CITY COMMISSION MEETING AGENDA

CITY COMMISSION        DAYTON, OHIO        JANUARY 5, 2022
                                      6:00 P.M.

I. AGENDA SCHEDULE

Please register to speak on items 9, 11 and 13 with the Clerk of the Commission.
(Sign-up sheets at entrance of Commission Chambers.)
1. Call Meeting to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Minutes
6. Communications and Petitions Distribution (if any)
7. Special Awards/Recognition
8. Discussion of City Manager’s Recommendations (See Section II)
9. Citizen Comments on City Manager's Recommendations
10. City Commission Action on City Manager’s Recommendations
11. Public Hearing: N/A
12. Discussion Item: N/A
13. Comments by Citizens - Please register to speak with the Clerk of Commission
   (Non - Calendar items) sign-up sheets at entrance of Commission Chambers
14. Comments by City Manager
15. Comments by City Commission
16. Work Session: N/A
17. Miscellaneous (See Section VI)

II. CITY MANAGER RECOMMENDATIONS (Item #8 above)
The following recommendations are offered for City Commission approval.

A. Purchase Orders, Agreements and Contracts:
(All contracts are valid until delivery is complete or through December 31st of the current year).

AVIATION
A1. Telos Identity Management Solutions LLC (processing, storing, and
    retrieval of fingerprint records and security threat assessment records as
    needed through 12/31/25) $75,000.00
1. (Cont’d):

| WATER |
|--------------------|---------------|
| B1. B J. Anderson Co., Inc. (YSI brand replacement parts and related items needed through 12/31/25) | $80,000.00 |
| B2. PVS Nolwood Chemicals, Inc. (ferric chloride solution as needed through 10/31/22) | $45,000.00 |
| B3. Agilent Technologies, Inc. (one-year maintenance agreement, including parts, for laboratory analytic equipment (ICP-OES 710/715 SYSTEM) as needed through 12/31/25) | $158,856.00 |
| B4. JCI – Jones Chemicals, Inc. (liquid chlorine gas as needed through 12/31/22) | $120,000.00 |
| B5. Mississippi Lime Company (quick lime as needed through 12/31/22) | $100,000.00 |
| -Depts. of Aviation and Water. | Total: $578,856.00 |

2. Advocates for Basic Legal Equality, Inc. (ABLE) – Grant Agreement – Emergency Solutions Grant for the Preventing Homelessness by Aligning Systems Effectively (PHASE) Program agreement for – Department of Planning, Neighborhoods and Development. $21,815.54 (Thru 6/30/22)

C. Revenue to City:

3. Avis Budget Car Rental, LLC dba Avis and Budget – Lease Agreement – non-exclusive rental car concession and lease agreement at the Dayton International Airport – Department of Aviation/AP Admin & Finance. $2,728,107.00 (Thru 12/31/24)

4. Byers Car Rental, LLC dba Hertz and Dollar – Lease Agreement – non-exclusive rental car concession and lease agreement at the Dayton International Airport - Department of Aviation/AP Admin & Finance. $1,305,104.00 (Thru 12/31/24)

5. Byers Car Rental, LLC dba Thrifty – Lease Agreement – non-exclusive rental car concession and lease agreement at the Dayton International Airport – Department of Aviation/AP Admin & Finance. $930,104.00 (Thru 12/31/24)
6. **EAN Holdings, LLC dba Alamo Rent-A-Car and Enterprise Rent-A-Car – Lease Agreement** – for non-exclusive rental car concession and lease agreement at the Dayton International Airport - Department of Aviation/AP Admin & Finance. $1,902,078.00 (Thru 12/31/24)

7. **EAN Holdings, LLC dba National Car Rental – Lease Agreement** - for non-exclusive rental car concession and lease agreement at the Dayton International Airport - Department of Aviation/AP Admin & Finance. $1,631,840.00 (Thru 12/31/24)

8. **EAN Holdings, LLC dba Alamo Rent-A-Car and Enterprise Rent-A-Car – Lease Agreement** for rental car service center lease agreement at the Dayton International Airport - Department of Aviation/AP Admin & Finance. $328,968.00 (Thru 12/31/24)

9. **Avis Budget Car Rental, LLC dba Avis and Budget – Lease Agreement** - for two (2) rental car service center lease agreements at the Dayton International Airport – Department of Aviation/AP Admin & Finance. $702,072.00 (Thru 12/31/24)

10. **EAN Holdings, LLC dba National Car Rental – Lease Agreement** - for rental car service center lease agreement at the Dayton International Airport - Department of Aviation/AP Admin & Finance. $328,968.00 (Thru 12/31/24)

**VI. MISCELLANEOUS:**

**ORDINANCE NO. 31959-21**

**RESOLUTION NO. 6629-21**

**IMPROVEMENT RESOLUTION NO. 3599-21**

**INFORMAL RESOLUTION NO. 994-21**
AVIATION

(A1) P0220201 – TELOS IDENTITY MANAGEMENT SOLUTIONS LLC, ASHBURN, VA

- Processing, storing, and retrieval of fingerprint records and security threat assessment records as needed through 12/31/2022.
- These services are required for screening prior to issuing an Airport badge.
- Telos Identity Management Solutions LLC is recommended to ensure system compatibility and integration with existing systems, therefore this purchase was negotiated.
- The Department of Aviation requests additional authority of $60,000.00 through 12/31/2025.
- The Department of Aviation recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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WATER – WATER RECLAMATION

(B1) P0220214 – B L ANDERSON CO., INC., WEST CHESTER, OH

- YSI brand replacement parts and related items as needed through 12/31/2022.
- These goods are required to maintain and repair equipment at the Water Reclamation Facility.
- B L Anderson Co., Inc. is recommended as the sole regional distributor of this equipment; therefore, this purchase was negotiated.
- The Department of Water requests additional authority of $60,000.00 through 12/31/2025.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
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</table>

(B2) P0220215 – PVS NOLWOOD CHEMICALS, INC., DETROIT, MI

- Ferric chloride solution as needed through 12/31/2022.
- This good is required to help with emissions control.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 19023S with pricing extended through 12/31/2022.
- The Department of Water recommends approval of this order.

<table>
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WATER – WATER SUPPLY AND TREATMENT

(B3) P0220211 – AGILENT TECHNOLOGIES, INC., CHICAGO, IL

- One year maintenance agreement, including parts, for laboratory analytical equipment (ICP-OES 710/715 system).
- These services are required to analyze inorganics in water.
- Agilent Technologies, Inc. is the original equipment manufacturer (OEM), the sole source of this proprietary maintenance agreement and is recommended for award to ensure compatibility and integration with existing systems, therefore this purchase was negotiated.
- The Department of Water requests additional authority of $120,000.00 through 12/31/2025.
- The Department of Water recommends approval of this order.

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WATER – WATER SUPPLY AND TREATMENT (CONTINUED)

(B4) P0220213 – JCI – JONES CHEMICALS, INC., SARASOTA, FL
- Liquid Chlorine gas as needed through 12/31/2022.
- This good is required for the treatment of potable water at the Ottawa and Miami water treatment plants.
- Eight (8) possible bidders were solicited and one (1) response was received. This order establishes a price agreement per IFB 22013S with pricing through 12/31/2025.
- The Division of Water recommends acceptance of the sole bid.

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</table>

(B5) P0220212 – MISSISSIPPI LIME COMPANY, ALTON, IL
- Quick lime as needed through 12/31/2022.
- These goods are required for lime softening treatment in potable water.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18015JL with pricing extended through 12/31/2022.
- The Department of Water recommends approval of this order.

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The aforementioned departments recommend approval of this order.
City Manager’s Report

From: 2390 - Planning, Neighborhoods & Dev. / Development (HUD programs)
Name: Advocates for Basic Legal Equality, Inc. (ABLE)
Address: 130 W. Second Street
St. 700 East
Dayton, OH 45402

Date: January 5, 2022
Expense Type: Grant Agreement
Total Amount: $21,815.54 (thru 6/30/2022)

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<th>Fund Source(s)</th>
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<td>Emergency Solutions Grant (ESG)</td>
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<td>$21,815.54</td>
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Includes Revenue to the City: No
Affirmative Action Program: Yes

Description
Emergency Solutions Grant — Advocates for Basic Legal Equality, Inc. (ABLE)

The Department of Planning, Neighborhoods & Development requests approval to enter into an Agreement with ABLE for the Preventing Homelessness by Aligning Systems Effectively (PHASE) Program. The agreement provides $21,815.54 in FY 2020 Emergency Solution Grant (ESG) Funds. ABLE provides legal representation to households becoming homeless due to eviction.

The City of Dayton has been awarded 2020 Emergency Solutions Grant (ESG) funding from the U.S. Department of Housing & Urban Development (HUD) to improve the quality of existing emergency shelters and provide critical social and supportive services necessary to assist homeless individuals in becoming self-sufficient.

This Agreement shall commence upon execution and it shall terminate on June 30, 2022.

This Agreement has been reviewed by the Law Department as to form and correctness.

This Agreement is funded using Emergency Solutions Grant – FY2020 ESG Funds.

A Certificate of Funds and a copy of the Agreement are attached.

Signatures/Approval
Dec 28, 2021

Approved by City Commission

Division
Dec 28, 2021

Department

City Manager
FORM NO. MS-16

Clerk
Date
Updated 10/2019
"2020 ESG ABLE City Managers Report" History

Document created by Beth Wilson (beth.wilson@daytonohio.gov)
2021-12-28 - 4:22:43 PM GMT

Document emailed to Sarah Geist (sarah.geist@daytonohio.gov) for signature
2021-12-28 - 4:23:48 PM GMT

Email viewed by Sarah Geist (sarah.geist@daytonohio.gov)
2021-12-28 - 6:54:20 PM GMT

Document e-signed by Sarah Geist (sarah.geist@daytonohio.gov)
Signature Date: 2021-12-28 - 6:54:41 PM GMT - Time Source: server

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2021-12-28 - 6:54:43 PM GMT

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Signature Date: 2021-12-28 - 10:00:19 PM GMT - Time Source: server

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CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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<th>Renewal Contract</th>
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Required Documentation

- X Initial City Manager's Report
- X Initial Certificate of Funds
- X Initial Agreement/Contract

Copy of City Manager's Report
Copy of Original Certificate of Funds

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<th>Amount:</th>
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<tbody>
<tr>
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Attach additional pages for more FOAPALs

Vendor Name: Advocates for Basic Legal Equality, Inc. (ABLE)
Vendor Address: 130 W. Second Street, St. 700 East Dayton OH 45402-1500
Street City State Zipcode + 4

Federal ID: 237376131
Commodity Code: 96199
Purpose: Funding for 2020 Emergency Solutions Grant with ABLE.
ABLE will provide legal representation to households becoming homeless due to eviction.

Contact Person: Beth Wilson - 3688
Planning, Neighborhoods, & Developme 12/16/2021
Department/Division Date
Dec 29, 2021

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature Date

CF Prepared by CF/CT Number

Finance Department
Certificate of Funds 2020 ABLE PHASE
Final Audit Report

Created: 2021-12-29
By: Beth Wilson (beth.wilson@daytonohio.gov)
Status: Signed
Transaction ID: CBJCHBCAABAAABpMr4w6XJYjSvQZyE6VxwQpoH7Q5z7F2

"Certificate of Funds 2020 ABLE PHASE" History

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Signature Date: 2021-12-29 - 5:43:30 PM GMT - Time Source: server

Agreement completed.
2021-12-29 - 5:43:30 PM GMT
EMERGENCY SOLUTIONS GRANT PROGRAM
SUBRECIPIENT AGREEMENT
ADVOCATES FOR BASIC LEGAL EQUALITY, INC. – PREVENTING
HOMELESSNESS BY ALIGNING SYSTEMS EFFECTIVELY (PHASE) PROGRAM
CFDA 14.231

THIS SUBRECIPIENT AGREEMENT ("Agreement") is entered into this day _____ of
_______, 2021, between the CITY OF DAYTON, OHIO (hereinafter referred to as
"City") and ADVOCATES FOR BASIC LEGAL EQUALITY, INC., a not-for-profit
corporation organized under the laws of the State of Ohio, (hereinafter referred to as
"Subrecipient").

WITNESSETH THAT:

WHEREAS, The United States Department of Housing and Urban Development
("HUD") awarded the City grant funding under the "Emergency Solutions Grant Program," as
authorized by the Stewart B. McKinney Homeless Assistance Act, including Subpart B of Title
IV of the Act; and

WHEREAS, The Subrecipient operates a non-profit organization that offers high quality
legal assistance in civil matters to help eligible low-income individuals and will provide that
assistance to individuals at risk of eviction ("Program"); and

WHEREAS, The Program qualifies for the receipt of funding under the Emergency
Solutions Grant Program, and that providing a portion of the City’s grant award from HUD to
the Subrecipient for its Program is consistent with the objectives of the Emergency Solutions
Grant Program.

NOW, THEREFORE, In consideration of the mutual promises and covenants
hereinafter set forth, the parties hereto mutually agree as follows:

I. GRANT OF FUNDS

The City grants the Subrecipient a portion of its 2020 Emergency Solutions Grant
Program award from HUD in an amount not to exceed TWENTY-ONE THOUSAND,
EIGHT HUNDRED FIFTEEN DOLLARS, AND FIFTY-FOUR CENTS
($21,815.54) for the costs of managing and operating the Program.

II. SCOPE OF SERVICES

A. Program

The Subrecipient shall, in a manner satisfactory to the City, manage and operate the
PHASE Program, as described in Exhibit A, which is attached hereto and
incorporated herein. The Subrecipient shall be solely responsible for all aspects of
operating the Program and shall use the funds provided hereunder for those costs
listed in Exhibit A under the heading "Use of Funds."

B. Special Requirements

1. The Subrecipient agrees to provide matching funds equal to the amount of grant
funding to be provided by the City hereunder. Calculation of the matching funds
shall be determined according to the HUD regulations set forth in 24 Code of Federal Regulations ("CFR") Part 576 et seq., and particularly, Section 576.201.

2. Any building for which Emergency Solutions Grant Program funds are used must be maintained as a shelter for the homeless for the period prescribed by the HUD regulations set forth in 24 CFR Part 576.

3. Any Emergency Solutions Grant Program funds used for building renovation, conversion, or major rehabilitation must meet the local government standard of being in a safe and sanitary condition.

4. Individuals at risk of homelessness must be given assistance in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living and obtaining other federal, state, local, and private assistance that may be available for such individuals.

5. To the maximum extent practicable, homeless individuals and families must be involved in the construction, renovation, maintenance, and operation of facilities assisted under the Emergency Solutions Grant Program, and in providing services for occupants of these facilities.

6. The Subrecipient must comply with applicable federal laws concerning non-discrimination and equal opportunity accessibility, lead-based paint, flood insurance, drug and alcohol-free facility and use of debarred, suspended, or ineligible subrecipients. (See 24 CFR Part 576).

C. Monitoring and Evaluation

1. Subrecipient agrees that the City and HUD, or its agents shall monitor, evaluate and may provide guidance and direction to Subrecipient in the conduct of the work and activities to be performed under the terms of this Agreement.

2. The City will monitor the performance of the Subrecipient against goals and performance standards as set forth in Exhibit C. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, Agreement suspension or termination procedures may be initiated.

III. TIME OF PERFORMANCE
This Agreement shall be effective upon execution by the City and shall terminate on June 30, 2022. The services and work to be performed by the Subrecipient shall commence August 1, 2021 through June 30, 2022, at which time all work must be satisfactorily completed in compliance with this Agreement.

IV. BUDGET AND PAYMENT PROCEDURES

A. Budget
Exhibit B, which is attached hereto and incorporated herein, shall serve as the official line item budget for the Program to be funded under this Agreement. In order to provide sufficient flexibility in the operation of the Program, the Subrecipient may amend the budget by transfer of funds between budget line items, so long as no line item is changed by more than 10% of that amount presently set out for that particular line item and such change would not violate 2 CFR Subpart D and E. A transfer of funds greater than 10% in any one line item shall not be effective until copies of the proposed amended budget are presented to and approved by the City’s Director of Planning, Neighborhoods & Development.

B. Payment Procedures
The City shall reimburse to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and city policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Subrecipient.

1. Disbursements shall be made for merchandise or services that have been properly budgeted and authorized which are accompanied by an invoice, Agreement, purchase order, or other authorization properly approved. Disbursements shall be made after certification by the Subrecipient that the Subrecipient has received the merchandise or services. All disbursements are to be made by check. No checks are to be payable to Cash. All checks shall be pre-numbered.

2. Expenditures under this Agreement shall be made solely for Program goods and services, which will be utilized during the Agreement term. The Subrecipient shall not spend funds for services, which are to be furnished beyond the Agreement term. Funds spent for services, supplies, or consumed in whole or in part beyond the term of the Agreement shall be unallowable expenses with respect to that portion of goods or services consumed or supplied beyond the term hereof.

The City shall reimburse Subrecipient for eligible activities that occur between August 1, 2021 and June 30, 2022. No funds are to be encumbered for the payment of Program costs incurred prior to the order to proceed, or costs incurred with respect to any action of the Subrecipient after the City has requested that the Subrecipient furnish data concerning such action prior to proceeding further, unless and until the Subrecipient is thereafter advised in writing that the City does not object to so proceeding.

Payments may be contingent upon certification of the Subrecipient’s financial management system in accordance with the standards specified in 24 CFR Part 200.

V. GENERAL CONDITIONS

A. Compliance
The Subrecipient agrees that the HUD regulations set forth in 24 CFR Part 576 and 2 CFR Part 200 are applicable to the grant funds it receives pursuant to this Agreement.

1. The Subrecipient agrees that the work and services authorized by this Agreement shall be performed in accordance with any and all applicable local, state, and federal regulations, directives, or guidelines.

2. The Subrecipient agrees to prohibit the use of federal funds for lobbying in compliance with the following:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

   b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal agreement, grant, loan or cooperative agreement, the Subrecipient shall notify the City, and complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The Subrecipient shall include the requirements of this Subsection A in award documents for all sub-awards at all times (including sub-contracts, subgrants, and Agreements) and require that all sub-award recipients disclose the same accordingly.

B. Independent Contractor

By executing this Agreement, Subrecipient acknowledges and agrees that it will be providing Services to the City as an “independent contractor.” As an independent contractor for the City, Subrecipient is prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Paragraph. Subrecipient shall have no authority to assume or create any obligation on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City.

Subrecipient, its employees and any person retained or hired by Subrecipient to perform duties and responsibilities under this Agreement are not the City employees, and therefore, such persons will not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City of Dayton. Further, Subrecipient will be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal taxes.
Subrecipient further acknowledges and agrees that none of his employees are public employees for the purpose of membership and/or participation in the Ohio Public Employees Retirement System (OPERS).

C. **Indemnification**
The Subrecipient shall defend, indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against legal liability for all claims, losses, damages and expenses to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the Program, including any violation of state, federal or local laws, rules and regulations governing the use or expenditure of Emergency Solutions Grant Program funding and/or the acts, omissions or conduct of the Subrecipient, its employees, contractors and/or agents.

In the event the Subrecipient violates any HUD regulations or requirements, and specifically those related to the Emergency Solutions Grant Program, the Subrecipient shall assume full and complete responsibility for said violations, including payment of the penalty imposed or re-payment of improperly expended funds, and shall defend, indemnify, and hold the City, its elected officials, officers, agents, and employees harmless.

D. **Insurance & Bonding**
The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud, and/or undue physical damage, and at a minimum, shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances by the City. The Subrecipient shall comply with the bonding and insurance requirements of 2 CFR Part 200 Subpart D.

E. **Amendments**
The City and the Subrecipient may amend this Agreement. However, no such amendment shall be effective unless it is reduced to writing, which shall reference this Agreement, executed by a duly authorized representative of each party, and, if required or applicable, approved by the Commission of the City of Dayton.

F. **Entire Agreement / Integration**
This Agreement, together with all Exhibits and attachments referenced herein, represents the entire and integrated Agreement between the City and the Subrecipient. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements, or contracts, whether oral or written, relating to the subject matter of this Agreement.

G. **Waiver**
A waiver by either party of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the waiving party’s rights with respect to any other or further breach.
H. Governing Law
This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

I. Reference to Laws
All references to local, state, and federal laws, regulations, rules or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

J. Notices
All communications or notices required or permitted under this Agreement, including invoices for payment, shall be sufficient if sent to the City or the Subrecipient by regular U. S. Mail, postage pre-paid, and addressed as follows:

To City: City of Dayton, Ohio
Department of Planning, Neighborhoods & Development
101 West Third Street
Dayton, Ohio 45402
Attn: Beth Wilson
Beth.Wilson@daytonohio.gov

To Subrecipient: Advocates for Basic Legal Equality, Inc.
130 W. Second Street, Ste. 700 East
Dayton, Ohio 45402
Attn: Matthew Currie
mcurrie@ablelaw.org

Nothing contained in this subsection shall be construed to restrict the transmission of routine communications between representatives of the City and the Subrecipient.

VI. FINANCIAL MANAGEMENT

A. Accounting Standards
The Subrecipient agrees to comply with 2 CFR Part 200, Subparts D and E, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles
The Subrecipient shall administer its program in conformance with 2 CFR Part 200, Subparts D and E. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis

VII. DOCUMENTATION AND RECORD KEEPING

A. Records to be Maintained
1. The Subrecipient shall maintain all records required by the federal regulations specified in 2 CFR Part 200 and 24 CFR Part 576 that are pertinent to the activities to be funded under this Agreement. Such records shall include, but not be limited to:

(a) Records providing a full description of each activity undertaken;

(b) Records demonstrating that each activity undertaken meets one of the Emergency Solutions Grant eligible activities;

(c) Records required to determine the eligibility of activities;

(d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with Emergency Shelter Grant assistance;

(e) Records maintained in the Dayton Montgomery County Homeless Management Information System (HMIS), with continuous participation and at a minimum of a 90% completion rate for Universal Data Elements by the Subrecipient;


2. All costs and expenditures shall be supported by properly executed payrolls, time records, invoices, Agreements, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City.

3. At any time during normal business hours and as often as the City may deem necessary, the Subrecipient shall make available to the City all of its records with respect to all matters covered by this Agreement, and will permit the City to audit, examine, and make excerpts of transcripts from such records and to make audits of all agreements, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The City may require the Subrecipient to provide by an independent CPA at the Subrecipient’s expense, an audit of this Agreement. In performing such audits, the Subrecipient shall require the auditor to comply with all City rules and regulations governing auditing.

