreement, the City/Airport Company shall require the Concessionaire to deliver (and thereafter maintain current for the entire term of this Agreement) an instrument of security in a form satisfactory to the City/Airport Company, in its sole discretion, in the amount of twenty-five percent (25%) of Concessionaire's Minimum Annual Guarantee for each year hereunder, 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 Performance bond.

## **SECTION 11 - OPERATION OF LEASED PREMISES: HOURS AND DELIVERIES**

*Subsection 11.1 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. Concessionaire's counter will be adequately staffed and open one hour before the first scheduled flight departure and thirty minutes after the arrival of the last scheduled commercial service flight. Hours of operation shall be such that passengers of flights arriving or departing from the terminal will be accommodated. 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 Concessionaire's analysis of the optimum arrangements, but the final

determination shall be made by the Executive Director based on their analysis of necessary service to the public.

*Subsection 11.2 Delivery of Vehicles and 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/Airport Company. Concessionaire shall abide by all Transportation Security Administration (TSA) requirements for parking of Motor Vehicles near the Terminal Building.

*Subsection 11.3 Utilities.*

- a. City/Airport Company 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.
- b. City/Airport Company 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 12 - QUALITY AND CHARACTER OF SERVICE**

*Subsection 12.1 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, does not unduly annoy, disturb, or offend others at the Airport.

*Subsection 12.2 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 12.3 Additional Compliance.* Concessionaire shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Agreement.

*Subsection 12.4 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. Employees of Concessionaire shall wear appropriate name tags, subject to the approval of the Executive Director, and employees will be appropriately dressed. Clothing will be neat and clean and present a professional appearance. Executive Director 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.

- 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 12.5 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/Airport Company. Additionally, City/Airport Company resources will be expended in dealing with violations of this Agreement by Concessionaire. The parties hereby agree that total damages sustained by to City/Airport Company 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/Airport Company. 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/Airport Company the following amounts as liquidated damages upon the occurrence of breaches, in any calendar year, related to operation violations:

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

For hours of operations violations, liquidated damages shall be as follows:

- \$100 per hour or portion thereof, during which location is not open - second 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 occurrence thereafter

City/Airport Company's failure to impose liquidated damages for any violation of the requirements set forth above shall not waive any right, or prohibit City/Airport Company from doing so for subsequent violations.

Except for violations regarding the minimum hours of operation, the liquidated damages for which shall be incurred immediately and without notice upon violation, other liquidated damage amounts shall not be imposed unless the violation continues for more than three (3) calendar days after City/Airport Company has given Concessionaire written notice (and this written notice may be in the form of an email) of the violation; provided, however, after City/Airport Company has given Concessionaire notice of the same violation more than twice during any given year, the liquidated damage amount shall be immediately imposed with no opportunity to cure in order to avoid the sanction. Additionally, after two (2) violations of the same type in the same year, City/Airport Company 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 13 – NON-DISCRIMINATION**

*Subsection 13.1. 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 airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

*Subsection 13.2. 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 Federal Aviation Administration 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 Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
  - e. Sanctions for Noncompliance: In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, the City/Airport Company will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.
  - f. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs a. through f. 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 Federal Aviation Administration 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 14 - IDEMNIFICATION AND INSURANCE**

*Subsection 14.1 Indemnification.* To the fullest extent allowable by law, Concessionaire hereby indemnifies and shall defend and hold harmless, at Concessionaire's expense, City/Airport Company, 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/Airport Company. Concessionaire's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the negligent or willful misconduct of City/Airport Company, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as City/Airport Company waiving its statutory limitation and/or immunities as set forth in the applicable Minnesota Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Concessionaire shall reimburse City/Airport Company, 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/Airport Company, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

*Subsection 14.2 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:

- 1) Commercial General Liability Insurance of not less than \$5,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Insurance of not less than \$5,000,000.00 per occurrence;
- 3) To the extent that Concessionaire employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Minnesota statutory limits.

