

REQUEST FOR PROPOSALS AND CONCESSION AGREEMENT

RENTAL CAR SERVICE

**NORFOLK AIRPORT AUTHORITY
NORFOLK INTERNATIONAL AIRPORT
NORFOLK, VIRGINIA**

AUGUST 1, 2018 – JUNE 30, 2023

DOCUMENT INDEX

**RENTAL CAR SERVICE CONCESSION
NORFOLK INTERNATIONAL AIRPORT**

Request for Proposals and Information for Offerors..... Section I

Proposal Form..... Section II

Concession Agreement..... Section III

Exhibit A – Concession Area

Exhibit B – Rental Car Customer Facility Charge Agreement

Exhibit C – Concessionaire’s Property

Exhibit D – Employee Parking Rules and Regulations

Exhibit E – Historical Passenger Activity

Exhibit F - Rental Car Gross Receipts

SECTION I

**REQUEST FOR PROPOSALS
AND
INFORMATION FOR OFFERORS**

RENTAL CAR SERVICE CONCESSION

NORFOLK INTERNATIONAL AIRPORT

TABLE OF CONTENTS

SECTION		PAGE
Section 1	Request for Proposals	R-1
Section 2	Submission of Proposals	R-3
Section 3	Information Accompanying Proposals	R-5
Section 4	Proposal Guarantee.....	R-13
Section 5	Inspection and Condition of Facilities	R-13
Section 6	Acceptance or Rejection of Proposals	R-13
Section 7	Basis for Award.....	R-15
Section 8	Execution of Concession Agreement.....	R-17
Section 9	Failure to Execute Concession Agreement.....	R-17
Section 10	Failure to Obtain Permits	R-18
Section 11	Disadvantaged Business Enterprise	R-18

SECTION 1. REQUEST FOR PROPOSALS

1.1 Request for Proposals. The Norfolk Airport Authority (“Authority”) requests Proposals from Offerors to enter into a concession agreement to operate a rental car service concession (“Concession”) at the Norfolk International Airport (“Airport”) in Norfolk, Virginia. The Authority intends to obtain a maximum of eight (8) high quality, professionally operated rental car service concessions with eight (8) separate brand identifications that will reflect the prestige and dignity of the Airport and the services these facilities provide to the public. No more than one branded operator will operate in any Concession Area and only one recognized brand will be operated pursuant to any Concession Agreement. Proposals submitted are to be based on minimum annual guarantees for the privilege of operating the rental car service concession as described in the Proposal Documents. Each Proposal will be considered independently on its own merits.

1.2 Proposal Documents. The “Proposal Documents” consist of three (3) parts and any exhibits or attachments:

Section I: The Request for Proposals and Information to Offerors (“RFP”);

Section II: The Proposal Form to be completed by each Offeror; and

Section III: The Concession Agreement to be executed in substantially the form attached hereto.

The final contractual agreement between the Selected Offeror and the Authority shall include all three parts of the Proposal Documents including the completed Proposal Form submitted by the Selected Offeror.

1.3 Definitions. Certain definitions are provided in the Concession Agreement.

Except as otherwise specifically defined elsewhere, terms defined in the Concession Agreement which are used in the Proposal Documents shall have the meanings assigned in the Concession Agreement.

1.4 Copies: Copies of the Proposal Documents are available on the Authority website at : <https://www.norfolkairport.com/about-us/business-opportunities> and upon request to:

Steven Sterling, Deputy Executive Director A&O
Norfolk Airport Authority
Norfolk International Airport
Norfolk, VA 23518-5807
Phone: (757) 857-3351
Facsimile: (757) 857-3265
ssterling@norfolkairport.com

1.5 Pre-proposal Conference. A Pre-proposal conference will be held on **April 9, 2018 at 2:00 p.m.** in Conference Room A (located on the second floor of the Departures Terminal). This meeting is optional.

1.6. Inspection of Facility. Offerors will have an opportunity to inspect the Concession Area following the Pre-Proposal Conference. Statements by any Authority representative before or during the inspection shall not be a part of this procurement and may not be relied upon by Offerors.