B. Retention
The Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after receipt of final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until
completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

C. Client Data
The Subrecipient shall maintain client data demonstrating client eligibility for the services to be provided under the terms of this Agreement. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of services provided. Such information shall be made available to the City or its designees for review upon request.

D. Disclosure
The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City’s or Subrecipient’s responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian or otherwise required by law or court order.

E. Property Records
The Subrecipient shall maintain real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the “changes in use” restrictions specified in 24 CFR Part 576 and 2 CFR Part 200 as applicable.

F. Close-Outs
The Subrecipient’s obligation to the City shall not end until all closeout requirements are completed. Activities during this close-out include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.

G. Audits & Inspections
All Subrecipient’s records with respect to any matters covered by this Agreement shall be made available to the City, City agency, its designees or the Federal Government and its agencies or designees, at any time during normal business hours, as often as the City or the Federal Government, its agencies or designees deem necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after completion. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning subrecipient audits and, as applicable, 2 CFR 200 Subpart F.

H. Subcontracting

1. The Subrecipient represents that it has or will secure at its own expense, all personnel required to perform the work and services under this Agreement for the
Program. All of the work and services required will be performed by the Subrecipient or under its supervision and all personnel engaged in the work and services shall be fully qualified and shall be authorized or permitted under federal, state and local law to perform such work and services.

2. None of the work or services covered by this Agreement shall be subcontracted without written approval of the City. Any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

VIII. REPORTING AND PAYMENT PROCEDURES

A. Program Income
The Subrecipient shall report quarterly all “program income,” as defined at 2 CFR 200.307 generated by activities carried out with Emergency Shelter Grant funds made available under this Agreement. The use of program income by the Subrecipient shall comply with the requirements set forth at 2 CFR 200.307. By way of further limitations, the Subrecipient may use such income during the Agreement period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program balances on hand. All unused program income shall be returned to the City at the end of the Agreement period. Any interest earned on cash advances from the U.S. Treasury is not program income and shall be remitted promptly to the City.

B. Indirect Costs
If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.

C. Progress Reports
The Subrecipient shall submit a Progress Report to the City in the form, content, and frequency as required by the City.

D. Annual Reports
The Subrecipient shall submit an Annual Report to the City in the form, content, and frequency as required by the City and both the SAGE and HMIS systems.

E. Procurement
The Subrecipient shall comply with the City’s policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

1. The Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200 Subpart D, Procurement, and shall subsequently follow Property Management Standards as modified by 2 CFR 200, Subpart D, covering utilization and disposal of property.
IX. **EQUAL EMPLOYMENT OPPORTUNITY**

A. The Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff determination, rates of pay of other forms of compensation, or selection for training, including apprenticeship.

   It is expressly agreed and understood by the Subrecipient that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton, constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option.

B. The Subrecipient shall comply with all other applicable federal, state, and local laws, regulations, and/or orders pertaining to equal employment opportunity.

X. **TERMINATION**

In addition to all other remedies provided under this Agreement or at law, the City may terminate this Agreement in the event or for the following reasons:

A. The Subrecipient’s failure, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement;

B. The Subrecipient’s breach of any term or condition of this Agreement;

C. The Subrecipient’s violation of any applicable federal, state and/or local law, rule, regulation, OMB Circular, executive order or directive, including any provision of the Stewart B. McKinney Homeless Assistance Act, as amended by the National Affordable Housing Act;

D. The Subrecipient’s submission of any invoices, reports or records that are incorrect, fraudulent and/or incomplete in any material respect;

E. Ineffective or improper use of the funds provided under this Agreement;

F. Suspension or termination of the Emergency Solutions Grant Program grant award to the City under which this Agreement is made. However, if the grant is merely reduced and in the absence of any contrary grantor agency directive, the Subrecipient may readjust its budget and recommend amendment(s) to the City; or

G. When required or directed by HUD to terminate, assign, or transfer this Agreement.

In the event the City terminates this Agreement for reasons (a) through (g) above, the Subrecipient may be required to repay, at the City’s discretion, all or a portion of the funds disbursed to the Subrecipient under this Agreement. Notwithstanding, it is understood that in the event of termination for any of the aforementioned reasons, all
unexpended funds in the Subrecipient’s possession on the date of termination shall be immediately returned to the City.

XI. **CONFLICT OF INTEREST**
No member of the governing body of the City and no other officers, officials, agents or employees of the City or government of the United States of America, shall have any personal financial interest, direct or indirect, in this Agreement. The Subrecipient shall take appropriate steps to insure compliance.

XII. **INTEREST OF SUBRECIPIENT**
The Subrecipient covenants that no person who presently exercises any function or responsibilities in connection with the program has any personal financial interest, direct or indirect, in the Agreement. The Subrecipient covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in any parcels of property within the City which thereby causes conflict in any manner or degree with the performance of its work or services hereunder.

XIII. **ENTIRE AGREEMENT**
This Agreement constitutes the entire agreement between the City and subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and subrecipient with respect to this Agreement.
XIV. REFERENCES TO LAW
All references to federal, state or local laws, regulations, or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

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

THE CITY OF DAYTON, OHIO

______________________________
City Manager

ADOVCATES FOR BASIC LEGAL EQUALITY, INC.

______________________________
Chief Executive Officer

Dec 20, 2021

APPROVED AS TO FORM AND CORRECTNESS:

12/16/2021

X

John Musto for

______________________________
City Attorney

Signed by: Musto, John

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

______________________________, 2021

Min./Bk. ____________ Page ______

______________________________
Clerk of the Commission
EXHIBIT “A”
SCOPE OF SERVICES
ADVOCATES FOR BASIC LEGAL EQUALITY
EMERGENCY SOLUTIONS GRANT
PREVENTING HOMELESSNESS BY ALIGNING
SYSTEMS EFFECTIVELY (PHASE) PROGRAM

1. PROGRAM

Advoicates for Basic Legal Equality (ABLE) is collaborating with Homefull and Greater Dayton Premier and Management (GDPM) to prevent evictions for high-risk households living in public housing. ABLE will provide legal assistance to the PHASE project. ABLE will work with the collaborate partners to identify at-risk residents and provide legal representation to individuals at risk of becoming homeless due to eviction.

2. COMMUNITY DEVELOPMENT GOALS AND OBJECTIVES

- Provide temporary assistance to individuals that would have become homeless but for this assistance;
- Reduce the number of households entering shelter

3. OUTCOME MEASUREMENTS: PERFORMANCE AND OUTCOME MEASURES

In accordance with U.S. Department of Housing and Urban Development (HUD) requirements, the City has implemented a performance measurement system that is based on an outcomes-based approach to funding projects. The City requires recipients of federal funds to assess the productivity and impact of their programs. This Performance and Outcome Measurement System will help to quantify the effectiveness of programs and establish clearly defined outcomes.

Outcomes-based measurement focuses on results rather than processes and provides an assessment tool for the City and its grantees. The implementation of an outcomes funding framework intends to improve results, accountability, and cost-effectiveness of funded programs.

The City shall report outcomes accomplishments to HUD. The City therefore requires the Subrecipient to submit performance measurement reports that focus on establishing clearly articulated objectives, performance measures, outputs, and program outcomes (desired end results). The City shall review the reports to track progress, provide feedback, and when necessary, provide technical assistance. Program performance is also considered in the decision-making process for fund allocation.

4. SUBRECIPIENT RESPONSIBILITIES

The Subrecipient will be responsible for the following aspects of managing the program:

- Comply with all ESG regulations;
- Market program in conjunction with the City;
• Provide prevention, and rapid rehousing assistance to eligible families and individuals; and,

• Preparation of reports to the City as detailed in Article VIII of the Agreement.

5. BUDGET

TWENTY-ONE THOUSAND EIGHTHUNDRED FIFTEEN DOLLARS AND FIFTY-FOUR CENTS ($21,815.54) in ESG funds will be used solely for the PHASE Program.

6. STAFFING

The Subrecipient shall assign the following staff as Key Personnel to the ESG Prevention and Rapid Rehousing program:

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

<table>
<thead>
<tr>
<th>Title</th>
<th>Percentage of time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney / Paralegal</td>
<td>.2 FTE</td>
</tr>
</tbody>
</table>

7. PAYMENT PROCEDURES

The City will reimburse Subrecipient for expenditures for the Project and in accordance with the line-item budget set forth in Exhibit B. Subrecipient shall submit all invoices and supporting records and documentation to the City’s Department of Planning, Neighborhoods & Development. Subrecipient shall comply with the following requirements for the submission of requests for reimbursement:

Invoice Information

Subrecipient’s invoice shall contain the following:

1. City Contract Number;

2. Invoice Number;

3. Period Covered;

4. Accomplishments Summary, etc.;
5. Written documentation verifying that weekly payroll reports were reviewed and comply with approved wage determination;

6. Total Amount Requested;

7. List of Enclosed Documents;

8. Agreement funding Balance;

9. Other information Subrecipient desires to communicate to the City’s Project Coordinator; and

10. Signature of Subrecipient’s Fiscal Officer or Chief Official.

A. Supporting Documentation

Subrecipient shall collect, maintain and submit the following documentation and information with invoices for payment.

For Project administration, the Subrecipient will include:

1. Number of hours worked on the program/project funded, and

2. Summary of work performed by employee during the time for which payment was made.

For supplies/materials, the documentation and information shall include:

1. Invoice from vendor or company detailing the item(s)/services purchased and a copy of Contractor’s check showing that Subrecipient paid the vendor for goods/services.

For professional services provided by a subcontracted entity, the documentation and information shall include:

1. A copy of the subcontract must be submitted (at least one during the Agreement period, if Contractor will seek reimbursement on several invoices); and

2. Contractor must require that the subcontracted agency submit the same level of documentation and information that Contractor must provide to seek payment from the City and such information and documentation must be submitted by the Contractor to the City with its invoice. At a minimum, the subcontracted agency should provide Contractor a cover memo, on company letterhead, which summarizes the request for payment, the amount requested, services provided for the requested amount, and information on clients served, if applicable.
Unless disputed or the City determines that there is insufficient documentation to substantiate the invoice, the City will tender payment to Subrecipient within thirty (30) days from the date the City receives the invoice.

8. DOCUMENTATION AND RECORD KEEPING

In order to ensure that program participants and activities meet the program eligibility criteria, the Subrecipient must keep the following documents:

A. Referrals from social service agencies documenting that program participant were indeed at risk of homelessness at the time they entered the Program;

B. Dates when participating families/individuals entered and exited from the Program;

C. The services that each Program participant received; and

D. Follow-up services provided to those Program participants who exit the Program during this program.

Subrecipient will maintain case files, including above information for a period of not less than five (5) years after completion of the program. Subrecipient will maintain these and other documents and financial records in accordance with the requirements for record retention specified in Article VII of the Agreement.

9. REPORTING PROCEDURES

The City will require timely and consistent reports to ensure that the program is proceeding according to the work program and in accordance with federal regulations. The Subrecipient agrees to submit the following reports:

A. Initial Progress Report

No later than fifteen (15) days from the effective date of this Agreement, the Subrecipient shall submit to the City an initial report, which summarizes progress, initiated to date.

B. Quarterly Progress Report

On the fifth (5th) day of the month following the end of a quarter, beginning with the last quarter of the 2020 Program Year, the Subrecipient must submit a progress report which details at a minimum the following:

1. Total number of individuals who applied for assistance;

2. Total number of individuals approved for assistance;

3. Demographic profile of applicants and approved recipients;
4. Number of individuals assisted;

5. Description of assistance completed for each individual assisted;

6. Percentage of applicants who were from low and moderate income households; and

7. Status of funding i.e. expenditures and remaining balance.

All reports shall be submitted to the City’s Department of Planning, Neighborhoods & Development.
EXHIBIT “B”
BUDGET
ABLE EMERGENCY SOLUTIONS GRANT
PHASE PROGRAM

The Subrecipient will be reimbursed for eligible costs shown in the following budget and based on the appropriate documentation up to a maximum of $21,815.54 per the term of the Agreement.

<table>
<thead>
<tr>
<th>Eligible Activities</th>
<th>City ESG FY2020</th>
<th>Matching Funds</th>
<th>Project Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Activity Amount</td>
<td>Activity Amount</td>
<td>Activity Amount</td>
</tr>
<tr>
<td><strong>Tenant Legal Services</strong></td>
<td>$20,179.38</td>
<td>$21,815.54</td>
<td>$41,994.92</td>
</tr>
<tr>
<td>Administration</td>
<td>$1,636.16</td>
<td></td>
<td>$1,636.16</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$21,815.54</strong></td>
<td><strong>$21,815.54</strong></td>
<td><strong>$43,631.08</strong></td>
</tr>
</tbody>
</table>
EXHIBIT “C”
MONITORING SCHEDULE
ABLE EMERGENCY SOLUTIONS GRANT
PHASE PROGRAM

Grantee: City of Dayton, Department of Planning, Neighborhoods & Development
Subrecipient: ABLE
Project/Program: ESG PHASE PROGRAM

<table>
<thead>
<tr>
<th>Monitoring Subject Area</th>
<th>Date of Review</th>
<th>City Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section I. Required Monitoring for ALL HPRP Subrecipient Agreements</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial and Program Eligibility and Records Management</td>
<td>Prior to submission of first invoice then ongoing</td>
<td>Beth Wilson</td>
</tr>
<tr>
<td>Program Performance</td>
<td>Ongoing on a quarterly basis until termination of Agreement</td>
<td>Beth Wilson</td>
</tr>
</tbody>
</table>
2020 ESG ABLE Final
Final Audit Report

Created: 2021-12-17
By: Beth Wilson (beth.wilson@daytonohio.gov)
Status: Signed
Transaction ID: 0BJCHBRAABAAqCLaLydW49NNqNuVHKVGYw-8382ADU

"2020 ESG ABLE Final" History

Document created by Beth Wilson (beth.wilson@daytonohio.gov)
2021-12-17 - 1:52:12 PM GMT

Document emailed to Janet Hales (jhales@ablelaw.org) for signature
2021-12-17 - 1:53:00 PM GMT

Email viewed by Janet Hales (jhales@ablelaw.org)
2021-12-20 - 5:07:51 PM GMT

Document e-signed by Janet Hales (jhales@ablelaw.org)
Signature Date: 2021-12-20 - 5:08:33 PM GMT - Time Source: server

Agreement completed.
2021-12-20 - 5:08:33 PM GMT

Adobe Sign
City Manager’s Report

From 3210 - Aviation/AP Admin & Finance
Supplier, Vendor, Company, Individual
Name Avis Budget Car Rental, LLC dba Avis and Budget
Address 6 Sylvan Way
Parsippany, NJ 07054

Date January 5, 2022
Expense Type Lease Agreement
Total Amount $2,728,107.00 thru 12/31/2024

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation Operating-MAG</td>
<td>51000-3216-23344-43</td>
<td>$2,548,003.00</td>
</tr>
<tr>
<td>Aviation Operating-Rent</td>
<td>51000-3216-23344-43</td>
<td>$180,104.00</td>
</tr>
</tbody>
</table>

Includes Revenue to the City ✔ Yes  ❌ No  Affirmative Action Program ❌ Yes  ✔ No  N/A

NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with Avis Budget Car Rental, LLC dba Avis and Budget. A Request for Proposals (RFP) was issued in June 2021 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for agreements with the City.

Avis Budget Car Rental, LLC dba Avis and Budget is an incumbent operator, will dual brand with Avis and Budget, and lease one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queueing and common space in the Rental Car Counter Facility building.

Revenues to the City are anticipated to be $2,548,003.00 for the 3-year MAG and $180,104.00 for the 3-year counter rent, totaling $2,728,107.00.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:  Name: Avis Budget Car Rental LLC dba Avis and Budget

Address: Margaret Hollingsworth@avisbudget.com

6 Sylvan Way

City: Parsippany  State: NJ  Zip+4: 07054

Customer #: 223475741  Address Location #: A1

Federal ID#: 22-3475741

Revenue Information:  Fund: 51000  Organization: 3216  Revenue: 23344  Program: 43

Contract Information:  Contract Start Date: 1/1/2022  Contract Expiration Date: 12/31/2024

Billing Information:  Rate: $5,002.89  Arrears  Pre-bill: X

Monthly (1st month of billing): January

Quarterly (1st month of quarter): 

Semi-annual (1st month of half): 

Annual (1st month of billing): 

Other (explain): 

Rate Change Date:  Rate Change Amount: 

Description of Services (wording on invoice): Effective 1/1/2022.

Terminal Space Rent at Dayton International Airport

842 sf Counter, Office, Queuing and common space in the Rental Car Counter Facility @ $71.30 / sq per year for 2022

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 12541  Auditor: D. Rolly  Date: 12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable database and contains the terms and conditions necessary for collection.

Director of Finance: D. A. A.  12/28/21
CERTIFICATE OF REVENUE

Customer Information:
Name: Avis Budget Car Rental, LLC  
RAC – Accounting

Address: 300 Centre Point Drive

City: Virginia Beach  
State: VA  
Zip+4: 23462

Customer #:  
Add Type/Seq #: A2

Federal ID#: 22-3475741

Revenue Information:
Fund: 51000  
Orgn: 3216  
Rev: 23344  
Prog: 43  
Actv: 

Contract Information:
Contract Start Date: 1/1/2022  
Contract Expiration Date: 12/31/2024

Billing Information:
Rate: $62,583.42  
Arrears:  
Pre-bill: X

Monthly (1st month of billing): Jan
Quarterly (1st month of quarter): 
Semi-annual (1st month of half): 
Annual (1st month of billing): 
Other (explain):

Rate Change Date: 1/1/2023  
Rate Change Amount: $71,000.08

Description of Services (wording on invoice): Effective 1/1/2022
Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton Intl Airport
Annual Settle-up (the greater of annual MAG and 10% Gross Revenue)

Departmental Approval: 

TO BE COMPLETED BY FINANCE

City Reference Number: 5741  
Auditor: Billy  
Date: 12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance: 

12/14/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT
THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

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

WITNESSETH THAT:

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

WHEREAS. On June 9, 2021, the City submitted a Request for Proposal titled "Request for Proposal for Non-Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD" ("RFP"); and

WHEREAS. Operator responded to the RFP on August 18, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

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

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

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

ARTICLE I
DEFINITIONS

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

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

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

"Commencement Date" means January 1, 2022.
“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.

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

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

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

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

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

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

“Expiration Date” means December 31, 2024.

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

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

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

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

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III
TERM

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

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

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to Operator shall be collectively referred to herein as the "Premises"): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #6 depicted on Exhibit B.

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

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

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

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

On the date designated for deletion or increase of the parking blocks in the Ready/Return:
  1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
  2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
  3. Exhibit I shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

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

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

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

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

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

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

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

**ARTICLE V**

**USE OF THE PREMISES**

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

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

2. For such other uses only as the City may approve in writing in its sole and absolute 
   discretion.

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

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

ARTICLE VI 
OPERATOR’S CONCESSION RIGHTS AND OBLIGATIONS

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

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

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

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

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

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

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D)(1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator’s Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator’s employees, invitees and those doing business with it, or regarding the Operator’s staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator’s rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator’s operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator’s written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport’s police with respect to violations of traffic regulations committed in the course of Operator’s business by Operator’s agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. **Operations Violations.** Operator’s failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice/occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

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

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

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

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

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

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

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

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

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

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

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

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

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

R. All of Operator’s computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
   1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3.2-AOC-Merchant.docx?agreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Offeror.docx?agreement=true&time=1493826893795).

ARTICLE VII
CITY RIGHTS AND OBLIGATIONS

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

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City’s officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

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

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

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

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

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

ARTICLE VIII
RENTS, FEES, PAYMENTS AND PERFORMANCE BOND

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only. This rate is subject to updating annually upon adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

B. Concession Fee. As consideration for the privilege of operating the concession hereunder, Operator shall pay to the City each Contract Year, for the full term of this Agreement, a Concession Fee. The Concession Fee is the greater of:
   1. The Percentage Concession Fee as defined in Article I:
      OR
   2. The respective amount shown below as the Operator's Minimum Annual Guarantee:

<table>
<thead>
<tr>
<th>Period</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2022 to December 31, 2022</td>
<td>$751,001.00</td>
</tr>
<tr>
<td>January 1, 2023 to December 31, 2023</td>
<td>$852,001.00</td>
</tr>
<tr>
<td>January 1, 2024 to December 31, 2024</td>
<td>$945,001.00</td>
</tr>
</tbody>
</table>

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

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

D. In the event of termination of this Agreement on a date other than December 31st in any year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional Contract Year shall be determined by multiplying the number of days that have transpired that year by 1/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

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

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

H. Prior to the Commencement Date, Operator shall provide to the City, and shall keep in full force and effect during the Term, and thereafter, until all financial obligations hereunder are satisfied, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator fails to pay any moneys required hereunder within the time limits specified herein in addition to taking any other action as may be provided hereunder.

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

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described above, shall be sent to the City at the following address or at such other address as City shall direct in writing:

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

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

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

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty-five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

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

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

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

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

ARTICLE X
INDEMNIFICATION

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

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

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

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

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

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

ARTICLE XI
INSURANCE

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

1. Worker's Compensation and Occupational Disease Insurance

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

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

3. **All Risk Property Insurance**

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

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

4. **Automobile Liability Insurance**

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

B. Original certificates of insurance evidencing the required coverage to be in force on the Commencement Date, and all renewal certificates of such insurance, shall be provided to City. At the City’s request, Operator shall furnish complete copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Operator shall not be deemed to be a waiver by the City. Operator shall advise all insurers of these Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Operator of its obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to terminate this Agreement as provided in Article XIII until proper evidence of insurance is provided. All policies of insurance

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shall provide for a minimum of thirty (30) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

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

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

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

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

ARTICLE XII
DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

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

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

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

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

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XIII
TERMINATION BY CITY

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

1. The failure by Operator to pay any Fees as required under this Agreement when due and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator:

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator:

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

ARTICLE XIV
TERMINATION BY OPERATOR

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

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator’s use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City’s operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator’s operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator’s right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

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

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

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

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

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities. as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

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

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its’ adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

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

ARTICLE XVII
ASSIGNMENT AND SUBLETTING

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

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

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

ARTICLE XVIII
GENERAL PROVISIONS

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

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

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

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

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

   Avis Budget Car Rental, LLC
   6 Sylvan Way
   Parsippany, NJ 07054
   Attn: Anne D. Morrison

or such other address as Operator shall direct in writing.

D. Operator represents that it has carefully reviewed the terms and conditions of this Agreement and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by the Agreement.
E. Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. In this Agreement, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Agreement. All section references, unless otherwise expressly indicated, are to sections in this Agreement. Any references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with this Agreement.

