

Exhibit E

[Concession Agreement]

**RENTAL CAR CONCESSION AGREEMENT
FOR
AUSTIN - BERGSTROM INTERNATIONAL AIRPORT**

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Attachment 1: Definitions

- Exhibit A: Monthly Revenue Report (By Location)
- Exhibit A-1: Monthly Revenue Report (Summary)
- Exhibit B: Brands
- Exhibit C: ACDBE Participation Report
- Exhibit D: ACDBE Quarterly Revenue Report

RENTAL CAR CONCESSION AGREEMENT

THIS RENTAL CAR CONCESSION AGREEMENT (this “Concession Agreement”) is made as of the ____ day of _____, 20__, by and between **THE CITY OF AUSTIN, TEXAS** (the “City”), acting through its Executive Director of Aviation (“Director”) and _____, a _____ corporation (the “Concessionaire”) authorized to do business in the State of Texas.

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions. Definitions of defined terms utilized in this Concession Agreement and not otherwise defined herein are set forth in **Attachment 1** hereto. The definitions for other defined terms are set forth in other parts of this Concession Agreement including the Exhibits.

1.2 Interpretations. All terms defined in this Concession Agreement and all pronouns used in this Concession Agreement shall, unless the context clearly requires otherwise, be deemed to apply equally to the singular and plural forms and to all genders. The term “or” is specifically used in its logical sense and, as such, is satisfied whenever one or more of its operands are true. Except as otherwise expressly provided or unless the context otherwise requires, (a) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as at the time applicable to the City, (b) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Concession Agreement as a whole and not to any particular article, section or other subdivision, and (c) the word “including” shall mean “including without limitation”. The table of contents, titles and headings of the articles and sections of this Concession Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Concession Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

1.3 Related Documents. This Concession Agreement contains references to the Indenture, the Master Lease and the Concessionaire’s Sublease Agreement. To the extent of any irreconcilable conflict between the terms and provisions of this Concession Agreement and the terms and provisions of the documents referenced in the preceding sentence, this Concession Agreement and such documents shall have the following order of priority: the Indenture, this Concession Agreement, the Master Lease and the Concessionaire’s Sublease Agreement.

ARTICLE 2 GRANT OF CONCESSION

2.1 Grant of Concession. City hereby awards and grants to Concessionaire, and Concessionaire hereby accepts, the right and the obligation to operate a Rental Car Concession at the Airport during the Concession Term on a nonexclusive basis for the purpose of arranging

rental vehicle and related services for Airport Customers where such services are furnished by Concessionaire. The concession rights and privileges granted and awarded to Concessionaire are expressly made subject to all of the terms, covenants and conditions of this Concession Agreement and the Sublease Agreement. Concessionaire specifically acknowledges and understands that City intends to grant Rental Car Concessions to other Persons. The award of concession rights and privileges to such other concessionaires shall not constitute a violation of this Concession Agreement, nor, in the event of the cessation or termination of such other Rental Car Concessions during the term hereof, shall the award of concession rights and privileges to a substitute or successor concessionaire constitute a violation hereof.

ARTICLE 3 TERM

3.1 Term. This Concession Agreement shall be effective, and binding between the parties, as of the date first signed by City and Concessionaire. The term of this Concession Agreement (the “Concession Term”), however, shall commence on the Opening Date and, unless earlier terminated pursuant to the provisions of this Concession Agreement, shall extend for an initial period of eleven (11) Concession Agreement Years.

3.2 Renewals. The City in its sole discretion may agree in writing to extend the Concession Term for up to two additional five (5) year periods; provided, that the Master Lessee is not in default under the Master Lease and the Concessionaire (1) provides the City with written notice of its request to renew nine (9) months before the expiration of the Term, and (2) is not in default under this Concession Agreement, the Sublease Agreement, or the Service Center Lease.

3.3 Prior Concession Agreement. The City and Concessionaire agree that notwithstanding anything in the Prior Concession Agreement to the contrary, (i) the Prior Concession Agreement shall remain in full force and effect until, and shall terminate on, the Opening Date, unless terminated earlier in accordance with its terms; provided that, those provisions of the Prior Concession Agreement which by their express terms survive the termination of the Prior Concession Agreement shall not be terminated, and (ii) all terms and provisions of this Concession Agreement with respect to, concerning or otherwise relating to the CFC (as defined herein) shall apply to the CFC (as defined in the Prior Concession Agreement) until the Opening Date. Without limiting the generality of the foregoing, Concessionaire consents to the pledge of the CFCs and Parking Garage Rentals (as each such term is defined in the Prior Concession Agreement) for the payment of the Bonds and agrees to remit such CFCs and Parking Garage Rentals, on and after the effective date of this Concession Agreement, to the Trustee in accordance with the terms of this Concession Agreement for deposit in the Revenue Fund established under the Indenture for the Bonds. For the avoidance of doubt, Concessionaire acknowledges and agrees that the Concessionaire’s failure to collect and remit the proceeds of the CFC (as defined in the Prior Concession Agreement) when due as required by Section 4.2 hereof shall constitute an Event of Default under this Concession Agreement and an event of default under the Prior Concession Agreement, and the City shall be entitled to exercise any right or remedy with respect thereto under this Concession Agreement and the Prior Concession Agreement, all in accordance with their respective terms. Concessionaire, at its sole cost and expense, shall vacate the Concessionaire’s leased premises and kiosks in the Airport Terminal

and on the third floor of the existing parking garage covered by its Prior Concession Agreement in broom clean and good condition and repair, obsolescence and ordinary wear and tear excepted, and remove all of its personal property therefrom. Concessionaire shall complete such vacation of its leased premises in the Airport Terminal not later than ten (10) days after the Opening Date, unless vacated earlier in accordance with the terms of the Prior Concession Agreement, and shall complete such vacation of its leased premises on the third floor of the existing parking garage not later than fourteen (14) days after the Opening Date. Concessionaire further agrees to remit to the Trustee any CFCs (as defined in the Prior Concession Agreement) charged prior to the Opening Date that are not collected until after the Opening Date, notwithstanding any termination of the Prior Concession Agreement.

ARTICLE 4 FEES AND PAYMENTS

4.1 Concession Fee. Concessionaire shall pay to City, for the concession rights and privileges granted herein, in the manner provided in this ARTICLE 4, an amount for each Concession Agreement Year (the “Concession Fee”) equal to the greater of the following: (a) the Minimum Annual Guaranteed Concession Fee for such Concession Agreement Year; or (b) a percentage fee (the “Percentage Fee”) equal to ten percent (10%) (the “Required Percentage”) of its Gross Receipts for such Concession Agreement Year.

4.1.1 The Minimum Annual Guaranteed Concession Fee. For the first Concession Agreement Year, the Minimum Annual Guaranteed Concession Fee shall be eighty-five percent (85%) of the Concession Fee (as defined in the Prior Concession Agreement) due for the last twelve months under the Prior Concession Agreement, prorated for the number of months in the first Concession Agreement Year. For the second Concession Agreement Year, the Minimum Annual Guaranteed Concession Fee shall be eighty-five percent (85%) of the Concession Fee (as defined in the Prior Concession Agreement) due for the last twelve months under the Prior Concession Agreement. For the third Concession Agreement Year and for the eight (8) Concession Agreement Years following the third Concession Agreement Year, the Minimum Annual Guaranteed Concession Fee shall be an amount equal to eighty-five percent (85%) of the Concession Fee due for the immediately preceding full Concession Agreement Year but in no event shall it be less than the Minimum Annual Guaranteed Concession Fee set for the third Concession Agreement Year. If the Concession Agreement is renewed in accordance with Section 3.2, for each of the Concession Agreement Years following the renewal, the Minimum Annual Guaranteed Concession Fee shall be an amount equal to eighty-five percent (85%) of the Concession Fee due for the immediately preceding full Concession Agreement Year but in no event shall it be less than the Minimum Annual Guaranteed Concession Fee set for the twelfth (12th) Concession Agreement Year. The Minimum Annual Guaranteed Concession Fee shall remain in effect until the subsequent renewal, if any, of the Concession Agreement.

4.1.2 Percentage Fee. City may adjust the Required Percentage every five (5) Concession Agreement Years based on either, as selected by the City, (a) the average of the three (3) highest percentage fees paid under the then current concession contracts with rental car companies at airports in the United States with the same FAA classification as the Airport, or (b) the average of the three (3) highest percentage fees paid under the then current concession

contracts with rental car companies out of the six (6) highest enplanement commercial airports in the State of Texas, as selected by the City. City shall determine and notify Concessionaire in writing of the new Required Percentage, as well as the data used in calculating such amount, sixty (60) days prior to commencement of the Concession Agreement Year. In no event shall the Required Percentage be less than ten percent (10%) of Gross Receipts per Concession Agreement Year.

4.1.3 Overpayment/Underpayment of Concession Fee. If the aggregate Concession Fee due for any Concession Agreement Year exceeds the greater of (i) the Minimum Annual Guaranteed Concession Fee applicable to such Concession Agreement Year; or (ii) a Percentage Fee equal to the Required Percentage of its Gross Receipts for such Concession Agreement Year the over-payment shall be credited to Concessionaire's account as City may determine; provided, however, in no event shall Concessionaire take a credit against any subsequent Concession Fee or other payment owed to City for any such overpayment without the prior approval of City. Concessionaire shall have no right to set-off or off-set any Concession Fee or other payment owed to City under this Concession Agreement against any amounts that may be payable by City to Concessionaire unless such credit is issued by the City. If the aggregate Concession Fee payments made for any Concession Agreement Year is less than the greater of either (i) the Minimum Annual Guaranteed Concession Fee applicable to such Concession Agreement Year, or (ii) the Required Percentage of Concessionaire's Gross Receipts for such Concession Agreement Year, Concessionaire shall pay the balance due to City within thirty (30) days after receipt of invoice.

4.1.4 Gross Receipts. "Gross Receipts" shall mean the total amount actually charged to customers by Concessionaire for or in connection with rental car agreements it secures through its operations at the Airport or derives from the rental of vehicles to persons picked up at the Airport by or on behalf of Concessionaire. "Gross Receipts" as used herein includes all monies or other consideration paid or payable to Concessionaire for all sales made and services performed for cash or credit provided to persons picked up at the Airport, regardless of the ownership, area, fleet, or location assignment of the vehicles and without regard to (a) the manner in which, or place at which, the vehicles or other products or services are furnished to Concessionaire's customers, (b) whether the vehicles or other products are returned to Airport or to some other location or (c) the manner in which the reservation, rental or contract was made or executed (i.e., by what mode, means or process); and regardless of whether or not customer was an airline passenger, resides locally, or used any other Airport services; and shall include monies paid or payable for any vehicles originally rented at Airport but renewed at or from another location.

4.1.4.1 For the avoidance of doubt, and not as a limitation on the general applicability of the foregoing definition it is agreed and understood that Gross Receipts expressly include, but are not limited to:

4.1.4.1.1 Fees for the rental or leasing of vehicles pursuant to daily or time charges and/or mileage charges and fees;

4.1.4.1.2 All bundled unit rate or daily rate charges as charged the customer on the rental agreement (no unbundling permitted);

4.1.4.1.3 Fees charged customers for Concessionaire's recoupment of airport concession fees;

4.1.4.1.4 Fees charged customers for Concessionaire's recoupment of vehicle tax, title and licensing or registration fees for its fleet vehicles;

4.1.4.1.5 Fees for any and all fuel options charged customers such as, but not limited to, prepayment of fuel, refueling (including charges for fuel and charges for refueling services), and any other charges related to fuel, fuel replacement, and/or servicing;

4.1.4.1.6 Fees generated from customers that are picked-up by Concessionaire or its agents at the Airport;

4.1.4.1.7 Premiums and any and all other fees and charges for acceptance of any and all types of insurance and/or insurance supplements, including personal accident insurance, personal effects insurance, baggage insurance, personal effects protection insurance, liability insurance, liability insurance supplements, medical protections and coverages, etc., without limitation;

4.1.4.1.8 Fees and charges of all types for acceptance of insurance waivers or loss or damage waivers of all types, such as, but not limited to, loss damage waiver, collision damage waiver, partial waivers, windshield damage waivers, etc., without limitation;

4.1.4.1.9 Fees and charges for vehicle upgrades and exchanges;

4.1.4.1.10 Inter-city fees and drop charges;

4.1.4.1.11 Fees and charges for additional equipment, communications and technology, including car seats, car racks, radios, phones, navigation, Wi-Fi, satellite services, sound systems, etc.;

4.1.4.1.12 Fees and charges for any and all miscellaneous items and services, including additional drivers, drivers under a certain age, keys, cleaning of vehicles, roadside assistance, towing, valet services, etc., without limitation;

4.1.4.1.13 Additional fees charged for government rentals including any "Government Administrative Rate Supplement (GARS)" or similar fee;

4.1.4.1.14 Additional fees charged customers for participation in frequent flyer and other frequent traveler programs;

4.1.4.1.15 Fees charged customers for carbon offset or other environmental programs;

4.1.4.1.16 Fees generated from contracted services with other Airport concessionaires and users, or any other third parties;

4.1.4.1.17 Charges to recover Concessionaire's operating costs, including franchise and other taxes or surcharges levied on Concessionaire's activities, facilities, equipment, real or personal property, payroll taxes, income taxes, taxes on frequent flier miles paid directly to an airline, vehicle tax, title, licensing and/or registration fees;

4.1.4.1.18 [Reserved]; and

4.1.4.1.19 Any and all other fees and charges charged to customer, and all other receipts, compensation, revenue and other consideration received or accrued to Concessionaire, Concessionaire's franchisor or any other affiliated person or entity for or on account of the subject Rental Car Concession, its operations, or its fleet vehicles, unless specifically excluded herein.

4.1.4.2 Concessionaire may exclude from Gross Receipts only the following "Allowable Exclusions:"

4.1.4.2.1 Customer Facility Charges;

4.1.4.2.2 Federal, State, City or other local/municipal motor vehicle rental tax, or sales or use taxes levied on the rental transaction or the sale to the customer of ancillary products or services, which are required by law to be charged to customers and remitted to the taxing authority. These taxes shall be separately stated (separate line item) and computed on the rental agreements and identified for the customer. It is agreed and understood that neither the CFC nor the Concession Fees payable by Concessionaire hereunder constitute a tax;

4.1.4.2.3 Monies received by Concessionaire as reimbursement or compensation for actual damages to or loss or conversion of vehicles rented to customers at Airport, whether paid by customer, insurance company or other third party. This exclusion does NOT include charges for any type of insurance or waiver option sold to customers by Concessionaire such as, but not limited to, loss damage waiver, collision damage waiver and any and all other types;

4.1.4.2.4 Any local or national discounts provided to customers at the time of rental, separately stated on the customer's rental agreement, and discount taken on customer's receipt upon vehicle return; provided, however that any discount, dividend, rebate or other reduction in charges applied retroactively (i.e., after completion of the rental transaction at the time of vehicle return), including volume discounts and other corporate business

incentive programs of Concessionaire (e.g., corporate/commercial discounts or dividends) are not an Allowable Exclusion from Gross Receipts.

4.1.4.3 Credit Transactions. Concessionaire may conduct all or part of its business on a credit basis, provided that the risk of such operation shall be borne solely by Concessionaire. Concessionaire shall pay Concession Fees on such credit transactions, and report all sales, charges and receipts, both cash and credit, in its monthly statement to City.

4.1.5 Payment of Concession Fee. On or before the first day of each month of the Concession Term, Concessionaire, without demand or notice, shall pay a monthly installment of the Minimum Annual Guaranteed Concession Fee due hereunder equal to one-twelfth (1/12) of the Minimum Annual Guaranteed Concession Fee specified herein for the Concession Agreement Year in which such month occurs.

4.1.6 Remittance. Concessionaire shall remit to City, on or before the 20th day of each month without demand or notice, the excess, if any, between the monthly installment of Minimum Annual Guaranteed Concession Fee paid for the preceding month and the Percentage Fee due for such preceding month.

4.1.7 Recovery of Concession Fee. Concessionaire acknowledges that Concession Fee payments by Concessionaire to City under this Concession Agreement are for Concessionaire's privilege to use the Airport facilities and are not fees imposed by City upon Concessionaire's customers. The City does not require, but will not prohibit a separate charge by Concessionaire for the Concession Fee on customer invoices or rental agreements (the "Recovery Fee"); provided, that if the Concessionaire charges a separate Recovery Fee, the Concessionaire shall include a separate statement of and charge for the Concession Fee on customer invoices or rental agreements and such Recovery Fee shall meet all of the following conditions: (a) such Recovery Fee must be titled "Concession Recovery Fee," "Concession Recoupment Fee" or such other similar name first approved by City 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 tax line"); (c) the Recovery Fee as stated on the invoice and charged to the customer shall be no more than 11.11% except that in the event that the Percentage Fee is adjusted under Section 4.1.2 to an amount greater than ten percent (10%), the maximum Recovery Fee shall be the Percentage Fee divided by the quantity one minus the Percentage Fee, (e.g., if the Percentage Fee is 10%, then the maximum Recovery Fee is $.1/(1-.1) = .1/.9 = 11.11\%$; if the Percentage Fee is 10.5%, then the maximum Recovery Fee is $.105/(1-.105) = .105/.895 = 11.73\%$, etc.); (d) Concessionaire shall neither identify, treat or refer to the Recovery Fee as a tax; and (e) Concessionaire shall comply with all Legal Requirements, including Federal Trade Commission requirements. Concessionaire shall never directly or indirectly state or imply that the City is requiring the collection of the Recovery Fee.

4.1.8 Abatement of Minimum Annual Guaranteed Concession Fee. Notwithstanding the foregoing requirements of this Section 4.1, the obligation of Concessionaire to pay monthly installments of the Minimum Annual Guaranteed Concession Fee pursuant to this Section 4.1 (but not the obligation of Concessionaire to pay the Percentage Fee as required by Section 4.1) may be abated by City in its sole discretion upon written request submitted by

Concessionaire to the Director and upon written approval of the Director upon the occurrence of one of the following:

4.1.8.1 Decline in Passenger Count. The number of passengers deplaning on scheduled airline flights at the Airport during any three consecutive reporting months shall be less than seventy-five percent (75%) of the number of such deplaning passengers in the same consecutive reporting months of the preceding Concession Agreement Year (the “Passenger Count”); or

4.1.8.2 Adverse Effect of Other Circumstances. Concessionaire demonstrates to City, in a manner that City in its sole discretion determines to be satisfactory, that Concessionaire’s Gross Receipts have materially diminished through no fault of Concessionaire during a period of at least thirty (30) consecutive days and City determines that the operation of Concessionaire’s Rental Car Concession at the Airport has been adversely affected for such period by shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for its operations through no fault of Concessionaire.

4.1.9 Period of Abatement. In the event that the payment of monthly installments of the Minimum Annual Guaranteed Concession Fee is abated pursuant to this Section 4.1, the period of abatement shall be specified by the Director, in its sole discretion.

4.2 Obligation to Collect and Remit CFCs. In addition to the Concession Fees, the Concessionaire shall collect a Customer Facility Charge in accordance with the terms hereof and remit such amounts collected to the Trustee, as the assignee of City, for deposit in the Revenue Fund in accordance with, and for the purposes specified in, the Bond Ordinance and Indenture, including without limitation, payment of the principal of, premium, if any, and interest on the Bonds. Concessionaire shall remit the CFCs monthly to the Trustee on or before the 20th day of each month for the preceding calendar month of operations. CFCs do not constitute a Gross Receipt.

4.2.1 Trust Property. CFCs collected by the Concessionaire are due, payable and deemed paid to the Trustee immediately upon the collection thereof by the Concessionaire, and pending the actual remittance thereof to the Trustee, such amounts are and shall be property in which the Concessionaire holds only a possessory interest as agent of the Trustee and not an equitable interest. CFCs collected by the Concessionaire, whether prior to or after remittance to the Trustee under this Section 4.2 are pledged for the payment of the Bonds, and the Concessionaire hereby consents to such pledge. The Concessionaire acknowledges the Trustee’s security interest in the CFCs as the Trustee’s agent under Section 9.313 of the Texas Business and Commerce Code and Section 1208 of the Texas Government Code. Prior to remittance to the Trustee, CFC revenue collected by the Concessionaire shall be held in trust by the Concessionaire as agent for the benefit of the Trustee. All CFC revenue collected and held by the Concessionaire shall be considered the property of the Trustee. The Trustee shall provide notice of receipt of CFCs to the City in accordance with the terms of the Indenture.

4.2.2 Rental Customer Contracts. The CFC shall be identified on a separate line on the rental car customer contract, after taxes, and described on the rental car customer contract as the “ABIA Rental Car Facility Fee.” The current CFC per day amount shall be indicated on

the customer contract. The CFC shall not be combined with any other fee or charge on the same line of the customer contract or statement of charges. CFCs shall not be included in calculations of state and local taxes due, or any other fees or surcharges imposed by Concessionaire, including, but not limited to, any “airport concession recovery fee” or other reimbursement fees charged by Concessionaire.

4.2.3 Collection of CFCs. The CFC shall be the amount determined by the Director for all rental car companies doing business on the Airport and occupying the CONRAC. Concessionaire shall charge and collect CFCs from all rental car customers, **without exception.** For the avoidance of doubt, and not as a limitation on the universal applicability of the preceding sentence, Concessionaire shall charge and collect CFCs from customers receiving complimentary or discounted car rental under the Concessionaire’s bona fide marketing plans, customers whose rentals are tax exempt, regardless of whether customer was an airline passenger to or from the Airport, and regardless of whether the rental reservation or contract was made by phone, internet, in person, or in any other manner or from any other location.

4.2.4 Accounting Records for CFC. Concessionaire shall maintain records and controls which are sufficient to demonstrate the correctness of the CFC revenue collected by the Concessionaire and the amount of CFC revenue paid to the Trustee. CFC collections shall be recorded by Concessionaire in a separate account and not combined with any other receipts or charges in Concessionaire’s accounting system. The records shall be available for inspection, audit, and examination at all times by the Director and any designee thereof, as well as the Trustee or City, or their duly authorized representatives upon not less than one Business Days’ prior written notice.

4.2.5 Initial Amount of CFC. The initial CFC effective as of the Effective Date is Five Dollars and Ninety-Five Cents (\$5.95) for each day, or partial day, of each rental and shall be levied on the rental at the Airport of any rental car. Each twenty-four (24) hour period or fraction thereof within the rental period shall constitute a separate day for which the CFC must be levied and collected.