1.7. Questions from Offerors. The Authority encourages all prospective Offerors to present any questions regarding the Proposal Documents at the Pre-proposal Conference. Offerors may submit written questions about the RFP in advance of the Pre-proposal Conference, preferably by email, to Steven Sterling, whose contact information is set out in Section 1.4. All questions not presented at or before the Pre-proposal Conference must be submitted in writing to Mr. Sterling by **April 11, 2018 at**

5:00 p.m. Answers will be posted by **April 18, 2018 at 5:00 p.m.** The Authority will accept clarification requests pertaining to the answers posted until **April 25, 2018.** The Authority will not meet individually with representatives of any prospective Offeror prior to receipt of Proposals. The Authority may issue addenda to the Proposal Documents as it determines appropriate in response to questions received. Such addenda and any official answers will be posted on the Authority website and distributed by email to potential Offerors who sign in at the Pre-proposal Conference.

1.8. Unauthorized Contact. Except for communications specifically authorized herein, contact with any official or employee of the Authority, including any Commissioner, in connection with this procurement or the Proposal Documents is prohibited and may be cause for disqualification of the Offeror.

SECTION 2. SUBMISSION OF PROPOSALS

2.1. Due Date. Proposals will be received until **2:00 p.m. (Local Time) May 25, 2018** (the "Due Date") in the administrative offices of the Authority at the following address:

Norfolk Airport Authority
Norfolk International Airport
2200 Norview Avenue
Norfolk, VA 23518-5807

An original and three (3) paper copies of Offeror's Proposal and all attachments along with a pdf copy of all submittals on CD-Rom must be contained in a sealed envelope labeled "Rental Car Service Concession Proposal," conspicuously endorsed with the Offeror's name, and showing the Due Date and time the Proposal is due. Proposals must be delivered in sufficient time for receipt by the Authority not later than the Due

Date. It is the sole responsibility of the Offeror to assure that the Authority receives the Proposal prior to the Due Date. Proposals or modifications thereto received after the Due Date will not be considered. All Proposals will be opened and considered at the discretion of the Authority.

2.2. The Proposal Form. The Proposal must be submitted upon the Proposal Form at Section II and must include all required information. The Proposal must be signed on behalf of the Offeror and acknowledged as specified on the Proposal Form.

2.3. Failure to Comply with RFP. It is essential that the information and requirements of the Proposal Documents be adhered to in the preparation and submission of Proposals. Optional or additional items must be clearly identified. Failure to comply with the restrictions and provisions contained herein may be cause for rejection of the Proposal.

2.4. Incorporation of Representation, etc. In making a Proposal, the Offeror expressly offers to assume all the obligations and liabilities contained in the Proposal Documents, including the representations and warranties made by the “Concessionaire” in the Concession Agreement.

2.5. Offeror’s Expenses. The Authority will not return Proposals and all expenses for preparing and submitting Proposals or for travel in connection with Proposals shall be borne by Offeror.

SECTION 3. INFORMATION ACCOMPANYING PROPOSALS.

3.1. Burden on Offeror. It is the burden of Offeror to provide evidence in its Proposal that it is fully competent to provide the Concession and that it has the necessary experience and capacity to fulfill the requirements of the Proposal Documents. Offeror must have a minimum of three (3) years of substantial, continuous, and recent experience providing comparable services.

3.2. Additional Information; Presentation. In addition to the specific requirements set forth in the Proposal Documents, the Authority may give oral or written notice to any Offeror at any time to furnish additional information, either in writing and/or in a verbal presentation, to representatives of the Authority relating to its qualifications to perform the obligations imposed by the Proposal Documents. The requested information shall be furnished in the format and within the time frame specified by the Authority. The giving of this notice to any Offeror shall not be construed as an acceptance of Offeror's Proposal. The Authority reserves the right to consider, in its evaluation and selection process, any additional information obtained from Offerors or as the Authority may obtain from its independent investigation of Offerors.

3.3. Amendments; Initialed Copies. If the Authority issues an amendment to the Proposal Documents prior to the Due Date, a copy of the amendment shall be initialed by the Offeror, attached to its Proposal and submitted prior to the Due Date. By initialing and submitting a copy of the amendment, Offeror agrees that the terms of said amendment are incorporated into the Proposal Documents. **THE AUTHORITY SHALL HAVE THE RIGHT TO REFUSE TO CONSIDER THE PROPOSAL OF AN OFFEROR**

WHO FAILS TO INITIAL AND SUBMIT A COPY OF SUCH AMENDMENT BY THE DUE DATE.