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

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

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

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

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

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

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

L. This Agreement, including the incorporated Ready/Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City’s rights with respect to any other or further breach.

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

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

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

WITNESSED BY: [Signature]

WITNESSED BY: [Signature]

WITNESSED BY: [Signature]

Avis-Budget Car Rental, LLC

By: [Signature] Ann Morrison

Its: Vice President, Props & Facilities

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

[Signature]
City Attorney

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

______________________________ , 2021

Min/Bk. _______________ Pg. _______________

______________________________
Clerk of the Commission
EXHIBIT I to the Rental Car Ready/Return Agreement

Ready Return Block Layout.
EXHIBIT B to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Rental Car Counter Facility Layout
Rental Car Facility Counter Layout

EXHIBIT K
Concession Agreement, Effective Jan 2022
Sept, 2021

Counter 1  N/A
Counter 2  Byers dba Thrifty
Counter 3  Byers dba Hertz and Dollar
Counter 4  EAN dba National
Counter 5  EAN dba Alamo/Enterprise
Counter 6  Avis Budget

Individual Office = 109 SF
Individual Storage = 50 SF
Individual Counter = 146 SF
Individual TOTAL = 305 SF

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

Individual TOTAL = 305 SF
RAC Shared TOTAL = 537 SF per
TOTAL EACH RAC = 842 SF
EXHIBIT C to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Title VI: List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin):
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964):
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects):
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability): and 49 CFR part 27:
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age):
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex):
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federal-aid funded or not):
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability, in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38:
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex):
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations:
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100):
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
EXHIBIT D to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

ACDBE Rental Car Annual Participation Report - Quarterly Reporting

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

ACDBE Participation Contract Goal: __%  
Prime Concessionaire Total Gross Revenue: $__________
Total ACDBE Participation: $__________

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

PART I: CONTACT INFORMATION

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

PART II: ACDBE Participation

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

<table>
<thead>
<tr>
<th>ACDBE Firm Name</th>
<th>Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 - Sept. 30)</th>
<th>Nature of Relationship with ACDBE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td>$__________</td>
<td>□ Prime Concession</td>
<td>□ Black</td>
</tr>
<tr>
<td>Address:</td>
<td></td>
<td>□ Subcontractor</td>
<td>□ Hispanic</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Management Contract</td>
<td>□ Asian-Pacific American</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Goods/Services</td>
<td>□ Asian-Indian American</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>□ Non-Minority Women</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>□ Other</td>
</tr>
</tbody>
</table>

Phone No.: __________________________
Email: __________________________

Business Type:
- [ ] Car- Rental- Insurance
- [ ] Car- Rental- Vending
- [ ] Car- Rental- Office Supplies
- [ ] Car- Rental- Uniforms
- [ ] Car- Rental- Gas: Oil
- [ ] Car- Rental- Other (Explain business type below)

Shortfall Explained:

Does this vendor have a lease or sublease?
- [ ] Yes  
- [ ] No

Agreement Dates:
- [ ] Yes  
- [ ] No

Does the agreement have an option to renew?
- [ ] Yes
- [ ] No

How many renewal options?
- [ ] Length of time of renewal:
- [ ] No
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE")
RENTAL CAR ANNUAL PARTICIPATION REPORT
QUARTERLY REPORTING

NON-ACDBE Subconcession(s)

<table>
<thead>
<tr>
<th>NAME</th>
<th>TYPE OF GOODS OR SERVICE</th>
<th>Total NON-ACDBE Subs Gross Receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
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<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

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

1st Quarter
(Jan 1, 20__ - Mar 30, 20__)  

2nd Quarter
(Apr 1, 20__ - Jun 30, 20__)  

3rd Quarter
(Jul 1, 20__ - Sep 30, 20__)  

4th Quarter
(Oct 1, 20__ - Dec 31, 20__)  

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

________________________
Signature of Authorized Representative

________________________
Print Name/Title

________________________
Date

For BOTH Annual and Quarterly Reporting:
In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire's good faith efforts to achieve the ACDBE participation contract goal.
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with Byers Car Rental, LLC dba Hertz and Dollar. A Request for Proposals (RFP) was issued in June 2021 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for agreements with the City.

Byers Car Rental, LLC dba Hertz and Dollar is an incumbent operator, will dual brand with Hertz and Dollar, and lease one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queueing and common space in the Rental Car Counter Facility building.

Revenues to the City are anticipated to be $1,125,000.00 for the 3-year MAG and $180,104.00 for the 3-year counter rent, totaling $1,305,104.00.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue are attached.

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: Byers dba Hertz & Dollar
Address: 4185 East 5th Avenue
City: Columbus  State: OH  Zip+4: 43219
Customer #: @00004225  Address Location #: A7
Federal ID#: 31-4139860

Revenue Information:
Fund: 51000  Organization: 3216  Revenue: 23344  Program: 43

Contract Information:
Contract Start Date: 1/1/2022  Contract Expiration Date: 12/31/2024

Billing Information:
Rate: $5,002.89  Arrears:  Pre-bill: X
Monthly (1st month of billing): January
Quarterly (1st month of quarter): 
Semi-annual (1st month of half): 
Annual (1st month of billing): 
Other (explain): 
Rate Change Date: 
Rate Change Amount: 

Description of Services (wording on invoice): Effective 1/1/2022.
Terminal Space Rent at Dayton International Airport
842 sf Counter, Office, Queuing and common space in the Rental Car Counter Facility @ $71.30 / sq per year for 2022-2023

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number: R228-1
Auditor: D. Bully
Date: 12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance

✓
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Byers dba Hertz and Dollar
Address 4185 East 5th Avenue
City Columbus State OH Zip+4 43219 -
Customer # Add Type/Seq # A1
Federal ID# 31-4139860

Revenue Information: Fund 51000 Orgn 3216 Rev 23344 Prog 43 Actv

Contract Information: Contract Start Date 1/1/2022 Contract Expiration Date 12/31/24

Billing Information: Rate: $31,250.00 Arrears Pre-bill X
Monthly (1st month of billing) Jan
Quarterly (1st month of quarter) 
Semi-annual (1st month of half) 
Annual (1st month of billing) 
Other (explain) 
Rate Change Date Rate Change Amount

Description of Services (wording on invoice): Effective 1/1/2022
Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton Intl Airport
Annual Settle-up (the greater of annual MAG and 10% Gross Revenue)

Departmental Approval

TO BE COMPLETED BY FINANCE

City Reference Number 4225 Auditor DB Date 12/25/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance 12/28/21

12/14/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT ("Agreement") is made and entered into this ______ day of ____________, 2021 between the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and Byers Car Rentals LLC, dba Hertz and Dollar ("Operator").

WITNESSETH THAT:

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

WHEREAS, On June 9, 2021, the City submitted a Request for Proposal, titled “Request for Proposal for Non -Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD” ("RFP"); and

WHEREAS, Operator responded to the RFP on August 18, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

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

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

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

ARTICLE I
DEFINITIONS

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

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

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

“Commencement Date” means January 1, 2022.
“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.

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

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

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

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

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

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

“Expiration Date” means December 31, 2024.

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

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

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

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

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

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

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

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

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

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

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

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

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

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

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

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

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

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

"Vehicle(s)" means any automobiles, trucks, vans, and all accessories and appurtenances thereto provided by the Operator (and/or other Concessionaires, as the context would dictate) to meet the transportation needs of Customers.
ARTICLE II
NON-EXCLUSIVE AGREEMENT

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

ARTICLE III
TERM

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

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

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to Operator shall be collectively referred to herein as the “Premises”): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #2A depicted on Exhibit B.

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

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

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

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

On the date designated for deletion or increase of the parking blocks in the Ready/Return:
1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

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

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

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

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

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

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

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

**ARTICLE V**
**USE OF THE PREMISES**

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

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

2. For such other uses only as the City may approve in writing in its sole and absolute discretion.

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

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

ARTICLE VI
OPERATOR’S CONCESSION RIGHTS AND OBLIGATIONS

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

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

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

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

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

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

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator's staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator's rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator's operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator's written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport's police with respect to violations of traffic regulations committed in the course of Operator's business by Operator's agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator’s failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice/occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

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

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all Vehicles as may be required by laws and ordinances and display all permits or stickers as may be required. Upon execution of this Agreement and thereafter annually or at the City’s request, Operator shall provide evidence to the City that Operator has obtained such permits, licenses, certificates, other authorizations and registrations.

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

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

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

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

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

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

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

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

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

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

R. All of Operator’s computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
   1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493825893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Officer.docx?agreement=true&time=1493825893795).

**ARTICLE VII**

**CITY RIGHTS AND OBLIGATIONS**

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

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

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

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

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

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

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

**ARTICLE VIII**

**RENTS, FEES, PAYMENTS AND PERFORMANCE BOND**

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a
premise rent for the Premises described in Article IV(A). For the period commencing January 1,
2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as
stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square
foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only.
This rate is subject to updating annually upon adoption of the Airlines Rates and Charges
Resolution by the Commission of the City of Dayton.

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

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

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

<table>
<thead>
<tr>
<th>Period</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2022 to December 31, 2022</td>
<td>$375,000.00</td>
</tr>
<tr>
<td>January 1, 2023 to December 31, 2023</td>
<td>$375,000.00</td>
</tr>
<tr>
<td>January 1, 2024 to December 31, 2024</td>
<td>$375,000.00</td>
</tr>
</tbody>
</table>

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

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

D. In the event of termination of this Agreement on a date other than December 31st in any
year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional
Contract Year shall be determined by multiplying the number of days that have transpired that
year by $/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

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

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

H. Prior to the Commencement Date, Operator shall provide to the City, and shall keep in full force and effect during the Term, and thereafter, until all financial obligations hereunder are satisfied, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator fails to pay any moneys required hereunder within the time limits specified herein in addition to taking any other action as may be provided hereunder.

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

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described above, shall be sent to the City at the following address or at such other address as City shall direct in writing:

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

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

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

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

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

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

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

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

ARTICLE X
INDEMNIFICATION

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

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

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

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and, shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

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

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

ARTICLE XI
INSURANCE

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

1. Worker's Compensation and Occupational Disease Insurance

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

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

3. All Risk Property Insurance

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

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

4. Automobile Liability Insurance

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

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

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

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

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

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

ARTICLE XII
DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

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

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

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

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

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

**ARTICLE XIII**

**TERMINATION BY CITY**

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

1. The failure by Operator to pay any Fees as required under this Agreement when due and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

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

**ARTICLE XIV**

**TERMINATION BY OPERATOR**

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

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator’s use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator’s operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator's right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

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

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

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

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

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

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

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

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

ARTICLE XVII
ASSIGNMENT AND SUBLETTING

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

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

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

ARTICLE XVIII
GENERAL PROVISIONS

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

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

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

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

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

Byers Car Rentals, LLC dba
Hertz and Dollar
4185 E. 5th Ave.
Columbus, OH 43219
Attn: Josh Pierre

or such other address as Operator shall direct in writing.

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

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

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

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

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

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

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

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

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

L. This Agreement, including the incorporated Ready/Return Agreement and any executed
service facility lease, represents the entire and integrated agreement between City and Operator.
This Agreement supersedes all prior and contemporaneous communications, representations,
understandings, agreement or contracts, whether oral or written, relating to the subject matter of
this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City’s rights with respect to any other or further breach.

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

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

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

WITNESSED BY:  

Byers Car Rentals, LLC dba Hertz and Dollar

By: _______________________________  

Its: 11/1/2021  

WITNESSED BY:  

CITY OF DAYTON, OHIO

____________________________________  

City Manager

APPROVED AS TO FORM AND CORRECTNESS:  

City Attorney

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

______________________________, 2021

Min/Bk. ___________ Pg. __________ 

Clerk of the Commission
EXHIBIT 1 to the Rental Car Ready/Return Agreement

Ready Return Block Layout.
EXHIBIT B to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Rental Car Counter Facility Layout
Rental Car Facility Counter Layout

EXHIBIT K
Concession Agreement, Effective Jan 2022
Sept, 2021

Counter 1  N/A
Counter 2  Byers dba Thrifty
Counter 3  Byers dba Hertz and Dollar
Counter 4  EAN dba National
Counter 5  EAN dba Alamo/Enterprise
Counter 6  Avis Budget

Department Legend
- COMMON
- COMMON VESTIBULE
- COUNTER 1
- COUNTER 2
- COUNTER 3
- COUNTER 4
- COUNTER 5
- COUNTER 6
- RAC CIRCULATION
- RAC VESTIBULE

Individual Office = 109 SF
Individual Storage = 50 SF
Individual Counter = 146 SF
Individual TOTAL = 305 SF

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

Individual TOTAL = 305 SF
RAC Shared TOTAL = 537 SF per
TOTAL EACH RAC = 842 SF
Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
EXHIBIT D to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

ACDBE Rental Car Annual Participation Report - Quarterly Reporting

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

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

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

PART I: CONTACT INFORMATION

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<tr>
<th>Concessionaire:</th>
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<tr>
<td>Address:</td>
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<tr>
<td>Contact Person/Email:</td>
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</tr>
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<td>Phone No. / Fax No.:</td>
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PART II: ACDBE Participation

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

<table>
<thead>
<tr>
<th>ACDBE Firm Name Address &amp; Phone No.</th>
<th>Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 - Sept. 30)</th>
<th>Nature of Relationship with ACDBE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
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<tr>
<td>Name:</td>
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<td>□ Prime Concession</td>
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<td></td>
</tr>
<tr>
<td>Email:</td>
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</tbody>
</table>

Business Type:

- □ Car-Rental: Insurance
- □ Car-Rental: Vending
- □ Car-Rental: Office Supplies
- □ Car-Rental: Uniforms
- □ Car-Rental: Gas: Oil
- □ Car-Rental: Other (Explain business type below)

Shortfall Explained:

- □ Yes
- □ No

Does this vendor have a lease or sublease?

- □ Yes
- □ No

Does the agreement have an option to renew?

- □ Yes
- □ No

How many renewal options?

Length of time of renewal:

- □ 34
# AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE")
## RENTAL CAR ANNUAL PARTICIPATION REPORT
### QUARTERLY REPORTING

<table>
<thead>
<tr>
<th>NAME</th>
<th>TYPE OF GOODS OR SERVICE</th>
<th>Total NON-ACDBE Subs Gross Receipts</th>
</tr>
</thead>
<tbody>
<tr>
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## PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

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

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Gross Receipts</th>
<th>ACDBE Participation</th>
<th>Actual %</th>
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<tr>
<td>1st Quarter</td>
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<td>(Jan 1, 20__ - Mar 30, 20__)</td>
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<td>2nd Quarter</td>
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<td>3rd Quarter</td>
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<td>(Jul 1, 20__ - Sep 30, 20__)</td>
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<td>4th Quarter</td>
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<td>(Oct 1, 20__ - Dec 31, 20__)</td>
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I hereby certify that the information contained in this report is true and correct:

__________________________
Signature of Authorized Representative

__________________________
Print Name/Title

__________________________
Date

**For BOTH Annual and Quarterly Reporting:**
In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire's good faith efforts to achieve the ACDBE participation contract goal.
City Manager's Report

From 3210 - Aviation/AP Admin & Finance

Supplier, Vendor, Company, Individual

Name Byers Car Rental, LLC dba Thrifty

Address 4185 E. 5th Ave. Columbus, OH 43219

Date January 5, 2022

Expense Type Lease Agreement

Total Amount $930,104.00 thru 12/31/2024

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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</thead>
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<tr>
<td>Aviation Operating-MAG</td>
<td>51000-3216-23344-43</td>
<td>$750,000.00</td>
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<tr>
<td>Aviation Operating-Rent</td>
<td>51000-3216-23344-43</td>
<td>$180,104.00</td>
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</table>

Includes Revenue to the City ☑  No  Affirmative Action Program ☑  No  N/A

Description

NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with Byers Car Rental, LLC dba Thrifty. A Request for Proposals (RFP) was issued in June 2021 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for agreements with the City.

Byers Car Rental, LLC dba Thrifty is an incumbent operator and will lease one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queueing and common space in the Rental Car Counter Facility building.

Revenues to the City are anticipated to be $750,000.00 for the 3-year MAG and $180,104.00 for the 3-year counter rent, totaling $930,104.00.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Byers dba Thrifty

Address 4185 East 5th Avenue

City Columbus State OH Zip+4 43219

Customer # Address Location #

Federal ID# 31-4139860

Revenue Information: Fund 51000 Organization 3216 Revenue 23344 Program 43

Contract Information: Contract Start Date 1/1/2022 Contract Expiration Date 12/31/2024

Billing Information: Rate: $20,833.33 Arrears Pre-bill X

Monthly (1st month of billing) January

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing)

Other (explain)

Rate Change Date Rate Change Amount

Description of Services (wording on invoice): Effective 1/1/2022

Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton International Airport

Annual Settle-up (the greater of annual MAG and 10% Gross Revenue).

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number I 4225 Auditor D Billy Date 12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance 12/28/21
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Byers dba Thifty

Address  4185 East 5th Avenue

City  Columbus  State  OH  Zip+4  43219  -

Customer #  @00004225  Address Location #  A6

Federal ID#  31-4139860

Revenue Information:  Fund  51000  Organization  3216  Revenue  23344  Program  43

Contract Information:  Contract Start Date  1/1/2022  Contract Expiration Date  12/31/2024

Billing Information:  Rate:  $5002.89  Arrears  Pre-bill  X

Monthly (1st month of billing)  January

Quarterly (1st month of quarter)  

Semi-annual (1st month of half)  

Annual (1st month of billing)  

Other (explain)  

Rate Change Date  

Rate Change Amount  

Description of Services (wording on invoice): Effective 1/1/2022.

Terminal Space Rent at Dayton International Airport

842 sf Counter, Office, Queuing and common space in the Rental Car Counter Facility @  $71.30 / sq per year for 2022-2023

Departmental Approval  [Signature]

TO BE COMPLETED BY FINANCE

Revenue Contract Number  4225-1  Auditor  D. Billy  Date  12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection. Director of Finance  [Signature]  12/28/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

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

WITNESSETH THAT:

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

WHEREAS, On June 9, 2021, the City submitted a Request for Proposal, titled “Request for Proposal for Non–Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD” ("RFP"); and

WHEREAS, Operator responded to the RFP on August 18, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

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

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

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

ARTICLE I
DEFINITIONS

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

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

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

“Commencement Date” means January 1, 2022.
“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.

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

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

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

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

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

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

“Expiration Date” means December 31, 2024.

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

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

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

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

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

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

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

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

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

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

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

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

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

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

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

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

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

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

"Vehicle(s)" means any automobiles, trucks, vans, and all accessories and appurtenances thereto provided by the Operator (and/or other Concessionaires, as the context would dictate) to meet the transportation needs of Customers.
ARTICLE II
NON-EXCLUSIVE AGREEMENT

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

ARTICLE III
TERM

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

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

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to Operator shall be collectively referred to herein as the "Premises"): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #2B depicted on Exhibit B.

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

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

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

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

On the date designated for deletion or increase of the parking blocks in the Ready/Return:
1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

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

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

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

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

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

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

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

**ARTICLE V**

**USE OF THE PREMISES**

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

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

2. For such other uses only as the City may approve in writing in its sole and absolute discretion.

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

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

ARTICLE VI
OPERATOR’S CONCESSION RIGHTS AND OBLIGATIONS

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

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

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

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

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

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

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator's staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator's rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator's operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator's written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport's police with respect to violations of traffic regulations committed in the course of Operator's business by Operator's agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator’s failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice/occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

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

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

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

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

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

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

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

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

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

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

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

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

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

R. All of Operator’s computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
   1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Offeror.docx?agreement=true&time=1493826893795).

ARTICLE VII
CITY RIGHTS AND OBLIGATIONS

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

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City’s officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

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

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

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

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

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

ARTICLE VIII
RENTS, FEES, PAYMENTS AND PERFORMANCE BOND

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only. This rate is subject to updating annually upon adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

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

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

   OR

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

<table>
<thead>
<tr>
<th>Date Range</th>
<th>Amount</th>
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<tbody>
<tr>
<td>January 1, 2022 to December 31, 2022</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>January 1, 2023 to December 31, 2023</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>January 1, 2024 to December 31, 2024</td>
<td>$250,000.00</td>
</tr>
</tbody>
</table>

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

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

D. In the event of termination of this Agreement on a date other than December 31st in any year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional Contract Year shall be determined by multiplying the number of days that have transpired that year by 1/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

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

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

H. Prior to the Commencement Date, Operator shall provide to the City, and shall keep in full force and effect during the Term, and thereafter, until all financial obligations hereunder are satisfied, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator fails to pay any moneys required hereunder within the time limits specified herein in addition to taking any other action as may be provided hereunder.

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

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described above, shall be sent to the City at the following address or at such other address as City shall direct in writing:

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

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

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

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

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

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

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

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

ARTICLE X
INDEMNIFICATION

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

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

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

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and, shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

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

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

ARTICLE XI
INSURANCE

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

1. Worker's Compensation and Occupational Disease Insurance

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

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

3. **All Risk Property Insurance**

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

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

4. **Automobile Liability Insurance**

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

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

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

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

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

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

ARTICLE XII
DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

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

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

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

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

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

**ARTICLE XIII**
**TERMINATION BY CITY**

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

1. The failure by Operator to pay any Fees as required under this Agreement when due and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

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

ARTICLE XIV
TERMINATION BY OPERATOR

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

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator’s use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City’s operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator’s operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator's right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

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

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

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

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

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

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

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its’ adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

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

ARTICLE XVII
ASSIGNMENT AND SUBLetting

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

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

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

ARTICLE XVIII
GENERAL PROVISIONS

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

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

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

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

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

Byers Car Rentals, LLC dba Thrifty
4185 E. 5th Ave.
Columbus, OH 43219
Attn: Josh Pierre

or such other address as Operator shall direct in writing.

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

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

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

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

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

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

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

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

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

L. This Agreement, including the incorporated Ready/Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City’s rights with respect to any other or further breach.