4.2.6 CFC Adjustment. The CFC shall be reviewed at least annually and may be adjusted periodically by the Director, in his sole discretion, for any reason, including, without limitation, to (i) meet all covenants or requirements with respect to the Bonds on a current and ongoing basis and (ii) ensure that projected revenue from the CFC, together with projected revenue from Contingent Fee, as described below, is at least equal to the amount required to meet the applicable revenue covenants under the Indenture. The Director has the right, but not the obligation, to consider a CFC level sufficient to fund the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund set forth in Section 4.2.6.2. The Director shall give Concessionaire sixty (60) days’ written notice prior to implementing a change in the CFC.

4.2.6.1 The City shall engage an independent consultant selected by the City to evaluate and recommend to City whether to adjust the CFC annually, whether upwards or downwards, such that the CFC level will be sufficient so that the projected CFC revenues will meet the applicable revenue covenants under the Indenture. The independent consultant’s analysis will also include a proposed CFC rate that will be sufficient to fund the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund set forth in Section

4.2.6.2. City shall communicate with Concessionaire the independent consultant's findings and allow the Concessionaire to provide any additional information prior to City making a final determination on adjusting the CFC. Fees for the independent consultant shall be paid from CFC revenues.

4.2.6.2 The parties agree that the Indenture shall establish funds and accounts held by the Trustee for the benefit of the bondholders, including the CFC Surplus Fund, and within the CFC Surplus Fund, the CFC Surplus Annual Disbursement Account and the CFC Surplus Residual Account. In the event the combined total amount of CFCs collected and any Contingent Fees required to be paid under Section 4.3 hereof, together with any other amounts required to be deposited in the Revenue Fund, exceeds the amount required to fund the amounts specified in Sections 5.2(b)(i), (ii), (iii) and (iv) of the Indenture, the excess amounts shall be deposited in the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund in accordance with the terms of the Indenture. Subject to Sections 4.2.6.3, 4.2.6.4, and 4.2.6.5, the amounts, if any, credited to the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund shall be used to pay the following in such order of priority:

4.2.6.2.1 For the period beginning on the Effective Date of this Concession Agreement and ending on September 30, 2013, and for each Fiscal Year thereafter until the Opening Date, to the City a total amount of \$913,000 each Fiscal Year, with such amount to be prorated for any partial Fiscal Year in the manner determined by the City;

4.2.6.2.2 Upon the Opening Date, to the RAC O&M and Rent Reserve Fund an amount up to \$2,100,000;

4.2.6.2.3 Within six (6) months from the Opening Date, to the Master Lessee up to \$6,000,000 to be used by the Master Lessee to reimburse the Sublessees for Initial Tenant Improvements paid for by the Sublessees prior to the date of reimbursement as long as, after making such payment, sufficient funds remain in the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund to pay the amount reasonably estimated by the City to be necessary to pay all amounts to be paid under Section 4.2.6.2.4 (excluding any amounts to be paid under Section 4.2.6.2.4(g)) for such Fiscal Year and to provide for a minimum of \$1,000,000 to remain in the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund after giving effect to the estimated payments to be made under Section 4.2.6.2.4, as described below;

4.2.6.2.4 Beginning on the Opening Date and ending in the Fiscal Year ending September 30, 2018, the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund shall be used to pay the following in such order of priority:

(a) Annually, to reimburse the Concessionaires for any Contingent Fees paid prior to the date of reimbursement;

(b) Annually, to the City a total of \$470,000, with such amount to be adjusted on the fifth (5th) anniversary of the Opening Date and on each successive fifth (5th) anniversary of the Opening Date thereafter to reflect any increase in the actual annual cumulative percentage changes in the Consumer Price Index, with such amount for the Fiscal Year in which the Opening Date occurs to be prorated in the manner determined by the City;

(c) Annually, to each of the City and the Master Lessee, respectively, on a one-for-one (1:1 or equally pro-rata) basis, an amount up to \$350,000, with such amount to be increased two percent (2%) annually each Fiscal Year (with such increase to begin with the second full Fiscal Year following the Opening Date) and with such amount for the Fiscal Year in which the Opening Date occurs to be prorated in the manner determined by the City, for the following purposes:

(i) to the City to reimburse the City for operation and maintenance costs of the Commercial Parking Facility and related improvements paid by the City prior to the date of reimbursement; and

(ii) to the Master Lessee to reimburse the Master Lessee for O&M Costs paid by the Master Lessee prior to the date of reimbursement.

(d) Annually, to the RAC O&M and Rent Reserve Fund, as needed to restore the balance in such fund to \$2,100,000;

(e) Annually, to the Master Lessee the amount necessary to reimburse the Master Lessee for any remaining O&M Costs approved by the City and paid by the Master Lessee prior to the date of reimbursement and not previously reimbursed by CFC funds or reimbursed or paid from the Repair and Replacement Fund;

(f) Annually, to the Master Lessee an amount up to \$900,000 to reimburse the Master Lessee for Base Rent paid prior to the date of reimbursement, with such amount to be adjusted on the fifth (5th) anniversary of the Opening Date and on each successive fifth (5th) anniversary of the Opening Date thereafter to reflect any increase in the actual annual cumulative percentage changes in the Consumer Price Index; and

(g) To the Master Lessee the remaining balance, if any, to be used by the Master Lessee to reimburse the Sublessees for Initial Tenant Improvements paid for by the Sublessees, not previously reimbursed by CFC funds, and not exceeding a total reimbursement of \$6,000,000 total for Initial Tenant Improvements, so long as a minimum

of \$1,000,000 remains in the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund, after giving effect to the payments made under this Section 4.2.6.2.4(g).

4.2.6.2.5 Beginning in the Fiscal Year ending September 30, 2019, and for each Fiscal Year thereafter until the Bonds are no longer outstanding, the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund shall be used to pay the following in the following order of priority:

(a) Annually, \$750,000 to the Repair and Replacement Fund, with such amount to be adjusted every year as determined by the City in its sole and absolute discretion;

(b) Annually, to reimburse the Concessionaires for any Contingent Fees paid prior to the date of reimbursement;

(c) Annually, to the City a total of \$470,000, with such amount to be adjusted on the fifth (5th) anniversary of the Opening Date and on each successive fifth (5th) anniversary of the Opening Date thereafter to reflect any increase in the actual annual cumulative percentage changes in the Consumer Price Index;

(d) Annually, to each of the City and the Master Lessee, respectively, on a one-for-one (1:1 or equally pro-rata) basis, an amount up to the amount set forth in Section 4.2.6.2.4 (after giving effect to each annual increase as specified therein), with such amount to be increased two percent (2%) annually each Fiscal Year, for the following purposes:

(i) to the City to reimburse the City for operation and maintenance costs of the Commercial Parking Facility and related improvements paid by the City prior to the date of reimbursement; and

(ii) to the Master Lessee to reimburse the Master Lessee for O&M Costs paid by the Master Lessee prior to the date of reimbursement.

(e) Annually, to the RAC O&M and Rent Reserve Fund, as needed to restore the balance in such fund to \$2,100,000;

(f) Annually, to the Master Lessee the amount necessary to reimburse the Master Lessee for any remaining O&M Costs approved by the City and paid by the Master Lessee prior to the date of reimbursement and not previously reimbursed by CFC funds or reimbursed or paid from the Repair and Replacement Fund;

(g) Annually, to the Master Lessee an amount up to \$900,000 to reimburse the Master Lessee for Base Rent paid prior to the date of reimbursement, with such amount to be adjusted on the fifth (5th) anniversary of the Opening Date and on each successive fifth (5th) anniversary of the Opening Date thereafter to reflect any increase in the actual annual cumulative percentage changes in the Consumer Price Index; and

(h) To the Master Lessee the remaining balance, if any, to be used by the Master Lessee to reimburse the Sublessees for Initial Tenant Improvements paid for by the Sublessees, not previously reimbursed by CFC funds, and not exceeding a total reimbursement of \$6,000,000 total for Initial Tenant Improvements, so long as a minimum of \$1,000,000 remains in the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund, after giving effect to the payments made under this Section 4.2.6.2.5(h).

4.2.6.3 (a) All disbursements to be made from the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund pursuant to Section 4.2.6.2 shall be made annually after the end of each subject Fiscal Year by the Trustee through the City's submission of disbursement requests to the Trustee on or before November 15 following the end of each such Fiscal Year in accordance with the terms of the Indenture; provided, that the City shall submit disbursement requests to the Trustee (i) no later than the fifteenth (15th) day following the Opening Date for the disbursement to be made pursuant to Section 4.2.6.2.2, and (ii) no later than the last day of the seventh (7th) month following the Opening Date for the disbursements to be made pursuant to Section 4.2.6.2.3.

(b) All disbursements to be made pursuant to Section 4.2.6.2.3 shall be made only for the costs specified in such Section that have been incurred and paid by the Sublessees on or before the last day of the sixth (6th) month following the Opening Date.

(c) All disbursements to be made pursuant to Sections 4.2.6.2.4 and 4.2.6.2.5 to the City, Master Lessee, Concessionaire or Sublessees as a reimbursement of costs incurred by any such Person shall be made only for such costs specified in Sections 4.2.6.2.4 and 4.2.6.2.5 that have been incurred by each such Person during the subject Fiscal Year and paid by each such Person for the period beginning on the first day of such Fiscal Year and ending on October 31 of the immediately succeeding Fiscal Year; provided, that in the event any such costs are not reimbursed on account of insufficient moneys being available therefor in the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund, such unreimbursed costs shall be eligible for reimbursement in accordance with the terms of Section 4.2.6.3(d) below. The City may require the Master Lessee, Concessionaire and Sublessees to submit appropriate supporting documentation to the City in order for the City to determine the eligibility of such costs to be paid from the CFC Surplus Fund.

(d) In the event any disbursements to be made pursuant to Section 4.2.6.2 may not be made in full on account of insufficient moneys being available therefor in the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund, the unpaid portion of any such specified or requested disbursement (i) shall be payable by the Trustee from the CFC Surplus Residual Account of the CFC Surplus Fund, to the extent funds are available therein, through the City's submission of disbursement requests to the Trustee on or before November 15 following the end of the applicable Fiscal Year in accordance with the terms of the Indenture, and (ii) if sufficient moneys are not available in the CFC Surplus Residual Account of the CFC Surplus Fund to pay such unpaid portion, are eligible to be paid in connection with the respective annual disbursement request submitted by the City to the Trustee for any subsequent Fiscal Year, in each case, subject in all respects to the priority for such disbursements set forth in Section 4.2.6.2.

4.2.6.4 On or before the last day of each November, beginning November 2013, the City shall submit an annual disbursement request to the Trustee, in accordance with the terms of the Indenture, directing the Trustee to transfer, from the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund to the CFC Surplus Residual Account of the CFC Surplus Fund, the amount on deposit in the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund, as of November 15 of such year, that exceeds the amount specified in the disbursement request submitted by the City to the Trustee to be disbursed by the Trustee from the CFC Surplus Annual Disbursement Account of the CFC Surplus Fund for such year, if any. Concessionaire agrees that, in addition to the purposes of the CFC Surplus Residual Account of the CFC Surplus Fund specified in Section 4.2.6.3(d) above, moneys credited to the CFC Surplus Residual Account of the CFC Surplus Fund may be used at the discretion of the City to (i) pay the principal of, redemption premium, if any, and any sinking fund requirement and interest on the Bonds on the payment date therefor, (ii) restore any deficiency in the Debt Service Fund, the Debt Service Reserve Fund, the Debt Service Coverage Fund or the Repair and Replacement Fund, (iii) purchase, defease, or retire Bonds; provided, that the Debt Service Reserve Fund and the Debt Service Coverage Fund are fully funded; (iv) make final payments for the retirement or defeasance of Bonds; (v) expand, repair or improve the Joint Use Facility or the CONRAC Site, and (vi) expand, repair or improve, or pay any other costs of, rental car facilities, including any costs associated with the relocation of rental car facilities.

4.2.6.5 If at any time the Master Lease is terminated and the City enters into leases or other agreements directly with the Concessionaires with respect to the use of the Subleased Premises, the parties hereto agree that (i) all payments or disbursements to be made from the CFC Surplus Fund to the Master Lessee pursuant to Sections 4.2.6.2.4 and 4.2.6.2.5 shall be made instead to each Concessionaire in its capacity as lessee in accordance with the terms of the lease between the City and the respective Concessionaire, and (ii) the transfers to be made from the CFC Surplus Fund to the RAC O&M and Rent Reserve Fund pursuant to Sections 4.2.6.2.4(d) and 4.2.6.2.5(e) shall be disregarded and of no force or effect.

4.2.7 Separate CFC Account. In the event that Concessionaire materially fails to collect or remit to the Trustee CFCs substantially in accordance with this Concession Agreement, and such failure continues for ten (10) days after receipt of written notice, then in

addition to any other right or remedy available to City, the Director may, by written notice, require Concessionaire to establish a separate CFC trust account, into which Concessionaire shall deposit each business day all CFCs collected by Concessionaire or its agents or employees (the “CFC Trust Account”) for the benefit of City and the Trustee. The CFC Trust Account shall be held by an independent third party bank trustee reasonably acceptable to City. The CFC Trust Account shall be separate from and not commingled with any other Concessionaire funds, including CFCs collected on behalf of other airports. Any amounts required to be remitted to the Trustee under this Section 4.2.7 shall be paid by such independent third party bank trustee to the Trustee on or before the date specified in Section 4.2 hereof. Funds in the CFC Trust Account shall be invested solely in instruments issued or guaranteed by the United States Government or any of its agencies, or federally insured bank certificates of deposit. Any income earned on funds in the CFC Trust Account after the date of required remittance to the Trustee shall be the property of the Trustee and shall be paid immediately to the Trustee.

4.3 Contingent Fee. If, in any Concession Agreement Year, the projected amount collected through CFCs is expected to be insufficient to meet the applicable revenue covenants under the Indenture, Concessionaire agrees to pay an additional fee at the times and in the same manner CFC fees are to be paid as required by the terms of this Concession Agreement, in an amount determined by the City in its sole discretion (after allocating the amount of the additional fee among all Rental Car Concessionaires based upon their Pro Rata Share that shall be sufficient to provide funds in an amount at least equal to the difference between the projected CFC collections for such year, and the amount necessary to meet the applicable covenants under the Indenture, which additional fee shall be referred to herein as a “Contingent Fee.” In addition, if all or any part of the CFC fee fails to survive a challenge in a court of competent jurisdiction, then the stricken portion(s) of the CFC will be replaced, as appropriate, with a Contingent Fee in an amount determined by the City in its sole discretion that is at least equal to the amount that would otherwise be provided by the CFC and sufficient to meet the applicable covenants under the Indenture. In the event all or any part of the CFC fails to survive a challenge in a court of competent jurisdiction, all references to the CFC in this Concession Agreement shall be interpreted to mean both the CFC and the Contingent Fee, or the Contingent Fee, as applicable.

4.4 Monthly Revenue Reports. Beginning with the second (2nd) full month of the first Concession Agreement Year and ending on the month following the final month of the Concession Term, Concessionaire shall, on or before the 20th day of each month, submit to City a Monthly Revenue Report in the form of the Exhibit A hereto (which may be amended by City from time to time) that details the total Gross Receipts for such preceding month for each location where Concessionaire operates its Rental Car Concession at the Airport, including but not limited to CONRAC, Fixed Base Operators, and hotels on the Airport and a Monthly Revenue Report in the form of the Exhibit A-1 hereto (which may be amended by City from time to time) that summarizes Concessionaire’s total Gross Receipts for such preceding month from all of its locations where Concessionaire operates its Rental Car Concession at the Airport. If City shall not receive the Monthly Revenue Report by the 20th day of each month, Concessionaire shall pay a late fee of \$50.00 (Fifty dollars) per day until the Monthly Revenue Report is received by City. The Monthly Revenue Report shall include:

4.4.1 Concessionaire’s entire Gross Receipts for the prior calendar month;

4.4.2 any Allowable Exclusions from Gross Receipts (but only to the extent expressly authorized under Section 4.1.4.2 of this Concession Agreement) itemized separately with corresponding dollar amounts;

4.4.3 the number of rental transactions and rental transaction days occurring during the calendar month;

4.4.4 the total amount of CFCs collected for the reporting month; and

4.4.5 is certified and signed by an authorized official of the Concessionaire.

4.4.6 to the extent permitted by applicable law, the number of rental transactions and rental Transaction Days by Concessionaire shall be maintained by the City as confidential commercial information, subject to applicable public information, open records, or freedom of information laws. Aggregate totals of such rental transactions and rental Transaction Days by all concessionaires may be provided as public information by City.

4.5 Security Deposit. Upon the Opening Date, Concessionaire shall deposit with City the sum equal to three months' of Concession Fees and CFCs paid by Concessionaire to City under the Prior Concession Agreement, calculated based upon the three-month period next preceding the Opening Date, to be held by City as security for Concessionaire's full, faithful, and timely performance of its obligations under this Concession Agreement (the "Security Deposit"). The Security Deposit shall be in the form of cash or an irrevocable letter of credit. The letter of credit must be in a form, and drawn on a bank, acceptable to City, and must remain in effect throughout the term of the Concession Agreement and for a period of ninety (90) days thereafter. If a letter of credit expires in accordance with its terms prior to such time, Concessionaire must provide a replacement letter of credit to City at least thirty (30) days before its expiration date.

4.5.1 As the fees and charges adjust during the term of this Concession Agreement, City shall periodically review the adequacy of the Security Deposit, and may, by written notice to Concessionaire, increase the required amount of the Security Deposit. Such notice shall include a calculation of the revised Security Deposit, which shall not exceed three months' total estimated Concession Fees due and payable by Concessionaire under this Concession Agreement. Concessionaire shall within twenty (20) Business Days of receipt of such written notice from City increasing the Security Deposit, deposit the additional amount with City by cash, certified check, or supplemental letter of credit.

4.5.2 City shall have the right, but not the obligation, to apply all or any part of the Security Deposit to cure any default of Concessionaire under this Concession Agreement, including nonpayment of Concession Fees, CFCs, or any other amounts due from Concessionaire under this Concession Agreement. In such event, Concessionaire must deposit with City an amount equal to the amount so applied by City within twenty (20) business days of written notice from City of the nature and amount of the application.

4.5.3 City shall return the Security Deposit to Concessionaire, less any amounts applied by City under Section 4.5.2 above, within ninety (90) days after the termination of this Concession Agreement.

ARTICLE 5
REMITTANCE; LATE PAYMENT

5.1 Remittance Address.

Any and all payments due to the Trustee by the Concessionaire shall be remitted to:

If by check:

Deutsche Bank National Trust Company
Global Transaction Banking
100 Plaza One, 6th Floor
MS: JCY03-0699
Jersey City, NJ 07311

or if by electronic transfer of funds:

Deutsche Bank
ABA #021-001-033
A/C #01419647
REF: PORT S80316.1
City of Austin Rental Car
Attn: Debra Schwalb

Any and all payments due to City by Concessionaire shall be remitted as follows:

If by check:

City of Austin
Department of Aviation
3600 Presidential Blvd., Suite 411
Austin, Texas 78719

or if by electronic transfer of funds:

City of Austin Automated Clearing House
(ACH) transfer of funds to JP Morgan Chase Bank, NA,
221 West Sixth Street, 2nd Floor, Austin, Texas 78701
as follows:

ACH Instructions:
ABA: 111000614
Account Number: 9900075116
Swift Code: CHASUS33
Location: New York, New York
Account Name: City of Austin
Investment Pool Receiving Account

or at such other place as City may direct in writing.

5.2 Late Payment. If any payment payable by Concessionaire under this Concession Agreement, including the payment of CFCs to Trustee, is not made by Concessionaire within ten (10) days of when due, Concessionaire shall pay to City, to compensate City for the costs of processing delinquent payments, a late payment charge equal to fifty dollars (\$50.00) in addition to the delinquent payment then owing, regardless of whether or not a Notice of Default has been given by City. In addition, if such delinquent payment and late charge are not received within thirty (30) days of the original due date, Concessionaire shall further pay interest on such delinquent payment/remittance and late charge thereafter at the Default Rate. City and Concessionaire recognize that the damages which City will suffer as a result of Concessionaire's failure to timely pay amounts due hereunder are difficult or impracticable to ascertain, and agree that such interest and late charge are a reasonable approximation of the damages which City will suffer in the event of Concessionaire's late payment. This provision shall not relieve Concessionaire from payment of amounts due hereunder at the time and in the manner herein specified.

ARTICLE 6 AUDITS AND RECORD RETENTION

6.1 Annual Audit Requirement by Concessionaire, CPA Opinion.

6.1.1 Within ninety (90) days after the end of each Concession Agreement Year, Concessionaire, at its own expense, shall provide to City an audited annual accounting statement of the Concessionaire's Gross Receipts and Concession Fees due City and the CFCs due the Trustee for such Concession Agreement Year (each, an "Annual Audit Statement"). The Annual Audit Statement shall be prepared by an independent, licensed Certified Public Accountant, in accordance with generally accepted accounting principles applicable to private entities. The Annual Audit Statement shall include an opinion on whether the statement of CFCs, Gross Receipts, and Concession Fees have been completely and accurately presented, calculated and reported according to the terms of this Concession Agreement, and whether Concession Fees due City have been completely and accurately calculated and paid according to the terms of this Concession Agreement. This obligation shall survive termination of this Concession Agreement.

6.1.2 In the event Concessionaire fails to timely submit its Annual Audit Statement, or the information submitted by Concessionaire within the required timeframe fails to conform to the requirements stated above, and such Annual Audit Statement is not received within ten (10) days after receipt of written notice from City, then City may impose on Concessionaire, and Concessionaire shall pay, a non-compliance penalty of fifty dollars (\$50.00) per day for each day the Annual Audit Statement is not received after the due date. If the Annual Audit Statement required hereunder is not provided by Concessionaire within 120 days after the end of the Concession Agreement Year, then City may impose, and Concessionaire shall pay, a noncompliance penalty of one hundred dollars (\$100.00) per day for each day the Annual Audit Statement is not received by City after 120 days after the end of Concessionaire's Concession Agreement Year.