3.4 Information about Offeror to be included in Proposals. A Proposal shall consist of a completed Proposal Form and the following information about Offeror, which must accompany the Proposal Form:

- a. The legal name and principal address of the Offeror.
- b. The legal nature of the Offeror entity, i.e. corporation, partnership, individual, limited liability company or other.
- c. If Offeror is a corporation, the following must be provided:
 - i. The full name and address of each officer and director.
 - ii. Certificate of good standing issued by the Virginia State Corporation Commission not more than sixty (60) days prior to the Due Date. This requirement is waived for all incumbent operators.
 - iii. If the Offeror is not incorporated under the laws of the Commonwealth of Virginia, a certificate of good standing from the state of incorporation and a certificate from the clerk of the Virginia State Corporation Commission evidencing the Offeror's legal qualifications to transact business in Virginia.
- d. If Offeror is a partnership, the following must be provided:
 - i. The full legal name and address for each partner, designating any general partners and limited partners.
 - ii. A copy of Offeror's partnership agreement.

- iii. Evidence that the Offeror is legally qualified to transact business in Virginia.
- e. If Offeror is a limited liability company, the following must be provided:
 - i. A statement of the names and addresses of the members designating any managing members.
 - ii. A copy of Offeror's articles of organization.
 - iii. A copy of the current operating agreement.
 - iv. Evidence that Offeror is legally qualified to transact business in Virginia.
- f. If any of the officers, directors, partners, members, or other parties identified in the responses to subsections (c), (d), and (e) above is an entity and not an individual, provide the information requested in subsections (c), (d) and (e) above, as appropriate, for each such entity.
- g. Provide Offeror's federal income tax returns for the last two (2) years.
- h. Provide either (i) a balance sheet and income statement, certified by a certified public accountant who is not an employee of Offeror, showing net worth of Offeror as of a date not earlier than 120 days prior to the Due Date, and net income for a twelve-month period ending as of a date not earlier than 120 days prior to the Due Date; or (ii) a balance sheet and income statement for the preceding fiscal year, certified by a certified public accountant who is not an employee of Offeror, and net income for the preceding fiscal year, along with a statement from said certified public accountant indicating that the financial condition of the Offeror on the date

the Proposal is submitted is at least as good as that shown on the balance sheet and income statements.

- i. A completed **Bank Reference Authorization** (attached to the Proposal Form).
- j. A credit report for Offeror issued by a nationally recognized credit reporting agency (e.g., Equifax, Experian) dated within thirty (30) days of the Due Date.
- k. The name, address and nature of any other business enterprise owned or operated by Offeror on the Due Date, or anticipated to be owned or operated during the Term of the Concession.
- l. State whether any governmental entity has ever denied Offeror a permit, license, or certificate necessary to provide any services similar to the Concession. If so, provide information regarding each such denial, including the date of each application, the type of service to be provided pursuant to each application, the governmental entity with which each application was filed, and the reasons the application was denied.
- m. State whether Offeror has ever withdrawn an application made to any governmental entity for a license, permit, or certificate necessary to provide any services similar to the Concession. If so, provide information regarding each such withdrawal, including the date of each application, the governmental entity with which each application was filed, the type of service to be provided and the reasons the application was withdrawn.
- n. State whether Offeror has been convicted of any felony.

- o. Certify (by signing the Proposal Form) that the Offeror, and each officer, director, employee, and agent of Offeror who will be directly involved in the supervision, direction, management, or operation of the Concession, has never been convicted of, and does not have pending criminal charges of, the disqualifying criminal offenses listed in 49 CFR §1542.209(d).
- p. State whether Offeror has ever been found to be in violation of any regulatory order of any local, state, or federal governmental agency. If so, provide information regarding each such violation.
- q. State whether Offeror has any pending criminal charges or is a party to any pending civil or administrative proceeding. If so, provide information regarding each such pending charge or proceeding.
- r. State whether Offeror has ever filed a reorganization, insolvency or similar action or proceeding under any state or federal law. If so, provide information regarding each such proceeding, including the filing date and venue of such proceeding.
- s. State whether Offeror has filed a bankruptcy petition and whether Offeror is currently a debtor in-possession pursuant to the United States Bankruptcy Code. If so, provide documentary evidence, in form and substance satisfactory to the Authority, that (i) Offeror has all necessary power and authority to submit a Proposal; and (ii) in the event that Offeror is successful in its Proposal (a) neither the automatic stay of the Bankruptcy Code nor the pendency of the bankruptcy proceeding shall have any effect on any contract with the Authority; (b) any contract with

the Authority shall be assigned or modified only with the express written consent of the Authority; and (c) all Customer Facility Charges collected by Offeror shall constitute the exclusive property of the Authority. Without limitation, the evidence required herein may be in the form of a satisfactory order from the Bankruptcy Court or a satisfactory opinion letter from counsel for such entity.