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

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

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

WITNESSED BY:  

Byers Car Rentals, LLC dba Thrifty

By:  

Its: 11/11/2021

WITNESSED BY:  

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

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

_____________________, 2021

Min/Bk.___________ Pg.___________

Clerk of the Commission
EXHIBIT 1 to the Rental Car Ready/Return Agreement

Ready Return Block Layout.
EXHIBIT B to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Rental Car Counter Facility Layout
EXHIBIT C to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
EXHIBIT D to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

ACDBE Rental Car Annual Participation Report - Quarterly Reporting

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

ACDBE Participation Contract Goal: ___%  
Prime Concessionaire Total Gross Revenue: $__________
Total ACDBE Participation: $__________

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

**PART I: CONTACT INFORMATION**

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

**PART II: ACDBE Participation**

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

<table>
<thead>
<tr>
<th>ACDBE Firm Name Address &amp; Phone No.</th>
<th>Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 – Sept. 30)</th>
<th>Nature of Relationship with ACDBE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td>$__________</td>
<td>☐ Prime Concession</td>
<td>☐ Black</td>
</tr>
<tr>
<td>Address:</td>
<td></td>
<td>☐ Subcontractor</td>
<td>☐ Hispanic</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Management Contract</td>
<td>☐ Asian-Pacific American</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Goods/Services</td>
<td>☐ Asian-Indian American</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>☐ Non-Minority Women</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>☐ Other</td>
</tr>
<tr>
<td>Phone No.:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Business Type:**
- ☐ Car- Rental- Insurance
- ☐ Car- Rental- Vending
- ☐ Car- Rental- Office Supplies
- ☐ Car- Rental- Uniforms
- ☐ Car- Rental- Gas: Oil
- ☐ Car- Rental- Other (Explain business type below)

**Shortfall Explained:**

**Does this vendor have a lease or sublease?**
- ☐ Yes
- ☐ No

**Agreement Dates:**
- ☐ Yes
- ☐ No

**Does the agreement have an option to renew?**
- ☐ Yes
- ☐ No

**How many renewal options?**
- Length of time of renewal: ☐

- ☐ No
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE")
RENTAL CAR ANNUAL PARTICIPATION REPORT
QUARTERLY REPORTING

NON-ACDBE Subconcession(s)

<table>
<thead>
<tr>
<th>NAME</th>
<th>TYPE OF GOODS OR SERVICE</th>
<th>Total NON-ACDBE Subs Gross Receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

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

1st Quarter
(Jan 1, 20__ - Mar 30, 20__)  

2nd Quarter
(Apr 1, 20__ - Jun 30, 20__)  

3rd Quarter
(Jul 1, 20__ - Sep 30, 20__)  

4th Quarter
(Oct 1, 20__ – Dec 31, 20__)  

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

____________________________________
Signature of Authorized Representative

____________________________________
Print Name/Title

____________________________________
Date

For BOTH Annual and Quarterly Reporting:
In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire’s good faith efforts to achieve the ACDBE participation contract goal.
City Manager’s Report

Date January 5, 2022
Expense Type Lease Agreement
Total Amount $1,902,078.00 thru 12/31/2024

From 3210 - Aviation/AP Admin & Finance
Supplier, Vendor, Company, Individual
EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car
Address 4600 McAuley Place
Cincinnati, OH 45242

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation Operating-MAG</td>
<td>51000-3216-23344-43</td>
<td>$1,721,974.00</td>
</tr>
<tr>
<td>Aviation Operating-Rent</td>
<td>51000-3216-23344-43</td>
<td>$180,104.00</td>
</tr>
</tbody>
</table>

Includes Revenue to the City ☑ Yes  □ No
Affirmative Action Program □ Yes  □ No  ☑ N/A

Description

NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car. A Request for Proposals (RFP) was issued in June 2021 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for lease agreements with the City.

EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car is an incumbent operator, will dual brand leasing one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queueing and common space in the Rental Car Counter Facility building.

Revenues to the City are anticipated to be $1,721,974.00 for the 3-year MAG and $180,104.00 for the 3-year counter rent, totaling $1,902,078.00.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue are attached.

Signatures/Approval

Approved by City Commission

Clerk
Date

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  EAN Holdings LLC dba Alamo / Enterprise
ATTN: Mike Cullen
Address  4600 McAuley Place
City  Cincinnati State  OH Zip+4  45242
Customer #  @00006038 Address Location #  A 2
Federal ID#  26-4088616

Revenue Information: Fund  51000 Organization  3216 Revenue  23344 Program  43

Contract Information: Contract Start Date  1/1/2022 Contract Expiration Date  12/31/2024

Billing Information: Rate:  $5,002.89 Arrears  Pre-bill  X
Monthly (1st month of billing)  January
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date  Rate Change Amount

Description of Services (wording on invoice): Effective 1/1/2022.
Terminal Space Rent at Dayton International Airport
842 sf Counter, Office, Queuing and common space in the Rental Car Counter Facility @ $71.30 / sq
per year for 2022

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number  / 6038.5  Auditor  D Billy  Date  12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in
the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance  12/28/21
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car
Attn. Controller, Mike Cullen

Address 3700 Park 42 Drive, Suite 100A
City Cincinnati State OH Zip+4 45241 - 2083

Customer # ____________________ Add Type/Seq # ____________________

Federal ID# 26-4086616

Revenue Information: Fund 51000 Orgn 3216 Rev 23344 Prog 43 Actv ______

Contract Information: Contract Start Date 1/1/2022 Contract Expiration Date 12/31/2024

Billing Information: Rate: $42,551.83 Arrears ________ Pre-bill X ________
Monthly (1st month of billing) Jan
Quarterly (1st month of quarter) ____________
Semi-annual (1st month of half) ____________
Annual (1st month of billing) ____________
Other (explain) ____________________________

Rate Change Date 1/1/2023 Rate Change Amount $49,098.25

Description of Services (wording on invoice): Effective 1/1/2022
Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton Intl Airport
Annual Settle-up (the greater of annual MAG and 10% Gross Revenue)

Departmental Approval

TO BE COMPLETED BY FINANCE

City Reference Number 1-62038-4 Auditor D Bailey Date 12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance 12/28/21

12/14/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT ("Agreement") is made and entered into this _____ day of __________, 2021 between the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car ("Operator").

WITNESSETH THAT:

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

WHEREAS, On June 9, 2021, the City submitted a Request for Proposal, titled “Request for Proposal for Non-Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD” (“RFP”); and

WHEREAS, Operator responded to the RFP on August 18, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

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

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

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

ARTICLE I
DEFINITIONS

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

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

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

“Commencement Date” means January 1, 2022.

“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.
“Concessionaire(s)” means all rental car businesses operating at the Airport pursuant to the terms of an agreement similar to this Agreement.

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

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

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

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

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

“Expiration Date” means December 31, 2024.

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

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

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

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

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

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

“Hazardous Materials” means any substance, whether solid, liquid or gaseous, that is listed, defined or regulated as a “hazardous substance,” “hazardous waste,” “solid waste,” or pesticide, or is otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law or that is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or that causes or poses a threat to cause a contamination or nuisance or a hazard to the environment or to the health or safety of any persons, except Operator may use, bring, and store household and commercial cleaners and chemicals in connection with the operation and maintenance of the premises in commercially reasonable quantities, and may have fuel in the tanks of its vehicles.
“Minimum Annual Guarantee” or “MAG” means that minimum amount to be paid to the City, per Contract Year, for the concession privileges and rights stated in this Agreement, which Operator specified in its response to the City’s RFP and provided in Article VIII(B).

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III
TERM

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

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

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to Operator shall be collectively referred to herein as the "Premises"): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #4 depicted on Exhibit B.

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

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

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

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

On the date designated for deletion or increase of the parking blocks in the Ready/Return:
1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

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

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

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

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

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

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

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

**ARTICLE V**

**USE OF THE PREMISES**

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

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

2. For such other uses only as the City may approve in writing in its sole and absolute discretion.

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

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

ARTICLE VI
OPERATOR’S CONCESSION RIGHTS AND OBLIGATIONS

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

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

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

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

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

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

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator's staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator's rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator's operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator's written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport's police with respect to violations of traffic regulations committed in the course of Operator's business by Operator's agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator’s failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice/occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

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

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all Vehicles as may be required by laws and ordinances and display all permits or stickers as may be required. Upon execution of this Agreement and thereafter annually or at the City’s request, Operator shall provide evidence to the City that Operator has obtained such permits, licenses, certificates, other authorizations and registrations.

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

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

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

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

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

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

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

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

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

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

R. All of Operator’s computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
   1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Offeror.docx?agreement=true&time=1493826893795).

ARTICLE VII
CITY RIGHTS AND OBLIGATIONS

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

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City's officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

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

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

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

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

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

ARTICLE VIII
RENTS, FEES, PAYMENTS AND PERFORMANCE BOND

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a premise rent for the Premises described in Article IV(A). For the period commencing January 1, 2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only. This rate is subject to updating annually upon adoption of the Airlines Rates and Charges Resolution by the Commission of the City of Dayton.

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

1. The Percentage Concession Fee as defined in Article I;
   OR
2. The respective amount shown below as the Operator's Minimum Annual Guarantee:

<table>
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<th>Period</th>
<th>Amount</th>
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The MAG shall be paid in equal monthly installments, in advance, on the first day of each month during the Term.

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

D. In the event of termination of this Agreement on a date other than December 31st in any year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional Contract Year shall be determined by multiplying the number of days that have transpired that year by 1/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

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

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

H. Prior to the Commencement Date, Operator shall provide to the City, and shall keep in full force and effect during the Term, and thereafter, until all financial obligations hereunder are satisfied, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator fails to pay any moneys required hereunder within the time limits specified herein in addition to taking any other action as may be provided hereunder.

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

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described above, shall be sent to the City at the following address or at such other address as City shall direct in writing:

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

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

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

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

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

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

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

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

ARTICLE X
INDEMNIFICATION

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

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

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

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and, shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

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

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

ARTICLE XI
INSURANCE

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

1. 0 Worker's Compensation and Occupational Disease Insurance

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

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

3.0 **All Risk Property Insurance**

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

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

4.0 **Automobile Liability Insurance**

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

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

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

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

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

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

ARTICLE XII

DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

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

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

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

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

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XIII
TERMINATION BY CITY

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

1. The failure by Operator to pay any Fees as required under this Agreement when due and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

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

ARTICLE XIV
TERMINATION BY OPERATOR

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

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator’s use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator’s operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator’s right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

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

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

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

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

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

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

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its’ adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

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

**ARTICLE XVII**

**ASSIGNMENT AND SUBLETTING**

A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not, (1) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (2) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator’s interest herein by operation of law; (3) sublease the Premises or any part thereof; or (4) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.

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

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

ARTICLE XVIII
GENERAL PROVISIONS

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

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

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

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

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

EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car
4600 McAuley Place
Cincinnati, OH 45242
Attn: Mike Filomena

or such other address as Operator shall direct in writing.

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

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

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

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

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

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

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

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

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

L. This Agreement, including the incorporated Ready/Return Agreement and any executed
service facility lease, represents the entire and integrated agreement between City and Operator.
This Agreement supersedes all prior and contemporaneous communications, representations,
understandings, agreement or contracts, whether oral or written, relating to the subject matter of
this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City’s rights with respect to any other or further breach.

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

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

(BALANCE OF THIS PAGE INTENTIONALY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative,
have executed this Agreement as of the date first set forth above.

WITNESSED BY:

DAN NEWTON
Controller

EAN Holdings, LLC dba
Alamo Rent A Car and
Enterprise Rent-A-Car

By: ________________

Its: ________________

CITY OF DAYTON, OHIO

_____________________
City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

_____________________
City Attorney

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

_____________________, 2021

Min/Bk. ___________  Pg. ___________

_____________________
Clerk of the Commission
EXHIBIT 1 to the Rental Car Ready/Return Agreement

Ready Return Block Layout.
EXHIBIT B to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

Rental Car Counter Facility Layout
Rental Car Facility Counter Layout

EXHIBIT K
Concession Agreement, Effective Jan 2022
Sept. 2021

Counter 1: N/A
Counter 2: Byers dba Thrifty
Counter 3: Byers dba Hertz and Dollar
Counter 4: EAN dba National
Counter 5: EAN dba Alamo/Enterprise
Counter 6: Avis Budget

Department Legend:
- COMMON
- COMMON VESTIBULE
- COUNTER 1
- COUNTER 2
- COUNTER 3
- COUNTER 4
- COUNTER 5
- COUNTER 6
- RAC CIRCULATION
- RAC VESTIBULE

Individual Office = 109 SF
Individual Storage = 50 SF
Individual Counter = 146 SF
Individual TOTAL = 305 SF

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

Individual TOTAL = 305 SF
RAC Shared TOTAL = 537 SF per
TOTAL EACH RAC = 842 SF
Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq.; 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 17123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) threatened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not;
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, or certain testing entities (42 USC §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq.).
EXHIBIT D to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

ACDBE Rental Car Annual Participation Report - Quarterly Reporting

Fiscal Year: October 1, 2020 - September 30, 2020

ACDBE Participation Contract Goal: __%  
Prime Concessionaire Total Gross Revenue: __________
Total ACDBE Participation: __________

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

PART I: CONTACT INFORMATION

<table>
<thead>
<tr>
<th>Concessionaire:</th>
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</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Contact Person/Email:</td>
<td></td>
</tr>
<tr>
<td>Phone No. / Fax No.:</td>
<td></td>
</tr>
</tbody>
</table>

PART II: ACDBE Participation

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

<table>
<thead>
<tr>
<th>ACDDE Firm Name</th>
<th>Total ACDDE Participation to Date in Dollars (for Fiscal Year Oct. 1 - Sept. 30)</th>
<th>Nature of Relationship with ACDDE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
</tr>
</thead>
</table>
| Address & Phone No. | $__________ | □ Prime Concession  
□ Subcontractor  
□ Management Contract  
□ Goods/Services | □ Black  
□ Hispanic  
□ Asian Pacific American  
□ Asian Indian American  
□ Non-Minority Women  
□ Other |

Business Type:

- Car Rental - Insurance
- Car Rental - Vendoring
- Car Rental - Office Supplies
- Car Rental Uniforms
- Car Rental Gas/Oil
- Car Rental Other (Explain business type below)

Shortfall Explained: Does this vendor have a lease or sublease?

- Yes
- No

Does the agreement have an option to renew?

- Yes
- No

How many renewal options? Length of time of renewal:

- Yes
- No
## AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE")
### RENTAL CAR ANNUAL PARTICIPATION REPORT
#### QUARTERLY REPORTING

<table>
<thead>
<tr>
<th>NAME</th>
<th>TYPE OF GOODS OR SERVICE</th>
<th>Total NON-ACDBE Subs Gross Receipts</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

### PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

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

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Gross Receipts</th>
<th>ACDBE Participation</th>
<th>Actual %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Quarter</td>
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<tr>
<td>(Jan 1, 20__ - Mar 30, 20__)</td>
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<tr>
<td>2nd Quarter</td>
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<tr>
<td>(Apr 1, 20__ - Jun 30, 20__)</td>
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<tr>
<td>3rd Quarter</td>
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<tr>
<td>(Jul 1, 20__ - Sep 30, 20__)</td>
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<tr>
<td>4th Quarter</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>(Oct 1, 20__ - Dec 31, 20__)</td>
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</tbody>
</table>

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

______________________________
Signature of Authorized Representative

______________________________
Print Name/Title

______________________________
Date

**For BOTH Annual and Quarterly Reporting:**
In the event the Prime Concessionaire has not achieved the ACDBE participation contract goal, this report must be accompanied by a corrective action plan and written documentation evidencing the Prime Concessionaire's good faith efforts to achieve the ACDBE participation contract goal.
City Manager’s Report

From 3210 - Aviation/AP Admin & Finance

Supplier, Vendor, Company, Individual

EAN Holdings, LLC dba National Car Rental

Address 4600 McAuley Place
Cincinnati, OH 45242

Date January 5, 2022
Expense Type Lease Agreement
Total Amount $1,631,840.00 thru 12/31/2024

Fund Source(s) Fund Code(s) Fund Amount(s)
Aviation Operating-MAG 51000-3216-23344-43 $1,451,736.00
Aviation Operating-Rent 51000-3216-23344-43 $180,104.00

Includes Revenue to the City Yes No

Affirmative Action Program Yes No N/A

Description

NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT
AT THE DAYTON INTERNATIONAL AIRPORT

The Department of Aviation requests permission to enter into an Agreement with EAN Holdings, LLC dba National Car Rental. A Request for Proposals (RFP) was issued in June 2021 for six available rental car locations at the Dayton International Airport. Five responses were received with all five companies being recommended for agreements with the City.

EAN Holdings, LLC dba National Car Rental is an incumbent operator and will lease one (1) counter. They will pay 10% of gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater, plus rents for counter, office, queueing and common space in the Rental Car Counter Facility building.

Revenues to the City are anticipated to be $1,451,736.00 for the 3-year MAG and $180,104.00 for the 3-year counter rent, totaling $1,631,840.00.

This Concession and Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016

FORM NO. MS-16
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  EAN Holdings LLC dba National
ATTN: Mike Cullen

Address  4600 McAuley Place

City  Cincinnati State  OH  Zip+4  45242 -

Customer #  @00006038  Address Location #  A 2

Federal ID#  26-4086616

Revenue Information: Fund  51000  Organization  3216  Revenue  23344  Program  43

Contract Information: Contract Start Date  1/1/2022  Contract Expiration Date  12/31/2024

Billing Information: Rate:  $5,002.89  Arrears  Pre-bill  X

Monthly (1st month of billing)  January

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing)

Other (explain)

Rate Change Date  Rate Change Amount

Description of Services (wording on invoice): Effective 1/1/2022.

Terminal Space Rent at Dayton International Airport

842 sf Counter, Office, Queuing and common space in the Rental Car Counter Facility @ $71.30 / sq
per year for 2022

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number  1 6038 3

Auditor  D. Billy

Date  12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in
the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name EAN Holdings, LLC dba National Car Rental
Attn. Controller, Mike Cullen

Address 3700 Park 42 Drive, Suite 100A

City Cincinnati State OH Zip+4 45241 - 2083

Customer # ___________ Add Type/Seq # ___________

Federal ID# 26-4086616

Revenue Information: Fund 51000 Orgn 3216 Rev 23344 Prog 43 Actv ______

Contract Information: Contract Start Date 1/1/2022 Contract Expiration Date 12/21/2024

Billing Information: Rate: $34,368.75 Arrears _______ Pre-bill X

Monthly (1st month of billing) Jan

Quarterly (1st month of quarter) _______

Semi-annual (1st month of half) _______

Annual (1st month of billing) _______

Other (explain) _______

Rate Change Date 1/1/2023 Rate Change Amount $41,242.50

Description of Services (wording on invoice): Effective 1/1/2022

Pre-Bill MAG (Minimum monthly Rental Car Concession Guarantee) at Dayton Intl Airport

Annual Settle-up (the greater of annual MAG and 10% Gross Revenue)


Departmental Approval

TO BE COMPLETED BY FINANCE

City Reference Number I-6038 2 Auditor D Billy Date 12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance

12/15/2021
NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT AT THE JAMES M. COX DAYTON INTERNATIONAL AIRPORT

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT ("Agreement") is made and entered into this ______ day of ____________, 2021 between the City of Dayton, Ohio ("City"), a political subdivision in and of the State of Ohio, and EAN Holdings, LLC dba National Car Rental ("Operator").

WITNESSETH THAT:

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

WHEREAS, On June 9, 2021, the City submitted a Request for Proposal, titled “Request for Proposal for Non-Exclusive Rental Car Concessions at the James M. Cox International Airport No. 21-018AOAD” ("RFP"); and

WHEREAS, Operator responded to the RFP on August 18, 2021, setting forth its desire and qualifications to operate a rental car concession at and from the Airport; and

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

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

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

ARTICLE I
DEFINITIONS

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

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

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

“Commencement Date” means January 1, 2022.
“Concession Fee” means the amount payable, per Contract Year, for the on-Airport rental car concession rights and privileges granted to Operator under this Agreement.

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

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

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

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

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

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

“Expiration Date” means December 31, 2024.

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

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

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

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

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;

2. Those fees referred to in this Agreement as Customer Facility Charges, “CFC’s” which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to City of Dayton RCGO § 37.11 (B), as may be amended;

3. Amounts received specifically for the actual loss of or damages of vehicles or other property of Operator;

4. Amounts received from the sale of vehicles off-airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator’s operations at the Airport that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

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

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

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

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

"Premise Rent" means an amount paid the City for Operator's occupancy of the Rental
Car Counter Facility.

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

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

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

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

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

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

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

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

"Vehicle(s)" means any automobiles, trucks, vans, and all accessories and appurtenances
thereto provided by the Operator (and/or other Concessionaires, as the context would dictate) to
meet the transportation needs of Customers.
ARTICLE II
NON-EXCLUSIVE AGREEMENT

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

ARTICLE III
TERM

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

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

ARTICLE IV
PREMISES

A. The City leases to Operator the following areas in the Rental Car Counter Facility described herein together with any substitutions or additions thereto, but less any removals therefrom, from time to time as provided in this Agreement (hereinafter all areas leased to Operator shall be collectively referred to herein as the “Premises”): approximately eight hundred forty-two (842) square feet of counter, office, storage, queuing and shared common area identified as position #5 depicted on Exhibit B.

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

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

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

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

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

1. Operator shall surrender such portion of the parking block in the Ready/Return to the City, if a deletion;
2. Operator will be permitted to use any additional parking block assigned to Operator in the Ready/Return, if an addition;
3. Exhibit 1 shall be revised accordingly, which shall not require a formal written amendment to this Agreement.

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

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

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

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

2. On the relocation date, the substitute premises shall be deemed for the purposes of this Agreement to be the portion of the Premises being relocated. The Premises Rent, as applicable, shall be recalculated and adjusted based on the new area of the substitute Premises. The MAG, however, shall not be adjusted.

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

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

ARTICLE V
USE OF THE PREMISES

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

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

2. For such other uses only as the City may approve in writing in its sole and absolute discretion.

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

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

ARTICLE VI
OPERATOR’S CONCESSION RIGHTS AND OBLIGATIONS

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

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

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

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

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

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

2. Operator may offer for rental antique, vintage, classic or other luxury or prestige automobile or handicapped operated vehicles of good quality, free from any known defect and clean and attractive both inside and out. The City shall have the right to prohibit Operator from offering for rental any such automobile which the City reasonably determines not to meet the standards described in (D) (1) above.

3. Operator shall provide the following services for its Customers at the Airport: (i) accept at least three (3) nationally recognized credit cards and at least one (1) locally named credit or debit cards for payment of Vehicle rental; (ii) provide for a national reservation system for services of Operator at the Airport, and (iii) will rent motor vehicles to customers who are local walk-up customers, ticketed Airline passengers and any other customer who so chooses to rent.
4. Operator shall maintain a sufficient number of trained personnel to ensure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises, shall be polite, clean and neat in appearance and appropriately attired. The City shall have the right to complain to Operator as to the demeanor, conduct or appearance of Operator's employees, invitees and those doing business with it, or regarding the Operator's staffing levels, and Operator agrees to take all reasonable steps necessary to resolve such complaint(s).