6.2 Records Retention. Concessionaire shall maintain full and accurate records, accounts, books, and data with respect to business done by it hereunder which shall show all of the Gross Receipts, in sufficient detail to readily permit verification of Gross Receipts and revenues (including, without limitation, CFCs) by City. Such records shall include all books, records and documents generated or maintained by Concessionaire concerning or relating to Concessionaire's operations under this Concession Agreement, the collection of CFCs, or the calculation of Gross Receipts and the Concession Fees or other rents, fees or charges payable under this Concession Agreement, such as general ledgers, sales journals, daily sales reports, detailed daily reports, cash register tapes, trial balances, sales tax reports, subsidiary ledgers, daily journals, original and closed rental agreements, corporate chart of accounts, and lists of all rental locations on the Airport. Concessionaire shall retain all such records, accounts, books, ledgers, journals, business reports, rental agreements, and all other pertinent data and supporting documentation ("books and records") for the longer of three (3) years after the end of the Concession Agreement Year to which they pertain or until completion of all pending audits or litigation between the parties.

6.3 City's Auditing Rights. Upon written notice, City or its authorized representatives shall, at any time during the Concession Term or within three years after the end of any Concession Agreement Year, have access to, and the right to audit, examine, or reproduce any or all books and records of Concessionaire related to performance under this Concession Agreement. Concessionaire shall cooperate fully with any audit or examination initiated by City, and shall produce all books and records requested for audit to a designated location at the Airport, or in Austin, Texas, within thirty (30) days of the date of written request. To facilitate the inspection of Concessionaire's books and records, documents provided for audit shall be made available in an electronically downloadable format acceptable to City whenever possible. When electronic files do not exist, legible printed copies of books and records must be provided.

If Concessionaire fails to produce all books and records requested for audit within the required timeframe, Concessionaire shall be subject to a noncompliance penalty of fifty dollars (\$50.00) per day for each day beyond the twentieth day after date of written request, and then one hundred dollars (\$100.00) per day for each day after forty-five (45) days, until all books and records have been provided for audit as requested. In addition to the penalty, if Concessionaire's books and records have not been provided for audit within forty-five (45) days of audit request, City shall have the right to send its auditor or authorized representative to another location where Concessionaire's books and records are maintained in order to audit, examine or reproduce books and records. In this event Concessionaire shall pay all reasonable expenses for the audit, including, but not limited to, travel/transportation expenses, food and lodging, and related business expenses.

If the audit reveals that additional fees are due City, Concessionaire shall pay such additional fees, plus interest from the date such fees were originally due and payable at the Default Rate, within twenty (20) days after receipt of written notice from City. If the audit reveals that Concessionaire has overpaid the fees due City, such overpayment shall be refunded by City.

If the audit reveals a discrepancy (underreporting by Concessionaire) of five percent (5%) or more between Concessionaire's Gross Receipts as reported by Concessionaire to City and

those determined by City audit, then Concessionaire shall also pay City an underreporting penalty of 7% of the additional fees due City within twenty (20) days of written notice by City.

City's rights and Concessionaire's obligations under this Section shall survive the expiration or earlier termination of this Concession Agreement.

**ARTICLE 7
[RESERVED]**

**ARTICLE 8
STANDARDS OF OPERATION**

8.1 First Class Service. Concessionaire shall ensure that its Rental Car Concession is operated, at a minimum, in conformance with the following standards:

8.1.1 General Standards of Operation.

8.1.1.1 Concessionaire shall provide the highest degree and standards of quality of services to the patrons of the Airport. Concessionaire shall furnish prompt, efficient, first-class rental car service that is adequate to meet all reasonable demands for its rental car service by Airport Customers and shall conduct its Rental Car Concession in a first-class manner.

8.1.1.2 Concessionaire shall abide by City Codes and Standards and City's decisions and operational orders regarding operations, activities, safety and security matters and general use of the Airport.

8.1.1.3 Traveler's checks and credit cards must be acceptable forms of payment for rental transactions.

8.1.1.4 Concessionaire shall perform all operations and activities authorized under this Concession Agreement in a manner that ensures the safety of people and the Airport, the protection of public health and the environment, and the safety and integrity of the Airport. Concessionaire shall employ qualified personnel and maintain equipment sufficient for the purposes of this provision. Concessionaire shall immediately notify the City of any condition, problem, malfunction or other occurrence that Concessionaire reasonably knows to be an imminent threat to the safety of people or the Airport, harm to public health or the environment, or the safety or integrity of the Airport.

8.1.1.5 Concessionaire shall not engage in activities that will divert Airport Customers from Concessionaire's Rental Car Concession for any purpose whatsoever, including the writing of sales agreements for an Airport Customer at any of Concessionaire's other rental car operations not located on the Airport. If City believes, in its opinion, that Concessionaire is engaging in such a diversion of activity, it reserves the right to inspect any relevant Concessionaire records, including records from operations other than Concessionaire's Rental Car Concession. Concessionaire shall refer any customers and/or rental contracts that Concessionaire is unable to accommodate to other Airport concessionaires.

8.1.1.6 Service must be provided promptly and efficiently and on a fair, equal and not unlawfully discriminatory basis to all patrons of the Airport.

8.1.1.7 If City receives and forwards to Concessionaire any complaint concerning Concessionaire's operation of its Rental Car Concession, Concessionaire shall promptly respond to complainant in writing, with a copy to City, within five Business Days of its receipt and shall make a good faith attempt to resolve the cause of such complaint.

8.1.1.8 Concessionaire shall use and maintain sequentially-numbered customer car rental agreement forms for all Airport rental transactions. Concessionaire shall institute and maintain reasonably prudent procedures for safeguarding, voiding, and general handling of such agreement forms. A current copy of the Concessionaire's customer car rental agreement shall be delivered to the Director with the first monthly revenue report and updated as the agreement format is altered.

8.1.2 Personnel.

8.1.2.1 Concessionaire shall employ a sufficient number of trained personnel to handle customer service, vehicle maintenance, car handling and office and administration duties necessary for the efficient and effective operation of Concessionaire's Rental Car Concession. Concessionaire shall train all of its employees in the proper operation of its business and compliance with Legal Requirements, City Standards and the provisions of this Concession Agreement, and the provision of good service to customers. Concessionaire shall ensure that all employees, contractors and agents conduct themselves in a professional and courteous manner at all times. To the extent required by City, Concessionaire also shall cause its employees to participate in any customer-service training program established by City for some or all concessionaires operating within the CONRAC.

8.1.2.2 The operation of Concessionaire's Rental Car Concession shall be supervised at all times by an active, qualified, competent manager on duty or a qualified assistant manager on duty, who shall have full authority to make day-to-day business and operational decisions. Concessionaire's operation of its Rental Car Concession must be adequately staffed with sufficient and well-trained personnel who shall be courteous at all times. All employees must wear their nametags and Airport identification badges at all times while performing their duties if required in the area in which the employee is working under the terms of Section 8.3 hereof.

8.1.2.3 When on duty, all of Concessionaire's employees who deal with Airport Customers shall maintain a clean, neat and well-groomed appearance and shall wear a uniform or appropriate attire as established by Concessionaire with Concessionaire's logo conspicuously displayed. Concessionaire's employees may not traffic in, use or possess at the Airport alcohol, illegal drugs, controlled substances, or firearms. Concessionaire shall closely monitor its employees to insure consistent, high quality first-class service. The Director reserves the right to direct the removal from the Airport of any employee who fails to consistently meet acceptable standards of decorum or who violates the provisions of this Concession Agreement.

8.1.2.4 Concessionaire shall not permit its agents or employees to use pressure sales tactics or to personally solicit customers of the Airport for vehicle rentals or related services offered by Concessionaire under this Concession Agreement. City shall be the sole judge of whether conduct amounts to a violation of this Section 8.1.2.4. Upon written notice from City, Concessionaire shall take all necessary steps to immediately eliminate conduct in violation of this Section 8.1.2.4 and to prevent its recurrence.

8.1.2.5 Concessionaire shall provide City a list of Concessionaire's decision-making representatives and their telephone numbers and e-mail addresses and direction as to how those representatives may be reached on a 24-hour basis for emergency purposes.

8.1.2.6 Employees of Concessionaire shall be permitted to park their personal vehicles in the employee surface parking areas designated by City from time to time, subject to the same terms and conditions of use as are applicable to employees of other tenants at the Airport and other concessionaires using the employee surface parking areas at the Airport.

8.1.3 Hours of Operation. Unless otherwise approved by City, Concessionaire's Rental Car Concession shall remain open and staffed seven (7) days a week, at least 30 minutes prior to and subsequent to any scheduled airline departure or arrival including all holidays, with the exception of temporary closure during such periods as may be reasonably necessary for repair or redecorating or for reasons beyond Concessionaire's control; provided, however, Concessionaire shall extend the closing time of its Rental Car Concession operations to accommodate air traffic delays and schedule changes.

8.1.4 Rental Vehicles. Concessionaire shall maintain, at Concessionaire's sole expense, all vehicles used in its Rental Car Concession in good, safe and operative order, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside. Rental vehicles must not be more than three model years old. Notwithstanding the foregoing, Concessionaire may offer for rental antique, vintage, classic or other luxury or prestige vehicles or handicapped-operated vehicles ("designated vehicles"). City shall have the right to prohibit Concessionaire from offering for rental any such designated vehicle that City determines not to meet the mechanical or appearance standards described in this Section 8.1.4. Concessionaire shall use its best efforts to have available a sufficient number of vehicles to meet all reasonably foreseeable demands of the traveling public. Concessionaire shall operate all of its vehicles in a safe manner and in accordance with all applicable Legal Requirements and City Standards and shall ensure that its employees strictly observe all posted speed limits and other traffic and safety signs.

8.1.5 Road Obstructions. If, during the Concessionaire's operations or activities authorized under this Concession Agreement, it becomes necessary to obstruct any road or other area provided for vehicular traffic, Concessionaire shall, at least seventy-two (72) hours before the placement of an obstruction, obtain the written approval of the City. The Concessionaire shall comply with the related decisions and directions of the City in respect to this subsection.

8.2 Multi-Branding. Subject to the provisions regarding assignment in ARTICLE 16, Concessionaire shall be prohibited from operating at the Airport under any brand name or trade

name other than the brand name(s) or trade name(s) identified in **Exhibit B** hereto. During the Concession Term, Concessionaire shall operate and maintain all signage only under the brand or trade name(s) set forth in **Exhibit B** hereto. No other brand or trade name shall be used or displayed by Concessionaire at the Airport or upon the Leased Premises during the Concession Term. Except as provided herein, the operation of multiple brand or trade names by Concessionaire under this Concession Agreement is prohibited.

8.2.1 If Concessionaire utilizes any particular brand or trade name under a license or franchise agreement, Concessionaire represents and warrants to City that Concessionaire has been granted the right to use any such brand or trade name that may be used at the Leased Premises for the entire term of this Concession Agreement, pursuant to a franchise or license agreement (the "Franchise Agreement") with the brand or trade name owner (a "Franchisor"). At City's request, Concessionaire agrees to provide City with a copy of the Franchise Agreement and reasonable evidence that such agreement remains in full force and effect. Concessionaire agrees that the termination of Concessionaire's right either to use Concessionaire's brand or trade name at the Leased Premises or to conduct a Rental Car Concession at the Leased Premises of the type then conducted by or under license from the Franchisor of such brand or trade name shall constitute a material breach of Concessionaire's obligations under this Concession Agreement.

8.3 Airport Security. Employees, agents and representatives of Concessionaire and its respective contractors and subcontractors shall comply with the Airport Security Plan to the extent applicable and all other applicable airport security regulations as adopted or required by the TSA or other Governmental Authorities from time to time. If a breach of the Airport Security Plan or such other airport security regulations occurs as a result of the acts or omissions of an employee, agent, representative, contractor or subcontractor of Concessionaire in any manner or form at any time during the Concession Term, Concessionaire immediately shall remedy such breach or assist City, the TSA or other Governmental Authorities in remedying such breach, regardless of the circumstances. City reserves the right to take whatever action that City determines to be necessary to remedy any such breach in the event Concessionaire fails immediately to do so. Concessionaire shall maintain the integrity of the controlled access security system of the Airport for the Concession Term. Concessionaire also shall take such steps as may be necessary or directed by City to ensure that its subtenants, invitees and guests observe the requirements of this Section 8.3. **CONCESSIONAIRE SHALL BE SOLELY AND FULLY RESPONSIBLE FOR, AND SHALL INDEMNIFY AND HOLD CITY, AND ITS ELECTED AND NON-ELECTED OFFICIALS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES HARMLESS FROM AND AGAINST ANY FINES OR PENALTIES IMPOSED ON CITY AS A RESULT OF, ANY BREACH OF AIRPORT SECURITY BY CONCESSIONAIRE, OR ITS OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS, ASSIGNS AND SUPPLIERS.**

Persons employed at the Airport are subject to criminal history background checks, and failure to pass the background checks will disqualify a person from employment at the Airport. Concessionaire shall cooperate, and cause its existing and prospective employees and contractors to cooperate, with City in conducting such background checks in accordance with Applicable Law.

Concessionaire shall be responsible for obtaining security badges for entry to the sterile, secured or restricted areas of the Airport, if necessary, for all Concessionaire and Concessionaire contractor personnel required to enter into such area to perform Concessionaire's obligations under this Concession Agreement. Concessionaire shall be responsible for collecting all security badges issued to Concessionaire or Concessionaire contractor personnel who cease to be employed and returning to City's Department of Aviation in accordance with Applicable Laws and Airport policies. Concessionaire shall pay City the sum of Five Hundred Dollars (\$500) for each security badge issued to a Concessionaire employee or Concessionaire contractor employee that is lost, or otherwise not returned as required by applicable Transportation Security Regulations.

8.4 Concessionaire Otherwise Responsible. Concessionaire shall otherwise obtain all licenses/permissions necessary for, and pay all costs and expenses incurred with respect to, the operation of the Rental Car Concession, it being understood and agreed that City shall not, except as specifically set forth in this Concession Agreement, be required to furnish services of any nature with respect to the operation of the Rental Car Concession, and Concessionaire hereby assumes full and sole responsibility for the supply and payment for all licenses, services and operational costs. This includes, without limitation, all taxes, permit fees, license fees and assessments lawfully levied or assessed upon Concessionaire.

ARTICLE 9 SMOKING REGULATIONS

9.1 Smoking Regulations. City maintains a no smoking policy for the Terminal and the CONRAC. Smoking shall not be permitted in the CONRAC.

ARTICLE 10 INDEMNITY AND INSURANCE

10.1 Indemnity.

10.1.1 No Liability of City. Except to the extent any such injury or damage is caused by the gross negligence or willful misconduct of City, City shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage is caused, sustained or alleged to have been sustained by Concessionaire or by others, including all persons directly or indirectly employed by Concessionaire, or any agents, contractors, subcontractors, subtenants, licensees or invitees of Concessionaire, as a result of any condition (including existing or future defects in the Leased Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to Concessionaire's use or occupancy of the Leased Premises or of areas adjacent thereto. No elected or non-elected official, employee or officer of City shall have any personal liability with respect to (a) any of the provisions of this Concession Agreement; (b) any injury (including death) to any persons or for damage to any property regardless of how such injury or damage is caused, sustained or alleged to have been sustained by Concessionaire or by others, including all persons directly or indirectly employed by Concessionaire, or any agents, contractors, subcontractors, licensees or invitees of Concessionaire, as a result of any condition (including existing or future defects in the Leased Premises) or occurrence (including failure or interruption of utility service) whatsoever

related in any way to Concessionaire's use or occupancy of the Leased Premises or of areas adjacent thereto, except to the extent any such injury or damage is caused by the gross negligence or willful misconduct of such elected or non-elected official, employee, or officer of City; or (c) a default by City hereunder or the exercise by City of any of its remedies hereunder upon the occurrence of an Event of Default.

10.1.2 Indemnification by Concessionaire.

10.1.2.1 CONCESSIONAIRE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS ELECTED AND NON-ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "**INDEMNIFIED PARTIES**"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES OF INVESTIGATION AND LITIGATION, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, JUDGMENTS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER (COLLECTIVELY, "**CLAIMS**") RESULTING FROM OR CONCERNING THIS CONCESSION AGREEMENT OR THE CONDUCT OF CONCESSIONAIRE'S BUSINESS AT THE AIRPORT, TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (A) ANY BREACH OF THIS CONCESSION AGREEMENT BY CONCESSIONAIRE, ITS AGENTS, EMPLOYEES OR CONTRACTORS, (B) ANY FALSE REPRESENTATION OR WARRANTY MADE BY CONCESSIONAIRE HEREUNDER, (C) ANY NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF CONCESSIONAIRE, OR ITS AGENTS, EMPLOYEES OR CONTRACTORS, AND (D) TO THE EXTENT COVERED BY INSURANCE REQUIRED TO BE MAINTAINED BY CONCESSIONAIRE HEREUNDER, ANY ALLEGED, ESTABLISHED, OR ADMITTED ACT OR OMISSION OF THE INDEMNIFIED PARTIES, INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE INDEMNIFIED PARTIES, BUT, TO THE EXTENT ALLOWED BY TEXAS LAW, EXCLUDING CLAIMS TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES AS DETERMINED BY A COURT OF COMPETENT JURISDICTION, PROVIDED THAT THE EXECUTION OF THIS CONCESSION AGREEMENT WILL NOT BE DEEMED A NEGLIGENT ACT. CONCESSIONAIRE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. CONCESSIONAIRE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF CONCESSIONAIRE OR THE INDEMNIFIED PARTIES, AS CONCESSIONAIRE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY CONCESSIONAIRE. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS CONCESSION AGREEMENT.

10.1.2.2 Release. Other than to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, Concessionaire hereby releases the Indemnified Parties with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of the Indemnified Parties, including all claims caused by the negligence or strict liability of the Indemnified Parties.

10.1.3 Survival. CONCESSIONAIRE AND CITY AGREE AND ACKNOWLEDGE THAT THIS SECTION 10.1 IS THE PRODUCT OF MUTUAL NEGOTIATION. Concessionaire's obligations under this SECTION 10.1 shall survive the expiration or earlier termination of the Concession Term.

10.2 Insurance. Concessionaire shall obtain and keep in force, at its sole cost and expense, during the Concession Term the following types of insurance, in the amounts specified and in the form hereinafter provided:

10.2.1 Workers' Compensation and Employers Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code Title 5.) and minimum policy limits for employers liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The following endorsements shall be added to the policy:

10.2.1.1 A Waiver of Subrogation in favor of the City of Austin, form WC 420304; and

10.2.1.2 A 30 day Notice of Cancellation/Material Change in favor of the City of Austin, form WC 420601.

10.2.2 Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 for coverage A (Bodily Injury and Property Damage) and coverage B (Personal and Advertising Injury); and \$1,000,000 product/completed operations minimum limit of liability. The policy shall contain the following provisions:

10.2.2.1 Blanket contractual liability coverage;

10.2.2.2 Medical expense coverage with a minimum limit of \$5,000 any one person;

10.2.2.3 Fire Legal Liability with a minimum limit of \$50,000;

10.2.2.4 Independent Contractors coverage;

10.2.2.5 City of Austin listed as additional insured;

10.2.2.6 Thirty-day Notice of Cancellation in favor of the City of Austin endorsement CG 0205; and

10.2.2.7 Waiver of Transfer of Right of Recovery Against Others in favor of the City of Austin endorsement CG 2404.

10.2.3 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 for bodily injury and property damage. The policy shall contain the following provisions:

10.2.3.1 City of Austin named as additional insured(s), form TE 9901B; (and Bond Trustee, if so directed by City);

10.2.3.2 Thirty-day Notice of Cancellation in favor of the City, Form TE 0202A; and

10.2.3.3 Waiver of Subrogation endorsement TE 2046A.

10.2.4 All Risk Property Insurance for all Initial Tenant Improvements, any Alterations constructed by Concessionaire in the CONRAC and all of the RAC's Property for 100% of the replacement cost value. The Concessionaire shall be named as loss payee on the policy.

10.3 General Requirements.

10.3.1 Concessionaire and its contractors and subcontractors shall not commence operations under this Concession Agreement until Concessionaire and its contractors and subcontractors have obtained the required insurance and Certificates of Insurance are received and reviewed by City indicating required coverage. If coverage period ends during the Term of this Concession Agreement, Concessionaire and its contractors and subcontractors must, prior to the end of the coverage period, forward a new Certificate of Insurance to City as verification of continuing coverage for the duration of this Concession Agreement.

10.3.2 Approval of insurance by City and the required minimums shall not relieve or decrease the liability or responsibility of Concessionaire hereunder and shall not be construed to be a limitation of liability on the part of Concessionaire.

10.3.3 Concessionaire's and all its contractors' and subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policy is issued and shall be written by companies with an A.M. Best rating of B+VII or better. Companies with A.M. Best ratings of A- or better, if required, shall write hazardous materials insurance. Workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund shall be acceptable.

10.3.4 Concessionaire will not engage in operations or store any property in the facilities that will cause an increase in the premium rate paid by the Airport for fire and extended coverage insurance or that will cause an increase in the premiums paid for such insurance of other tenants or subtenants in the Airport, unless Concessionaire pays the entire amount of such increase or increases. Further, Concessionaire will not engage in operations or store any property in the facilities which may make void or voidable any such insurance policies.

All endorsements, waivers, and notices of cancellation endorsements, as well as Certificates of Insurance naming City (and Bond Trustee, if so directed by City) as additional insureds shall indicate:

City of Austin/Department of Aviation
Attn: Airport Properties Manager
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719

10.3.5 The “other” insurance clause shall not apply to City where City is shown as additional insureds on any policy. It is intended that policies required in this Concession Agreement, covering both City and Concessionaire, shall be considered primary coverage as applicable. If insurance policies are not written for amounts specified below, Concessionaire shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

10.3.6 In order to ensure compliance with the provisions of this Article, City shall be entitled, upon request and without expense, to inspect certified copies of Concessionaire’s insurance policies and endorsements thereto at the Airport or other location in Austin, Texas reasonably designated by Concessionaire.

10.3.7 The City reserves the right to review the insurance requirements set forth during the Term of this Concession Agreement and to make commercially reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by City based upon changes in statutory law, court decisions, and the claims history of their industry or the financial condition of the insurance company as well as the Concessionaire.

10.3.8 Concessionaire shall not cause or permit any insurance to lapse or to be canceled during the Term of this Concession Agreement unless replaced by other insurance that satisfies the requirements of this Article as of the time of lapse or cancellation.