- t. As to each Controlling Party of Offeror, provide the information requested in subsections (g) through (r). For purposes of this RFP, a Controlling Party is a shareholder, officer, director, member or partner of Offeror who either (i) owns or controls an interest in the Offeror which equals or exceeds fifty percent (50%) of Offeror's units of ownership or control, or (ii) has authority for the management and supervision of the development and submittal of Offeror's Proposal for this Concession or the anticipated provision of services pursuant to Offeror's Proposal.
- u. If applicable, provide complete information and documentation pertaining to Offeror's status as a Disadvantaged Business Enterprise (DBE).

3.5 Service Information to be provided with Proposals. The following information must accompany each Proposal:

- a. Detailed information relating to concessions or other business ventures that the Offeror has operated or is currently operating that are comparable to the Concession. Such information shall include, but not be limited to, references sufficient to enable the Authority to determine the Offeror's financial responsibility and proven experience in the operation and

management of a reputable business comparable to the Concession. This requirement is waived for incumbent operators.

- b. A detailed marketing and public relations plan to promote the Concession and to assure that individuals using the Airport are aware of the Concession in order to maximize its use and revenue.
- c. A proposed operating plan for the Concession that shall address, at a minimum, the Standards of Service set out in the attached Concession Agreement and specific services to be provided.
- d. The full legal name and address of each individual who will serve in a managerial or supervisory position with regard to the Concession and for each such individual, detailed information to establish to the satisfaction of the Authority the individual's qualifications and experience.
- e. A safety and security plan to assure that individuals using the Concession and their property at the Airport are safe and secure at all times, including but not limited to:
 - i. The alcohol and/or drug testing program to be applied to all Offeror's employees at the Concession;
 - ii. The criminal and security background check program that will be applied to all Offeror's employees who will provide the Concession service. This program must, at a minimum, address felonies, crimes involving moral turpitude, and the disqualifying criminal offenses listed in 49 CFR §1542.209(d).

- f. Written certification in the Proposal Form that Offeror has determined all requirements for permits, licenses, and certificates required by any regulatory agency (federal, state, and local) for Offeror to operate the Concession, and that Offeror has or will be able to obtain all required permits, licenses, and certificates upon thirty (30) calendar days of receipt of the Notice of Intent to Award the Concession Agreement. This requirement is waived for incumbent operators. The Selected Offeror must promptly and diligently apply for and pursue the required permits, licenses, and certificates and shall provide the Authority with copies of all applications for such permits, licenses, and certificates. Selected Offeror shall provide the Authority, upon request, with a copy of any such licenses, permits and certificates and any applications and other information provided to such regulatory agencies and continuously keep Authority fully informed of the status of each application.
- g. Offeror's ACDBE plan in accordance with Section 11 of this RFP.

3.6 Offeror may submit any additional information that is material and relevant to a determination of its qualifications and ability to operate a successful concession of the type required hereunder offering safe, uninterrupted, technically sound, and efficient service in a clean, attractive, and professional environment consistent with the highest standards as determined by the Authority in its sole discretion.

SECTION 4. PROPOSAL GUARANTEE

4.1 Terms of Proposal Guarantee. Each Offeror shall submit with its Proposal a Proposal Guarantee in the amount of Five Thousand Dollars (\$5,000.00) in the form of a bank cashier's check or bank certified check payable to the Authority or a bid bond issued by a surety authorized to do business in Virginia. The Proposal Guarantees of all Offerors will be retained by the Authority, without interest, until execution of the final Concession Agreement by the Authority.

4.2 Return of Proposal Guarantees. After the execution of the Concession Agreement, the Proposal Guarantees of all non-defaulting Offerors shall be promptly returned.

SECTION 5. INSPECTION AND CONDITION OF FACILITIES

The Authority shall deliver the Concession Area to the Selected Offeror in an "as is" condition. By submitting a Proposal, Offeror is deemed to agree that the Concession Area is in a condition suitable for the Concession. The Offeror agrees to accept the facilities as of date of delivery without any further recourse to the Authority.