5. Without limiting any other requirement set forth in this Agreement, Operator shall conduct its concession business operations within the Airport in such manner as shall reduce to a minimum the emanation of noise, vibration, dust, fumes and odors, so as not to interfere with the use of adjacent areas on the Airport.

6. Operator's rights to use the Premises for the purposes provided in this Agreement are subject to the rights of the City, as City, to monitor compliance with this Agreement to ensure that the Premises are used and operated as required by Operator.

7. If Operator receives (or the City receives and forwards to Operator) any written complaint concerning Operator's operation of the business at the Airport, Operator shall promptly respond to such complaint in writing within thirty (30) days of its' receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Without further notice or demand, Operator shall keep a copy of each such complaint and Operator's written response for a period of one (1) year from the date of the complaint and shall make the complaint and the written response available to the City upon its request.

8. Operator shall respond in writing to complaints registered by the Airport's police with respect to violations of traffic regulations committed in the course of Operator's business by Operator's agents, employees, invitees and licensees, setting forth such action as have been taken or are immediately contemplated to remedy said violations.

9. Operator shall keep the Premises open for service for such periods during each day and on such days during each week as may be necessary to meet reasonable demands for such services and to properly and adequately serve the public, as determined by the City; provided, Operator shall provide rental car services to Airport customers during all hours of air carrier operations at the Airport. Should the Operator operate more than one concession location in the Rental Car Counter Facility, Operator is not permitted to close one location and direct customers to its other location.

10. Counters will be adequately staffed and open one hour before the first scheduled flight departure and one hour after the last scheduled flight arrival.

11. Operator shall comply with the Airports Rules & Regulations and any amendments to that shall be approved.
12. Operations Violations. Operator’s failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to the City. Additionally, City resources will be expended in dealing with violations of this Agreement by Operator. The parties hereby agree that total damages sustained by the City for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter three (3) business days from a notice/occurrence, for the first occurrence only, are reasonable estimates of the loss anticipated to be suffered or incurred by the City. Operator, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Operator agrees to pay immediately upon demand by the City the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to the following operation violations:

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

For hours of operations violations, liquidated damages are as follows:

- $100 per hour or portion thereof during which location is not open - first occurrence
- $200 per hour or portion thereof during which location is not open - first occurrence
- $300 per hour or portion thereof during which location is not open - first occurrence
- $1,000 per occurrence thereafter

E. Operator shall, at its expense, obtain all permits, licenses, certificates or other authorizations required for conduct of its concession business at the Airport, shall register all Vehicles as may be required by laws and ordinances and display all permits or stickers as may be required. Upon execution of this Agreement and thereafter annually or at the City’s request, Operator shall provide evidence to the City that Operator has obtained such permits, licenses, certificates, other authorizations and registrations.

F. Operator shall not use or occupy or permit the Premises to be used or occupied, or do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way violate any certificate of occupancy affecting the Premises, or make void or voidable any insurance then in force with respect thereto, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Operator under this Agreement, or which will constitute a public or private nuisance, or which will disrupt the safe, efficient and normal operations of the Airport.
G. Operator shall not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which may violate and shall comply with any present or future, ordinary or extraordinary, foreseen or unforeseen, laws, regulations, ordinances or requirements of the federal, state or municipal governments or of any other governmental, public or quasi-public authorities now existing or hereafter created, having jurisdiction in the Premises, whether or not City also is liable for compliance.

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

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

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

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

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

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

N. Operator shall repair or pay for any and all damages to City and its property caused by any wrongful, intentional or negligent acts or omissions by Operator, its agents, contractors or employees arising out of Operator’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.
O. Operator shall operate or cause to be operated all its Vehicles in a safe manner and in accordance with all applicable rules and regulations, and with all federal, state and local laws and to strictly observe all posted speed limits.

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

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

R. All of Operator’s computer software, hardware, firmware, payment card processing policies, procedures and related services utilized to process City of Dayton revenue transactions shall be:
   1. Completed by a qualified professional payment card processing firm acceptable and approved by the City of Dayton; and,

Operator shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance (“AOC”) Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton. (https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?aggreement=true&time=1493826893795 or https://www.pcisecuritystandards.org/documents/PCI-DSS-v3-AOC-Offeror.docx?agreement=true&time=1493826893795).

ARTICLE VII
CITY RIGHTS AND OBLIGATIONS

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

B. All rights not expressly granted to Operator herein are reserved by the City, including, without limitation, the following rights (which may be exercised by the City’s officers, employees, agents, licensees, contractors or designees):
1. to have, at any and all reasonable times, and with reasonable notice to Operator when possible, the full and unrestricted access to the Premises for the purpose of inspecting the Premises and doing any and all things, which the City is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the City’s police power;

2. to enter the Premises at any time;

3. to enter the Premises to maintain, replace, repair, alter, construct or reconstruct existing and future utility, mechanical, electrical and other systems or portions thereof on the Airport, including without limitation, systems for the supply of heat, water, gas, fuel, electricity, and for the furnishing of sprinkler, sewage, drainage, and telephone service, including all related lines, pipes, mains, wires, conduits and equipment, and;

4. to adopt and enforce reasonable rules and regulations with respect to the use of the Airport and facilities thereon, which Operator agrees to observe and obey; and

5. to exercise such other rights as may be granted the City elsewhere in this Agreement.

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

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

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

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

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

ARTICLE VIII
RENTS, FEES, PAYMENTS AND PERFORMANCE BOND

A. Premises Rent. Operator shall pay to the City, in advance on the 1st day of each month, a
premise rent for the Premises described in Article IV(A). For the period commencing January 1,
2022 through December 31, 2022, the Operator will pay the sum of what will be adopted as
stated below for 2022. The sum of Sixty-Six Dollars and Sixty-Four Cents ($66.64) per square
foot per year (the rate for 2021) is inserted into this Agreement for purposes of planning only.
This rate is subject to updating annually upon adoption of the Airlines Rates and Charges
Resolution by the Commission of the City of Dayton.

B. Concession Fee. As consideration for the privilege of operating the concession
hereunder, Operator shall pay to the City each Contract Year, for the full term of this Agreement,
a Concession Fee. The Concession Fee is the greater of:
1. The Percentage Concession Fee as defined in Article I;
   OR
2. The respective amount shown below as the Operator's Minimum Annual Guarantee:

<table>
<thead>
<tr>
<th>Period</th>
<th>Amount</th>
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<tr>
<td>January 1, 2022 to December 31, 2022</td>
<td>$412,425.00</td>
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<tr>
<td>January 1, 2023 to December 31, 2023</td>
<td>$494,910.00</td>
</tr>
<tr>
<td>January 1, 2024 to December 31, 2024</td>
<td>$544,401.00</td>
</tr>
</tbody>
</table>

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

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

D. In the event of termination of this Agreement on a date other than December 31st in any
year of the Agreement, the MAG and Premises Rent shall be prorated. Proration for a fractional
Contract Year shall be determined by multiplying the number of days that have transpired that
year by 1/365th of the annual MAG and Premises Rent.
E. On or before the twentieth (20th) day of each month, Operator shall furnish to the City a sworn or verified statement of its total Gross Revenues for the preceding month, with the Concession Fee calculated. No additional payment is due at this time. The Concession Fee will be reconciled at Contract Year end, as described in Paragraph G below. This statement shall be in the format (as given to Operator by the City) acceptable to the City and shall contain detailed financial information, broken down by categories of items representing Gross Revenues.

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

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

H. Prior to the Commencement Date, Operator shall provide to the City, and shall keep in full force and effect during the Term, and thereafter, until all financial obligations hereunder are satisfied, a performance bond for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Contract Year. The City may draw upon the Performance Bond if Operator fails to pay any moneys required hereunder within the time limits specified herein in addition to taking any other action as may be provided hereunder.

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

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094
J. All annual reports and monthly statements of Gross Revenues together with the associated payments to the City, as described above, shall be sent to the City at the following address or at such other address as City shall direct in writing:

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

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

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

1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a greater than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

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

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

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

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

ARTICLE X
INDEMNIFICATION

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

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

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

D. City shall not be liable to Operator or to Operator's agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Operator's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport; nor, to the extent permitted by law, shall City have any liability whatsoever to Operator, Operator's agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot located on the Airport. City shall not be liable to Operator for damage to property of Operator or any loss of revenues to Operator resulting from City's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
E. The obligations of Operator under this Article X shall survive expiration or termination of this Agreement, and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

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

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

**ARTICLE XI**

INSURANCE

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

1.0 Worker's Compensation and Occupational Disease Insurance

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

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

3.0 **All Risk Property Insurance**

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

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

4.0 **Automobile Liability Insurance**

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

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

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

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

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

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

**ARTICLE XII**

**DAMAGE AND DESTRUCTION OF PREMISES**

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, and there is not substantial damage to the Rental Car Counter Facility in which such portion of the Premises is located, or material damage to such Rental Car Counter Facility as described in Subsection (B), Operator may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the City shall permit any such proceeds to be made available.

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

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

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

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

E. If any improvements to the Premises are not diligently repaired by Operator where required within forty-five (45) days or if any space is deleted from the Premises, then the City shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Operator is obligated to repair or restore improvements, Operator must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XIII
TERMINATION BY CITY

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

1. The failure by Operator to pay any Fees as required under this Agreement when due and/or the failure of Operator to and to remit all CFCs as required by Section 37.11 of
the Revised Code of General Ordinances, and the failure to cure same within ten (10) days after the receipt of written notice thereof by Operator;

2. The failure by Operator on or after the date of this Agreement to perform any other representation, warranty or covenant or contract required to be performed by Operator in this Agreement and the failure of Operator to remedy such default within a period of thirty (30) days after receipt of written notice by the Operator;

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

ARTICLE XIV
TERMINATION BY OPERATOR

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

1. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof so as to prevent Operator’s use of the Premises in its conduct of its car rental business and the remaining in force of such injunction, not stayed by way of appeal or otherwise, for a period of at least six (6) months;

2. The substantial restriction of City's operation of the Airport by action of any governmental agency or department (other than the City or its agencies and departments) and continuance thereof for a period of not less than six (6) months, provided such restriction adversely affects all of Operator’s operations at the Airport.

B. Any termination by Operator pursuant to this Article shall not occur unless the Operator notifies the City of its election to terminate at least thirty (30) days prior to the effective date of such termination, together with a statement of the grounds for termination. If Operator does not give such notice during the period that any of the above events is occurring, then Operator’s right to terminate this Agreement as provided in this Article shall not be available to Operator until another happening of any one of said events.
ARTICLE XV
SURRENDER AND RETURN OF THE PREMISES

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

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

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

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

B. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit C and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or
indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the Operator’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Operator’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

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

C. Operator shall abide by all U. S. Department of Transportation requirements regarding DBE and ACDBE requirements and reporting procedures.
D. It is the goal of the City to encourage participation by organizations classified as Airport Concession Disadvantaged Business Enterprises (ACDBE) as defined in 49 CFR Part 23 for a concession at the Airport. The City established an overall goal for ACDBE participation in Airport Concessions of 13.46% of the total gross revenues of all Airport Concessions for federal fiscal years 2022, 2023 and 2024. A new goal will be established for subsequent federal fiscal years per the FAA requirements, and will be reported to the Operator upon its’ adoption. Operator shall provide information under this Article XVI as requested by City for City’s reporting requirements for FAA or any other governmental entity. Operator is required to submit quarterly statements, provided in Exhibit D (subject to change), to the City regarding their participation in their ACDBE participation goal.

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

ARTICLE XVII
ASSIGNMENT AND SUBLetting

A. Except with the consent of City and as the result of a merger or acquisition, Operator shall not, (1) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (2) allow to exist or occur any transfer of or lien upon the Premises, this Agreement or Operator’s interest herein by operation of law; (3) sublease the Premises or any part thereof; or (4) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for herein or by anyone other than Operator. The City may withhold its consent to the foregoing in its sole discretion. The requirements of this Article shall apply to any transaction or series of transactions that shall have the same effect as any of the aforementioned occurrences, and in no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Operator under any bankruptcy, insolvency or reorganization proceedings.

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

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

ARTICLE XVIII
GENERAL PROVISIONS

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

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

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

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

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

EAN Holdings, LLC dba
National Car Rental
4600 McAuley Place
Cincinnati, OH 45242
Attn: Mike Filomena

or such other address as Operator shall direct in writing.

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

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

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

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

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

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

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

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

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

L. This Agreement, including the incorporated Ready/Return Agreement and any executed service facility lease, represents the entire and integrated agreement between City and Operator. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreement or contracts, whether oral or written, relating to the subject matter of this Agreement.
M. A waiver by the City of any breach of this Agreement shall be in writing. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the City’s rights with respect to any other or further breach.

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

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

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)
IN WITNESS WHEREOF, the City and Operator, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

WITNESSED BY:

EAN Holdings, LLC dba National Car Rental

By: [Signature]

Its: Vice President General Manager

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

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

_________________________, 2021

Min/Bk. _________ Pg. _________

Clerk of the Commission
EXHIBIT 1 to the Rental Car Ready/Return Agreement

Ready Return Block Layout.
Rental Car Facility Counter Layout

EXHIBIT K

Concession Agreement. Effective Jan 2022
Sept, 2021

Counter 1  N/A
Counter 2  Byers dba Thrifty
Counter 3  Byers dba Hertz and Dollar
Counter 4  EAN dba National
Counter 5  EAN dba Alamo/Enterprise
Counter 6  Avis Budget

Department Legend

COMMON
COMMON VESTIBULE
COUNTER 1
COUNTER 2
COUNTER 3
COUNTER 4
COUNTER 5
COUNTER 6
RAC CIRCULATION
RAC VESTIBULE

Individual Office = 109 SF
Individual Storage = 50 SF
Individual Counter = 146 SF
Individual TOTAL = 305 SF

RAC Circulation = 2218 SF / 8 Counters = 370 SF per
RAC Vestibule = 847 SF / 8 Counters = 106 SF per
RAC Mechanical/Closet = 150 SF / 8 Counters = 18.75 SF per
RAC Shared TOTAL = 537 SF per

Individual TOTAL = 305 SF
RAC Shared TOTAL = 537 SF per
TOTAL EACH RAC = 842 SF
Title VII List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation and Implementation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability), and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
EXHIBIT 1 to the NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT

ACTBE Rental Car Annual Participation Report - Quarterly Reporting

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

ACD BE Participation Contract Goal: ___%  
Prime Concessionaire Total Gross Revenue: $________

Total ACDBE Participation: $________

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

PART I: CONTACT INFORMATION

<table>
<thead>
<tr>
<th>Concessionaire:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Contact Person/Email:</td>
<td></td>
</tr>
<tr>
<td>Phone No. / Fax No.:</td>
<td></td>
</tr>
</tbody>
</table>

PART II: ACDBE Participation

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

<table>
<thead>
<tr>
<th>ACDBE Firm Name</th>
<th>Total ACDBE Participation to Date in Dollars (for Fiscal Year Oct. 1 - Sept. 30)</th>
<th>Nature of Relationship with ACDBE Firm</th>
<th>Race/Gender of Disadvantaged Owner with Largest Ownership Interest</th>
</tr>
</thead>
</table>
| Address & Phone No. | $________ | □ Prime Concession  
□ Subcontractor  
□ Management Contract  
□ Goods/Services | □ Black  
□ Hispanic  
□ Asian-Pacific American  
□ Asian Indian American  
□ Non Minority Women  
□ Other |
| Name: |  |
| Address: |  |
| Phone No.: |  |
| Email: |  |

Business Type:

- [ ] Car-Rental Insurance
- [ ] Car-Rental Vending
- [ ] Car-Rental Office Supplies
- [ ] Car-Rental Uniforms
- [ ] Car-Rental Gas/Oil
- [ ] Car-Rental Other (Explain business type below)

Shortfall Explained:

Does this vendor have a lease or sublease?  
- [ ] Yes  
- [ ] No

Agreement Dates:

- [ ] Yes  
- [ ] No

Does the agreement have an option to renew?  
- [ ] Yes  
- [ ] No

How many renewal options?  
Length of time of renewal:  
- [ ] Yes  
- [ ] No

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### AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE")

**RENTAL CAR ANNUAL PARTICIPATION REPORT**

**QUARTERLY REPORTING**

**NON-ACDBE Subconcession(s)**

<table>
<thead>
<tr>
<th>NAME</th>
<th>TYPE OF GOODS OR SERVICE</th>
<th>Total NON-ACDBE Subs Gross Receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$</td>
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<tr>
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<td>$</td>
</tr>
</tbody>
</table>

### PART III: QUARTERLY REPORTING - PRIME CONCESSIONAIRE

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

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Gross Receipts</th>
<th>ACDBE Participation</th>
<th>Actual %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Quarter (Jan 1, 20__ - Mar 30, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2nd Quarter (Apr 1, 20__ - Jun 30, 20__)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>3rd Quarter (Jul 1, 20__ - Sep 30, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4th Quarter (Oct 1, 20__ - Dec 31, 20__)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

______________________________
Signature of Authorized Representative

______________________________
Print Name/Title

______________________________
Date

**For BOTH Annual and Quarterly Reporting:**

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

The Department of Aviation requests permission to enter into a Rental Car Service Center Lease Agreement with EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car. A Request for Proposals (RFP) was issued in June 2020 for six available rental car Concession locations at the Dayton International Airport, which included an option to lease one of 4 available Service Centers. Four Service Center Lease options were received with all four companies being recommended for lease agreements with the City.

EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car is an incumbent operator, and requests to lease Service Center site 3320 Valet Drive. They will pay a monthly fixed ground and building rent of $9,138.00 to the City, with total Rents to the City anticipated to be $109,656.00 per year, and $328,968.00 for the 3-year term.

This Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue are attached.

Approved by City Commission

City Manager

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:  Name  EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car
Address  4600 McAuley Place
City  Cincinnati  State  OH  Zip+4  45242

Revenue Information:  Fund  51000  Organization  3216  Revenue  23203  Program  43

Contract Information:  Contract Start Date  Upon Execution  Contract Expiration Date  12/31/2024

Billing Information:  Rate:  $9,138  Arrears  Pre-bill  X
Monthly (1st month of billing)  January
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date  Rate Change Amount

Description of Services (wording on invoice):  Service center lease for 3-years through 2024, lease is located at the service center, 3320 Valet Drive.

Departmental Approval  

TO BE COMPLETED BY FINANCE

Revenue Contract Number  1-6038
Auditor  D. Bailey  Date  12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance  

12/28/21
RENTAL CAR SERVICE CENTER LEASE AGREEMENT

THIS RENTAL CAR SERVICE CENTER LEASE AGREEMENT, ("Lease") is made and entered into this ___ day of ______________, 2021, between the City of Dayton, Ohio ("Lessor"), a political subdivision in and of the State of Ohio, and EAN Holdings, LLC dba Alamo Rent A Car and Enterprise Rent-A-Car ("Lessee"), a limited liability company authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

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

WHEREAS, Lessor heretofore acquired a rental car service center, which is located at 3320 Valet Road, Vandalia OH, and listed on Exhibit A as property C;

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

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

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

ARTICLE I - LEASED REAL PROPERTY

A. Lessor leases to Lessee the rental car service center located at the Airport and having the address of 3320 Valet Drive, which facility is situated on 66,000 square feet of ground space ("Ground Space") and containing a building containing approximately 2,960 square feet space ("Building", and collectively, the Ground Space and Building referred to herein as the "Premises"). The exact location of the Premises at the Airport is depicted in Exhibit A, property C, which is attached hereto and incorporated herein.

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

**ARTICLE II - USE OF PREMISES**

A. Lessee shall have the exclusive use of the Premises for operating a rental car service center in support of its rental car concession at the Airport. It is agreed that the Premises will not be used for servicing any other rental car concessionaire, whether operating at the Airport or off the Airport, without the prior written approval of Lessor. Sales of vehicles at and/or from the Premises are strictly prohibited. Lessee shall only be permitted to operate the rental car service center under the trade name which shall be identical to that under the Concession Agreement for the Lessee.

B. Lessee shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. All employees shall be required to obtain an airport-issued vehicle permit for any personal vehicle which the Lessees employees intend to park in the Premises.

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

D. Lessee shall actively use the Premises only for the purposes specified in this Lease at all times. Lessee shall not at any time leave the Premises vacant without the written consent of Lessor; provided, however, that failure to actively use the Premises as the result of (1) a work stoppage by Lessee’s employees, or (2) the repair or restoration or making of alterations, additions and changes to the Premises, will not constitute a default or breach of this Lease.

E. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority; or allow the Premises to be used for any improper, immoral or unlawful purpose.

F. Lessee may make any necessary minor alterations to the Premises required for its operations, upon obtaining the prior approval of Lessor.

G. Lessee shall, upon termination and/or expiration of this Lease, remove all personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises to Lessor in good condition, normal wear and tear excepted.

**ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSEE**

A. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees and agents operating under this Lease are properly identified with an
Airport Identification Badge and that said badge is prominently displayed at all times. Lessee’s employees shall, at Lessee’s expense, be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations.

B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with its National Pollutant Discharge Elimination System (“NPDES”) permit. In addition, the Airport holds the Ohio EPA NPDES permit for the Airport as a whole. In accordance with the Dayton International Airport Storm Water Pollution Prevention Plan, as required by the NPDES Permit, Lessee is required to submit a chemical inventory and implement Best Management Practices in accordance with the Dayton International Airport Storm Water Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required. Lessee will provide Lessor with complete information concerning any such dispute or contest.

C. Lessee shall fully comply with all current and future requirements of all regulatory agencies having jurisdiction over the fuel/oil storage tank systems, either underground or aboveground including, but not limited to, the Bureau of Underground Storage Tank Regulations (“BUSTR”), EPA, OEPA, the State Fire Marshall, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of Lessor’s Director of Aviation will be final. Lessee agrees to register the Premises’ underground storage tanks with BUSTR, its successor or any other regulatory agency having jurisdiction. Lessee further agrees to apply, maintain, and pay the annual assessment fee for coverage for the underground storage tanks with the Petroleum Underground Storage Tank Release Compensation Board. Lessee shall also at its sole expense, when required by law or when deemed necessary by the Lessor or his designee, test all storage tanks located on the Premises for structural integrity and leaks and shall maintain and repair the leak detection system provided by Lessor. Upon request, Lessee shall make available to the Lessor the results of such tests. Testing required herein shall be to the satisfaction of the Lessor and in conformance with all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during the Lessee’s occupancy of the Premises, a tank leaks or the pipelines servicing a tank leak or are discovered to be leaking, Lessee shall immediately notify the Lessor and take all necessary steps to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of the Lessor and in accordance with this Lease and all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently
exist, or as they may be amended or enacted. Lessee agrees to maintain the existing storage tank system in operational condition at its sole expense and pay or reimburse Lessor for all licenses, inspections, fines, insurance and other fees and charges that may be incurred by or levied upon Lessor due to Lessee’s activities under this Lease. If the fuel facility must be removed through no fault or cause of Lessee, Lessor shall be responsible for the cost of the removal, but not previously existing environmental issues, of the fuel facility. This clause shall survive the termination of this Lease with respect to environmental issues caused by Lessee.

D. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

E. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations, or arising from Lessee's exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete and proper removal and disposal away from the Airport of all refuse collected. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

F. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.

G. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

H. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee's tenancy. Real property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation for property taxes for the Premises shall be based on the Industrial Report of the Auditor of Montgomery County, Ohio (the “Report”), and any updates thereto or successor reports. Lessee shall be permitted to protest or contest in a manner specified by Lessor, the validity or amount of any such real property tax or assessment under this provision. Lessor retains the sole right and obligation to file such protest or contest with the taxing authority for Montgomery County, Ohio; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments
hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the taxing authority for Montgomery County, Ohio.

I. Except as otherwise provided in Article VI, Lessee is responsible for the complete and proper maintenance and repair of the Premises including any maintenance and repair of all building systems, including but not limited to:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all surfaces located on the Premises as required;
2. Mowing, planting and maintenance of grass areas and landscaping on the Premises;
3. Maintenance of all utility lines serving the Premises to lease line or metering or submetering point, whichever is larger. Access to such areas located outside the Premises shall be provided by Lessor;
4. Maintenance of storm drainage structures and storm lines that solely serve the Premises and maintenance of oil separators in storm and sanitary sewer lines serving the Premises, if provided. Access to such areas located outside the Premises shall be provided by Lessor;
5. Maintenance, test and service of the fire suppression system serving the Premises in accordance with applicable codes;
6. Maintenance, test and service of the fire alarm system serving the Premises;
7. Maintenance, test and service of existing Underground storage tank system, associated piping and associated leak detection system; and
8. Complete interior and exterior maintenance.

J. Lessee shall not make any alterations, repairs, additions or undertake demolition activities (collectively, “modifications”) during the term of this Lease. In the event any such modification(s) are required or desired, the Lessee must first receive written approval for the modification(s) from Lessor.

K. Lessee shall have all utility accounts placed in its name and shall pay all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such services. Lessee agrees to notify Lessor immediately upon termination of any utility account, except at the termination of this Lease. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to Lessee, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee.

L. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the Premises, or on the exterior of any improvement on the Premises, its name, or trade name,
in neatly arranged electric, neon or other type sign or signs; the size and type of sign or signs subject to Lessor's approval.

M. Nothing contained in this Lease prohibits Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee's use of the Premises for purposes stated herein.

**ARTICLE IV - TERM**

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

**ARTICLE V - RENTAL**

A. During the term of this Lease, Lessee shall pay to Lessor as rent for the Premises the following monthly amount which Lessee specified in its response to the City's RFP: Nine-Thousand One-Hundred Thirty-Eight Dollars and Zero Cents ($9,138.00). Lessee shall pay the aforesaid monthly rentals on the first day of the month. All payments due hereunder shall be sent to Lessor at the following address:

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

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

B. Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee plus Two-Thousand Five-Hundred and Zero Cents ($2,500.00) dollars for utilities.

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

**ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSOR**

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe, obey and enforce.
B. Lessor's Director of Aviation or such designees shall have the full and unrestricted right, at all times during normal business hours and at all other times upon reasonable notice to Lessee, when possible, to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor's police power. This provision shall in no way limit or restrict Lessor's right to enter upon the Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour notification.

C. Should Lessee fail to provide and maintain proper trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee the costs of providing same plus a fifteen percent (15%) administrative service fee.

**ARTICLE VII - NON-DISCRIMINATION**

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

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

B. During the performance of this Agreement, the Lessee, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit B and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Lessee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation
made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Lessee’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

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

ARTICLE VIII - INDEMNIFICATION

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

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

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

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

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

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

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

ARTICLE IX - INSURANCE

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. Commercial Liability Insurance (Primary and Umbrella):

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

2. All Risk Property Insurance:

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

   ii. The Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee.
iii. When Lessee undertakes any improvement, construction or repair project to the Premises, All Risk Blanket Builders Risk Insurance shall be provided to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, flood including surface water backup, collapse, faulty workmanship or materials, business interruption, extra expense, loss of revenue, and loss of use of property. The Lessor shall be named as loss payee.

3. Automobile Liability Insurance:

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


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

B. Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease, and all renewal certificates of such insurance, shall be provided to Lessor. Lessee shall provide the Lessor with a Certificate of Insurance on all required insurance prior to Lessee’s exercise of any privileges provided by this Lease within thirty (30) days of execution of this Lease. In the event of a claim or threatened claim against Lessor that could be covered under a policy of insurance required hereunder, Lessee agrees to promptly furnish, upon Lessor’s request, a copy of such policy or policies of insurance to Lessor. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XIV until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.
C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and take any other action which Lessor, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessor or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

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

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

G. Lessee shall also maintain, at all times during the term hereof, Workers’ Compensation and Occupational Disease Insurance for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law, or of at least $1,000,000 each accident.

**ARTICLE X – DAMAGE AND DESTRUCTION OF PREMISES**

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, Lessee shall repair the damage to the improvements as soon as reasonably possible at Lessee’s expense or, upon mutual agreement, shall take such other actions as is mutually agreed between Lessor and Lessee, which actions may include, but are not limited to, demolition and removal of the entire Building and all appurtenances and
fixtures. Lessee may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. During any period in which Lessee is unable to use all or a substantial portion of the Premises due to damage or destruction of the Premises and which significantly impacts Lessee’s operations at the Airport, then the rent payable for the Premises shall be abated or appropriately adjusted for the period during which such damage renders the Premises unusable or operations are so curtailed or terminated. However, if Lessor determines that such damage resulting in inability to use all or a substantial portion of the Premises is caused by the acts, errors or omissions of Lessee, its employees, agents and/or contractors, Lessee shall not be entitled to an abatement of rents as provided herein. Except for such abatement of rents due, as applicable, Lessee shall have no claim against the Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

C. If any improvements to the Premises are not diligently repaired by Lessee where required, or such action as mutually agreed by the Lessor and Lessee is not completed, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is obligated to repair or restore or remove improvements or the entire Building structure, Lessee must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XI - ASSIGNMENT AND SUBLETTING

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

ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

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

ARTICLE XIII - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations;
2. The default by Lessor in the performance of any material covenant or agreement required to be performed by it herein, and the failure of Lessor to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt from Lessee of written notice to remedy the same; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor shall have failed to commence the remedying of such default within said thirty (30) days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remedying thereof.

B. Lessee may exercise its rights of termination by prior written notice to Lessor at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of the effective date of termination specified in such notice. Rentals due hereunder shall be payable only to the date of termination.

ARTICLE XIV - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

2. If Lessee shall default in or fail to make payments at the times and in the amounts as required of it under this Lease and said default is not cured by amounts due and owing within thirty (30) days after Lessor notifies Lessee in writing of the default;

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease to be performed, kept and observed by it, and said failure is not cured, or action taken to correct such failure, within thirty (30) days after Lessor notifies Lessee in writing of said failure;

4. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.
B. Lessor may terminate this Lease upon giving Lessee ninety (90) days prior written notice to Lessee in the event the Premises is needed for any municipal, airport or economic development purpose or project.

**ARTICLE XV - HOLDING OVER**

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

**ARTICLE XVI - INVALID PROVISIONS**

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

**ARTICLE XVII - WAIVER**

A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee, as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

**ARTICLE XVIII - GENERAL PROVISIONS**

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

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

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

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

EAN Holdings, LLC dba
Alamo Rent A Car and Enterprise Rent-A-Car
4600 McAuley Place
Cincinnati, OH 45242
Attn: Mike Filomena

or such other address as Lessee shall direct in writing.

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

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

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

G. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.
H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

K. This Lease represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

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

IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
WITNESSED BY:

DAN NEWTON

EAN Holdings, LLC dba
Alamo Rent A Car and
Enterprise Rent-A-Car

By: Michel Plemeny
Its: Vice President / General Manager

WITNESSED BY:

CITY OF DAYTON, OHIO

By:

City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

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

_________________________, 2021

Min/Bk. _________ Pg. _________

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

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
City Manager’s Report

From 3210 - Aviation/AP Admin & Finance
Supplier, Vendor, Company, Individual
Name Avis Budget Car Rental, LLC dba Avis and Budget
Address 6 Sylvan Way
Parsippany, NJ 07054

Date January 5, 2022
Expense Type Lease Agreement
Total Amount $702,072.00 thru 12/31/2024

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<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>$702,072.00</td>
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</table>

Includes Revenue to the City ☑ Yes □ No
Affirmative Action Program □ Yes ☑ No ☑ N/A

Description

RENTAL CAR SERVICE CENTER LEASE AGREEMENTS (2)

The Department of Aviation requests permission to enter into two (2) Rental Car Service Center Lease Agreements with Avis Budget Car Rental, LLC dba Avis and Budget. A Request for Proposals (RFP) was issued in June 2020 for six available rental car Concession locations at the Dayton International Airport, which included an option to lease one of 4 available Service Centers. Four Service Center Lease options were received with all four companies being recommended for lease agreements with the City.

Avis Budget Car Rental, LLC dba Avis and Budget is an incumbent operator, and requests to lease two (2) Service Center sites, 3300 Valet Drive and 3340 Valet Drive. They will pay a monthly fixed ground and building rent of $15,001.00 and $4,501.00 to the City for each site respectfully. Total Rents to the City for both sites are anticipated to be $234,024.00 per year, and $702,072.00 for the 3-year term.

These Lease Agreements are effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Lease Agreements as to form and correctness. Two (2) Certificates of Revenue are attached for each Lease Agreement.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: Avis Budget Car Rental, LLC dba Avis and Budget
Address: 6 Sylvan Way
City: Parsippany State: NJ Zip+4: 07054
Customer #: ___________ Address Location #: ___________
Federal ID#: _______________

Revenue Information:
Fund: 51000 Organization: 3216 Revenue: 23203 Program: 43

Contract Information:
Contract Start Date: Upon Execution
Contract Expiration Date: 12/31/2024

Billing Information:
Rate: $4,501.00 Arrears: ________ Pre-bill: X
Monthly (1st month of billing): January
Quarterly (1st month of quarter): ___________
Semi-annual (1st month of half): ___________
Annual (1st month of billing): ___________
Other (explain): ___________
Rate Change Date: ___________
Rate Change Amount: ___________

Description of Services (wording on invoice): Service center lease for 3-years through 2024, lease is located at the service center, 3340 Valet Drive.

Departmental Approval: __________________________

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 1 - 8661 Auditor: D. Billy Date: 12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance: ___________________________ Date: 12/28/2021
RENTAL CAR SERVICE CENTER LEASE AGREEMENT

THIS RENTAL CAR SERVICE CENTER LEASE AGREEMENT, ("Lease") is made and entered into this __ day of ____________, 2021, between the City of Dayton, Ohio ("Lessor"), a political subdivision in and of the State of Ohio, and Avis Budget Car Rental, LLC ("Lessee"), a Delaware Corporation authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

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

WHEREAS, Lessor heretofore acquired a rental car service center, which is located at 3340 Valet Road, Vandalia OH, and listed on Exhibit A as property D;

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

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

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

ARTICLE I - LEASED REAL PROPERTY

A. Lessor leases to Lessee the rental car service center located at the Airport and having the address of 3340 Valet Drive, which facility is situated on 40,000 square feet of ground space ("Ground Space") and containing a building containing approximately 1,200 square feet space ("Building", and collectively, the Ground Space and Building referred to herein as the "Premises"). The exact location of the Premises at the Airport is depicted in Exhibit A, property D, which is attached hereto and incorporated herein.

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

C. From and after the date of execution of this Lease, Lessee shall be solely responsible for replacement, repair and maintenance for all appurtenances, equipment and fixtures.

**ARTICLE II - USE OF PREMISES**

A. Lessee shall have the exclusive use of the Premises for operating a rental car service center in support of its rental car concession at the Airport. It is agreed that the Premises will not be used for servicing any other rental car concessionaire, whether operating at the Airport or off the Airport, without the prior written approval of Lessor. Sales of vehicles at and/or from the Premises are strictly prohibited. Lessee shall only be permitted to operate the rental car service center under the trade name which shall be identical to that under the Concession Agreement for the Lessee.

B. Lessee shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. All employees shall be required to obtain an airport-issued vehicle permit for any personal vehicle which the Lessees employees intend to park in the Premises.

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

D. Lessee shall actively use the Premises only for the purposes specified in this Lease at all times. Lessee shall not at any time leave the Premises vacant without the written consent of Lessor; provided, however, that failure to actively use the Premises as the result of (1) a work stoppage by Lessee’s employees, or (2) the repair or restoration or making of alterations, additions and changes to the Premises, will not constitute a default or breach of this Lease.

E. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority; or allow the Premises to be used for any improper, immoral or unlawful purpose.

F. Lessee may make any necessary minor alterations to the Premises required for its operations, upon obtaining the prior approval of Lessor.

G. Lessee shall, upon termination and/or expiration of this Lease, remove all personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises to Lessor in good condition, normal wear and tear excepted.
ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSOR

A. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees and agents operating under this Lease are properly identified with an Airport Identification Badge and that said badge is prominently displayed at all times. Lessee’s employees shall, at Lessee’s expense, be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations.

B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with its National Pollutant Discharge Elimination System (“NPDES”) permit. In addition, the Airport holds the Ohio EPA NPDES permit for the Airport as a whole. In accordance with the Dayton International Airport Storm Water Pollution Prevention Plan, as required by the NPDES Permit. Lessee is required to submit a chemical inventory and implement Best Management Practices in accordance with the Dayton International Airport Storm Water Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required. Lessee will provide Lessor with complete information concerning any such dispute or contest.

C. Lessee shall fully comply with all current and future requirements of all regulatory agencies having jurisdiction over the fuel/oil storage tank systems, either underground or aboveground including, but not limited to, the Bureau of Underground Storage Tank Regulations (“BUSTR”), EPA, OEPA, the State Fire Marshall, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of Lessor's Director of Aviation will be final. Lessee agrees to register the Premises’ underground storage tanks with BUSTR, its successor or any other regulatory agency having jurisdiction. Lessee further agrees to apply, maintain, and pay the annual assessment fee for coverage for the underground storage tanks with the Petroleum Underground Storage Tank Release Compensation Board. Lessee shall also at its sole expense, when required by law or when deemed necessary by the Lessor or his designee, test all storage tanks located on the Premises for structural integrity and leaks and shall maintain and repair the leak detection system provided by Lessor. Upon request, Lessee shall make available to the Lessor the results of
such tests. Testing required herein shall be to the satisfaction of the Lessor and in conformance with all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during the Lessee's occupancy of the Premises, a tank leaks or the pipelines servicing a tank leak or are discovered to be leaking, Lessee shall immediately notify the Lessor and take all necessary steps to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of the Lessor and in accordance with this Lease and all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. Lessee agrees to maintain the existing storage tank system in operational condition at its sole expense and pay or reimburse Lessor for all licenses, inspections, fines, insurance and other fees and charges that may be incurred by or levied upon Lessor due to Lessee's activities under this Lease. If the fuel facility must be removed through no fault or cause of Lessee, Lessor shall be responsible for the cost of the removal, but not previously existing environmental issues, of the fuel facility. This clause shall survive the termination of this Lease with respect to environmental issues caused by Lessee.

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

E. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations, or arising from Lessee's exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete and proper removal and disposal away from the Airport of all refuse collected. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

F. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.

G. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

H. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee's tenancy. Real property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation for property taxes for the Premises shall be based on
the Industrial Report of the Auditor of Montgomery County, Ohio (the “Report”), and any updates thereto or successor reports. Lessee shall be permitted to protest or contest in a manner specified by Lessor, the validity or amount of any such real property tax or assessment under this provision. Lessor retains the sole right and obligation to file such protest or contest with the taxing authority for Montgomery County, Ohio; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the taxing authority for Montgomery County, Ohio.

I. Except as otherwise provided in Article VI, Lessee is responsible for the complete and proper maintenance and repair of the Premises including any maintenance and repair of all building systems, including but not limited to:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all surfaces located on the Premises as required;
2. Mowing, planting and maintenance of grass areas and landscaping on the Premises;
3. Maintenance of all utility lines serving the Premises to lease line or metering or submetering point, whichever is larger. Access to such areas located outside the Premises shall be provided by Lessor;
4. Maintenance of storm drainage structures and storm lines that solely serve the Premises and maintenance of oil separators in storm and sanitary sewer lines serving the Premises, if provided. Access to such areas located outside the Premises shall be provided by Lessor;
5. Maintenance, test and service of the fire suppression system serving the Premises in accordance with applicable codes;
6. Maintenance, test and service of the fire alarm system serving the Premises;
7. Maintenance, test and service of existing Underground storage tank system, associated piping and associated leak detection system; and
8. Complete interior and exterior maintenance.

J. Lessee shall not make any alterations, repairs, additions or undertake demolition activities (collectively, “modifications”) during the term of this Lease. In the event any such modification(s) are required or desired, the Lessee must first receive written approval for the modification(s) from Lessor.

K. Lessee shall have all utility accounts placed in its name and shall pay all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such services. Lessee agrees to notify Lessor immediately upon termination of any utility account, except at the termination of this Lease. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or
otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to Lessee, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar users located in Dayton, Ohio or. ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee.

L. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the Premises, or on the exterior of any improvement on the Premises, its name, or trade name, in neatly arranged electric, neon or other type sign or signs; the size and type of sign or signs subject to Lessor's approval.

M. Nothing contained in this Lease prohibits Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee’s use of the Premises for purposes stated herein.

ARTICLE IV - TERM

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

ARTICLE V - RENTAL

A. During the term of this Lease, Lessee shall pay to Lessor as rent for the Premises the following monthly amount which Lessee specified in its response to the City's RFP: Four-Thousand Five-Hundred and One-Dollars and Zero Cents ($4,501.00). Lessee shall pay the aforesaid monthly rentals on the first day of the month. All payments due hereunder shall be sent to Lessor at the following address:

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

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

B. Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee plus Two-Thousand Five-Hundred and Zero Cents ($2,500.00) dollars for utilities.

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

**ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSOR**

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe, obey and enforce.

B. Lessor's Director of Aviation or such designees shall have the full and unrestricted right, at all times during normal business hours and at all other times upon reasonable notice to Lessee, when possible, to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor's police power. This provision shall in no way limit or restrict Lessor's right to enter upon the Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour notification.

C. Should Lessee fail to provide and maintain proper trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee the costs of providing same plus a fifteen percent (15%) administrative service fee.

**ARTICLE VII - NON-DISCRIMINATION**

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

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

B. During the performance of this Agreement, the Lessee, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit B and which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: Lessee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Lessee’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

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

**ARTICLE VIII - INDEMNIFICATION**

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

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

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

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

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

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

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

ARTICLE IX - INSURANCE

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. **Commercial Liability Insurance (Primary and Umbrella):**

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

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

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

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

3. **Automobile Liability Insurance:**

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

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

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

B. **Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease, and all renewal certificates of such insurance, shall be provided to Lessor.** Lessee shall provide the Lessor with a Certificate of Insurance on all required insurance prior to Lessee’s exercise of any privileges provided by this Lease within thirty (30) days of execution of this Lease. In the event of a claim or threatened claim against Lessor that could be covered under a policy of insurance required hereunder, Lessee agrees to promptly furnish, upon Lessor’s request, a copy of such
policy or policies of insurance to Lessor. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XIV until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

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

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

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

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

G. Lessee shall also maintain, at all times during the term hereof, Workers’ Compensation
and Occupational Disease Insurance for its employees employed or providing service(s)
upon the Premises in such amounts as prescribed under Ohio law, or of at least
$1,000,000 each accident.

ARTICLE X – DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or
casualty, Lessee shall repair the damage to the improvements as soon as reasonably
possible at Lessee’s expense or, upon mutual agreement, shall take such other actions as
is mutually agreed between Lessor and Lessee, which actions may include, but are not
limited to, demolition and removal of the entire Building and all appurtenances and
fixtures. Lessee may use insurance proceeds from insurance it carried to pay for the work
as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. During any period in which Lessee is unable to use all or a substantial portion of the
Premises due to damage or destruction of the Premises and which significantly impacts
Lessee’s operations at the Airport, then the rent payable for the Premises shall be abated
or appropriately adjusted for the period during which such damage renders the Premises
unusable or operations are so curtailed or terminated. However, if Lessor determines that
such damage resulting in inability to use all or a substantial portion of the Premises is
caused by the acts, errors or omissions of Lessee, its employees, agents and/or
contractors, Lessee shall not be entitled to an abatement of rents as provided herein.
Except for such abatement of rents due, as applicable, Lessee shall have no claim against
the Lessor for any damage suffered by reason of any such damage, destruction, repair or
restoration.

C. If any improvements to the Premises are not diligently repaired by Lessee where required,
or such action as mutually agreed by the Lessor and Lessee is not completed, or if any
space is deleted from the Premises, then the Lessor shall be entitled to all insurance
proceeds payable on account of improvements in such space. Where the Lessee is
obligated to repair or restore or remove improvements or the entire Building structure,
Lessee must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XI - ASSIGNMENT AND SUBLETTING

The leasehold estate and rights granted herein are personal property of Lessee. Lessee may not
sell, assign, transfer sublet or underlet the same, or any portion thereof. Any assignment in
violation hereof shall be void.
ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

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

ARTICLE XIII - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations;

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

B. Lessee may exercise its rights of termination by prior written notice to Lessor at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of the effective date of termination specified in such notice. Rentals due hereunder shall be payable only to the date of termination.

ARTICLE XIV - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent
jurisdiction: or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

2. If Lessee shall default in or fail to make payments at the times and in the amounts as required of it under this Lease and said default is not cured by amounts due and owing within thirty (30) days after Lessor notifies Lessee in writing of the default;

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease to be performed, kept and observed by it, and said failure is not cured, or action taken to correct such failure, within thirty (30) days after Lessor notifies Lessee in writing of said failure;

4. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee’s receipt of written notice, which shall state in detail the violation.