10.3.9 Concessionaire shall pay all premiums, deductibles and self-insured retention’s, if any, stated in policies. All deductibles or self-insured retention’s shall be disclosed on the Certificate of Insurance.

10.4 Claims Against Concessionaire.

If a claim, demand, suit, or other action is made or brought by any person against Concessionaire arising out of or concerning this Concession Agreement, or the Rental Car Concession, Concessionaire shall give written notice thereof, to City within two (2) Business Days after being notified of such claim, demand, suit, or action. Such notice shall enclose a true copy of all written claims. If the claim is not written, or the information is not discernible from the written claim, Concessionaire shall state the date of notification of any such claim, demand, suit, or other action, the names and addresses of the person asserting such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding, and the name of any person against whom such claim is being made. The notice shall be given to the Director as provided herein, and to the Austin City Attorney, City Hall, 301 West 2nd Street, Austin, Texas 78701.

ARTICLE 11 ENVIRONMENTAL PROTECTION

11.1 Definitions in this ARTICLE 11:

“Environmental Laws” - shall refer to and include, without limitation, all Federal, State, City, and local statutes, laws, ordinances, rules and regulations, now or hereafter in effect, and as amended from time to time, that are intended for the protection of the environment, or that govern, control, restrict, or regulate the use, handling, treatment, storage, discharge, disposal, or transportation of Hazardous Materials. Environmental Laws specifically include but are not limited to, the National Environmental Policy Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Materials Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Superfund Authorization and Recovery Act, the Occupational Safety and Health Administration Hazard Communication Standards, the Texas Water Code, the Texas Hazardous Materials Act, and the Texas Water Quality Control Act.

“Hazardous Materials” - shall refer to, and include, without limitation, all substances whose use, handling, treatment, storage, disposal, discharge, or transportation is governed, controlled, restricted, or regulated by Environmental Laws, that have been defined, designated or listed by any responsible regulatory agency as being hazardous, toxic, radioactive, or that may present an actual or potential hazard to human health or the environment if improperly used, handled, treated, stored, disposed, discharged, generated or released. Hazardous Materials specifically include, without limitation, asbestos and asbestos-containing-materials, petroleum products, solvents, and pesticides.

“Environmental Claims” – shall refer to, and include, without limitation, all claims, demands, suits, actions, judgments, and liability for: (i) removal, remediation, assessment, transportation, testing and disposal of Hazardous Materials as directed by any government agency, court order, or Environmental Law; (ii) bodily injury, or death; (iii) damage to or loss of use of property of any person; (iv) injury to natural resources; (v) fines, costs, fees, assessments, taxes, demands orders, directives or any other requirements imposed in any manner by any governmental agency under Environmental Laws; and (vi) costs and expenses of cleanup, remediation, assessment testing, investigation, transportation and disposal of a Hazardous Material spill, release, or discharge.

“City” – shall include City’s elected and non-elected officials, officers, agents, employees, contractors, successors, and assigns.

“Concessionaire” - shall include Concessionaire’s directors, officers, agents, employees, contractors, customers, invitees, successors, and assigns.

11.2 Compliance. In its operations at the Airport, Concessionaire shall strictly comply with all applicable Environmental Laws, the Airport Environmental Policies and Procedures (including without limitation, the Storm Water Pollution Prevention Plan (“SWPPP”) and Spill Response Plan), which are incorporated by reference, and as of the Effective Date of this Concession Agreement are located on the Airport’s website at: http://content.abia.org/environmental/storm_water.html. Without limiting the generality of the foregoing provision, Concessionaire shall not use or store Hazardous Materials on or at the Airport except as reasonably necessary in the ordinary course of Concessionaire’s permitted

activities at the Airport, and then only if such Hazardous Materials are properly labeled and contained as required pursuant to Applicable Laws, and notice of and a copy of the current material safety data sheet is provided to the DOA for each such Hazardous Material. Prior to commencing operations at the Airport, Concessionaire will complete an Airport baseline environmental questionnaire. Concessionaire shall not discharge, cause or allow a Release, or dispose of any Hazardous Materials on the Airport or surrounding air, lands or waters in violation of Applicable Laws. Concessionaire shall promptly notify City of any Hazardous Material spills, releases, or other discharges by Concessionaire at the Airport in accordance with City's Spill Response Plan and promptly abate, remediate, and remove any the same to the extent required under Applicable Laws. Concessionaire shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries, or notices relating to the environmental condition of the Airport, or any alleged material noncompliance with Environmental Laws by Concessionaire at the Airport within ten (10) days after such documents are generated by or received by Concessionaire. If Concessionaire uses, handles, treats, or stores Hazardous Materials at the Airport, and it is necessary for Concessionaire to arrange for the disposal of the Hazardous Materials, Concessionaire shall comply with any applicable requirement under Applicable Laws to have a contract in place with an EPA or TCEQ approved waste transport or disposal company, and to identify and retain spill response contractors to assist with spill response and facilitate waste characterization, transport, and disposal. Complete records of all disposal manifests, receipts and other documentation required by Applicable Laws shall be retained by the Concessionaire and made available to City for review upon request. City shall have the right at any time to enter the Leased Premises to inspect, take samples for testing, and otherwise investigate the Leased Premises for the presence of Hazardous Materials. In exercising its right of access, City shall endeavor to minimize disruption of or interfere with Concessionaire's operations or use of the Leased Premises.

11.3 Responsibility. Concessionaire's Hazardous Materials shall be the responsibility of Concessionaire. Concessionaire shall be liable for and responsible to pay all Environmental Claims that arise out of or are caused in whole or in part from Concessionaire's use, handling, treatment, storage, disposal, discharge, or transportation of Hazardous Materials on or at the Airport, the violation of any Environmental Law by Concessionaire, or the failure of Concessionaire to comply with the terms, conditions and covenants of this Article. If City incurs any costs or expenses (including attorney, consultant and expert witness fees) arising from Concessionaire's use, handling, treatment, storage, discharge, disposal, or transportation of Hazardous Materials on the Airport, Concessionaire shall promptly reimburse City for such costs upon demand. All reporting requirements under Environmental Laws with respect to spills, releases, or discharges of Hazardous Materials by Concessionaire at the Airport shall be the responsibility of Concessionaire.

11.4 Indemnity. IN ADDITION TO ANY OTHER INDEMNITIES IN THIS CONCESSION AGREEMENT, CONCESSIONAIRE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY FROM ANY AND ALL ENVIRONMENTAL CLAIMS (INCLUDING REASONABLE ATTORNEY'S FEES, LITIGATION AND INVESTIGATION EXPENSES, AND COURT COSTS) ARISING OUT OF OR RESULTING IN WHOLE OR IN PART FROM CONCESSIONAIRE'S USE, HANDLING, TREATMENT, STORAGE, DISPOSAL, DISCHARGE, OR TRANSPORTATION OF HAZARDOUS MATERIALS ON OR AT THE AIRPORT, THE VIOLATION OF ANY ENVIRONMENTAL LAW BY

CONCESSIONAIRE, OR THE FAILURE OF CONCESSIONAIRE TO COMPLY WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS ARTICLE.

11.5 Removal. Prior to the expiration or earlier termination of the Concession Agreement or the Sublease Agreement, Concessionaire shall remove or remediate in accordance with applicable Environmental Laws and the Airport Environmental Rules and Policies, all of Concessionaire's Hazardous Materials from the Airport, and surrounding lands and waters. Unless instructed otherwise by City, Concessionaire shall also, prior to vacating the Subleased Premises and Airport, remove all aboveground and underground storage tanks, piping and other equipment, if any, installed by or on behalf of Concessionaire in the CONRAC which stored Hazardous Materials, or which are contaminated by Hazardous Materials, provided that Concessionaire shall not at any time install or have installed any such storage tanks, piping or other equipment without express prior written consent of City. Fuel Facilities installed by or on behalf of the Master Lessee as part of original development of the CONRAC or in the course of maintenance or improvement thereafter by Master Lessee, shall not be considered installed by or on behalf of Concessionaire for purposes of this Section.

11.6 Stormwater Requirements. Concessionaire acknowledges that the Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES") and Federal Stormwater Regulations (40 C.F.R. Part 122) and the Texas Pollution Discharge Elimination System Program ("TPDES"). In its operations at the Airport, Concessionaire shall comply with Applicable Law, including NPDES, TPDES, Federal and State Stormwater Regulations, including any permits thereunder, and the SWPPP.

11.7 Sustainability. Concessionaire shall comply with Applicable Laws pertaining to recycling, energy, and natural resource conservation and management. Concessionaire shall cooperate with City in the implementation of energy conservation, water conservation, and waste minimization programs and policies the City establishes from time to time.

11.8 Survival. The covenants, conditions, and indemnities in this Article shall survive the expiration or earlier termination of this Concession Agreement.

ARTICLE 12
TAXES AND ASSESSMENTS; LIENS

12.1 Payment of Taxes and Assessments. Concessionaire shall pay, or in good faith contest, on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are now or may hereafter be levied upon Concessionaire as a result of this Concession Agreement, or upon the business conducted by Concessionaire on the Airport; and shall maintain in current status all federal, state, and local licenses, and permits required for the operation of the Concession granted under this Concession Agreement. If Concessionaire contests such taxes, charges or fees, City may require Concessionaire to establish and sufficiently fund an escrow account bond to cover payment of such taxes, charges, or fees, if determined to be due and owing.

ARTICLE 13
DEFAULT

13.1 Events of Default. The term “Event of Default” shall mean the occurrence of any of the following events:

13.1.1 Vacating or Abandonment. The vacating or abandonment of the portion of the CONRAC subleased by Concessionaire pursuant to the Sublease Agreement for a period of forty-eight (48) consecutive hours;

13.1.2 Failure to Lease Space in CONRAC. The failure by Concessionaire to enter into a valid and binding Sublease Agreement for space within the CONRAC on substantially the same terms as contained in the Master Lease pursuant to rules, regulations, procedures and requirements established by City;

13.1.3 Failure to Remit Customer Facility Charge. The failure by Concessionaire to collect and remit the proceeds of the Customer Facility Charge when due as required by Section 4.2 hereof;

13.1.4 Failure to Make Payments. The failure by Concessionaire to make any payment of Concession Fees or other amount required by this Concession Agreement, or the Sublease Agreement when due (other than as provided in Section 13.1.3 hereof) and such failure continues for ten (10) days after a Notice of Default is deemed to be received by Concessionaire in accordance with Section 18.9 hereof;

13.1.5 Failure to Perform under ARTICLE 10. The failure by Concessionaire to observe or perform the covenants, conditions and agreements to be observed or performed by Concessionaire in ARTICLE 10 hereof and such failure continues for ten (10) days after a Notice of Default is deemed to be received by Concessionaire in accordance with Section 18.9 hereof;

13.1.6 Failure to Perform under ARTICLE 11. The failure by Concessionaire to observe or perform the covenants, conditions and agreements to be observed or performed by Concessionaire in ARTICLE 11 hereof;

13.1.7 Failure to Perform Other Covenants, etc. The failure by Concessionaire to observe or perform any covenant, condition or agreement to be observed or performed by Concessionaire in this Concession Agreement (other than as provided in Sections 13.1.1, 13.1.2, 13.1.3, 13.1.4, 13.1.5, 13.1.8, 13.1.9, 13.1.11, and 13.1.12 hereof) and such failure continues for thirty (30) days after a Notice of Default is deemed to be received by Concessionaire in accordance with Section 18.9 hereof;

13.1.8 False Financial or Background Statement. The discovery by City that any financial or background statement provided to City by Concessionaire or any successor, grantee or assign of Concessionaire was materially false;

13.1.9 Bankruptcy, etc. The filing by or against Concessionaire of a petition in bankruptcy, Concessionaire's being adjudged bankrupt or insolvent by any court, a receiver of the property of Concessionaire being appointed in any proceeding brought by or against Concessionaire, Concessionaire's making an assignment for the benefit of creditors or any proceeding being commenced to foreclose any mortgage or other lien on Concessionaire's interest in the Leased Premises or on any personal property kept or maintained on the Subleased Premises by Concessionaire;

13.1.10 Failure to Abide by all Applicable Laws. The failure by Concessionaire to abide by all applicable laws, ordinances, rules, and regulations of the United States, State of Texas, or the City of Austin, and if such failure should continue for a period of thirty (30) days after receipt by Concessionaire of written notice of such failure; and

13.1.11 Event of Default Under the Sublease Agreement. The occurrence of an "Event of Default" under Concessionaire's Sublease Agreement.

13.1.12 Failure to File Annual Audit Statement. The failure of Concessionaire to submit its annual audited statement within one hundred fifty (150) days after the end of the Concession Agreement Year shall be a material event of default.

13.2 Remedies. In addition to, and not in lieu or to the exclusion of, any other remedies provided in this Concession Agreement or to any other remedies available to City at law or in equity, City shall have the remedies specified in this Section 13.2 upon the occurrence of an Event of Default hereunder.

13.2.1 Right to Terminate. Whenever any Event of Default is continuing hereunder, City shall have the right to terminate this Concession Agreement and all of Concessionaire's rights by giving at least ten (10) calendar days written notice to Concessionaire. Upon termination, the Sublease shall also be in default and the Master Lessee may re-enter the Subleased Premises using such force as may be necessary and remove all persons and property of Concessionaire from the CONRAC. City will be entitled to recover from Concessionaire all unpaid Concession Fees and any other amount otherwise payable by Concessionaire, or any other payments and damages incurred because of Concessionaire's default including the reasonable and necessary costs of re-letting (including any tenant improvements reasonably required, renovations or repairs reasonably required, any advertising reasonably required, any leasing commissions reasonably required, and attorneys' fees and costs reasonably required)

(collectively, the “Concession Termination Damages”), together with interest on all Concession Termination Damages at the Default Rate, from the date such Concession Termination Damages are incurred by City until paid by Concessionaire.

13.2.2 Concessionaire Retains Liability. In addition to Concession Termination Damages, and notwithstanding termination and re-entry, Concessionaire’s liability for all Concession Fees and all other amounts otherwise payable by Concessionaire hereunder, or other charges which, but for termination of this Concession Agreement, would have become due over the remainder of the Concession Term (collectively, the “Concession Future Charges”), will not be extinguished and Concessionaire agrees that City will be entitled, upon termination for default, to collect as additional damages the following (the “Concession Deficiency”):

13.2.2.1 An amount equal to the Concession Future Charges, less the amount of actual fees, if any, which City receives during the remainder of the Concession Term from others to whom the CONRAC may be leased, in which case such Concession Deficiency will be computed and payable at City’s option either in an accelerated lump-sum payment discounted to net present value, or in monthly installments, in advance, on the first day of each calendar month following termination of this Concession Agreement and continuing until the date on which the Concession Term would have expired but for such termination. Any suit or action brought to collect any portion of Concession Deficiency attributable to any particular month or months shall not in any manner prejudice City’s right to collect any portion of Concession Deficiency by a similar proceeding. For purposes of this Section 13.2.2.1, “net present value” is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank for the region that includes Austin, Texas; or

13.2.2.2 An amount equal to Concession Future Charges less the aggregate fair value of the Concession Fees over the remaining Concession Term, reduced to net present value. In this case, the Concession Deficiency must be paid to City in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this Section 13.2.2.2, “net present value” is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank for the region that includes Austin, Texas.

13.2.3 Re-Letting of Leased Premises. In the event this Concession Agreement is terminated as a result of an Event of Default, City shall have no obligation to cause the Leased Premises to be re-let in whole or in part, alone or together with other premises, upon a termination of this Concession Agreement. City shall not be liable for, nor will Concessionaire’s obligations under this Concession Agreement be diminished by reason of, any failure by City to cause the Leased Premises to be re-let or any failure by City to collect any rent due upon such re-letting.

13.2.4 Personal Property of Concessionaire. If upon any re-entry permitted under this Concession Agreement, there remains any personal property of Concessionaire upon the Leased Premises, the Master Lessee, in its sole discretion, may and shall, at the direction of the City, remove and store such personal property for the account of and at the expense of Concessionaire. Concessionaire shall bear all risks associated with the removal and storage of

such personal property. Concessionaire shall reimburse City for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. In accordance with Texas law, the City has the right to sell any personal property, which has been stored for a period of thirty (30) days or more, unless Concessionaire has tendered reimbursement to City for all expenses incurred in such removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorneys' fees), second to the payment of removal and storage charges, third to the payment of any other amounts which may then be due and owing from Concessionaire to City, and fourth to the payment of any other amounts which may then be due and owing from the Concessionaire to the Master Lessee. The balance of sale proceeds, if any, will then be paid to Concessionaire.

13.3 Remedies Cumulative. All rights, options and remedies of City contained in this Concession Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Concession Agreement.

13.4 City Default.

13.4.1 The City shall be in default under this Concession Agreement in the event:

13.4.1.1 The City fails to substantially perform any material term, covenant or condition of this Concession Agreement, and such default is not cured by the City within thirty (30) days after receipt of written notice from Concessionaire; provided, however, should the nature of the default be such that it is not curable within such thirty (30) day period, the City shall be deemed to have cured such default, if within such thirty (30) day period it shall commence the cure and thereafter diligently prosecute the same to completion; or

13.4.1.2 The City permanently abandons the Airport as a commercial passenger airport,

13.4.2 Upon the happening of a City Default, and the passage of the time periods described, Concessionaire may, in addition to other rights or remedies available under applicable law, terminate this Concession Agreement by giving written notice thereof to the City at least thirty (30) days in advance of the date upon which termination is to be effective,

13.5 Concessionaire's Right to Terminate for Other Events.

13.5.1 Provided that Concessionaire is not itself in default under this Concession Agreement, Concessionaire may terminate this Concession Agreement upon the happening of anyone or more of the following events by giving the City written notice at least thirty (30) prior to the effective date of termination:

13.5.1.1 The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereto, in such a manner as to substantially restrict Concessionaire for a period of at least one year from operating thereon,

13.5.1.2 Issuance by any court of competent jurisdiction of an injunction in any way preventing or restricting the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days,

13.5.1.3 The inability of Concessionaire or its customers to use, for a period of ninety (90) consecutive days, the Airport, the CONRAC or any substantial part thereof due to enactment or enforcement of any Applicable Law, or because of an event of Force Majeure, or

13.5.1.4 The permanent cessation of all scheduled airline service from the Airport for any reason other than abandonment by the City.

13.5.2 In the event Concessionaire terminates this Concession Agreement under this Section 13.5, Contingent Fees and Concession Fees due hereunder shall be payable only to date of termination. Upon such termination, as Concessionaire's exclusive remedy, the City shall pay to Concessionaire the depreciated net book value of its leasehold improvements which cannot be removed from the Leased Premises.

ARTICLE 14 TERMINATION

14.1 Termination. This Concession Agreement may be terminated in advance of its scheduled expiration date as follows:

14.1.1 Default. City may terminate this Concession Agreement upon the occurrence of an Event of Default as provided in Section 13.1 hereof.

14.1.2 Termination of Master Lease. City may terminate this Concession Agreement upon the termination of the Master Lease pursuant to an event described in Section 22.1 of the Master Lease.

14.1.3 Termination of Sublease Agreement. City may terminate this Concession Agreement upon the termination of the Sublease Agreement pursuant to an event described in Section 22.1 of the Sublease Agreement.

14.1.4 Court Decree. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by City of any of its material obligations under this Concession Agreement, then either party hereto may terminate this Concession Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Concessionaire is not in default under any of the provisions of this Concession Agreement on the effective date of such termination, any Concession Fees or other payments prepaid by Concessionaire shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Concessionaire.

ARTICLE 15
NO WAIVER; CITY'S RIGHT TO PERFORM

15.1 Receipt of Monies Following Termination. No receipt of monies by City from Concessionaire after the termination or cancellation of this Concession Agreement in any lawful manner shall (a) reinstate, continue or extend the Concession Term; (b) affect any notice theretofore given to Concessionaire; (c) operate as a waiver of the rights of City to enforce the payment of any Concession Fees or other amount otherwise payable by Concessionaire then due or thereafter falling due; or (d) operate as a waiver of any right of City to recover possession of the Subleased Premises by suit, action, proceeding or remedy. Concessionaire agrees that, after the service of notice to terminate or cancel this Concession Agreement, or after the commencement of suit, action or summary proceedings or any other remedy, or after a final order or judgment for the possession of the Subleased Premises, City may demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, proceeding, suit, action, remedy, order or judgment; and any and all such monies collected shall be deemed to be payments on account of the use and occupation by Concessionaire and/or Concessionaire's liability hereunder.

15.2 No Waiver of Breach. The failure of City to insist, in any one or more instances, upon a strict performance of any of the covenants of this Concession Agreement or to exercise any option herein contained, shall not be construed as a waiver or relinquishment of the future performance of such covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by City of Concession Fees or other amount otherwise payable by Concessionaire hereunder with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by City of any provision hereof shall be deemed to have been made unless expressed in writing and signed by City. The consent or approval of City to or of any act by Concessionaire requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent similar acts by Concessionaire.

15.3 No Waiver. The receipt by City of any installment of Concession Fees or other amount otherwise payable by Concessionaire shall not be a waiver of any Concession Fees or other amount otherwise payable by Concessionaire hereunder.

15.4 Application of Payments. City shall have the right to apply any payments made by Concessionaire to the satisfaction of any debt or obligation of Concessionaire to City, in City's sole discretion, regardless of the instructions of Concessionaire as to the application of any such sum (whether such instructions are endorsed upon Concessionaire's check or otherwise), unless otherwise agreed by both parties in writing. The acceptance by City of a check or checks drawn by a Person other than Concessionaire shall in no way affect Concessionaire's liability hereunder nor shall it be deemed an approval of any assignment of this Concession Agreement or subletting by Concessionaire.

15.5 City's Right to Perform. Upon Concessionaire's failure to perform any obligation or make any payment required of Concessionaire hereunder, City shall have the right (but not the obligation) to perform such obligation of Concessionaire on behalf of Concessionaire and/or to make payment on behalf of Concessionaire. Concessionaire shall reimburse City the reasonable

cost of City's performing such obligation on Concessionaire's behalf, including reimbursement of any amounts that may be expended by City, plus interest at the Default Rate.