SECTION 6. ACCEPTANCE OR REJECTION OF PROPOSALS

6.1 Withdrawal of RFP; Rejection of Proposals. The Authority reserves the right to withdraw the Request for Proposals at any time for any reason, to reject any or all Proposals or amendments thereto, and to waive any defects in form in any Proposals received.

6.2 Negotiations. The Authority may award a Concession Agreement based on the Proposals received, without conducting negotiations or discussions. Each Proposal should be submitted on the most favorable terms. After receipt of Proposals, negotiations may be conducted with one or more Offerors as determined by the Authority.

6.3 Selection of Proposals. Within one hundred twenty (120) days after the Due Date for receipt of Proposals, or as soon thereafter as it may act, the Authority will select up to eight (8) of the Proposals and will reject all other Proposals. The selection of a Proposal shall be deemed to constitute an agreement of the Selected Offeror to execute a Concession Agreement on the terms set forth in the Proposal as may be modified by any negotiations. Notwithstanding the foregoing, the selection of a Proposal shall not be effective and binding upon the Authority until the Concession Agreement has been formally executed by both parties.

6.4 Notice of Intent to Award. The selection of a Proposal will be by written Notice of Intent to Award the Concession Agreement, specifically indicating a Selected Offeror and signed by an authorized representative on behalf of the Authority. No other act of the Authority, its commissioners, agents, or employees shall constitute the selection of a Proposal.

SECTION 7 BASIS FOR AWARD

7.1 Evaluation Factors. The Authority reserves the right to make any award on the basis of the Proposal (including any information that Authority receives from any source) that it determines, in its sole discretion, best meets the requirements of the Authority.

The Authority's selection of a Proposal will be based upon an evaluation of the Offeror, and where applicable, any Controlling Parties, as being both responsive and responsible, and as being the most advantageous to the Authority, with no single evaluation factor being necessarily determinative. The following factors and such others without specific prior identification as the Authority in its discretion shall determine, may be considered by the Authority in evaluating the Proposals received and making its selection without any predetermined weight as the Authority may determine appropriate:

- a. Experience of Offeror and those employees of the Offeror whom the Offeror certifies will have overall management supervision as well as those persons who will have major responsibilities in the control and management of the operation of the Concession.
- b. The Offeror's proposed operating, safety and security plans.
- c. The financial condition of Offeror, and if relevant, any Controlling Party, and the ability to obtain adequate financing to perform those functions necessary for the Concession.
- d. An evaluation of the Offeror's current and past performance in providing comparable services, particularly at other airports or public facilities.
- e. Personal and professional references.
- f. The Concession Fee the Offeror has proposed to pay the Authority.
- g. Offeror's DBE participation and ACDBE plan.
- h. Offeror's management policies.
- i. Offeror's proposed plans, if any, for Improvements to the Concession Area for use of space, décor, and quality of equipment and furnishings.

- j. Offeror's plans for marketing and promoting the Concession.

7.2 Sources of Information. In the process of evaluation, the Authority may acquire and use, to the extent deemed necessary, information obtained from the following sources:

- a. The Offeror, including representations and other data contained in Offeror's Proposal, or other information provided by Offeror.
- b. Other information available to the Authority, including financial data and records concerning Offeror's performance.
- c. Publications, including credit ratings, trade and financial journals or reports.
- d. Other sources, including banks or other financial companies; state, county and municipal departments and agencies; and other airports.
- e. The results of background investigations of Offerors made to verify information furnished or to secure additional information the Authority may deem necessary or desirable. In addition, the Authority reserves the right to audit or to appoint a competent representative to audit the books and records of any Offeror in order to verify its financial responsibility.

SECTION 8 EXECUTION OF CONCESSION AGREEMENT

8.1 Final Agreement. Within twenty (20) days after Authority's receipt from the Selected Offeror of copies of all required permits, licenses, and certificates, the Authority shall deliver or mail to the Selected Offeror, in duplicate, the final Concession

Agreement in the form substantially similar to the Agreement attached hereto completed in accordance with the Proposal submitted by Offeror and as accepted by Authority.

8.2 Within ten (10) days thereafter, the Selected Offeror shall deliver both copies to the Authority, with the Concession Agreement duly executed by it as “Concessionaire” and the Security Deposit required in the Concession Agreement. Upon receipt, the Authority will execute both copies and return one to the Concessionaire.