B. Lessor may terminate this Lease upon giving Lessee ninety (90) days prior written notice to Lessee in the event the Premises is needed for any municipal, airport or economic development purpose or project.

ARTICLE XV - HOLDING OVER

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

ARTICLE XVI - INVALID PROVISIONS

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

ARTICLE XVII - WAIVER

A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the
other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any
covenant hereof shall not be deemed a waiver of such breach, and no waiver by either
party of any provisions of this Lease shall be deemed to have been made unless
expressed in writing and signed by Lessor or Lessee, as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being
exhausted or discharged by the exercise thereof in one or more instances. It is agreed
that each and all of the rights, powers, options or remedies given to each party by this
Lease are cumulative and no one of them shall be exclusive of the other or exclusive of
any remedies provided by law except as specifically provided herein and that the
exercise of one right, power, option or remedy by either party shall not impair its right or
any other right, power, option or remedy, except as specifically provided herein.

ARTICLE XVIII - GENERAL PROVISIONS

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

B. Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered
mail, postage prepaid, addressed to:

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

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

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

Avis Budget Car Rental, LLC
6 Sylvan Way
Parsippany, NJ 07054
Attn: Anne D. Morrison

or such other address as Lessee shall direct in writing.

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

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

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

G. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

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

I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

K. This Lease represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

L. This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.
IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESSED BY:

[Signature]

WITNESSED BY:

[Signature]

Avis Budget Car Rental, LLC

By: [Signature] Anne Morris

Its: Vice President Property Utilization

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]

City Attorney

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

__________________________. 2021

Min/Bk. ___________ Pg. __________
Clerk of the Commission
EXHIBIT A – RENTAL CAR SERVICE CENTER PROPERTY

Service Center Site Map
2022

Rental Car Service Centers
EXHIBIT A
EXHIBIT B - Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: Avis Budget Car Rental, LLC dba Avis and Budget
Address: 6 Sylvan Way
City: Parsippany State: NJ Zip+: 07054
Customer #: Address Location #: 
Federal ID #: 

Revenue Information:
Fund: 51000 Organization: 3216 Revenue: 23203 Program: 43

Contract Information:
Contract Start Date: Upon Execution
Contract Expiration Date: 12/31/2024

Billing Information:
Rate: $15,001.00 Arrears: _______ Pre-bill: X
Monthly (1st month of billing): January
Quarterly (1st month of quarter): 
Semi-annual (1st month of half): 
Annual (1st month of billing): 
Other (explain): 
Rate Change Date: 
Rate Change Amount: 

Description of Services (wording on invoice): Service center lease for 3-years through 2024, lease is located at the service center, 3300 Valet Drive.

Departmental Approval: 

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 
Auditor: D. Ruby Date: 12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance: 

1 - 661 - 1
RENTAL CAR SERVICE CENTER LEASE AGREEMENT

THIS RENTAL CAR SERVICE CENTER LEASE AGREEMENT, ("Lease") is made and entered into this ___ day of ____________, 2021, between the City of Dayton, Ohio ("Lessor"), a political subdivision in and of the State of Ohio, and Avis Budget Car Rental, LLC ("Lessee"), a Delaware Corporation authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

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

WHEREAS, Lessor heretofore acquired a rental car service center, which is located at 3300 Valet Road, Vandalia OH, and listed on Exhibit A as property B;

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

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

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

ARTICLE I - LEASED REAL PROPERTY

A. Lessor leases to Lessee the rental car service center located at the Airport and having the address of 3300 Valet Drive, which facility is situated on 130,000 square feet of ground space ("Ground Space") and containing a building containing approximately 10,250 square feet space ("Building", and collectively, the Ground Space and Building referred to herein as the "Premises"). The exact location of the Premises at the Airport is depicted in Exhibit A, property B, which is attached hereto and incorporated herein.

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

C. From and after the date of execution of this Lease, Lessee shall be solely responsible for replacement, repair and maintenance for all appurtenances, equipment and fixtures.

**ARTICLE II - USE OF PREMISES**

A. Lessee shall have the exclusive use of the Premises for operating a rental car service center in support of its rental car concession at the Airport. It is agreed that the Premises will not be used for servicing any other rental car concessionaire, whether operating at the Airport or off the Airport, without the prior written approval of Lessor. Sales of vehicles at and/or from the Premises are strictly prohibited. Lessee shall only be permitted to operate the rental car service center under the trade name which shall be identical to that under the Concession Agreement for the Lessee.

B. Lessee shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. All employees shall be required to obtain an airport-issued vehicle permit for any personal vehicle which the Lessee’s employees intend to park in the Premises.

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

D. Lessee shall actively use the Premises only for the purposes specified in this Lease at all times. Lessee shall not at any time leave the Premises vacant without the written consent of Lessor; provided, however, that failure to actively use the Premises as the result of (1) a work stoppage by Lessee’s employees, or (2) the repair or restoration or making of alterations, additions and changes to the Premises, will not constitute a default or breach of this Lease.

E. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority; or allow the Premises to be used for any improper, immoral or unlawful purpose.

F. Lessee may make any necessary minor alterations to the Premises required for its operations, upon obtaining the prior approval of Lessor.

G. Lessee shall, upon termination and/or expiration of this Lease, remove all personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises to Lessor in good condition, normal wear and tear excepted.
ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSEE

A. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees and agents operating under this Lease are properly identified with an Airport Identification Badge and that said badge is prominently displayed at all times. Lessee’s employees shall, at Lessee’s expense, be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations.

B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with its National Pollutant Discharge Elimination System (“NPDES”) permit. In addition, the Airport holds the Ohio EPA NPDES permit for the Airport as a whole. In accordance with the Dayton International Airport Storm Water Pollution Prevention Plan, as required by the NPDES Permit, Lessee is required to submit a chemical inventory and implement Best Management Practices in accordance with the Dayton International Airport Storm Water Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required. Lessee will provide Lessor with complete information concerning any such dispute or contest.

C. Lessee shall fully comply with all current and future requirements of all regulatory agencies having jurisdiction over the fuel/oil storage tank systems, either underground or aboveground including, but not limited to, the Bureau of Underground Storage Tank Regulations (“BUSTR”), EPA, OEPA, the State Fire Marshall, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of Lessor’s Director of Aviation will be final. Lessee agrees to register the Premises’ underground storage tanks with BUSTR, its successor or any other regulatory agency having jurisdiction. Lessee further agrees to apply, maintain, and pay the annual assessment fee for coverage for the underground storage tanks with the Petroleum Underground Storage Tank Release Compensation Board. Lessee shall also at its sole expense, when required by law or when deemed necessary by the Lessor or his designee, test all storage tanks located on the Premises for structural integrity and leaks and shall maintain and repair the leak detection system provided by Lessor. Upon request, Lessee shall make available to the Lessor the results of
such tests. Testing required herein shall be to the satisfaction of the Lessor and in conformance with all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during the Lessee’s occupancy of the Premises, a tank leaks or the pipelines servicing a tank leak or are discovered to be leaking, Lessee shall immediately notify the Lessor and take all necessary steps to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of the Lessor and in accordance with this Lease and all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. Lessee agrees to maintain the existing storage tank system in operational condition at its sole expense and pay or reimburse Lessor for all licenses, inspections, fines, insurance and other fees and charges that may be incurred by or levied upon Lessor due to Lessee’s activities under this Lease. If the fuel facility must be removed through no fault or cause of Lessee, Lessor shall be responsible for the cost of the removal, but not previously existing environmental issues, of the fuel facility. This clause shall survive the termination of this Lease with respect to environmental issues caused by Lessee.

D. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

E. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations, or arising from Lessee’s exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete and proper removal and disposal away from the Airport of all refuse collected. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

F. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.

G. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

H. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee’s tenancy. Real property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation for property taxes for the Premises shall be based on
the Industrial Report of the Auditor of Montgomery County, Ohio (the “Report”), and any updates thereto or successor reports. Lessee shall be permitted to protest or contest in a manner specified by Lessor, the validity or amount of any such real property tax or assessment under this provision. Lessor retains the sole right and obligation to file such protest or contest with the taxing authority for Montgomery County, Ohio; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the taxing authority for Montgomery County, Ohio.

I. Except as otherwise provided in Article VI, Lessee is responsible for the complete and proper maintenance and repair of the Premises including any maintenance and repair of all building systems, including but not limited to:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all surfaces located on the Premises as required;
2. Mowing, planting and maintenance of grass areas and landscaping on the Premises;
3. Maintenance of all utility lines serving the Premises to lease line or metering or submetering point, whichever is larger. Access to such areas located outside the Premises shall be provided by Lessor;
4. Maintenance of storm drainage structures and storm lines that solely serve the Premises and maintenance of oil separators in storm and sanitary sewer lines serving the Premises, if provided. Access to such areas located outside the Premises shall be provided by Lessor;
5. Maintenance, test and service of the fire suppression system serving the Premises in accordance with applicable codes;
6. Maintenance, test and service of the fire alarm system serving the Premises;
7. Maintenance, test and service of existing Underground storage tank system, associated piping and associated leak detection system; and
8. Complete interior and exterior maintenance.

J. Lessee shall not make any alterations, repairs, additions or undertake demolition activities (collectively, “modifications”) during the term of this Lease. In the event any such modification(s) are required or desired, the Lessee must first receive written approval for the modification(s) from Lessor.

K. Lessee shall have all utility accounts placed in its name and shall pay all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such services. Lessee agrees to notify Lessor immediately upon termination of any utility account, except at the termination of this Lease. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or
otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to Lessee, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee.

L. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the Premises, or on the exterior of any improvement on the Premises, its name, or trade name, in neatly arranged electric, neon or other type sign or signs; the size and type of sign or signs subject to Lessor's approval.

M. Nothing contained in this Lease prohibits Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee’s use of the Premises for purposes stated herein.

**ARTICLE IV - TERM**

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

**ARTICLE V - RENTAL**

A. During the term of this Lease, Lessee shall pay to Lessor as rent for the Premises the following monthly amount which Lessee specified in its response to the City’s RFP: Fifteen-Thousand And One-Dollars And Zero Cents ($15,001.00). Lessee shall pay the aforesaid monthly rentals on the first day of the month. All payments due hereunder shall be sent to Lessor at the following address:

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

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

B. Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee plus Two Thousand Five Hundred Dollars ($2,500) for utilities.

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

**ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSOR**

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe, obey and enforce.

B. Lessor's Director of Aviation or such designees shall have the full and unrestricted right, at all times during normal business hours and at all other times upon reasonable notice to Lessee, when possible, to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor's police power. This provision shall in no way limit or restrict Lessor's right to enter upon the Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour notification.

C. Should Lessee fail to provide and maintain proper trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee the costs of providing same plus a fifteen percent (15%) administrative service fee.

**ARTICLE VII - NON-DISCRIMINATION**

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

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

B. During the performance of this Agreement, the Lessee, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended
from time to time, which are attached as Exhibit B and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Lessee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Lessee’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

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

**ARTICLE VIII - INDEMNIFICATION**

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

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

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

C. Lessor shall not be liable to Lessee or to Lessee's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessee's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport nor, to the extent permitted by law, shall Lessor have any liability whatsoever to Lessee, Lessee's subtenants, agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot, including the future parking garage, located either on or off the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee resulting from Lessor's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.
D. The obligations of Lessee under this Article VIII shall survive the termination or expiration date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

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

**ARTICLE IX - INSURANCE**

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

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

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

3. **Automobile Liability Insurance:**

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

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

B. Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease, and all renewal certificates of such insurance, shall be provided to Lessor. Lessee shall provide the Lessor with a Certificate of Insurance on all required insurance prior to Lessee’s exercise of any privileges provided by this Lease within thirty (30) days of execution of this Lease. In the event of a claim or threatened claim against Lessor that could be covered under a policy of insurance required hereunder, Lessee agrees to promptly furnish, upon Lessor’s request, a copy of such policy or policies of insurance to Lessor. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XIV until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

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

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.
E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

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

G. Lessee shall also maintain, at all times during the term hereof, Workers’ Compensation and Occupational Disease Insurance for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law, or of at least $1,000,000 each accident.

ARTICLE X – DAMAGE AND DESTRUCTION OF PREMISES

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, Lessee shall repair the damage to the improvements as soon as reasonably possible at Lessee’s expense or, upon mutual agreement, shall take such other actions as is mutually agreed between Lessor and Lessee, which actions may include, but are not limited to, demolition and removal of the entire Building and all appurtenances and fixtures. Lessee may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. During any period in which Lessee is unable to use all or a substantial portion of the Premises due to damage or destruction of the Premises and which significantly impacts Lessee’s operations at the Airport, then the rent payable for the Premises shall be abated or appropriately adjusted for the period during which such damage renders the Premises unusable or operations are so curtailed or terminated. However, if Lessor determines that such damage resulting in inability to use all or a substantial portion of the Premises is caused by the acts, errors or omissions of Lessee, its employees, agents and/or contractors, Lessee shall not be entitled to an abatement of rents as provided herein. Except for such abatement of rents due, as applicable, Lessee shall have no claim against the Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

C. If any improvements to the Premises are not diligently repaired by Lessee where required, or such action as mutually agreed by the Lessor and Lessee is not completed, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is
obligated to repair or restore or remove improvements or the entire Building structure, Lessee must do so notwithstanding that insurance proceeds may be insufficient.

ARTICLE XI - ASSIGNMENT AND SUBLETTING

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

ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

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

ARTICLE XIII - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations;

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

B. Lessee may exercise its rights of termination by prior written notice to Lessor at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of the effective date of termination specified in such notice. Rentals due hereunder shall be payable only to the date of termination.

ARTICLE XIV - TERMINATION BY LESSOR
A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

2. If Lessee shall default in or fail to make payments at the times and in the amounts as required of it under this Lease and said default is not cured by amounts due and owing within thirty (30) days after Lessor notifies Lessee in writing of the default;

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease to be performed, kept and observed by it, and said failure is not cured, or action taken to correct such failure, within thirty (30) days after Lessor notifies Lessee in writing of said failure;

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

B. Lessor may terminate this Lease upon giving Lessee ninety (90) days prior written notice to Lessee in the event the Premises is needed for any municipal, airport or economic development purpose or project.

**ARTICLE XV - HOLDING OVER**

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

**ARTICLE XVI - INVALID PROVISIONS**

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or
Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

ARTICLE XVII - WAIVER

A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee, as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

ARTICLE XVIII - GENERAL PROVISIONS

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

B. Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

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

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

C. Notices to Lessee provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

Avis Budget Car Rental, LLC
Lessee represents that it has carefully reviewed the terms and conditions of this Lease and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by the Lease.

E. Any headings in this Lease are for convenience of reference only and do not define or limit the provisions thereof. In this Lease, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Lease. All section references, unless otherwise expressly indicated, are to sections in this Lease. Any references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with this Lease.

F. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

G. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor's ownership of fee title to the Premises.

I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.
K. This Lease represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

L. This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESSED BY: 

[Signature]

Avis Budget Car Rental, LLC

By: [Signature]

Its: Anna Morrison

Vice President, Properties & Facilities

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS

[Signature]

CITY ATTORNEY

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

20 Min. Book Page

CLERK OF THE COMMISSION
EXHIBIT A – RENTAL CAR SERVICE CENTER PROPERTY

Service Center Site Map 2022

Rental Car Service Centers

EXHIBIT A
EXHIBIT B - Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
City Manager’s Report

From 3210 - Aviation/AP Admin & Finance

Supplier, Vendor, Company, Individual
Name EAN Holdings, LLC dba National Car Rental
Address 4600 McAuley Place
Cincinnati, OH 45242

Date January 5, 2022
Expense Type Lease Agreement
Total Amount $328,968 thru 12/31/2024

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<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>51000-3216-23203-43</td>
<td>$328,968.00</td>
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Includes Revenue to the City ☑ Yes  □ No  Affirmative Action Program □ Yes  □ No  ☑ N/A

Description

RENTAL CAR SERVICE CENTER LEASE AGREEMENT

The Department of Aviation requests permission to enter into a Rental Car Service Center Lease Agreement with EAN Holdings, LLC dba National Car Rental. A Request for Proposals (RFP) was issued in June 2020 for six available rental car Concession locations at the Dayton International Airport, which included an option to lease one of 4 available Service Centers. Four Service Center Lease options were received with all four companies being recommended for lease agreements with the City.

EAN Holdings, LLC dba National Car Rental is an incumbent operator, and requests to lease Service Center site 3350 Valet Drive. They will pay a monthly fixed ground and building rent of $9,138.00 to the City, with total Rents to the City anticipated to be $109,656.00 per year, and $328,968.00 for the 3-year term.

This Lease Agreement is effective for a three (3) year period, commencing on January 1, 2022, and terminating/expiring on December 31, 2024. There are no options for renewal.

The Department of Law has reviewed and approved the Agreement as to form and correctness. Two (2) Certificates of Revenue are attached.

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  EAN Holdings, LLC dba National Car Rental
Address  4600 McAuley Place
City  Cincinnati  State  OH  Zip+4  45242
Customer #  Address Location #
Federal ID#  

Revenue Information: Fund  51000  Organization  3216  Revenue  23203  Program  43

Contract Information: Contract Start Date  Upon Execution
Contract Expiration Date  12/31/2024

Billing Information: Rate:  $9,138  Arrears  Pre-bill  X
Monthly (1st month of billing)  January
Quarterly (1st month of quarter)  
Semi-annual (1st month of half)  
Annual (1st month of billing)  
Other (explain)  
Rate Change Date  Rate Change Amount

Description of Services (wording on invoice): Service center lease for 3-years through 2024, lease is located at the service center, 3350 Valet Drive

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number  1-6038-1  Auditor  D Billy  Date  12/28/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.
Director of Finance  12/28/21
RENTAL CAR SERVICE CENTER LEASE AGREEMENT

THIS RENTAL CAR SERVICE CENTER LEASE AGREEMENT, ("Lease") is made and entered into this ___ day of __________, 2021, between the City of Dayton, Ohio ("Lessor"), a political subdivision in and of the State of Ohio, and EAN Holdings, LLC dba National Car Rental ("Lessee"), a limited liability company authorized to conduct business in the State of Ohio.

WITNESSETH THAT:

WHEREAS, Lessor is the owner and operator of the improved real property, known and referred to as the James M. Cox Dayton International Airport ("Airport") which is situated in the City of Dayton, Counties of Montgomery and Miami, State of Ohio;

WHEREAS, Lessor heretofore acquired a rental car service center, which is located at 3350 Valet Road, Vandalia OH, and listed on Exhibit A as property E;

WHEREAS, Lessee operates a rental car concession at the Airport pursuant to a separate Non-Exclusive Rental Car Concession and Lease Agreement with Lessor ("Concession Agreement") to be dated January 1, 2022 and desires to lease the rental car service center to support its rental car operations at the Airport; and

WHEREAS, Lessor deems it advantageous to itself, to the operation of the Airport and in the best interest of the public to lease unto Lessee this rental car service center upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, IT IS AGREED AS FOLLOWS:

ARTICLE I - LEASED REAL PROPERTY

A. Lessor leases to Lessee the rental car service center located at the Airport and having the address of 3350 Valet Drive, which facility is situated on 120,000 square feet of ground space ("Ground Space") and containing a building containing approximately 4,019 square feet space ("Building", and collectively, the Ground Space and Building referred to herein as the “Premises”). The exact location of the Premises at the Airport is depicted in Exhibit A, property E, which is attached hereto and incorporated herein.

B. As part of this Lease and the Premises leased hereunder, Lessee shall have the right to use all appurtenances, equipment and fixtures located and/or situated upon the Premises. Lessor makes no representation or warranty as to such appurtenances, equipment and/or fixtures, their fitness for a particular purpose or merchantability or condition. By execution hereof, Lessee represents that it has inspected the Premises and all appurtenances, equipment and fixtures, and accepts same on an “as-is” basis.
C. From and after the date of execution of this Lease, Lessee shall be solely responsible for replacement, repair and maintenance for all appurtenances, equipment and fixtures.

**ARTICLE II - USE OF PREMISES**

A. Lessee shall have the exclusive use of the Premises for operating a rental car service center in support of its rental car concession at the Airport. It is agreed that the Premises will not be used for servicing any other rental car concessionaire, whether operating at the Airport or off the Airport, without the prior written approval of Lessor. Sales of vehicles at and/or from the Premises are strictly prohibited. Lessee shall only be permitted to operate the rental car service center under the trade name which shall be identical to that under the Concession Agreement for the Lessee.

B. Lessee shall not transport its Customers to or from the Terminal in Vehicles without prior written consent of the City, except to accommodate disabled Customers. All employees shall be required to obtain an airport-issued vehicle permit for any personal vehicle which the Lessees employees intend to park in the Premises.

C. If Lessee parks its Vehicles in public parking lots on the Airport or permits its employees, contractors or agents to park automobiles in such lots, Lessee must pay the posted parking rates.

D. Lessee shall actively use the Premises only for the purposes specified in this Lease at all times. Lessee shall not at any time leave the Premises vacant without the written consent of Lessor; provided, however, that failure to actively use the Premises as the result of (1) a work stoppage by Lessee’s employees, or (2) the repair or restoration or making of alterations, additions and changes to the Premises, will not constitute a default or breach of this Lease.

E. Lessee shall not do or permit anything to be done on or about the Premises which will in any way conflict with any applicable law, ordinance, rule or regulation issued by any competent governmental authority; or allow the Premises to be used for any improper, immoral or unlawful purpose.

F. Lessee may make any necessary minor alterations to the Premises required for its operations, upon obtaining the prior approval of Lessor.

G. Lessee shall, upon termination and/or expiration of this Lease, remove all personal property and trade fixtures and repair any damage or injury to the Premises resulting from such removal and deliver the Premises to Lessor in good condition, normal wear and tear excepted.

**ARTICLE III - RIGHTS AND OBLIGATIONS OF LESSEE**

A. As applicable or required by Lessor, Lessee shall, at its expense, arrange for and ensure that its employees and agents operating under this Lease are properly identified with an
Airport Identification Badge and that said badge is prominently displayed at all times. Lessee’s employees shall, at Lessee’s expense, be required to obtain an Airport-issued identification badge conditioned upon successful completion of a background check and other requirements as stated in the Airport Rules and Regulations.