Limits can be met with a combination of primary and excess policies.

*Subsection 14.3 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/Airport Company. Concessionaire and City/Airport Company 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 14.4 Both Concessionaire and City/Airport Company to Carry Fire Insurance.* It is understood that both Concessionaire and City/Airport Company 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/Airport Company) 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/Airport Company 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/Airport Company collects under its Insurance Coverage, City/Airport Company waives any and all claims against Concessionaire, its agents, servants, and employees, for loss or damage to City/Airport Company'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/Airport Company, 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 14.5 Insurance Certificate.* A certificate evidencing insurance required by Subsection 14.2 and 14.3 and listing both the City of Rochester and Rochester Airport Company as additional insured(s), excluding Workers' Compensation, shall be filed with City/Airport Company prior to this agreement being executed by City/Airport Company, 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/Airport Company. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such Insurance Coverage has been renewed shall be filed with City/Airport Company. If such Insurance Coverage is canceled or reduced, Concessionaire shall within fifteen (15) days after receipt of written notice from City/Airport Company of such cancellation or reduction in coverage, file with City/Airport Company a certificate showing that the required insurance has been reinstated or provided through another insurance Concessionaire or companies.

## **SECTION 15 - DAMAGE OR DESTRUCTION OF PREMISES IN TERMINAL BUILDING**

*Subsection 15.1 Partial Damage.* If all or a portion of the Terminal Building 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/Airport Company subject to the limitations of Subsection 15.4; provided, however, to the extent that such damage or destruction is not covered by insurance, Concessionaire shall be responsible for reimbursing City/Airport Company 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 subConcessionaires, agents, or employees.

*Subsection 15.2 Extensive Damage.* If the damages referred to in Subsection 15.1 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/Airport Company subject to the limitations of Subsection 15.4; and, the charges payable herein for the Minimum Annual Guarantee under Subsection 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/Airport Company'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/Airport Company 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 subConcessionaires, agents, or employees. Rents payable for the leased areas in the Terminal Building and/or Ready/Return Block will only abate if the City/Airport Company is unable to provide alternative space for Concessionaire to conduct its business.

*Subsection 15.3 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/Airport Company shall undertake the repair, replacement, and reconstruction of said Leased Premises; and charges payable herein for the Minimum Annual Guarantee under Subsection 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/Airport Company's Executive Director 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/Airport Company 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 subConcessionaires, agents, or employees; provided further, however, if within 120 days 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/Airport Company is unable to provide alternative space for Concessionaire to conduct its business.

*Subsection 15.4 Limits of City/Airport Company's Obligations Defined.* It is understood that, in the application of the foregoing Subsections, City/Airport Company's obligations shall be limited to repair or reconstruction of the Terminal Building 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 refurbishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

## **SECTION 16 - CANCELLATION**

*Subsection 16.1 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/Airport Company:

- 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/Airport Company, 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/Airport Company in the performance of any covenant or agreement herein required to be performed by City/Airport Company and the failure of City/Airport Company to remedy such breach for a period of sixty (60) days after receipt from Concessionaire of written notice to remedy the same.

*Subsection 16.2 Cancellation by City/Airport Company.* City/Airport Company may cancel this Agreement and terminate all of its obligations hereunder at any time that City/Airport Company 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/Airport Company shall give to

Concessionaire notice in writing to correct such breach and if such breach shall continue for fifteen (15) business days after the receipt of such notice by Concessionaire, City/Airport Company may, after the lapse of said fifteen (15) business day period, cancel this Agreement, without forfeiture, waiver, or release of City/Airport Company'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 16.3 Termination.* Should an early termination of this Agreement occur pursuant to the terms of Subsection 16.2 hereof, City/Airport Company 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 16.4 Notice of Termination.* If any of the events enumerated in Subsections 16.1 and 16.2 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 17 - 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 18 - SURRENDER OF POSSESSION**

Concessionaire shall, upon termination of this Agreement or cancellation, quit and deliver up the Leased Premises and privileges to City/Airport Company 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/Airport Company, reasonable use and wear thereof excepted. In addition to any lien provided by Minnesota law, City/Airport Company 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/Airport Company may have thereon for unpaid charges or fees.