ARTICLE 16 ASSIGNMENT OR SUBLEASE

16.1 Prohibition. Subject to Section 16.2 hereof, Concessionaire shall not, without the prior consent of City, assign or transfer this Concession Agreement or any interest herein or sublet the whole or any portion of the Leased Premises, nor shall this Concession Agreement or any interest hereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise, without the prior consent of City. If Concessionaire is anything other than an individual, Concessionaire further agrees that if, at any time during the Concession Term, more than one-half (1/2) of the outstanding voting equity interests of Concessionaire shall belong to any Persons other than those which own more than one-half (1/2) of those outstanding voting equity interests at the time of the execution of this Concession Agreement or members of their immediate families (*i.e.*, a person's spouse, children, grandchildren or siblings or any of the spouses of such person's children, grandchildren or siblings), such change in the ownership of Concessionaire shall be deemed an assignment of this Concession Agreement within the meaning of this ARTICLE 16; provided, however, this sentence shall not apply if and to the extent that Concessionaire is a corporation, the outstanding voting stock of which is publicly traded on a recognized security exchange. Concessionaire's entering into any operating agreement, license or other agreement under which a third party is given rights or privileges to enjoy a portion of Concessionaire's Rental Car Concession or to utilize a portion of the Leased Premises shall be an attempted subletting, assignment or transfer within the meaning of this ARTICLE 16.

16.2 Assignment. The terms of this Section are subject to the requirements of Section 16.4 hereof.

16.2.1 Deliveries to City. If Concessionaire shall, at any time during the Concession Term, desire to sell, assign or otherwise transfer this Concession Agreement in whole or in part, or any right granted to it by this Concession Agreement, Concessionaire shall, at the time Concessionaire requests the consent of City, deliver to City such information in writing as City may reasonably require with respect to the proposed assignee or transferee, including the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee or transferee, together with the proposed form of assignment or other transfer. Within thirty (30) days after receipt of the information specified above, City shall notify Concessionaire of its election either (a) to consent to the assignment or transfer or (b) to disapprove the assignment or transfer.

16.2.2 Additional City Conditions. As a condition for City's consent to any assignment or other transfer hereunder, City may require that the assignee or transferee remit directly to City, on a monthly basis, all monies due to Concessionaire for such assignment or transfer of rights hereunder by such assignee or transferee and shall be credited by City to the obligations of Concessionaire to the City under this Concession Agreement. In addition, a condition to City's consent to any assignment or other transfer of this Concession Agreement shall be the delivery to City of a true copy of the fully executed instrument of assignment or

transfer and an agreement executed by the assignee or transferee in form and substance satisfactory to City and expressly enforceable by City, by which the assignee or transferee assumes and agrees to be bound by the terms and provisions of this Concession Agreement and to perform all the obligations of Concessionaire hereunder.

16.2.3 Right to Deal with Assignee or Transferee. In the event of any assignment or other transfer of this Concession Agreement, Concessionaire and each respective assignor or transferor waive notice of default by the assignee or transferee in possession of the Leased Premises in the payment of Concession Fees or other amounts and in the performance of the covenants and conditions of this Concession Agreement and agree that City may in each and every instance deal with such assignee or transferee in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Concession Agreement or modify the same, and in general deal with such assignee or transferee in possession without notice to or consent of any assignor or transferor, including Concessionaire; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Concessionaire and of each respective assignor and transferor.

16.2.4 Attornment. Concessionaire agrees that any sublease will contain a provision to the effect that if there is any termination whatsoever of this Concession Agreement, then the subtenant, at the request of City, will attorn to City and the subtenancy, if City so requests, shall continue in effect with City. Nothing herein shall be deemed to require City to accept such attornment.

16.2.5 Concessionaire's Liability. No assignment or other transfer by Concessionaire of this Concession Agreement in whole or in part, or any right or leasehold interest granted to it by this Concession Agreement, and no subletting of the Leased Premises or any portion thereof, shall relieve Concessionaire of any obligation under this Concession Agreement, including Concessionaire's obligation to pay all Concession Fees and other amounts due hereunder prior to the date of the transfer. Any purported sublease, assignment or other transfer contrary to the provisions hereof without the consent of City shall be void. The consent by City to any subletting, assignment or other transfer hereunder shall not constitute a waiver of the necessity for such consent to any subsequent subletting, assignment or other transfer.

16.2.6 Reimbursement to City. Concessionaire shall reimburse City any reasonable professionals' fees and expenses incurred by City in connection with any request by Concessionaire for consent to any such sublease, assignment or other transfer hereunder.

16.3 Assignment to Successor or Affiliate. Subject to the requirements of Section 16.4 hereof, City agrees that it will not unreasonably condition or withhold its consent to an assignment or other transfer of this Concession Agreement to: (a) any corporation or other legal entity which at the time of such assignment or other transfer is the parent or a wholly-owned subsidiary of Concessionaire; (b) any corporation or other legal entity with which Concessionaire may merge or into which it may consolidate; or (c) any Person that may acquire all or substantially all of Concessionaire's rental car business or assets; provided, however, in each instance the surviving, resulting or transferee Person expressly assumes in writing all the obligations of Concessionaire contained in this Concession Agreement and the surviving, resulting or transferee Person has a consolidated net worth (after giving effect to such

consolidation, merger or transfer) at least equal to the greater of (i) the net worth of Concessionaire as of the date of this Concession Agreement or (ii) the net worth of Concessionaire immediately prior to such consolidation, merger or transfer. The term “net worth” as used in this Section 16.3 means the difference obtained by subtracting total liabilities from total assets of Concessionaire and all of its subsidiaries in accordance with generally accepted accounting principles.

16.4 Lease in CONRAC Required. Notwithstanding any other terms or provisions of this ARTICLE 16, no proposed subtenant, assignee or other transferee of Concessionaire shall be permitted to succeed to Concessionaire’s rights hereunder or to use or occupy any portion of the Leased Premises under a sublease unless such proposed subtenant, assignee or transferee executes and delivers to City a copy of the Sublease Agreement with the Master Lessee for space within the CONRAC on substantially the same terms as contained in the Master Lease or otherwise obtains rights under a Sublease Agreement pursuant to rules, regulations, procedures and requirements established by City. Without limitation of the foregoing, each subtenant of all or any portion of the Leased Premises or an assignee or other transferee of Concessionaire hereunder must agree to collect the Customer Facility Charge in accordance with this Concession Agreement.

ARTICLE 17
AIRPORT CONCESSION
DISADVANTAGED BUSINESS ENTERPRISES

17.1 ACDBE Program. This Concession Agreement is a revenue-producing contract awarded to Concessionaire and will result in the provision of goods and services to passengers, patrons and tenants at the Airport. Federal law and regulations impose ACDBE goals upon the performance of this Concession Agreement by Concessionaire, and City encourages Concessionaire voluntarily to strive to include significant involvement with ACDBE business enterprises in operations under this Concession Agreement. City has established a goal of six percent (6.0%) ACDBE participation for this Concession Agreement. ACDBE participation may be achieved through the purchase of goods and services necessary to conduct a Rental Car Concession business at the Airport from ACDBEs, as further described in the DOT regulations governing ACDBE participation, 49 C.F.R. Part 23.53, as amended or modified from time to time. These goods and services may include the purchase or lease of new vehicles from ACDBE firms. All ACDBE firms initially used to meet this ACDBE goal must be certified as ACDBEs by City prior to the Commencement Date. Only ACDBE entities that have a direct contract with Concessionaire may be counted toward achievement by Concessionaire of the ACDBE participation goal for this Concession Agreement.

17.2 ACDBE Program Compliance. Concessionaire has advised City that it will use the ACDBEs described in the ACDBE Participation Schedule in providing the services described therein. Concessionaire agrees that, within thirty (30) days after the expiration of each calendar quarter during the Concession Term, it will provide an ACDBE Quarterly Revenue Report to City describing the dollar value of vehicles and other goods and services purchased by Concessionaire from each ACDBE set forth in the ACDBE Participation Schedule (and each substitute ACDBE obtained pursuant to this Section 17.2) calculated in accordance with the requirements of 49 C.F.R. Part 23.53, as amended or modified from time to time.

Concessionaire agrees that it also shall submit, within thirty (30) days after the expiration of each calendar quarter during the Concession Term, a report to City, in a form acceptable to City, describing Concessionaire's total dollar value of vehicles and other goods and services purchased by Concessionaire during such quarter. Concessionaire shall have no right to terminate for convenience an ACDBE set forth in the ACDBE Participation Schedule without City's prior consent. If any such ACDBE is terminated by Concessionaire with City's prior consent or because of ACDBE's default under its contractual obligations to Concessionaire, then Concessionaire must make a good faith effort, in accordance with the requirements of 49 C.F.R. Part 23.25(e)1(iii) and (iv), as amended or modified from time to time, and 49 C.F.R. Part 26.53, as amended or modified from time to time, to find another ACDBE to substitute for the original ACDBE to sell the same amount of vehicles and other goods and services under the contact as the ACDBE that was terminated. Concessionaire must implement appropriate mechanisms to ensure compliance with the requirements of the DOT regulations governing ACDBE participation, 49 C.F.R. Part 23.53, as amended or modified from time to time, by all ACDBEs set forth in the ACDBE Participation Schedule. Concessionaire must include in its ACDBE participation program the specific provisions to be inserted into concession agreements and management contracts to ensure compliance with such regulations. Concessionaire's failure to comply with its obligations under this Section 17.2 shall constitute a default under this Concession Agreement.

17.3 ACDBE Participation Schedule. In the event of a change in the identity of the ACDBEs participating in the operations under this Concession Agreement, Concessionaire shall deliver, within ten (10) Business Days after such change, a revised ACDBE Participation Schedule to City in the manner and to the addressees for City specified in accordance with Section 18.9 hereof. A notice by Concessionaire to City to remove a particular ACDBE from the ACDBE Participation Schedule is not sufficient for purposes of this Section 17.3. When Concessionaire submits a revised ACDBE Participation Schedule hereunder, Concessionaire must submit a complete revised ACDBE Participation Schedule that includes the required information for all ACDBEs then participating in operations under this Concession Agreement. Concessionaire also shall send a copy of such revised ACDBE Participation Schedule in the manner provided by Section 18.9 hereof to THE CITY OF AUSTIN, Small and Minority Business Resources, 4201 Ed Bluestein Boulevard, Austin, Texas 78721, Telephone (512) 974-7600, Fax (512) 974-7601.

17.4 Minority-Owned and Women-Owned Business Enterprise (M/WBE) Procurement Program. Concessionaire shall comply with the standards and principles of the City Minority-Owned and Women-Owned Business Enterprise (M/WBE) Procurement Program, found at Austin City Code Chapters 2-9A, 2-9B, 2-9C, and 2-9D (Procurement Program). Accordingly, Concessionaire shall develop and submit to City an M/WBE Compliance Plan for approval in accordance with the standards and principles of the Procurement Program. Concessionaire will utilize subcontractors, suppliers and consultants that either assist Concessionaire in meeting the M/WBE participation goals, or Concessionaire will demonstrate Good Faith Efforts to meet the goals. The Compliance Plan shall be incorporated into and made a part of this Concession Agreement for all purposes once approved by City, and a violation by Concessionaire shall be an Event of Default.

ARTICLE 18 GENERAL PROVISIONS

18.1 Gratuities. City may, by written notice to Concessionaire, terminate this Concession Agreement without liability if it is determined by City that gratuities were offered or given by the Concessionaire or any agent or representative of Concessionaire to any officer or employee of City with a view toward securing this Concession Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of this Concession Agreement. In the event this Concession Agreement is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights or remedies, to recover or withhold from the Concessionaire the amount of the cost incurred by the Concessionaire in providing such gratuities.

18.2 Prohibition Against Personal Interest in Contracts. No officer, employee, contractor, or elected official of City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in this Concession Agreement resulting from that solicitation. Any willful violation of this provision shall constitute impropriety of office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, express or implied, of the Concessionaire shall render this Concession Agreement voidable by City.

18.3 Affirmative Action. Concessionaire shall undertake, to the extent applicable, an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, as amended or modified from time to time, to ensure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment, contracting or leasing activities covered in 14 C.F.R. Part 152, Subpart E, as amended or modified from time to time. Concessionaire further assures that (a) no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by 14 C.F.R. Part 152, Subpart E, as amended or modified from time to time, and (b) it will require that its covered organizations under 14 C.F.R. Part 152, Subpart E, as amended or modified from time to time, provide assurances to Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, as amended or modified from time to time, to the same effect. Concessionaire agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as amended or modified from time to time, as part of the affirmative action program, and by any federal, state or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. Concessionaire agrees that state or local affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 C.F.R. Part 152, Subpart E, as amended or modified from time to time, only when they fully meet the standards set forth in 14 C.F.R. 152.409, as amended or modified from time to time. Concessionaire agrees to obtain a similar assurance from its covered organizations and to cause them to require a similar assurance from their covered suborganizations, as required by 14 C.F.R. Part 152, Subpart E, as amended or modified from time to time.

18.4 No Discrimination. Concessionaire hereby agrees as follows:

18.4.1 Non-discrimination. As part of the consideration for this Concession Agreement, Concessionaire covenants and agrees that no person on the grounds of race, color, religion, sex, national origin or ancestry, age, sexual orientation, or gender identity, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in Concessionaire's operation of its Rental Car Concession at the Airport. Additionally, Concessionaire shall use all Airport facilities in compliance with all other requirements imposed by, or pursuant to, 49 C.F.R. Part 21, as amended or modified from time to time. Concessionaire covenants and agrees that this provision shall be binding on any successors and assigns of Concessionaire as permitted hereunder.

18.4.2 Employment Decisions. Concessionaire shall comply with Chapters 5-3 and 5-4 of the Austin City Code and will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or ancestry, age, sexual orientation, gender identity, or disability, and Concessionaire will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or ancestry, sexual orientation, gender identity, or disability, handicap or creed, including action relating to employment; upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships;

18.4.3 Posting of Notices. Concessionaire will post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Section 18.4; and

18.4.4 Solicitations and Advertisements for Employment. Concessionaire will, in all solicitations or advertisements for employees placed by or on behalf of Concessionaire, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or ancestry, sexual orientation, gender identity, or disability;

18.5 No Exclusive Right. Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege within the Federal Aviation Act, or the conduct of any activity at the Airport, except that, subject to the terms and provisions hereof, Concessionaire shall have the right to use the Leased Premises under the provisions of this Concession Agreement.

18.6 Subordination to Other Agreements. This Concession Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between City and any other Governmental Authority relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act or the FAA's Airport Improvement Program or in order to impose and use passenger facilities charges under 49 U.S.C. Section 40117 or any successor thereto.

18.7 Subordination to City Encumbrances. This Concession Agreement and all rights of Concessionaire hereunder shall be subject and subordinate to any deed of trust or mortgage

To Concessionaire:

Attn: _____

With a copy to:

The person and place to which notices, approvals, consents, demands, requests and other communications are to be sent may be changed by a party hereto upon written notice to the other. A written notice, approval, consent, demand, request or other communication required or permitted hereunder shall be deemed received and effective (i) on the date that is three days after the date on which it is deposited in the United States Mail if sent by certified mail, or (ii) on the date on which the signature receipt is recorded by the recognized delivery service if it is sent by a recognized delivery service.

18.10 Consents and Approvals of City. Whenever any provision of this Concession Agreement requires the consent or approval of City or provides to City the right to make a determination or judgment, City shall have the absolute and unconditional right to withhold its consent or approval, in its sole discretion, and to make such determination or judgment in its sole discretion on the basis of such factors and considerations as it shall deem relevant (including self-interest), except for those circumstances, if any, where this Concession Agreement expressly provides that such consent or approval will not be unreasonably withheld or City will make such determination or judgment reasonably.

18.11 Agents for Service of Process. The parties hereto hereby designate the following as their agents for service of process and will waive any objection to service of process if served upon its agent as set forth below:

To City:

City of Austin
City Clerk
301 W. Second St.
Austin, TX 78701

To Concessionaire:

18.12 Severability. If one or more clauses, sections or provisions of this Concession Agreement shall be held to be unlawful, invalid or unenforceable, the parties hereto agree that the material rights of either party hereto shall not be affected thereby except to the extent of such holding, and this Concession Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted herefrom.

18.13 Waiver of Anticipated Profits. Concessionaire hereby waives any claim against City and its elected and non-elected officials, officers, employees, agents, servants, representatives, contractors, subcontractors, affiliates, successors and assigns for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Concession Agreement or any part hereof, or by any judgment or award in any suit or proceeding declaring this Concession Agreement null, void or voidable or delaying the exercise of any rights under this Concession Agreement.

18.14 Right of City to Develop Airport. The parties hereto further covenant and agree that City reserves the right to further develop or improve the Airport as City may see fit, regardless of the desires or views of Concessionaire and without interference or hindrance. It is understood that City may from time to time elect to alter, improve or remodel portions of the Airport. Concessionaire agrees that any temporary inconvenience resulting from any such work by City or its contractors and agents shall not be grounds for reduction of any amount otherwise payable by Concessionaire hereunder.

18.15 Incorporation of Legally Required Provisions. The parties incorporate herein by reference all provisions legally required to be contained herein by any Governmental Authority.

18.16 Limitation of City's Liability. Neither City nor any elected and non-elected official, employee, officer or agent thereof shall have (a) any personal liability with respect to any of the provisions of this Concession Agreement, or (b) any liability for any consequential damages resulting from a default by City hereunder or from the exercise by City of any of its remedies hereunder upon the occurrence of an Event of Default. Concessionaire further agrees not to initiate or participate in initiation of any involuntary bankruptcy, reorganization, receivership or insolvency proceeding against City.

18.17 Successors and Assigns. This Concession Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

18.18 Required Modifications. In the event that a Governmental Authority (other than City) requires modifications or changes to this Concession Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire shall make or agree to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Concession Agreement as may be reasonably required.

18.19 Time is of the Essence. Time is of the essence in the performance of the terms and conditions of this Concession Agreement.

18.20 Understanding of Agreement. The parties hereto acknowledge that they thoroughly read this Concession Agreement, including any exhibits or attachments hereto, and have sought and received such competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein.

18.21 Legal Interest and Other Charges. Any payment of Concession Fees or any other amount due and payable hereunder that is not paid on the date it is due shall bear interest until paid at the Default Rate. Notwithstanding any provision of this Concession Agreement to the contrary, it is the intent of City and Concessionaire that City shall not be entitled to receive, collect, reserve or apply, as interest, any amount in excess of the maximum amount of interest permitted to be charged by Applicable Laws. In the event this Concession Agreement requires a payment of interest that exceeds the maximum amount of interest permitted under Applicable Laws, such interest shall not be received, collected, charged or reserved until such time as that interest, together with all other interest then payable, falls within the maximum amount of interest permitted to be charged under Applicable Laws. In the event City receives any such interest in excess of the maximum amount of interest permitted to be charged under Applicable Laws, the amount that would be excessive interest shall be deemed a partial prepayment of Concession Fees and treated under this Concession Agreement as such, or, if this Concession Agreement has expired or terminated, any remaining excess funds shall immediately be paid to Concessionaire.

18.22 Holding Over. Any holding over by Concessionaire after the expiration or earlier termination of the Concession Term shall not be deemed to operate as an extension or renewal of the Concession Term, but shall only create a tenancy from month-to-month which may be terminated by City at any time.

18.23 Governing Law; Choice of Venue; Waiver of Jury Trial. This Concession Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Jurisdiction and venue for any action on or related to the terms of this Concession Agreement shall be exclusively in Travis County, Texas, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for purposes of determining such action and waive any right to assert a claim of inconvenient forum.

18.24 Dispute Resolution. If a dispute arises out of or relates to this Concession Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. A party may make a written request for a meeting between representatives of each other party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below.

18.24.1 Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below. If the

efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Concession Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The parties will share the costs of the mediator equally.

18.24.2 Concessionaire agrees as a condition of this Concession Agreement that notwithstanding the existence of any dispute between the parties, insofar as is possible under the terms of the Concession Agreement, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a Texas court of competent jurisdiction.

18.25 [Reserved].

18.26 Waiver of Attorneys' Fees. Each party waives any and all rights under law or in equity to seek or recover attorneys' fees from the other party in any civil or administrative litigation or dispute resolution proceeding for the breach of this Concession Agreement or to enforce any provision of this Concession Agreement.

18.27 Update of Terms. City shall, without the necessity of an amendment to this Concession Agreement, have the right to periodically update the requirements set forth in Section 11.2 hereof and **Exhibits A, A-1, C, and D** hereto to reflect changes in practices for similar properties or operations either at the Airport or at other comparable airports. City likewise has the right, without the necessity of an amendment to this Concession Agreement, to make adjustments to this ARTICLE 17 to account for changes in Legal Requirements applicable to the CONRAC or CONRAC Site or the operation of a Rental Car Concession.

18.28 Representations and Warranties by City. City makes the following representations and warranties as the basis for the undertakings on its part herein contained:

18.28.1 City is a duly existing home-rule municipality under the laws of the State, and has the power to enter into the transactions contemplated by this Concession Agreement and to carry out its obligations hereunder.

18.28.2 City is the owner of the Airport.

18.28.3 City has taken all action and has complied with all provisions of law with respect to the execution, delivery and performance of this Concession Agreement, and the due authorization of the consummation of the transactions contemplated hereby, and this Concession Agreement has been duly executed and delivered by, and constitutes the valid and legally binding agreement of, City, enforceable against City in accordance with its terms.

18.28.4 Neither the execution and delivery of this Concession Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Concession Agreement, violate any law or regulation, or any judicial order, judgment, decree, or injunction, conflict with or results in a breach of any of the terms, conditions or provisions of any resolution, ordinance, or any agreement or instrument to which City is now a party or by which it is bound, or constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of City under the terms of any instrument or agreement.

18.28.5 There is no litigation now pending or, to City's knowledge, threatened challenging the powers of City or its City Council or in any way affecting this Concession Agreement.

18.29 Representations and Warranties by Concessionaire. Concessionaire makes the following representations and warranties as the basis for the undertakings on its part herein contained:

18.29.1 Concessionaire is a corporation duly organized under the laws of the State of _____ and duly qualified to do business in the State of Texas, is in good standing in the State of Texas, has power to execute and enter into this Concession Agreement and by proper corporate action has been duly authorized to execute and deliver this Concession Agreement.

18.29.2 This Concession Agreement has been duly executed and delivered by duly authorized officers of Concessionaire, and constitutes a valid and binding obligation of Concessionaire, enforceable against Concessionaire in accordance with its terms.