B. Lessee shall, at its expense, obtain from all authorities having jurisdiction over the operations and activities to be conducted upon the Premises, including, but not limited to, the Federal Aviation Administration (“FAA”), Transportation Security Administration (“TSA”), Environmental Protection Agency (“EPA”), Ohio Environmental Protection Agency (“OEPA”), and state and local fire protection agencies, all licenses, certificates, permits, registrations or other authorizations which may be required for the conduct of its operations and activities, and/or necessary to comply with any requirements of this Lease and/or in the exercise of any right or obligation granted in this Lease, including, but not limited to, any licenses, permits, procedures, or sampling required for Lessor to comply with its National Pollutant Discharge Elimination System (“NPDES”) permit. In addition, the Airport holds the Ohio EPA NPDES permit for the Airport as a whole. In accordance with the Dayton International Airport Storm Water Pollution Prevention Plan, as required by the NPDES Permit, Lessee is required to submit a chemical inventory and implement Best Management Practices in accordance with the Dayton International Airport Storm Water Pollution Prevention Plan. Lessee, however, shall not be deemed to have waived any right to exhaust administrative and/or judicial remedies, which may be available to Lessee regarding any dispute or contest related to any authorizations required. Lessee will provide Lessor with complete information concerning any such dispute or contest.

C. Lessee shall fully comply with all current and future requirements of all regulatory agencies having jurisdiction over the fuel/oil storage tank systems, either underground or aboveground including, but not limited to, the Bureau of Underground Storage Tank Regulations (“BUSTR”), EPA, OEPA, the State Fire Marshall, and the Fire Department of the City of Dayton, Ohio, or their respective successors and designees. In the event of a conflict between regulatory agencies, the decision of Lessor’s Director of Aviation will be final. Lessee agrees to register the Premises’ underground storage tanks with BUSTR, its successor or any other regulatory agency having jurisdiction. Lessee further agrees to apply, maintain, and pay the annual assessment fee for coverage for the underground storage tanks with the Petroleum Underground Storage Tank Release Compensation Board. Lessee shall also at its sole expense, when required by law or when deemed necessary by the Lessor or his designee, test all storage tanks located on the Premises for structural integrity and leaks and shall maintain and repair the leak detection system provided by Lessor. Upon request, Lessee shall make available to the Lessor the results of such tests. Testing required herein shall be to the satisfaction of the Lessor and in conformance with all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently exist, or as they may be amended or enacted. If during the Lessee’s occupancy of the Premises, a tank leaks or the pipelines servicing a tank leak or are discovered to be leaking, Lessee shall immediately notify the Lessor and take all necessary steps to repair the tank and/or pipelines and clean up the contaminated area to the satisfaction of the Lessor and in accordance with this Lease and all applicable federal, state or local laws, rules, regulations or ordinances as these provisions presently
exist, or as they may be amended or enacted. Lessee agrees to maintain the existing storage tank system in operational condition at its sole expense and pay or reimburse Lessor for all licenses, inspections, fines, insurance and other fees and charges that may be incurred by or levied upon Lessor due to Lessee’s activities under this Lease. If the fuel facility must be removed through no fault or cause of Lessee, Lessor shall be responsible for the cost of the removal, but not previously existing environmental issues, of the fuel facility. This clause shall survive the termination of this Lease with respect to environmental issues caused by Lessee.

D. Lessee shall repair or pay for any and all damages to Lessor and its property caused by any wrongful or negligent acts or omissions of Lessee, its agents or employees arising out of Lessee’s use or occupancy of the Premises or in the exercise of any right or obligation granted herein.

E. Lessee shall, at its expense, provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of its business or operations, or arising from Lessee's exercise of any right or obligation under this Lease. Lessee shall, at its expense, provide for the complete and proper removal and disposal away from the Airport of all refuse collected. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

F. The storage, handling and disposal of all Hazardous Materials, as defined by federal, state and local laws, shall be in compliance with all applicable licenses, permits, certificates or other authorizations obtained by Lessee and in compliance with all applicable federal, state and local laws governing the storage, handling and disposal of same.

G. Lessee, its agents, employees, patrons, guests, invitees and suppliers of service or furnishers of materials shall have the right of ingress to and egress from the Premises and shall have the right in common with others to use the public roadways serving the Airport.

H. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon, provided, however, that real property taxes and assessments shall be prorated so as to require Lessee to pay such taxes and assessments only for the period of Lessee's tenancy. Real property taxes and assessments are assessed on the entire Airport parcel, of which the Premises are a portion thereof. The calculation for property taxes for the Premises shall be based on the Industrial Report of the Auditor of Montgomery County, Ohio (the “Report”), and any updates thereto or successor reports. Lessee shall be permitted to protest or contest in a manner specified by Lessor, the validity or amount of any such real property tax or assessment under this provision. Lessor retains the sole right and obligation to file such protest or contest with the taxing authority for Montgomery County, Ohio; however, Lessee shall provide all necessary information and required legal or appraisal services relating to such protest or contest to Lessor at Lessee’s sole cost and expense. Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within thirty (30) days after receipt of invoice. Lessee’s right to protest or contest taxes and assessments
hereunder does not relieve Lessee of the obligation to pay taxes to Lessor unless Lessor receives a waiver from the taxing authority for Montgomery County, Ohio.

I. Except as otherwise provided in Article VI, Lessee is responsible for the complete and proper maintenance and repair of the Premises including any maintenance and repair of all building systems, including but not limited to:

1. Vehicular parking and entrance drive snow removal, lighting repair, brooming, striping, sealing, replacement and overlay of all surfaces located on the Premises as required;
2. Mowing, planting and maintenance of grass areas and landscaping on the Premises;
3. Maintenance of all utility lines serving the Premises to lease line or metering or submetering point, whichever is larger. Access to such areas located outside the Premises shall be provided by Lessor;
4. Maintenance of storm drainage structures and storm lines that solely serve the Premises and maintenance of oil separators in storm and sanitary sewer lines serving the Premises, if provided. Access to such areas located outside the Premises shall be provided by Lessor;
5. Maintenance, test and service of the fire suppression system serving the Premises in accordance with applicable codes;
6. Maintenance, test and service of the fire alarm system serving the Premises;
7. Maintenance, test and service of existing Underground storage tank system, associated piping and associated leak detection system; and
8. Complete interior and exterior maintenance.

J. Lessee shall not make any alterations, repairs, additions or undertake demolition activities (collectively, “modifications”) during the term of this Lease. In the event any such modification(s) are required or desired, the Lessee must first receive written approval for the modification(s) from Lessor.

K. Lessee shall have all utility accounts placed in its name and shall pay all utility charges (i.e., water, sanitary sewer, natural gas and electric) directly to the utility companies or municipalities providing such services. Lessee agrees to notify Lessor immediately upon termination of any utility account, except at the termination of this Lease. Lessor may, at its option, place such terminated account in its name. In the event Lessor, willingly or otherwise, assumes the responsibilities for providing water, sanitary sewer, natural gas or electric services to Lessee, Lessee shall pay to Lessor the higher of: i) the prevailing rates for similar type utility services offered by utility companies and/or municipalities providing utilities to similar utility users located in Dayton, Ohio or, ii) the actual cost incurred by the Lessor in providing the utility service to the Lessee.

L. Lessee shall not erect, allow or permit to be maintained on the Premises, or upon the exterior of any improvement on the Premises, any billboards or advertising signs, except those which have the prior written approval of Lessor. Lessee may maintain on the Premises, or on the exterior of any improvement on the Premises, its name, or trade name,
in neatly arranged electric, neon or other type sign or signs; the size and type of sign or signs subject to Lessor's approval.

M. Nothing contained in this Lease prohibits Lessor from granting easements, utility or otherwise, as long as said easements would not restrict Lessee’s use of the Premises for purposes stated herein.

**ARTICLE IV - TERM**

This Lease shall commence on January 1, 2022 and terminate on December 31, 2024, provided that the Concession Agreement has not been terminated and/or expired without a written renewal or written extension thereof and Lessee is not in default in any of the terms, conditions or promises set forth in the Concession Agreement.

**ARTICLE V - RENTAL**

A. During the term of this Lease, Lessee shall pay to Lessor as rent for the Premises the following monthly amount which Lessee specified in its response to the City’s RFP: Nine-Thousand One-Hundred Thirty-Eight Dollars and Zero Cents ($9,138.00). Lessee shall pay the aforesaid monthly rentals on the first day of the month. All payments due hereunder shall be sent to Lessor at the following address:

   City of Dayton, Ohio  
   P. O. Box 632094  
   Cincinnati, Ohio 45202

or at such other place as Lessor shall, in writing, direct.

B. Lessee shall pay a security deposit equivalent to the sum of three (3) months rental fee plus Two-Thousand Five-Hundred and Zero Cents ($2,500.00) dollars for utilities.

C. Without waiving any other right or action available to Lessor in the event of default in payment of rentals hereunder, if Lessee is delinquent for a period of thirty (30) days or more in paying to Lessor any rental due and owing to Lessor pursuant to this Lease, Lessee shall pay to Lessor a late charge thereon at the rate of two percent (2%) per month from the date such item was due and owing until full payment has been paid. The late charge shall not occur with respect to disputed items being contested in good faith by Lessee.

**ARTICLE VI - RIGHTS AND OBLIGATIONS OF LESSOR**

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe, obey and enforce.
B. Lessor's Director of Aviation or such designees shall have the full and unrestricted right, at all times during normal business hours and at all other times upon reasonable notice to Lessee, when possible, to enter the Premises for the purposes of inspecting the Premises and doing any and all things which the Lessor is obligated or authorized to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport and in the exercise of the Lessor's police power. This provision shall in no way limit or restrict Lessor's right to enter upon the Premises in the event of an emergency. Reasonable notice, as used in this subsection, shall in no event be interpreted to require more than twenty-four (24) hour notification.

C. Should Lessee fail to provide and maintain proper trash removal, mowing, snow removal or other required maintenance, Lessor shall have the right, but not the obligation, to provide or perform said services and to bill Lessee the costs of providing same plus a fifteen percent (15%) administrative service fee.

ARTICLE VII - NON-DISCRIMINATION

A. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee.

The provision obligates the Lessee for the period during which the property is owned, used, or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

B. During the performance of this Agreement, the Lessee, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations: Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as Exhibit B and which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination: Lessee, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation
made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the Lessee’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

4. Information and Reports: Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Lessee’s noncompliance with the non-discrimination provisions of this Agreement, the City will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6. Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

ARTICLE VIII - INDEMNIFICATION

A. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, the use or occupancy of the Premises, or any condition of the Premises, fixtures, structures, equipment or other improvements thereon, or Lessee's exercise of any right granted herein, or Lessee's performance for breach or default in
the performance of any obligation to be performed pursuant to this Lease, or any wrongful or negligent act or omission of Lessee, its agents and employees.

It is agreed that, to the extent permitted by law, no agreement or covenant by Lessee under this Subsection A shall include liability or damages for injury to persons or damage to property caused by or resulting from the sole negligence of Lessor, its agents or employees.

B. Lessee shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents and employees, from and against any mechanics or other lien or order for the payment of money filed against the Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee, its tenants or subtenants or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expense, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof.

C. Lessor shall not be liable to Lessee or to Lessee's subtenants, agents, representatives, contractors or employees, for any injury to, or death of, any of them or of any other person or for any damage to any of Lessee's property or loss of revenue, caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport nor, to the extent permitted by law, shall Lessor have any liability whatsoever to Lessee, Lessee's subtenants, agents, representatives, contractors or employees, for any damage, destruction, injury, loss or claim of any kind arising out of the use by any of the aforementioned of any parking lot, including the future parking garage, located either on or off the Airport. Lessor shall not be liable to Lessee for damage to property of Lessee or any loss of revenues to Lessee resulting from Lessor's acts or omissions in the maintenance and operation of the Airport or failure to operate the Airport.

D. The obligations of Lessee under this Article VIII shall survive the termination or expiration date of this Lease and shall not be affected in any way by the amount of or the absence in any case of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any part thereof.

E. The Lessor's elected officials, officers, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease or the Premises in the event of a breach or default by Lessor of any of its obligations.

F. Notwithstanding any other provision of this Lease to the contrary, to the extent permitted by law, Lessee waives any and every claim for recovery from the Lessor for any and all loss or damage to the Premises or to the contents thereof, which loss or
damage is covered by valid and collectable physical damage insurance policies maintained by Lessee or which would have been recoverable if the insurance required hereunder had been maintained by Lessee, to the extent that such loss or damage is recoverable, or would have been recoverable, as applicable, under said insurance policies. As this waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Lessee agrees to give each insurance company which has issued, or in the future may issue, its policies of physical damage insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. Lessee shall require any subtenant to include similar waivers of subrogation in favor of the Lessor.

**ARTICLE IX - INSURANCE**

A. Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best and covering all operations under this Lease, whether performed by Lessee or by its contractors:

1. **Commercial Liability Insurance (Primary and Umbrella):**

   Commercial Liability Insurance with limits of not less than $5,000,000 per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor, its elected officials, officers, agents, volunteers and employees, shall be named as additional insureds, on a primary, non-contributory basis for any liability arising directly or indirectly from this Lease.

2. **All Risk Property Insurance:**

   i. Lessee shall obtain an “All Risk Property” policy, including improvements and betterments covering damage to building, machinery, equipment or supplies in the amount of full replacement value of the property constituting within the Premises. Coverage extensions shall include business interruptions/loss of rents (in an amount not less than the sum of rents then payable under this Lease for a period of one year), and flood. Lessor is to be named as a loss payee.

   ii. The Lessee shall be responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned or rented by Lessee.
iii. When Lessee undertakes any improvement, construction or repair project to the Premises, All Risk Blanket Builders Risk Insurance shall be provided to cover at replacement cost the materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage extensions shall include the following: right to partial occupancy, material stored off-site and in transit, earthquake, flood including surface water backup, collapse, faulty workmanship or materials, business interruption, extra expense, loss of revenue, and loss of use of property. The Lessor shall be named as loss payee.

3. **Automobile Liability Insurance:**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Lessee shall provide Comprehensive Automobile Liability Insurance with limits of not less than $5,000,000 per occurrence combined single limit, for bodily injury and property damage. Lessor is to be named as an additional insured on a primary, non-contributory basis.

4. **Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB):**

Lessee will, at its expense, enroll the existing underground storage tank system in the Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB).

B. **Original certificates of insurance evidencing the required coverage to be in force on the effective date of this Lease, and all renewal certificates of such insurance, shall be provided to Lessor.** Lessee shall provide the Lessor with a Certificate of Insurance on all required insurance prior to Lessee’s exercise of any privileges provided by this Lease within thirty (30) days of execution of this Lease. In the event of a claim or threatened claim against Lessor that could be covered under a policy of insurance required hereunder, Lessee agrees to promptly furnish, upon Lessor’s request, a copy of such policy or policies of insurance to Lessor. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee or its contractors shall not be deemed to be a waiver by the Lessor. Lessee or its contractors shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve Lessee or its contractors of their obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease as provided in Article XIV until proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.
C. If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and take any other action which Lessor, including reasonable attorney’s fees, court costs and expenses, shall be reimbursed by the Lessee upon demand by Lessor.

D. Lessee shall require all contractors to carry the insurance required herein, or Lessee or its contractors may provide the coverage for any or all contractors, and, if so, the evidence of insurance submitted shall so stipulate. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Lessee or its contractors. Lessee and its contractors agree that insurers shall waive their rights of subrogation against the Lessor, its employees, elected official, agents, or representatives. Lessee and its contractors expressly understand and agree that any coverages and limits furnished by Lessee or its contractors shall in no way limit the Lessee or its contractors’ liabilities and responsibilities specified within this Lease or by law. Lessee and its contractors expressly understand and agree that any insurance or self insurance programs maintained by the Lessor shall not contribute with insurance provided by the Lessee or its contractors under this Lease. If Lessee or its contractors desire additional coverage, higher limits of liability, or other modifications for its own protection, then Lessee or its contractors shall each be responsible for the acquisition and cost of such additional protection.

E. The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

F. The insurance required by this Lease, at the option of Lessee or contractors, may be effected by blanket or umbrella policies issued to Lessee or contractors covering the Premises and other properties owned or leased by Lessee or contractors, provided that the policies otherwise comply with the provisions of this Lease and allocate to the Premises the specified coverage, without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein.

G. Lessee shall also maintain, at all times during the term hereof, Workers’ Compensation and Occupational Disease Insurance for its employees employed or providing service(s) upon the Premises in such amounts as prescribed under Ohio law, or of at least $1,000,000 each accident.

**ARTICLE X – DAMAGE AND DESTRUCTION OF PREMISES**

A. If improvements on a portion of the Premises are damaged, in whole or in part, by fire or casualty, Lessee shall repair the damage to the improvements as soon as reasonably possible at Lessee’s expense or, upon mutual agreement, shall take such other actions as is mutually agreed between Lessor and Lessee, which actions may include, but are not limited to, demolition and removal of the entire Building and all appurtenances and
fixtures. Lessee may use insurance proceeds from insurance it carried to pay for the work as it progresses, and the Lessor shall permit any such proceeds to be made available.

B. During any period in which Lessee is unable to use all or a substantial portion of the Premises due to damage or destruction of the Premises and which significantly impacts Lessee’s operations at the Airport, then the rent payable for the Premises shall be abated or appropriately adjusted for the period during which such damage renders the Premises unusable or operations are so curtailed or terminated. However, if Lessor determines that such damage resulting in inability to use all or a substantial portion of the Premises is caused by the acts, errors or omissions of Lessee, its employees, agents and/or contractors, Lessee shall not be entitled to an abatement of rents as provided herein. Except for such abatement of rents due, as applicable, Lessee shall have no claim against the Lessor for any damage suffered by reason of any such damage, destruction, repair or restoration.

C. If any improvements to the Premises are not diligently repaired by Lessee where required, or such action as mutually agreed by the Lessor and Lessee is not completed, or if any space is deleted from the Premises, then the Lessor shall be entitled to all insurance proceeds payable on account of improvements in such space. Where the Lessee is obligated to repair or restore or remove improvements or the entire Building structure, Lessee must do so notwithstanding that insurance proceeds may be insufficient.

**ARTICLE XI - ASSIGNMENT AND SUBLETTING**

The leasehold estate and rights granted herein are personal property of Lessee. Lessee may not sell, assign, transfer sublet or underlet the same, or any portion thereof. Any assignment in violation hereof shall be void.

**ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS**

All covenants, stipulations and agreements in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

**ARTICLE XIII - TERMINATION BY LESSEE**

A. In addition to all other remedies available to the Lessee under this Lease or at law, this Lease shall be subject to termination by Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee’s operations on the Airport, which remains in force unvacated or unstayed for a period of thirty (30) consecutive days and results in material interference with Lessee's normal business operations;
2. The default by Lessor in the performance of any material covenant or agreement required to be performed by it herein, and the failure of Lessor to remedy such default, or to take prompt action to remedy such default, within a period of thirty (30) days after receipt from Lessee of written notice to remedy the same; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessee shall have the right to terminate this Lease if the Lessor shall have failed to commence the remedying of such default within said thirty (30) days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remedying thereof.

B. Lessee may exercise its rights of termination by prior written notice to Lessor at any time after the lapse of the applicable periods of time, and this Lease shall terminate as of the effective date of termination specified in such notice. Rentals due hereunder shall be payable only to the date of termination.

ARTICLE XIV - TERMINATION BY LESSOR

A. In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to termination by Lessor should any one or more of the following events occur:

1. If Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

2. If Lessee shall default in or fail to make payments at the times and in the amounts as required of it under this Lease and said default is not cured by amounts due and owing within thirty (30) days after Lessor notifies Lessee in writing of the default;

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease to be performed, kept and observed by it, and said failure is not cured, or action taken to correct such failure, within thirty (30) days after Lessor notifies Lessee in writing of said failure;

4. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.
B. Lessor may terminate this Lease upon giving Lessee ninety (90) days prior written notice to Lessee in the event the Premises is needed for any municipal, airport or economic development purpose or project.

**ARTICLE XV - HOLDING OVER**

In the event that Lessee holds over and remains in possession of the Premises and the rights granted herein after expiration and/or termination of this Lease and without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease but shall only create an at will month-to-month tenancy that may be terminated at any time by Lessor or Lessee.

**ARTICLE XVI - INVALID PROVISIONS**

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

**ARTICLE XVII - WAIVER**

A. No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by Lessor or Lessee, as the case may be.

B. No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.

**ARTICLE XVIII - GENERAL PROVISIONS**

A. The term Lessor, as used in this Lease, means the City of Dayton, Ohio, and where this Lease speaks of approval and consent by the Lessor, such approval is understood to be manifested by act of the Lessor’s Director of Aviation, except as otherwise expressly
stated in this Lease. Whenever in this Lease, the approval or consent of Lessor is required, such approval or consent will not be unreasonably withheld.

B. Notices to the Lessor provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

   City of Dayton, Ohio - Department of Aviation  
   James M. Cox Dayton International Airport  
   3600 Terminal Drive, Suite 300  
   Vandalia, Ohio 45377  
   Attn: Director of Aviation

or such other address as the Lessor shall direct in writing.

C. Notices to Lessee provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, addressed to:

   EAN Holdings, LLC dba  
   National Car Rental  
   4600 McAuley Place  
   Cincinnati, OH 45242  
   Attn: Mike Filomena

or such other address as Lessee shall direct in writing.

D. Lessee represents that it has carefully reviewed the terms and conditions of this Lease and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by the Lease.

E. Any headings in this Lease are for convenience of reference only and do not define or limit the provisions thereof. In this Lease, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Lease. All section references, unless otherwise expressly indicated, are to sections in this Lease. Any references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with this Lease.

F. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.
G. Lessee (and any person claiming by or through Lessee) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the Lessor under this Lease, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

H. Neither Lessee nor any contractor of Lessee shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the Lessor’s ownership of fee title to the Premises.

I. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

J. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.

K. This Lease represents the entire and integrated agreement between Lessor and Lessee. This Lease supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Lease.

L. This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
WITNESSED BY:  

DAVE

DAN NEWTON

Controller

WITNESSED BY:

EAN Holdings, LLC dba
National Car Rental

By:  

Michele Fradella

Its:  

Vice President General Manager

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM  
AND CORRECTNESS:

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO:

_________________________________, 2021

Min/Bk. ___________  Pg. ___________

Clerk of the Commission
EXHIBIT A – RENTAL CAR SERVICE CENTER PROPERTY

Service Center Site Map
2022

A
Hertz (Flyers)
3350 Valet Circle

B
C
D
E
F

3300 Valet
3320 Valet
3340 Valet
3350 Valet

No Occupancy from RAC's 3450 Valet

Economy

Rental Car Service Centers

EXHIBIT A
EXHIBIT B - Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).