## **SECTION 19 - TAXES AND LICENSES**

The Concessionaire (and any successor in interest) covenants that it shall properly elect at the time the lease is executed to irrevocably waive depreciation and investment tax credit with respect to the leased property and/or Leased Premises. The Concessionaire agrees to retain a copy of such election in its records for the entire term of the lease. The Concessionaire further covenants that any publicly recorded document which is recorded in lieu of the lease will also state that neither the Concessionaire nor any successor in interest under the lease will claim depreciation or an investment credit with respect to the leased property. The term "leased property" for purposes of the foregoing election shall exclude any property (including fixtures, etc.) which was not financed with the proceeds of any "tax-exempt bond", as such term is defined by Section 150 (a)(6) of the Internal Revenue Code of 1986 (the "Code"). 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. City/Airport Company shall assist Concessionaire where necessary in obtaining said permits.

## **SECTION 20 - INSPECTION OF PREMISES**

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

## **SECTION 21 - 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/Airport Company. In the event of such holding over, City/Airport Company shall be entitled to collect from Concessionaire, ~~1.04.40~~ times the amount of Year Three's minimum annual guarantee. All other terms and conditions in such holdover shall be the same as herein provided.

## **SECTION 22 - QUIET ENJOYMENT**

City/Airport Company 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 23 - 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 24 - SECURITY AGREEMENTS**

City/Airport Company 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/Airport Company hereunder.

### **SECTION 25 - 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/Airport Company 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/Airport Company for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the Rochester International 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/Airport Company shall terminate this Agreement.

### **SECTION 26 - RIGHTS AND PRIVILEGES OF CITY/AIRPORT COMPANY**

- a. City/Airport Company 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. City/Airport Company's Executive Director is hereby designated as its official representative for the enforcement of all provisions in this Agreement with full power to represent City/Airport Company with dealings with Concessionaire in connection with the rights herein granted.
- c. The Executive Director 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. Except in the case of an emergency or previous arrangement with the Concessionaire,

Executive Director or designee's entry into the Premises shall be during reasonable business hours after providing reasonable advance notice, and in the presence of Concessionaire's representative.

- d. City/Airport Company 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/Airport Company deems appropriate, regardless of the desires or views of Concessionaire, and without interference or hindrance.
- e. During the time of war or National Emergency, City/Airport Company shall have the right to lease the landing area of the Airport, or any part of Rochester International Airport, thereof, to the United States Government for military or national use, and if any lease is executed, the provisions of this instrument insofar as they are inconsistent with the provision of the lease to the Government, shall be suspended.
- f. City/Airport Company 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 Rochester International Airport, and the right to pursue all operations of the Rochester International Airport.
- g. City/Airport Company 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/Airport Company, would limit the usefulness of the Airport, or constitute a hazard to aircraft.
- h. City/Airport Company 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 or Transportation Security Administration (TSA) Security Requirements, FAR Part 139 and CFR 1542 respectively, result in major expenditures to City/Airport Company due to Concessionaire's tenancy on the Rochester International Airport. If said renegotiation is desired, written notice must be given to Concessionaire sixty (60) days prior to such renegotiations.

#### **SECTION 27 - ACCESS CONTROL**

- a. Concessionaire shall upon termination of this agreement return all issued keys to City/Airport Company. If all issued keys are not returned to City/Airport Company at the termination of this Agreement Concessionaire shall pay to City/Airport Company cost to re-core premises locks and cut new keys at the rate set at the time of such re-core.
- b. Concessionaire is responsible for all keys issued to employees of Concessionaire. If a key is lost,

Concessionaire shall immediately notify City/Airport Company and shall pay to City/Airport Company cost to re-core premises locks and cut new keys at the rate set at the time of such re-core.