18.29.3 No approvals or consents, other than those that have been or will in normal course be obtained, are necessary in order for Concessionaire to execute and deliver this Concession Agreement.

18.29.4 To Concessionaire's knowledge, there is no litigation now pending or, threatened, challenging the corporate existence of Concessionaire nor any pending or, threatened action or proceeding before any court or administrative agency that individually (or in the aggregate in the case of any group of related lawsuits) is expected to have a material adverse effect on the financial condition of Concessionaire or the ability of Concessionaire to perform its obligations under this Concession Agreement or the Prior Concession Agreement.

18.29.5 Neither the execution and delivery of this Concession Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Concession Agreement, will conflict with or result in a material breach of the Articles of Incorporation or Bylaws of Concessionaire or any of the terms, conditions, or provisions of any indenture, agreement or other instrument to which Concessionaire is now a party or by which it is bound, or constitute a material default under any of the foregoing, or result in the creation or imposition of any material lien, charge, or

encumbrance of any nature whatsoever upon any of the property or assets of Concessionaire under the terms of any instrument or agreement.

18.29.6 Concessionaire has duly and validly obtained all material certificates, licenses, and permits from all public authorities, both federal and state, required to enable Concessionaire to carry on its business as it is now conducted and to enter into this Concession Agreement.

18.29.7 To Concessionaire's knowledge at the time Concessionaire executes this Concession Agreement, no event has occurred and no condition currently exists, which constitutes or may, with the passage of time or the giving of notice, or both, constitute an Event of Default with respect to or on the part of Concessionaire under this Concession Agreement or a default or an event of default under the Prior Concession Agreement or that could materially adversely affect the ability of Concessionaire to perform its obligations hereunder or under the Prior Concession Agreement.

18.30 Survival of Indemnities. All indemnities provided in this Concession Agreement shall survive the expiration or any earlier termination of the Concession Term. In any litigation or proceeding within the scope of any indemnity provided in this Concession Agreement, Concessionaire shall, at City's option, defend City at Concessionaire's expense by counsel satisfactory to City.

18.31 Submission of Agreement. The submission of this Concession Agreement for examination and negotiation does not constitute an offer to grant a concession or a reservation of or option to grant a concession and does not constitute an offer to lease or a reservation of or option to lease any part of the Leased Premises. This Concession Agreement shall become effective and binding only upon execution and delivery hereof by City and Concessionaire. No act or omission of any officer, employee or agent of City or Concessionaire shall alter, change or modify any of the provisions hereof.

18.32 Entire Agreement; Modification. This Concession Agreement sets forth all covenants, promises, agreements, conditions and understandings between City and Concessionaire concerning the operation of the Rental Car Concession, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between City and Concessionaire as to the operation of the Rental Car Concession other than as herein set forth. No subsequent alteration, amendment, change or addition to this Concession Agreement shall be binding upon City or Concessionaire unless reduced to writing and signed by City and Concessionaire.

18.33 Relationship of City and Concessionaire. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partners or joint venture partners, and no provision contained in this Concession Agreement nor any acts of Concessionaire and City shall be deemed to create any relationship between them other than as provided in this Concession Agreement.

18.34 Most Favored Nations. During the Term of the Concession Agreement, City agrees not to offer terms to other rental car concessionaires on terms more favorable than those

contained in this Concession Agreement. If City enters into an agreement on terms more favorable than those contained herein, the more favorable terms shall be offered to Concessionaire and at Concessionaire's election this Concession Agreement shall be modified to reflect the more favorable terms as contained in such other agreement.

18.35 Exhibits. **Attachment 1** and **Exhibits A, A-1, B, C and D** are attached to this Concession Agreement after the signatures and by this reference are incorporated herein.

18.36 Lawful Currency of United States. Any payments made or to be made by Concessionaire under this Concession Agreement shall be made in the lawful currency of the United States of America.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Concession Agreement as of the date first above written.

APPROVED AS TO FORM:

CITY OF AUSTIN, TEXAS

By: _____
Name: _____
Title: Assistant City Attorney

By: _____
Name: _____
Title: Executive Director of Aviation

[Concessionaire]

By: _____
Name: _____
Title: _____

Attachment 1

Master Glossary

Unless otherwise specifically provided in any agreement to which this **Attachment 1** is attached, the following terms shall have the meanings specified below (such definitions to be applicable equally to singular and plural nouns and verbs of any tense).

“2011 Reimbursement Agreement” shall mean that certain agreement dated January 26, 2012 by and among City, Master Lessee, Developer and a RAC representative regarding Phase I of the Project.

“ACDBE” shall mean a business entity, whether a sole proprietorship, partnership, corporation or other entity, of which at least fifty-one percent (51%) of the ownership thereof is owned and controlled by a “socially and economically disadvantaged individual” as such term is defined in the Airport and Airways Improvement Act of 1982, as amended, and the regulations promulgated pursuant thereto in 49 C.F.R. Part 23, as amended or modified from time to time. To qualify as an ACDBE, a business entity must meet the experience and economic guidelines for an “Airport Concession Disadvantaged Business Enterprise” set forth in 49 C.F.R. Part 23, as amended or modified from time to time, and must be certified by City as an ACDBE.

“ACDBE Participation Schedule” shall mean the schedule comprised of a copy of the ACDBE participation report in the form set forth in **Exhibit C** to the Concession Agreement for each ACDBE that is participating in Concessionaire’s Rental Car Concession, as modified from time to time in accordance with the Concession Agreement to reflect changes in ACDBE participation, and shall mean the ACDBE Participation Schedule to be provided by Master Lessee to City in accordance with **Section 25.3** of the Master Lease.

“ACDBE Quarterly Revenue Report” shall mean a quarterly report of ACDBE participation in operations under the Concession Agreement substantially in the form of **Exhibit D** to the Concession Agreement, and shall mean the ACDBE Quarterly Revenue Report to be provided by Master Lessee to City in accordance with **Section 25.2** of the Master Lease.

“Act” shall mean Chapter 22, Texas Transportation Code, as amended.

“Additional Bonds” shall mean any and all Bonds which may be issued or incurred by City in the manner set forth in Article VIII of the Indenture for the purposes described in **Section 8.2** of the Master Lease.

“Adjustment Period” shall have the meaning set forth in **Section 6.1.2** of the Master Lease.

“Administrative Costs Fund” shall mean the fund by that name established pursuant to the Indenture.

“Affiliate” or **“affiliate”** shall mean any Person, directly or indirectly controlling or controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person

possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“**Aircraft**” shall have the meaning set forth in Section 26.24 of the Master Lease.

“**Airport**” shall mean the Austin - Bergstrom International Airport in Austin, Texas, as it exists from time to time. Airport specifically includes the CONRAC Site and all property owned by the City for the operation of the Austin-Bergstrom International Airport.

“**Airport Customer**” shall mean any person who comes to the Airport by any means of transportation and enters into a motor vehicle rental agreement with Concessionaire at the Airport; and any person who enters into a motor vehicle rental agreement with Concessionaire at any of Concessionaire’s rental car operations located outside the boundaries of the Airport after having been transported to that location from the Airport by or on behalf of the Concessionaire. The following are excluded from the definition of “Airport Customer”: any person who enters into a motor vehicle rental agreement with Concessionaire at any of Concessionaire’s rental car operations outside the boundaries of the Airport having not been transported to that location from the Airport by or on behalf of the Concessionaire, whether or not the person has at any time flown into the Airport.

“**Airport Security Plan**” shall mean a program developed by City for the maintenance of the safety and security of the Airport and Persons using the CONRAC, the Terminal or any other portion of the Airport premises, as it may be amended, modified or revised by City from time to time. The Airport Security Plan is a part of the City Codes and Standards.

“**Allocated Space**” means space in the CONRAC allocated to a RAC from time to time as either its Exclusive Use Area or as designated space within Common Use Operational Areas in accordance with the terms of a Sublease Agreement, and measured in square feet. Allocated Space shall include, as further described under each Sublease Agreement, the CONRAC Counter Space, Ready/Return Space, Storage Space, employee parking, and such other space as may be assigned to, and accepted by a RAC for its exclusive use. Allocated Space includes the right to use Common Use Areas, and Vendor Parking Area on a non-exclusive basis with other RACs.

“**Alterations**” shall have the meaning set forth in Section 10.5 of the Master Lease and Section 11.1 of each Sublease Agreement.

“**Annual Audit Statement**” shall have the meaning set forth in Section 6.1 of the Concession Agreement.

“**Annual Audited Statement**” shall have the meaning set forth in Section 7.1 of the Master Lease.

“**Applicable Laws**” shall mean all present and future applicable laws, ordinances, orders, directives, rules, codes and regulations of all Governmental Authorities and all present and future grant assurances provided by City to any Governmental Authorities in connection with City’s ownership or operation of the Airport, as the same may be amended, modified or updated from

time to time, and applicable decisional law (including judicial or administrative interpretations, orders and judgments).

“Base Rent” shall mean nine hundred thousand dollars (\$900,000.00) per Lease Agreement Year, calculated at the rate of one dollar and forty-five cents (\$1.45) per square foot times the stipulated six hundred twenty thousand six hundred eighty-nine (620,689) square feet of the CONRAC, subject to adjustment on the fifth (5th) anniversary of the Opening Date and on each successive fifth (5th) anniversary of the Opening Date thereafter during the Lease Term as provided in **Section 6.1.1** of the Master Lease.

“Best Management Practices” shall mean the environmental or operational standards or guidelines specifying common and accepted practices appropriate for the types of businesses in which Master Lessee, Concessionaire and their respective contractors, agents or vendors engage on the Leased Premises, and such standards or guidelines as have been articulated by pertinent trade associations, professional associations or regulatory agencies. Best Management Practices shall be subject to prior approval by City.

“Bond Obligations” shall mean any and all obligations of City under the Bonds (or any of them) and shall, without limiting the generality of the foregoing, include (a) all payments necessary to pay principal, interest and premium, if any, under the terms of the Bonds; (b) all deposits required to be made to all debt service reserve funds and debt service coverage funds required under the terms of the Bonds to satisfy all requirements therefor under the Indenture; (c) all costs of any credit enhancement or facility or liquidity agreement; (d) all deposits required to be made to any other funds or accounts required under the terms of the Bonds to satisfy all requirements therefor under the Indenture, (e) all deposits required to pay administrative costs, trustee fees and expenses and all other amounts required or authorized under the Indenture, and (f) any rate covenant or similar covenant or obligation of the City under the Indenture for the establishment of CFCs or Contingent Fees.

“Bond Ordinance” shall mean the ordinance approved by the City Council of the City authorizing the issuance of the Initial Bonds.

“Bonds” shall mean the bonds issued or incurred by City (whether in one or more series) for purposes of financing the design, construction or improvement of, or the addition to, the Project, and specifically including bonds and other debt instruments issued by City, any completion debt obligations that may be required, and any loans obtained by City from a Governmental Authority under the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. § 601, *et seq.*, or other Applicable Laws, in each case, relating to the Project. The term “Bonds” shall also include, without limitation, the Initial Bonds and any Additional Bonds, and any indenture, resolution, loan agreement or any other document providing for the issuance of Bonds or Additional Bonds.

“Bond Trustee” or **“Trustee”** shall mean any Person appointed to act as the trustee on behalf of holders or owners of any Bonds under the Indenture or other agreement with City.

“Budget” shall mean the annual budget prepared by the Facility Manager for the O&M Costs of the CONRAC for each Lease Agreement Year or partial Lease Agreement Year

(including the period from Substantial Completion to Opening Date as part of the first Lease Agreement Year for purposes of budgeting) and previously approved by City, all in accordance with the procedures set forth in the Section 13.5 of the Master Lease. The Budget shall be itemized to indicate the fund source for each item, and distinguishing between those items to be paid for (a) from the Repair and Replacement Fund established under the Indenture and funded with Customer Facility Charges at a minimum amount annually determined by City in its sole and absolute discretion, (b) from the CFC Surplus Fund established under the Indenture and funded with Customer Facility Charges in the amount set forth in the Indenture, (c) from assessments to the RACs under the Sublease Agreements, and (d) from any other source.

“**Business Day**” shall mean for purposes of the Master Lease, the Sublease Agreements and the Concession Agreements any calendar day other than a Saturday, a Sunday or City holiday.

“**Certificate of Insurance**” shall have the meaning set forth in Sections 15.5 and 17.4.3 of the Master Lease, Section 16.5 of the Concession Agreement and Section 15.5 of the Sublease Agreement.

“**CFC Surplus Annual Disbursement Account**” shall mean the account by that name established within the CFC Surplus Fund pursuant to the Indenture.

“**CFC Surplus Fund**” shall mean the fund by that name established pursuant to the Indenture.

“**CFC Surplus Residual Account**” shall mean the account by that name established within the CFC Surplus Fund pursuant to the Indenture.

“**City**” shall mean the City of Austin, a Texas home rule municipality acting by and through its Executive Director of the Department of Aviation.

“**City Building Permit(s)**” means any permit required for a particular scope of work under Section 9.2 of the Master Lease prior to the construction at the Airport of that scope of work and to be issued by the City. Such permit is in addition to any other necessary municipal building permits.

“**City Building Permit Requirements**” shall mean the requirements of City to obtain a City Building Permit in accordance with the City Codes and Standards.

“**City Codes and Standards**” shall mean the rules, procedures and regulations adopted by City from time to time for the orderly use of the Airport, as the same may be amended, modified or supplemented from time to time, and including, without limitation, the Airport Security Plan, the Tenant Design Standards, City’s mechanical, electrical, water and waste, and industrial waste and storm drainage standards, any other City requirements and/or standards for design and construction at the Airport, and the operating rules and regulations for the CONRAC promulgated by City from time to time.

“**City Environmental Permit**” shall mean any environmental permit to which City is, whether now or in the future, subject and which covers or otherwise affects operations on or about the CONRAC Site.

“**Commencement of Construction**” shall mean the date after which Master Lessee complies with the requirements of Sections 9.2 & 9.3 of the Master Lease and commences construction of the Joint Use Facility in accordance with the requirements set forth in Section 9.4 of the Master Lease.

“**Commercial Fueling Service**” means the selling or offering for sale of fuel, fuel storage, fuel delivery, or fuel dispensing to the public, and excludes self-fueling by RACs and the sale of fuel to RAC Airport Customers under the terms of a vehicle rental contract.

“**Commercial Parking Facility**” shall mean the ground floor of all of the Joint Use Facility, other than the ground floor of the QTA Facility, to be exclusively used as a City-operated commercial parking facility.

“**Common Use Areas**” shall mean those portions of the CONRAC that are not included within (i) the Exclusive Use Areas, (ii) the Reserved Area, (iii) the IDF Rooms; or (iv) the Parking Management Office.

“**Common Use Operational Areas**” shall mean the CONRAC service road, Vendor Parking Area, shuttler ramps and non-public hallways, restrooms, service elevators and stairwells in the CSB and QTA, all to be utilized by the RACs in common, but not accessible by or for the use of the public.

“**Concession Agreement**” shall mean each Rental Car Concession Agreement for Austin - Bergstrom International Airport between City and a Concessionaire, together with the exhibits thereto and all agreements supplemental to or modifying such Concession Agreement, whether made contemporaneously therewith or subsequent thereto. The term “Concession Agreement” specifically shall include each successor concession agreement to which City and such Concessionaire may be a party that governs the terms of such Concessionaire’s Rental Car Concession. Concession Agreement shall not include a Prior Concession Agreement.

“**Concession Agreement Year**” initially shall mean the period beginning on the Opening Date and ending on the following September 30th and thereafter shall mean each successive twelve (12) month period during the Concession Term beginning on October 1st and ending on September 30th.

“**Concession Deficiency**” shall have the meaning set forth in Section 13.2.2 of the Concession Agreement.

“**Concession Fee**” shall have the meaning set forth in Section 4.1 of the Concession Agreement.

“**Concession Future Charges**” shall have the meaning set forth in Section 13.2.2 of the Concession Agreement.

“Concession Term” shall mean the term of the Concession Agreement as set forth in **Section 3.1** of the Concession Agreement.

“Concession Termination Damages” shall have the meaning set forth in **Section 13.2.1** of the Concession Agreement.

“Concessionaire” or **“RAC”** or **“Sublessee”** shall mean a Person engaged in the business of renting motor vehicles that holds a Rental Car Concession to engage in such business pursuant to a Prior Concession Agreement or a Concession Agreement. More specifically, in each Concession Agreement, “Concessionaire” shall mean the specific RAC that is a party to that agreement, and in each Sublease Agreement, “Sublessee” shall mean the specific RAC that is a party to that agreement.

“Concessionaire Direct Cost” shall mean (a) the costs of goods and services not part of O&M Costs, but provided directly to a specific RAC or its Exclusive Use Premises by or through the Facility Manager in support of that RAC’s car rental operations rather than as a cost of operation and maintenance of the CONRAC generally, and (b) the cost of maintenance, repair or replacement required due to neglect, carelessness or above by that RAC.

“Concessionaire Party” shall mean Concessionaire and each of its subtenants, contractors and subcontractors and the respective officers, subcontractors, agents, representatives, employees, guests, customers, invitees, vendors and suppliers of Concessionaire and of each such subtenant, contractor and subcontractor.

“CONRAC” shall mean the consolidated rental car facility located within the four (4) stories of the Joint Use Facility above the Commercial Parking Facility west of the internal shuttler ramps, together with the internal shuttler ramps, all floors of the QTA Facility and associated improvements, to be constructed by Master Lessee pursuant to the Master Lease and that includes, but is not limited to, the CONRAC Counter Areas, Ready/Return Area, the QTA Space, the Storage Space, the Common Use Areas, the CSB, the Common Use Operational Areas, the Off-Airport Rental Drop-Off Area and the Reserved Area, the Service Yard, Vendor Parking Area and dedicated ramps, roadways, flyovers and walkways necessary for ingress and egress as depicted in **Exhibit A-2** of the Master Lease, but excluding the reserved rights and premises of City as set forth in **Section 3.3** of the Master Lease.

“CONRAC Capital Improvements” shall mean the improvements, structures and fixtures installed by Master Lessee in the CONRAC, including the foundation, supporting walls, roof, ramps, elevators, plumbing, electrical and HVAC systems, finish-out work on floors, ceilings, demising walls, panel boxes and hook-ups to utilities; wires and conduits infrastructure; built-in shelves, counters; cash wraps; lighting; and interior design and construction work necessary in general to accommodate the Rental Car Concession operations of Concessionaires, but shall exclude RAC Property.

“CONRAC Common Areas” shall mean each area of the Common Use Areas that is accessible to the public and not subject to exclusive occupancy by the Master Lessee under the Master Lease or a RAC under a Sublease Agreement with Master Lessee, including, without limitation, any public corridor, hall, passageway, walkway, entrance, exit, aisle, stairway,

elevator, escalator, seating or waiting area and restroom, but excluding such Common Use Operational Areas.

“**CONRAC Counter Areas**” shall mean those portions of the CONRAC described or depicted in **Exhibit H** to the Master Lease as the “CONRAC Counter Areas” and to be utilized by the RACs for purposes of processing Transactions with Airport Customers.

“**CONRAC Counter Space**” shall mean with respect to each Sublease Agreement, the area(s) shaded and designated in an exhibit to that Sublease Agreement identifying that area as a portion of the Exclusive Use Premises for the signatory RAC.

“**CONRAC Site**” shall mean that parcel of land legally described in **Exhibit A-1** to the Master Lease, on which land the Joint Use Facility is to be constructed and thereafter maintained in accordance with the Master Lease. The legal description and area set forth in this definition shall, however, be subject to adjustment following Final Completion of the Joint Use Facility to account for dedications and other adjustments to the CONRAC Site made as part of construction of the Joint Use Facility, and Master Lessee’s provision of a revised legal description of the CONRAC Site for approval by City in accordance with **Section 9.6.1.3** and **Section 9.7** of the Master Lease.

“**Construction Contract**” shall mean the adapted and modified DBIA Document Nos. 520, 525 and 535 and the contract documents described in such DBIA Documents collectively, between Developer and Design-Builder attached to and made a part of the Master Lease as **Exhibit D** pursuant to which the Developer and Design-Builder will be obligated to construct the Joint Use Facility for a stipulated fixed price and within a guaranteed maximum time period as set forth therein. City and Master Lessee each shall be a third-party beneficiary of the Construction Contract.

“**Consumer Price Index**” shall mean the index currently published by the United States Bureau of Labor Statistics (unadjusted for seasonal variation) entitled the “Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100” for the Austin, Texas area. If, at any time when such index is needed, the “Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100” for the Austin, Texas area is no longer published, the parties shall use such substituted index as is then generally recognized and accepted for similar determinations of purchasing power.

“**Contamination**” means the unpermitted presence of any released Hazardous Material.

“**Contingent Fee**” shall mean the additional fee imposed by City on, and required to be paid by, each Concessionaire pursuant to **Section 4.3** of the Concession Agreement.

“**Costs of the Project**” shall mean any and all costs incurred or paid by City or Master Lessee in connection with the design, permitting and construction of the Project, including design costs, permitting costs, capitalized interest for payment of interest on Bonds and Bond issuance and underwriting expenses, the funding of any reserves required in connection with Bonds, construction costs, costs associated with project management, contract administration or construction management, and a reasonable allocation of administrative costs of City associated with the design and construction of the Project.

“**Customer Facility Charge**” or “**CFC**” shall mean the customer facility charge or charges imposed by City on rental car transactions occurring at the Airport, and required by City to be collected by Concessionaire pursuant to Section 4.2 of the Concession Agreement.

“**Customer Service Building**” or “**CSB**” shall mean that portion of the Joint Use Facility described or depicted on **Exhibit H** to the Master Lease to be utilized by RACs for office space and for processing Airport Customer Transactions.

“**Date of Beneficial Occupancy**” means the date on which the Joint Use Facility, including all Punch-List Items, is complete, all Initial Tenant Improvements are substantially complete, and the Master Lessee has received all certificates of occupancy and other permits, approvals, licenses and other documents from Governmental Authorities having jurisdiction over the Joint Use Facility necessary for the beneficial occupancy thereof. For New Entrants, the Date of Beneficial Occupancy shall mean the date the New Entrant commences rental car operations in the CONRAC.

“**Days**” (whether capitalized or not) shall, unless otherwise specified, mean and refer to calendar days, not Business Days, provided that when any deadline or the final day of any limitation period is not a Business Day, that deadline or limitation period shall extend to the next Business Day thereafter.