SECTION 9 FAILURE TO EXECUTE CONCESSION AGREEMENT

9.1 Should the Selected Offeror fail or refuse to execute the Concession Agreement in substantially the form attached hereto, or otherwise default on the agreement created by the Authority’s acceptance of the Selected Offeror’s Proposal, the Proposal Guarantee submitted by the Selected Offeror and any interest thereon shall become the property of the Authority, without the necessity of any further action on the part of the Authority, not as a penalty, but as liquidated damages. Offerors acknowledge that the Authority has incurred costs and will incur additional costs and damages by reason of such default and that such damages are difficult to determine.

9.2 Upon failure or refusal to execute the Concession Agreement, the Authority reserves the right to accept the Proposal of any other Offeror. Neither the exercise of such right by the Authority nor the failure to do so shall operate as a release by the Authority of the defaulting Offeror as to any claims or rights that the Authority may have against such defaulting Offeror pursuant to the preceding paragraph or otherwise.

SECTION 10 FAILURE TO OBTAIN PERMITS

If the Authority determines, in its sole discretion, that Selected Offeror has failed to diligently and promptly apply for or pursue all required permits, licenses, and certificates or failed to obtain the permits, licenses, and certificates required to operate the Concession within the time period provided herein, including any extension of time authorized by the Authority, the Authority may (i) withdraw the Notice of Intent to Award the Concession Agreement to the Selected Offeror and issue a Notice of Intent to Award to another Offeror submitting the Proposal with the best overall benefit to the Authority, or (ii) withdraw the Proposal Documents without making an award, or (iii) take such other action as the Authority shall determine appropriate.

SECTION 11 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

11.1 The Authority has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Airport is a primary small-hub airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The Authority has signed grant assurances that it will comply with 49 CFR Part 23. It is the policy of the Authority to ensure that ACDBEs have an equal opportunity to receive and participate in concession opportunities. It is also the policy:

- a. To ensure nondiscrimination in the award and administration of opportunities for concessions by the Airport while receiving DOT financial assistance;
- b. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- c. To ensure that its ACDBE program is narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet the eligibility standards of Part 23 are permitted to participate as ACDBEs at the Airport;
- e. To help remove barriers to the participation of ACDBEs in opportunities for concessions at the Airport; and
- f. To provide appropriate flexibility in establishing and providing opportunities for ACDBEs.

11.2 The requirements of 49 CFR Part 23, regulations of the DOT, apply to the Concession. It is the policy of the Authority to practice nondiscrimination based on race, color, sex, or national origin in the award and performance of the Concession Agreement. All firms qualifying under this solicitation are encouraged to submit Proposals. Award of this Concession will be conditioned upon satisfying the requirements of this RFP specification. These requirements apply to all Offerors, including those who qualify as an ACDBE. The Authority has established an ACDBE concession-specific goal of one and three tenths percent (1.3%) of total expenditures of goods and services for rental car service operations at the Airport.

11.3 Good Faith Efforts on Concession-Specific Goals

To be eligible to be awarded this Concession with this concession-specific goal, Offerors must make good faith efforts to meet the goal. An Offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that Offeror made sufficient good faith efforts to do so (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the Authority's concession-specific goals.

11.4 Where it appears that all or most of the goal for this RFP shall be met through the purchases of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.

11.5 The Offeror will be required to submit the following information: (a) the names and addresses of ACDBE firms and suppliers that will participate in the Concession Agreement, (b) A description of the work that each ACDBE will perform; (c) The dollar amount of the participation of each participating ACDBE firm; (d) Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet a contract goal; (e) Written and signed confirmation from the ACDBE that it is participating in the Concession as provided in the Selected Offeror's commitment; and (f) If the contract goal is not met, evidence of good faith efforts.

11.6 Title VI Solicitation Notice

In accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the related regulations, the Authority will

affirmatively ensure that disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals in response to this RFP and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

INTENTIONALLY LEFT BLANK

SECTION II

PROPOSAL FORM

RENTAL CAR SERVICE CONCESSION

NORFOLK INTERNATIONAL AIRPORT

Proposal By _____
(name of Offeror)

TO: NORFOLK AIRPORT AUTHORITY

A. The undersigned hereby offers to enter into a contract with the Norfolk Airport Authority ("Authority") to provide services in connection with the Authority's Request for Proposals for Rental Car Service dated as of March 15, 2018, and Rental Car Service Concession Agreement incorporated herein by this reference.