#### **SECTION 28 – NO PERSONAL LIABILITY**

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

#### **SECTION 29 – 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 Minnesota. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in Olmstead County, Minnesota. Each party waives its right to challenge venue.

#### **SECTION 30 – JURY TRIAL WAIVER**

The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

#### **SECTION 31 – NOTIFICATION**

Concessionaire shall:

- 1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify City/Airport Company 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.
- 2) Promptly notify City/Airport Company 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.
- 3) Notify City/Airport Company, 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, related to the Airport, 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 32 – 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 33 – 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/Airport Company. 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 34 – 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 35 – 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/Airport Company

### **SECTION 36 – 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.

### **SECTION 37 – 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 38 – 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 39 – 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/Airport Company: Rochester International Airport  
City/Airport Company of Rochester  
7600 Helgerson Dr SW  
Rochester, MN 55902

To the Concessionaire: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 40 – PUBLIC RECORD LAW**

Concessionaire understands and acknowledges that City/Airport Company is subject to the Public Records Law of the State of Minnesota. As such, Concessionaire agrees to retain all records as defined by Minnesota Statute applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Concessionaire agrees to assist City/Airport Company in complying with any public records request that City/Airport Company receives pertaining to this Agreement. Additionally, Concessionaire agrees to indemnify and hold harmless City/Airport Company, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Concessionaire’s actions or omissions which contribute to City/Airport Company’s inability to comply with the Public Records Law. In the event that Concessionaire decides not to retain its records for a period of seven (7) years, then it shall provide written notice to City/Airport Company whereupon Rochester shall take custody of said records assuming such records are not already maintained by City/Airport Company. This provision shall survive the termination of this Agreement.

#### **SECTION 41 – CONSTRUCTION**

This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. 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 42 – 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 43 – 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 44 – FORCE MAJEURE**

City/Airport Company shall not be responsible to Concessionaire and Concessionaire shall not be responsible to City/Airport Company 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 45 – GOOD STANDING**

Concessionaire affirms that it is a Concessionaire duly formed and validly existing and in good standing under the laws of the State of Minnesota 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 Minnesota and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

#### **SECTION 46 - 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 47 – NO INTERFERENCE**

The Concessionaire and City/Airport Company agree that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, or development of the Airport.

#### **SECTION 48 – 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 49 – 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 50 – SURVIVAL**

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

#### **SECTION 51 – MORE FAVORABLE TERMS**

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



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the dates set forth below.

ATTEST:

CONCESSIONAIRE:

By: \_\_\_\_\_ By: \_\_\_\_\_

Date: \_\_\_\_\_

CITY/AIRPORT COMPANY:

ATTEST:

ROCHESTER AIRPORT CORPORATION

By: \_\_\_\_\_ By: \_\_\_\_\_

John Reed, Executive Director

Date: \_\_\_\_\_

ATTEST:

CITY OF ROCHESTER

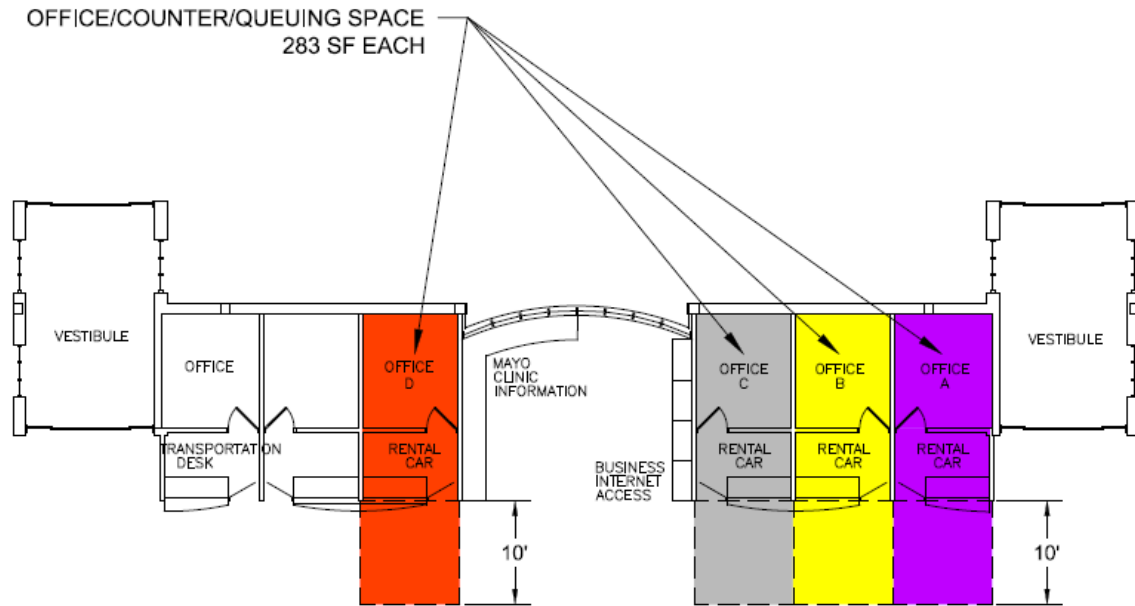
By: \_\_\_\_\_ By: \_\_\_\_\_

Kim Norton, Mayor

Date: \_\_\_\_\_

SAMPLE

**EXHIBIT A1 – LEASED PREMISES – TERMINAL BUILDING COUNTER AND OFFICES**



SAMMY

**EXHIBIT A2 – LEASED PREMISES – READY/RETURN BLOCKS**

SAMPLE

**EXHIBIT B – RENTAL CAR MONTHLY REPORT**

**ROCHESTER INTERNATIONAL AIRPORT**

RENTAL CAR MONTHLY REPORT OF GROSS REVENUES  
FOR MONTH OF \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

GROSS RENTAL REVENUE: \_\_\_\_\_

Percentage Fee (10%) \_\_\_\_\_

Less: Monthly Guarantee paid 1st of month: \_\_\_\_\_

(1) Privilege Fee Balance Due: \_\_\_\_\_

Number of Transaction Days: \_\_\_\_\_

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

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

Number of Transactions \_\_\_\_\_

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

Signature: \_\_\_\_\_

Typed Name and Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

Payments should be made payable to the "Rochester Airport Company."

REMIT THIS FORM AND PAYMENT TO: Rochester International Airport  
Rochester Airport Company  
Attn: Executive Director  
7600 Helgerson Dr. SW  
Rochester, MN 55902

**EXHIBIT C – SAMPLE RENTAL CAR ACDBE REPORTING FORM**

Name of **Car Rental Company**: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_

**Total expense purchases of goods and services for operations at RST:**

\$ \_\_\_\_\_

-The following information is left blank intentionally. Our company did not have any DBE participation to submit for the time period requested.

\_\_\_\_\_

Name of **ACDBE Firm**: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by ACDBE firm:

-----  
-----  
-----  
-----

The estimated dollar value of this work is \$ \_\_\_\_\_

This ACDBE Firm is registered as:

- |   |  |
|---|--|
| <input type="checkbox"/> Black American         | <input type="checkbox"/> Native American     |
| <input type="checkbox"/> Hispanic American      | <input type="checkbox"/> Non-Minority Women  |
| <input type="checkbox"/> Asian-Pacific American | <input type="checkbox"/> Other               |
| <input type="checkbox"/> Asian-Indian American  | <input type="checkbox"/> Information Unknown |

(Submit this page for each ACDBE subcontractor. Copies may be made.)

## 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).