“**Deadline for Substantial Completion**” shall mean the date identified in the Construction Contract as approved by City for Master Lessee’s Substantial Completion of the Joint Use Facility as set forth in **Section 9.4.2** of the Master Lease.

“**Debt Service Coverage Fund**” shall mean the fund by that name established pursuant to the Indenture.

“**Debt Service Reserve Fund**” shall mean the fund by that name established pursuant to the Indenture.

“**Default Rate**” shall mean an interest rate equal to the lesser of (a) one and one-half percent (1.5%) per annum or (b) the maximum interest rate permitted by law to be charged by Applicable Laws.

“**Deficiency**” shall have the meaning set forth in **Section 21.2.2** of the Master Lease and in **Section 21.2.2** of the Sublease Agreement.

“**Deliverables**” shall mean all documents and information required to be delivered to City pursuant to the 2011 Reimbursement Agreement and in accordance with **ARTICLE 9** of the Master Lease.

“**Department of Aviation**” shall mean the Department of Aviation of City.

“**Design-Builder**” shall mean the general contractor retained by Developer to install and construct the Joint Use Facility.

“**Developer**” shall mean Pfeffer Development, LLC, an Alaska limited liability company registered to conduct business in the State of Texas.

“**Development Agreement**” means the Project Delivery Agreement entered into between Master Lessee and Developer dated January 27, 2012 and made effective as of the 27th day of July, 2011, attached to and made part of the Master Lease as **Exhibit C** to provide for the development and construction of the Joint Use Facility through the Construction Contract pursuant to **ARTICLE 9** of the Master Lease. City shall be a third-party beneficiary of the Development Agreement.

“**DOT**” shall mean the United States Department of Transportation, and any successor agency, office or department thereof.

“**Effective Date**” means with respect to the Concession Agreement, the Master Lease or any Sublease Agreement, the date that the respective document is fully executed and delivered by all parties to the applicable agreement.

“**Environmental Assessment**” shall mean an investigation of site environmental conditions that is (a) sufficient to characterize environmental conditions at the CONRAC Site and/or associated with operations of the CONRAC, and (b) sufficient to identify changes in environmental conditions at the CONRAC Site and/or associated with operations of the CONRAC since the establishment of the Pre-Lease Environmental Condition (or completion of any subsequent Environmental Assessment), by comparison of the Environmental Assessment results with the Pre-Lease Environmental Condition (or the results of any subsequent Environmental Assessment). The Environmental Assessment scope of work shall be sufficient to meet both purposes, but shall in every case meet at least the minimum standards of American Society for Testing and Materials Standard E1903 - Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process.

“**Environmental Audit**” shall mean an environmental compliance audit consistent with any applicable or relevant and appropriate assessment or auditing standards, including Section 101(35)(B) (42 U.S.C. §9601(35)(B)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended or modified from time to time, 40 C.F.R. Part 312, as amended or modified from time to time, and American Society for Testing and Materials Standard E2107-00 Standard Practice for Environmental Regulatory Compliance Audits.

“**Environmental Covenants**” shall mean the obligations respectively of Master Lessee under **ARTICLES 16 & 17** of the Master Lease and of each Concessionaire under **ARTICLES 16 & 17** of its Sublease Agreement.

“**Environmental Laws**” shall refer to and include, without limitation, all Federal, State, City, and local statutes, laws, ordinances, rules and regulations, now or hereafter in effect, and as amended from time to time, that are intended for the protection of the environment, or that govern, control, restrict, or regulate the use, handling, treatment, storage, discharge, disposal, or transportation of Hazardous Materials. Environmental Laws specifically include, but are not limited to, the National Environmental Policy Act, the Comprehensive Environmental Response,

Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Materials Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Superfund Authorization and Recovery Act, the Occupational Safety and Health Administration Hazard Communication Standards, the Texas Water Code, the Texas Hazardous Materials Act, and the Texas Water Quality Control Act.

“**Event of Default**” shall have the meanings set forth in **Section 21.1** of the Master Lease with respect to the Master Lease; in **Section 21.1** of the Sublease Agreement with respect to the Sublease Agreement; and in **Section 13.1** of the Concession Agreement with respect to the Concession Agreement.

“**Exclusive Use Areas**” shall mean those portions of the CONRAC described or depicted in **Exhibit H** to the Master Lease as the “Exclusive Use Areas” and to be utilized by the RACs on an individual exclusive basis, or shared with one or more specific designated RAC(s), for purposes of operating Rental Car Concessions.

“**Exclusive Use Premises**” shall mean the CONRAC Counter Space, Ready/Return Space, allocated QTA Space and assigned Fuel Facilities and such other space as may be assigned to, and accepted by a RAC for its exclusive use, or shared with one or more specifically identified RAC, as shaded and depicted in an exhibit to each of the Sublease Agreements.

“**FAA**” means Federal Aviation Administration.

“**Facility Management Agreement**” means the agreement between Master Lessee and the Facility Manager approved by the City in writing to provide for the performance of Routine Maintenance and Major Maintenance for the CONRAC and the management of all operations of and activities in the CONRAC pursuant to **ARTICLES 11-18** of the Master Lease. City shall be a third-party beneficiary of the Facility Management Agreement.

“**Facility Manager**” shall mean the party retained by Master Lessee with the written consent of City to perform the Routine Maintenance and Major Maintenance for the CONRAC and to manage all operations of and activities in the CONRAC pursuant to Facility Management Agreement.

“**Federal Aviation Act**” shall mean the Federal Aviation Act of 1958, as amended.

“**Final Completion**” shall mean full and complete construction of all components of the Joint Use Facility, including completion of all Punch-List Items, which shall occur no later than one-hundred twenty (120) days after Substantial Completion. Final Completion shall exclude only Initial Tenant Improvements which shall be substantially complete on Final Completion and completed no later than the Opening Date and any modifications of or enhancements to way-finding signage which shall be complete no later than ninety (90) days after Final Completion.

“**Financial Assurance**” shall have the meaning set forth in **Section 17.4** of the Master Lease.

“**Fiscal Year**” shall mean the fiscal year of City commencing on October 1st and ending on September 30th.

“Force Majeure” shall mean acts and events not within the control of the party, and which the party could not use due diligence to avoid or prevent. Events of Force Majeure include acts of God, strikes, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Force Majeure does not include economic or market conditions, which affect a party’s cost, but not its ability to perform.

“Franchise Agreement” shall have the meaning set forth in Section 8.2.1 of the Concession Agreement.

“Franchisor” shall have the meaning set forth in Section 8.2.1 of the Concession Agreement.

“Fuel Facilities” shall mean (a) the specific improvements installed on or about the portion of the CONRAC Site as depicted in Exhibit A-2 to the Master Lease for purposes of fueling rental car vehicles by the RACs; and (b) all aboveground and underground fuel storage tanks, underground and aboveground fuel piping, related underground and aboveground structures and equipment, including fuel tank fill ports, fuel dispensers, spill containment structures, oil-water separators, storm water management systems, required network of monitoring wells, leak prevention and detection systems, and the surrounding areas used in connection with their operation, including areas of Hazardous Materials, transfer, dispensing and containment systems, wherever located on the CONRAC Site from time to time, including the underground and aboveground fuel piping, related underground and aboveground structures and equipment, including fuel tank fill ports, fuel dispensers, spill containment structures, oil-water separators, storm water management systems and leak prevention and detection systems located within the CONRAC from time to time.

“Fuel Facilities Operations Manual” shall mean the operations and maintenance manual prepared by the Facility Manager that addresses the operation, maintenance, routine and required inspections, and repair of the Fuel Facilities in order to prevent a release of a Hazardous Material or other deleterious material and to control and perform immediate removal, remediation and restoration action in the event of a release of a Hazardous Material or other deleterious material in connection with the operation of the Fuel Facilities.

“Fuel Letter of Credit” shall have the meaning set forth in Section 17.4.1 of the Master Lease.

“Future Charges” shall have the meaning set forth in Section 21.2.2 of the Master Lease and set forth in Section 21.2.2 of the Sublease Agreement.

“Good Standing” shall mean with respect to a RAC that the Sublease Agreement and Concession Agreement to which a RAC is a Party are not in default at the time that a determination of good standing is made.

“Governmental Authorities” shall mean federal, state and municipal governments, authorities and agencies and their respective agencies, departments, authorities and commissions. “Governmental Authorities” shall specifically include, without limitation, City, the State of

Texas, the Texas Attorney General, the DOT, the United States Federal Aviation Administration and the TSA.

“**Gross Receipts**” shall have the meaning set forth in Section 4.1.4 of the Concession Agreement.

“**Hazardous Materials**” shall refer to and include, without limitation, all substances whose use, handling, treatment, storage, disposal, discharge, or transportation is governed, controlled, restricted, or regulated by Environmental Laws, that have been defined, designated or listed by any responsible regulatory agency as being hazardous, toxic, radioactive, or that may present an actual or potential hazard to human health or the environment if improperly used, handled, treated, stored, disposed, discharged, generated or released. Hazardous Materials specifically include, without limitation, asbestos and asbestos-containing-materials, petroleum products, solvents, and pesticides.

“**IDF Rooms**” shall mean the Intermediate Distribution Frame rooms located on each floor of the CONRAC as shown on Exhibit H to the Master Lease which shall contain City’s networking equipment for connectivity to the Joint Use Facility.

“**Indenture**” shall mean the Trust Indenture dated as of _____, between the City and the Bond Trustee establishing the terms of the Bonds, as amended, modified or supplemented from time to time in accordance with the terms thereof.

“**Initial Bonds**” shall have the same meaning given to the term “Series 2013 Bonds” in the Indenture.

“**Initial Tenant Improvements**” shall mean the improvements, structures and fixtures installed by Concessionaire in its Exclusive Use Premises, including finish-out work on floors, ceilings, demising walls and store facades; storefront signage; panel boxes and hook-ups to utilities; wires and conduits infrastructure; decorations; furniture; equipment; shelves; counters; lighting; and interior design and construction work necessary in general to accommodate the Rental Car Concession operations of Concessionaire; and as further described in Section 2.2 of the Sublease Agreement.

“**Initial Tenant Improvements Construction Period**” shall have the meaning set forth in Section 2.2 of the Sublease Agreement.

“**Joint Use Facility**” shall mean the five (5) story parking garage structure containing the CONRAC and Commercial Parking Facility including a vehicle ramping system and any associated improvements approved by City in writing constructed on the CONRAC Site.

“**Lease Agreement Year**” initially shall mean the period beginning on the Opening Date and ending on the following September 30th and thereafter shall mean each successive twelve (12) month period during the Lease Term beginning on October 1st and ending on September 30th.

“**Lease Term**” shall mean the term of the Master Lease as provided in Section 5.1 thereof.

“**Leased Premises**” shall mean the CONRAC Site prior to Substantial Completion, with an appurtenant license to occupy all improvements thereon as constructed under the Master Lease through Final Completion, and the CONRAC on and after Substantial Completion and through the Lease Term, as more fully described in **Section 3.1** of the Master Lease.

“**Legal Requirements**” shall mean all orders, rules, regulations and requirements (whether now or hereafter in effect) of Applicable Laws, and all requirements, obligations and conditions of all instruments of record on the date of the any agreement to which this **Attachment 1** is attached.

“**Level 5**” shall mean the fifth (5th) floor of the CONRAC.

“**Lien**” shall mean any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on or affecting the Leased Premises, the Subleased Premises, the CONRAC Capital Improvements, Initial Tenant Improvements, any Alteration, the Fuel Facilities, or the QTA Equipment.

“**LOI**” shall mean that certain letter of intent dated November 18, 2011 by and among City, Master Lessee, Developer and a RAC representative regarding the Project.

“**Major Maintenance**” shall mean any repair, replacement or removal of improvements in, of, or to the CONRAC Site or any aspect of the Joint Use Facility during the one (1) year Warranty Period, or in, of or to the CONRAC or any structural aspect of the Joint Use Facility that in either period (a) preserves, extends or restores the useful life of, and is beyond the regular, normal annual or more frequent upkeep of physical property (i.e. land, building, or equipment), or (b) removes improvements at the expiration or termination of the Master Lease, or otherwise at the direction of City. Major Maintenance includes the repair or replacement of failed or failing building components as necessary to return a facility to its currently intended use, to prevent further damage, or to make it compliant with changes in laws, regulations, codes, or standards. Routine Maintenance shall not be considered Major Maintenance. Items of Major Maintenance include, but are not limited to, the items listed in **Exhibit F** to the Master Lease.

“**Market Share**” shall mean, with respect to each RAC, that RAC’s percentage share of the total rental car market at the Airport, where that share is calculated as the percentage which that RAC paid to City of the total of all Concession Fees paid to City by all RACs in the then-most recent Concession Agreement Year.

“**Master Lease**” shall mean the Consolidated Rental Car Facility Master Lease for Austin-Bergstrom International Airport, dated as of _____, 2013, by and between City and Master Lessee, together with all amendments, supplements, attachments and exhibits thereto.

“**Master Lessee**” shall mean Austin CONRAC, LLC, a Texas limited liability company, and any successor, assignee or transferee thereof permitted by the terms of the Master Lease.

“**Master Lessee Party**” shall mean Master Lessee and each of its subtenants, if any, other than the RACs, contractors (including the Facility Manager and Developer), and subcontractors and the respective officers, subcontractors, agents, representatives, employees,

guests, customers, invitees, vendors and suppliers of Master Lessee and of each such subtenant, contractor and subcontractor.

“Master Lessee’s Rent and Operation Reserve” shall mean account(s) established by Master Lessee for the Rent Reserve Requirement and O&M Reserve Requirement that each Concessionaire is required to pay to Master Lessee pursuant to the Sublease Agreement.

“Minimum Annual Guaranteed Concession Fee” shall mean (a) for the first Concession Agreement Year, an amount equal to eighty-five percent (85%) of the Concession Fee due for the immediately preceding twelve (12) months under the Prior Concession Agreement (as defined in the Concession Agreement), and (b) for the second and each subsequent Concession Agreement Year, an amount equal to eighty-five percent (85%) of the Concession Fee due for the immediately preceding full Concession Agreement Year.

“M/WBE Program” shall mean the City Minority-Owned and Women-Owned Business Enterprise (M/WBE) Procurement Program, found at Austin City Code Chapters 2-9A, 2-9B, 2-9C and 2-9D.

“New Entrant” shall mean any operator of a rental car business that meets minimum requirements substantially equivalent to those imposed on incumbent Concessionaires, but that is not a Concessionaire as of the Effective Date of the Master Lease, and thereafter shall mean an operator of a rental car business that meets minimum requirements substantially equivalent to those imposed on incumbent Concessionaires, but that is not a Concessionaire as of the end of the initial ten (10) year term of the Concession Agreement or at the time City solicits for new operators or rental car businesses in the CONRAC. “New Entrant” shall not mean any off-Airport motor vehicle rental services or businesses.

“New Entrant Areas” shall mean those portions of the CONRAC described or depicted in **Exhibit H** to the Master Lease to be utilized by New Entrants for purposes of operating Rental Car Concessions.

“Notice of Default” shall mean: (a) written notice by City to Concessionaire or by Concessionaire to City of any Event of Default or of any event or circumstance that, with the giving of notice or the passage of time, or both, will constitute an Event of Default under the Concession Agreement; (b) written notice by City to Master Lessee or by Master Lessee to City of any Event of Default or of any event or circumstance that, with the giving of notice or the passage of time, or both, will constitute an Event of Default under the Master Lease; or (c) written notice by Master Lessee to a Concessionaire or by Concessionaire to Master Lessee of any Event of Default or any event or circumstance that, with the giving of notice or the passage of time, or both, will constitute an Event of Default under a Sublease Agreement. Such notices, for all purposes, shall be in lieu of, and not in addition to, any notice required as a prerequisite to an unlawful detainer or similar action for possession of premises.

“Off-Airport Rental Drop Off Area” shall mean those portions of the Common Use Areas described or depicted on **Exhibit H** to the Master Lease as the “Off-Airport Rental Drop Off Area” to be utilized for drop off and pickup of customers of off-Airport motor vehicle rental services.

“**Office Space**” shall mean those portions of the Customer Service Building described or depicted on **Exhibit H** to the Master Lease to be utilized by RACs for office purposes.

“**O&M Costs**” shall mean all actual costs of operating the CONRAC and administering and carrying out the Master Lessee’s responsibilities under the Master Lease, including the following: (a) the actual costs incurred by any and all of the Facility Manager, City or Master Lessee in performing Routine Maintenance, Major Maintenance or Environmental Assessment under the Master Lease (including a reasonable allocation of City administrative costs but excluding any such costs incurred by the City with respect to its own direct responsibilities pursuant to **Section 12.5** of the Master Lease), and specifically including the cost of the Facility Manager and associated support staff that are responsible for supervising the operation and management of the CONRAC and CONRAC Site (specifically including ensuring Concessionaire’s compliance with the obligations imposed by the Master Lease); (b) the property and liability (including pollution liability) insurance costs incurred by the Facility Manager, City or Master Lessee with respect to the CONRAC and CONRAC Site; (c) except to the extent attributable to any individual RAC, any taxes, other than income taxes, paid by City, Master Lessee or the Facility Manager in regard to the Joint Use Facility, but that are payable by the RACs under **Section 12.1** of the Sublease Agreement; (d) the Utilities Costs for the CONRAC and CONRAC Site (except for any separately metered Utilities Costs for RAC Exclusive Use Premises); (e) internal costs (including staff time) of City incurred in connection with the administration of the Customer Facility Charge or the administration of the Bonds; (f) internal costs (including staff time) of Master Lessee incurred in connection with the performance by Master Lessee of any duties or obligations under any agreement with the Facility Manager; (g) the fees and costs payable by Master Lessee to the Facility Manager; and (h) any other cost or expense reasonably incurred by City or Master Lessee in connection with the RACs’ operations on or occupation of the CONRAC and CONRAC Site.

“**O&M Reconciliation Report**” shall have the meaning set forth in **Section 13.6** of the Master Lease and in **Section 5.1.5.3** of the Sublease Agreement.

“**O&M Reserve Requirement**” shall mean an amount equal to twenty-five percent (25%) of Concessionaire’s estimated aggregate Pro Rata Share of O&M Costs for each Sublease Agreement Year (or, for the first Sublease Agreement Year, the period commencing on the Substantial Occupancy Date through the end of such first Sublease Agreement Year).

“**Opening Date**” shall mean the date the CONRAC opens for business to the public, with all RACs renting cars and receiving rental returns in the CONRAC which shall occur no later than thirty (30) days following Final Completion.

“**Parking Management Office**” shall mean the space on the ground floor of the QTA Facility described or depicted on **Exhibit H** to the Master Lease to be used exclusively by City in conjunction with the Commercial Parking Facility and other City parking facilities at the Airport.

“**Passenger Count**” shall have the meaning set forth in **Section 4.1.8.1** of the Concession Agreement.

“**Payment and Performance Bond**” shall have the meaning set forth in **Section 9.3** of the Master Lease.

“**Percentage Fee**” shall have the meaning set forth in **Section 4.1** of the Concession Agreement.

“**Permitted Use**” shall have the meaning set forth in **Section 4.1** of the Master Lease.

“**Person**” shall mean an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

“**PL Policy**” shall have the meaning set forth in **Section 17.4.2** of the Master Lease.

“**Pollution Prevention Plan**” shall mean a written plan required by Environmental Laws, or if not required by Environmental Laws, an equivalent plan required by City for the CONRAC Site, prepared by the Facility Manager and adopted by Master Lessee in accordance with **Section 16.11** of the Master Lease that describes the Fuel Facilities and the management, training, operational and monitoring activities and requirements in place to prevent releases of Hazardous Materials or other deleterious materials (e.g., total suspended solids) from, or in connection with, the Fuel Facilities, to control and remediate spills or releases, and to meet other environmental permit requirements related to releases from, or in connection with, the Fuel Facilities.

“**Pre-Lease Environmental Condition**” shall have the meaning set forth in **Section 16.9** of the Master Lease and **Section 16.9** of the Sublease Agreement.

“**Pre-Lease Environmental Evaluation**” shall have the meaning set forth in **Section 16.9** of the Master Lease and **Section 16.9** of the Sublease Agreement.

“**Prior Concession Agreement**” shall mean each Rental Car Concession Agreement between City and a Concessionaire relating to the premises at the Airport leased and occupied by Concessionaire pursuant to the terms thereof prior to the Opening Date, together with the exhibits thereto and all agreements supplemental to or modifying such Prior Concession Agreement, whether made contemporaneously therewith or subsequent thereto. Prior Concession Agreement shall not include a Concession Agreement.

“**Project**” shall mean the design, construction, operation, maintenance, installation and financing of the Joint Use Facility on the CONRAC Site and its associated improvements.

“**Project Delivery Agreement**” shall mean the Development Agreement.

“**Pro Rata Share**” shall mean with respect to each Subleasing RAC the percentage determined by dividing (a) the total square footage of Exclusive Use Premises then allocated to that RAC by (b) the aggregate total square footage of all Exclusive Use Areas as then subleased to all RACs, all of which space may be measured by City or Master Lessee in any reasonable and uniform manner. The Pro Rata Share may vary from time to time, being readjusted by Master Lessee upon any increase or decrease any RAC’s Exclusive Use Premises or in the aggregate total square footage of all Exclusive Use Areas actually then subleased to RACs. For purposes

of determining the total amount of Exclusive Use Areas subleased (but without in any manner releasing, waiving or otherwise absolving any potential claims for damages against any Concessionaire upon an Event of Default), (i) space for which a Sublease Agreement expires or earlier terminates shall be treated as subleased until the first full month following the date on which the Sublease Agreement expires or is earlier terminated, and (ii) a Sublease Agreement rejected in bankruptcy shall be treated as terminating on the date the bankruptcy petition was filed.

“**Punch-List Items**” shall have the meaning set forth in **Section 9.4.2.1** of the Master Lease.

“**QTA Equipment**” shall mean all equipment installed in the QTA Space and used in connection with car washing and cleaning activities, including, without limitation, car washes and all associated equipment, the vacuums, and all fluid and/or compressed air dispensing systems; provided, however, that QTA Equipment shall not include any portion of the Fuel Facilities.

“**QTA Facility**” shall mean the portion of the Joint Use Facility that includes and lies east of the CONRAC’s internal shuttler ramps, and includes the car washes, fueling areas and associated vehicle stacking areas, the ground floor under those areas and the fourth floor above them, but does not include the Parking Management Office, all as described or depicted in **Exhibit H** to the Master Lease.

“**QTA Space**” shall mean the quick turnaround areas located in the portion of the CONRAC described or depicted in **Exhibit H** to the Master Lease and to be utilized by the RACs for purposes of car washing, cleaning and fueling activities.

“**RAC O&M and Rent Reserve Fund**” shall mean the fund by that name established pursuant to the Indenture as required by Section 6.10 of the Master Lease.

“**RAC Property**” shall mean trade fixtures and business equipment and furnishings and signs of each respective RAC that has not been permanently affixed to the CONRAC or otherwise remains the personal property of that RAC and the removal of which would not damage or affect the structural integrity or usability of the CONRAC.

“**Ready/Return Areas**” shall mean those portions of the CONRAC described or depicted in **Exhibit H** to the Master Lease as the “Ready/Return Area” and to be utilized by the RACs for purposes of stacking, staging, returning and delivering rental vehicles.

“**Ready/Return Space**” shall mean the area(s) shaded and designated in an exhibit to each of the Sublease Agreements identifying the same as a portion of the Exclusive Use Premises for the applicable RAC.

“**Recovery Fee**” shall have the meaning set forth in **Section 4.1.7** of the Concession Agreement.

“**Reimbursed O&M Costs**” shall mean those O&M Costs of the Master Lessee or Facility Manager that are reimbursed from Customer Facility Charges under **Section 13.8** of the

Master Lease and in accordance with the Concession Agreement.

“**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excluding

(a) any release that results in exposure to persons solely within a workplace, with respect to a claim that those persons may assert against the persons' employer;

(b) emissions from the engine exhaust of a motor vehicle or rolling stock; and

(c) migration or movement onto, within or from the Leased Premises of Hazardous Materials contamination existing prior to the Effective Date or originating from City property outside the Leased Premises.

“**Releasing Parties**” shall mean Master Lessee, Concessionaire and their assigns, subtenants and legal representatives.

“**Rent**” shall mean Base Rent and all other fees, costs and other amounts payable from Master Lessee to City under the Master Lease.

“**Rent Reserve Requirement**” shall mean an amount equal to twenty-five percent (25%) of Concessionaire’s estimated aggregate Pro Rata Share of Base Rent for each Sublease Agreement Year (or, for the first Sublease Agreement Year, the period commencing on the Opening Date through the end of such first Sublease Agreement Year).

“**Rental Car**” shall mean any motor vehicle, regardless of fuel or power source, including, but not limited to, a passenger automobile, van, sport utility vehicle, pickup or other truck under 10,000 pounds gross vehicle weight, motorcycle or motor scooter, legal to be driven on a public street in Austin, Texas and made available for use, without a hired driver, under any form of lease, rental contract or other agreement for temporary use.

“**Rental Car Concession**” shall mean the right to operate a rental car concession at the Airport on a nonexclusive basis for the purpose of arranging rental services for motor vehicles.

“**Repair and Replacement Fund**” shall mean the fund by that name established pursuant to the Indenture.

“**Required Percentage**” shall mean ten percent (10%) for each Concession Agreement Year, subject to City adjustment every five Concession Agreement Years in accordance with the terms of Section 4.1.2 of the Concession Agreement.

“**Reserved Area**” shall mean those portions of the CONRAC, initially described or depicted in Exhibit H to the Master Lease, reserved to Master Lessee for use by Master Lessee and the Facility Manager pursuant to the Master Lease and the Sublease Agreements, and specifically including reserved office space, the Service Yard, all portions of the Fuel Facilities

other than expressly allocated fuel dispensers, all CONRAC mechanical rooms and systems and designated storage rooms.

“**Restricted Area**” shall mean any area of the Airport where the City requires limited or controlled access for security or safety purposes as required by the TSA, federal regulations, or other Governmental Authority with safety or security jurisdiction over the Airport.

“**Revenue Fund**” shall mean the fund by that name established pursuant to the Indenture.

“**Routine Maintenance**” shall mean the following: (a) the regular maintenance and repair of the structural components of the CONRAC, including the roof (both structure and any covering/membrane), exterior walls, foundation and building structure, required to keep and maintain such structural components in good order, condition and repair; (b) the regular maintenance and repair of the Common Use Areas including water, snow and ice removal and the pressure washing, resurfacing and repair of roadways, ramps, flyovers, walkways, stairs, and sidewalks included therein and the maintenance and repair of escalators, elevators and moving sidewalks, if any, required to keep and maintain the Common Use Areas in good order, condition and repair; (c) the maintenance and repair of the Reserved Area; (d) the repair and maintenance of the QTA Equipment and the Fuel Facilities; (e) the repair and maintenance of, but not janitorial services for, the Parking Management Office and the Commercial Parking Facility, including the elevators and stairwells dedicated to the Commercial Parking Facility, during the Warranty Period; (f) regular maintenance and replacement of landscaping included in Master Lessee’s site plan and installed on or about the CONRAC; and (g) janitorial services, except as noted, in the areas maintained; provided, however, Routine Maintenance shall not include any repairs, replacements or other actions that constitute Major Maintenance. Items of Routine Maintenance include, but are not limited to, the items listed in **Exhibit E** to the Master Lease.

“**Security**” shall have the meaning set forth in **Section 6.6** of the Master Lease and in **Section 8.1** of the Sublease Agreement for the purposes of each such agreement, respectively.

“**Security Amount**” means an amount for each Lease Agreement Year equal to the sum of twenty-five percent (25%) of the Base Rent in the form of an irrevocable stand-by letter of credit in form acceptable to City.

“**Security Deposit**” shall have the meaning set forth in **Section 4.5** of the Concession Agreement.

“**Service Yard**” means the ground-level area on the east end of the CONRAC described or depicted in **Exhibit H** to the Master Lease, improved as depicted for delivery of fuel and other supplies, for holding trash and recycling for pickup, and for other functions in support of CONRAC operation

“**Significant Change**” means any change (or related series of changes) to the design of the CONRAC prior to the Date of Beneficial Occupancy that (a) results in an increase in costs in excess of \$25,000; (b) materially impacts the overall design of the CONRAC; (c) otherwise impacts the type of space available to the RACs in the CONRAC; or (d) extends the completion date of the CONRAC by more than thirty (30) days.

“**SPCC Plan**” shall mean a written spill prevention control and countermeasures plan required by Environmental Laws, prepared by the Fuel Facility Manager and adopted by each of the RACs for the CONRAC and the CONRAC Site, that includes a risk evaluation performed by a professional engineer and spill response procedures.

“**Storage Areas**” shall mean those portions of the CONRAC described or depicted in **Exhibit H** to the Master Lease as the “Storage Area” and to be utilized by the RACs for purposes of storing vehicles.

“**Storage Space**” shall mean the area(s) shaded and designated in an exhibit to each of the Sublease Agreements identifying the same as a portion of the Exclusive Use Premises for the applicable RAC.

“**Sublease Agreement**” means the agreement in the form attached to and made part of the Master Lease as **Exhibit G** between a RAC and Master Lessee by consent of City pursuant to which the RAC subleases space in the CONRAC and pay certain allocated costs.

“**Sublease Agreement Year**” initially shall mean the period beginning on the Opening Date and ending on the following September 30th and thereafter shall mean each successive twelve (12) month period during the Sublease Term beginning on October 1st and ending on September 30th.

“**Subleased Premises**” shall mean with respect to each RAC’s Sublease Agreement, the Exclusive Use Premises, together with the non-exclusive right of a RAC to use in common with the other RACs the Common Use Operational Areas and the Common Use Areas as set forth in the Sublease Agreement.

“**Sublease Security**” shall have the meaning set forth in **Section 8.1** of the Sublease Agreement.

“**Sublease Term**” shall mean the term of the Sublease Agreement as set forth in **Section 4.1** of the Sublease Agreement.

“**Substantial Completion**” or “**Substantially Complete**” shall mean the stage in the progress of the construction of the Joint Use Facility when the work, or a designated part of the work, is sufficiently complete in accordance with the Development Agreement and Construction Contract so that City, Master Lessee and RACs can occupy or use the Joint Use Facility for its intended use as evidenced by a certificate of Substantial Completion approved by City and a certificate of occupancy issued by a City building inspector prior to Substantial Completion. Substantial Completion shall include, without limitation, all required permit sign-offs, regulatory inspections and structural components completed, equipment and systems installed and functional and all interior and exterior wall, ceiling and floor finish materials installed excluding only the completion of the Punch-List Items, Initial Tenant Improvements and modifications of or enhancements to way-finding signage.

“**Substitute Master Lessee**” shall mean a master lessee, other than Master Lessee, to whom City relets the Leased Premises in accordance with the criteria set forth in **Section 21.2.3** of the Master Lease.

“Substantial Occupancy Date” shall mean the date on which Master Lessee turns over to each RAC its Exclusive Use Premises for purposes of installing the Initial Tenant Improvements and RAC Property in the Exclusive Use Premises and preparing to open for business in the CONRAC on the Opening Date which shall be no later than the date of Substantial Completion.

“Tenant Design Standards” shall mean the standards, established by City from time to time, to specify the aesthetic qualities and the design, construction and materials requirements for tenants of the Airport and its facilities, they may be amended, modified and revised from time to time.

“Terminal” shall mean the interconnected facilities at the Airport, along with all user movement areas, public areas and baggage claim areas therein and interconnecting facilities and all future expansions thereto.

“Termination Damages” shall have the meaning set forth in **Section 21.2.1** of the Master Lease and in **Section 21.2.1** of the Sublease Agreement.

“Termination Date” means the date the Master Lease terminates which (except for an earlier termination as provided in the Master Lease) shall be the last day of the 360th full calendar month after the Effective Date as provided in **Section 5.1** of the Master Lease.

“Termination Option” shall mean the right of City to terminate the Master Lease pursuant to **Section 4.5** of the Master Lease and to terminate the Sublease Agreements pursuant to **Section 4.1.4** of the Sublease Agreements.

“Transaction” means a distinct act of business between a RAC and a customer under which the RAC generates Gross Receipts by rental of a Rental Car as authorized under its Concession Agreement. Each taking of possession of a Rental Car from a RAC under an ongoing contract for multiple rentals is deemed a distinct act of business for purposes of this definition, however, an exchange of vehicles under a single rental contract is not deemed to create a new transaction.

“Transaction Day” shall mean each twenty-four (24) hour period (or fraction thereof) that a vehicle is rented by an Airport Customer; provided, however, that if a RAC’s vehicle rental contract contains a grace period for the vehicle’s return at the end of such vehicle’s rental period of no more than fifty-nine (59) minutes, during which grace period such RAC will not charge a customer a further vehicle rental fee or other form of late return fee, then the CFC shall not be imposed during such grace period and such grace period shall not be considered a further Transaction Day.

“Trustee” shall mean the Bond Trustee.

“TSA” shall mean the United States Transportation Security Administration, and any successor agency, office or department thereof.

“Utilities Costs” shall mean all fees, charges, costs, assessments and expenses incurred in connection with the permitting or operation of the CONRAC or the CONRAC Site for

electricity, communications, gas, water, sewer, storm water (including participation in the Regional Storm Water Management Program, garbage and recycling services and usage.

“**Utility Work**” shall have the meaning set forth in **Section 13.4** of the Master Lease and in **Section 14.3** of the Sublease Agreement.

“**Valet Parking Service**” shall mean a service in which a customer-owned vehicle is parked at a location provided by the RAC and the RAC transports the customer to or from the Terminal or the RAC arranges for pickup or re-delivery of the customer’s vehicle to the Terminal.

“**Vendor Parking Area**” shall mean the vendor parking yard areas located on the CONRAC Site immediately East of and adjacent to the Joint Use Facility described or depicted in **Exhibit H** to the Master Lease and to be utilized by the RACs for purposes of vendor parking.

“**Vested Improvements**” means all structures, fixtures and other improvements and equipment, including the Joint Use Facility, CONRAC Capital Improvements, QTA Equipment and Fuel Facilities (except for aboveground and underground fuel storage tanks), that are at any time constructed, placed or installed by or on behalf of Master Lessee on the CONRAC Site, or to provide vehicular or passenger access to or exit from the Joint Use Facility, all of which, unless expressly declined by City, shall vest in and be the exclusive property of City as the same are being constructed, placed or installed, including all repairs and replacements to such structures, fixtures and other improvements or equipment, as further provided in **Section 10.1** of the Master Lease. The term “Vested Improvements” shall specifically exclude any aboveground and underground fuel storage tanks that constitute a portion of the Fuel Facilities and any other Fuel Facilities expressly declined by City, RAC Property and any trade fixture or other property of Master Lessee or any RAC that has not become permanently affixed to the Leased Premises or to the Vested Improvements or otherwise remains the property of the RAC under a Sublease Agreement approved by City, except that the City shall have the option pursuant to **Section 10.1** of the Master Lease to accept and add as part of the Vested Improvements any interest in such fixtures or other property that may inure to the City under the Master Lease or any Sublease Agreement.

“**Warranty Period**” shall mean the period of time commencing on the date of Substantial Completion and expiring one (1) year thereafter.

EXHIBIT A

**RENTAL CAR MONTHLY REVENUE REPORT
CITY OF AUSTIN, DEPARTMENT OF AVIATION
Attention: Accounts Receivable
3600 PRESIDENTIAL BLVD., SUITE 411, AUSTIN, TX 78719**

COMPANY: _____ **LOCATION:** _____

Business Period: _____
Enter Business Month End above as mm/dd/yy

Gross Receipts:

Time & Mileage Charges & Fees	_____
Recoupment of Airport Concession Fees	_____
Vehicle TT&L/Registration Recoupment Fees	_____
All Fuel Charges & Services (Prepay, Refuel, Service Charges, etc.)	_____
All Insurance Sales	_____
All Damage Waiver Charges (LDW, CDW, PDW, etc.)	_____
Other Vehicle Charges (One Way or inter-city Fees, Exchanges, Upgrades, etc.)	_____
Additional Equipment, Communication & Technology (car seats, racks, radios, phones, navigation, Wi-Fi, satellite, etc.)	_____
Misc & Other Optional Charges (Add'l Drivers, Cleaning, Towing, Frequent Flyer, GARS, Carbon Offset, etc.)	_____
Contracted Services with Other Airport Concessionaires, Users or Third Parties	_____
Customer Facility Charges (CFC's)	_____
Taxes on rental transactions, required by taxing authority	_____
Receipts/Compensation for Actual Damages/Loss	_____
All Other Fees, Charges, Receipts, Revenue, Compensation not included above	_____
Total Gross Receipts:	\$ _____ (1)

Allowable Exclusions:

Customer Facility Charges (CFCs)	_____
<i>[NOTE: Pay CFCs directly to Bonds Trustee monthly.]</i>	
Taxes on rental transactions, required by taxing authority	_____
Receipts/Compensation for Actual Damages/Loss	_____
Customer Discounts at time of rental	_____
Total Allowable Exclusions:	\$ _____ (2)

Gross Receipts After Allowable Exclusions *[Line (1) less Line (2)]* **\$ _____ (3)**

Concession Fee *[Line (3) X 10%, or 0.10]* **\$ _____ (4)**

Monthly Minimum Annual Guarantee: _____

Has this month's MAG been paid prior to the submission of this report? Y/N >

Less: Applicable Minimum Payment (monthly MAG payment) if paid prior to report: **\$ _____ (5)**

Adjustments: Applicable credits, etc. (Explain below in Comments) **_____ (6)**

Concession Fee due City with Report: *[Line (4) less Lines (5),(6)]* **\$ _____**

Additional Information (Required)

Total CFCs Collected for the month:	_____
Total Rental Transactions for month:	_____
Total Rental Transaction Days for month:	_____

Comments:

The undersigned hereby certifies that this report is a true, accurate and complete statement of Company's Gross Receipts and Allowable Exclusions in accordance with the terms of the ABIA Rental Car Concession Agreement, as amended, for the month reported.

Preparer Name (print)	Responsible Manager's Name (print)
Preparer Title	Manager's Title
Preparer Signature	Manager's Signature
Date Signed	Date Signed

EXHIBIT A-1

RENTAL CAR MONTHLY REVENUE REPORT - SUMMARY
CITY OF AUSTIN, DEPARTMENT OF AVIATION
Attention: Accounts Receivable
3600 PRESIDENTIAL BLVD., SUITE 411, AUSTIN, TX 78719

COMPANY: _____ **LOCATIONS:** #1 _____ #2 _____

Business Period: _____
Enter Business Month End above as mm/dd/yy

Gross Receipts:

Time & Mileage Charges & Fees		
Recoupment of Airport Concession Fees		
Vehicle TT&L/Registration Recoupment Fees		
All Fuel Charges & Services (Prepay, Refuel, Service Charges, etc.)		
All Insurance Sales		
All Damage Waiver Charges (LDW, CDW, PDW, etc.)		
Other Vehicle Charges (One Way or inter-city Fees, Exchanges, Upgrades, etc.)		
Additional Equipment, Communication & Technology (car seats, racks, radios, phones, navigation, Wi-Fi, satellite, etc.)		
Misc & Other Optional Charges (Add'l Drivers, Cleaning, Towing, Frequent Flyer, GARS, Carbon Offset, etc.)		
Contracted Services with Other Airport Concessionaires, Users or Third Parties		
Customer Facility Charges (CFC's)		
Taxes on rental transactions, required by taxing authority		
Receipts/Compensation for Actual Damages/Loss		
All Other Fees, Charges, Receipts, Revenue, Compensation not included above		
Total Gross Receipts:		\$ - (1)

Allowable Exclusions:

Customer Facility Charges (CFCs)		
<i>[NOTE: Pay CFCs directly to Bonds Trustee monthly.]</i>		
Taxes on rental transactions, required by taxing authority		
Receipts/Compensation for Actual Damages/Loss		
Customer Discounts at time of rental		
Total Allowable Exclusions:		\$ - (2)

Gross Receipts After Allowable Exclusions *[Line (1) less Line (2)]* align="right">**\$ - (3)**

Concession Fee *[Line (3) X 10%, or 0.10]* align="right">**\$ - (4)**

Monthly Minimum Annual Guarantee: _____
 Has this month's MAG been paid prior to the submission of this report? Y/N >

Less: Applicable Minimum Payment (monthly MAG payment) if paid prior to report: align="right">**\$ - (5)**

Adjustments: Applicable credits, etc. *(Explain below in Comments)* align="right">**(6)**

Concession Fee due City with Report: *[Line (4) less Lines (5),(6)]* align="right">**\$ -**

Additional Information (Required)

Total CFCs Collected for the month: _____
 Total Rental Transactions for month: _____
 Total Rental Transaction Days for month: _____

Comments:

The undersigned hereby certifies that this report is a true, accurate and complete statement of Company's Gross Receipts and Allowable Exclusions in accordance with the terms of the ABIA Rental Car Concession Agreement, as amended, for the month reported.

Preparer Name (print)	Responsible Manager's Name (print)
Preparer Title	Manager's Title
Preparer Signature	Manager's Signature
Date Signed	Date Signed

EXHIBIT B

Brands listed on Exhibit B of Concession Agreement

COMPANY	EXHIBIT B
AVIS RENT A CAR SYSTEM, LLC	AVIS RENT A CAR
BUDGET RENT A CAR SYSTEM, INC.	BUDGET RENT A CAR
CLEARWATER TRANSPORTATION, LTD. DBA DOLLAR CAR RENTAL	DOLLAR CAR RENTAL
CLEARWATER TRANSPORTATION, LTD. DBA THRIFTY CAR RENTAL	THRIFTY CAR RENTAL
EAN HOLDINGS, LLC D/B/A ENTERPRISE RENT-A-CAR	ENTERPRISE RENT-A-CAR
EAN HOLDINGS, D/B/A NATIONAL CAR RENTAL AND ALAMO RENT A CAR	NATIONAL CAR RENTAL AND ALAMO RENT A CAR
THE HERTZ CORPORATION	HERTZ
SIMPLY WHEELZ LLC DBA ADVANTAGE RENT A CAR	ADVANTAGE
TEXAS RENT A CAR, LLC DBA ACE RENT A CAR	ACE RENT A CAR

EXHIBIT C

EXHIBIT D

ACDBE Revenue Report							
Your Company Name							
Reporting FY:							
Quarter (months)							
Total Revenue Generated this Quarter							
Vendor Name	Vendor Address	Vendor Phone	Services Provided	Certification Type	Certification Agency	Ethnicity	Amount Paid for Contract
ABC Insurance Company	123 Main Street, AUSTIN, TX 7870	512-555-1234	Insurance	WBE	WBENC - Women's Business Enterprise National Council - WBE	Non-Ethnic (Fema	\$1,234,567.89
Austin Key Service	444 Maple Drive, AUSTIN, TX 7870	866-888-4282	Keys, Key Blanks and Key C	ACDBE/MBE	DBE/Pennsylvania Dept. Of Transportation - DBE/South Central Texas Regional Certification Agency - DBE/State Of Oregon - MBE/UCP - Unified Certification Program - DBE/Wayne County MI DOT	Asian Female	\$50,000.00
						TOTAL to ACDBE	\$1,284,567.89
						% of Revenue	#DIV/0!
Notes:							
<p>MBE/WBE/SBE and any certification variation thereof should not be included in this report. Although various state, local, and private entities issue these types of certifications, the guidelines governing certification eligibility differ from the Federal guidelines governing ACDBE certification. In this instance ABC Insurance company should not be included in this report.</p> <p>Exceptions may be firms who maintain multiple certifications demonstrated from the example of Austin Key Services. Although the firm is MBE certified, the firm does maintain ACDBE certification, therefore this firm should be reported. *DBE firms may be included as long as the DBE certified firm is certified in the state where it provides services for the concession program.*</p> <p>All firms which are ACDBE/DBE certified maintain certificates verifying their certification eligibility. You may, and are strongly encouraged to, request copies of these certificates for all ACDBE/DBE firms. Listings of ACDBE and DBE certified firms are available online via the Texas Department of Transportation website at http://www.txdot.gov/business/tucp/default.htm or http://www.txdot.gov/business/tucp/temp.htm, or via the City of Austin SMBR website at http://www.ci.austin.tx.us/smbr/vendors/CertVendor.cfm.</p>							