B. Full Name of Offeror: _____

C. Address of Offeror's principal place of business (not a post office box)

D. Offeror's Proposal.

In furtherance of this Proposal, if selected by Authority, the Offeror offers to pay to the Authority during the term of the Concession Agreement a Concession Fee equal to the greater of:

1. Ten percent (10%) of Gross Revenue as defined in the Concession Agreement, or
2. The Minimum Annual Guarantee hereinafter specified for each Contract Year. Insert a specific and definite numerical dollar amount offered for each Contract Year; do not insert a percentage or any number which is incapable of determination and cannot be fixed without reference to other information. A Minimum Annual Guarantee of less than Three Hundred and Twenty-five Thousand Dollars (\$325,000.00) for any

Contract Year will not be considered.

1st Contract Year, ending in 2019: \$_____

2nd Contract Year, ending in 2020: \$_____

3rd Contract Year, ending in 2021: \$_____

4th Contract Year, ending in 2022: \$_____

5th Contract Year, ending in 2023: \$_____

- E. The Offeror acknowledges that payment of the Concession Fee, in addition to any other possible charges required by the Concession Agreement, is subject to, and further explained by, all the other terms and conditions set forth in the Proposal Documents.
- F. This Proposal shall be irrevocable for a period of one hundred twenty (120) days after the Due Date.
- G. The Offeror hereby makes each and every representation and agreement required by the RFP and made by "Concessionaire" in the Concession Agreement.
- H. The Offeror agrees that (i) the Proposal and all information provided with the Proposal are property of the Authority upon their receipt by the Authority, (ii) none of the information, regardless of the form of communication, provided to the Authority by the Offeror, or its officers, agents or employees, has been given in confidence, (iii) all or any part of the information may be used or disclosed by or on behalf of the Authority without liability of any kind; and(iv) information given as a part of this Proposal will remain confidential only to the extent specifically claimed by Offeror in writing to the Authority and, at Offeror's expense,

determined by a court of competent jurisdiction to be exempt from public disclosure.

I. Offeror's Representations and Warranties:

1. The Offeror hereby represents and affirms that the Proposal contained herein is in no way conditioned upon any predetermined level of aviation, passenger, or other business activity at the Airport, past, present, or future. Offeror has not relied on any representations of the Authority or its agents, either verbal or written, as to the level of business at the Airport before or during the term of the Concession Agreement, nor of any factors that might bear on such business potential, including without limitation the information provided on the Airport website or the exhibits attached or otherwise included in the Proposal Documents. The Proposal contained herein is based solely on Offeror's own knowledge of the market and the rental car business and its own assessment of the market potential at the Airport for such a concession.

2. The Offeror has read, understands and fully complies with all terms, conditions and provisions set forth in the Proposal Documents.

3. The Offeror is fully qualified and competent to successfully operate the Concession at the Airport. The Offeror will fully comply with all the requirements associated with doing so.

4. The Offeror has submitted an accurate and complete Proposal and has provided all the information requested by the Authority. The Offeror acknowledges that all of the information submitted by the Offeror and all of the warranties and representations made by the Offeror will be relied upon by the

Authority. This Proposal is fully responsive to the RFP and meets or exceeds all the specifications contained in the RFP (unless otherwise expressly indicated by the Offeror in this Proposal).

5. Neither the Offeror nor any of the Offeror's officers, directors, owners, employees, representatives or Controlling Parties has in any manner conspired, colluded or agreed, directly or indirectly, with any person, firm, corporation or other Offeror or potential Offeror to unfairly compete or compromise, in any way, the procurement process. The Offeror has not paid or agreed to pay, directly or indirectly, any person, partnership, company, association, organization, corporation or any other Offeror or any potential Offeror and has not paid any money or provided any other valuable consideration to any party for providing assistance in seeking acceptance of the Proposal or attempting to seek acceptance of the Proposal or to fix the proposed terms, conditions or provisions of this Proposal or any other Proposal of any other Offeror, and hereby states that no such money or other consideration will be hereinafter paid.

6. No Controlling Party, officer, director, owner, employee or representative of the Offeror is related by blood or marriage to any employee, officer or Commissioner of the Authority except as noted herein below.

7. Offeror hereby certifies for itself and each Controlling Party, and each officer, director, employee, and agent of Offeror who will be directly involved in the supervision, direction, management, or operation of the Concession, that no such individual or entity has ever been convicted of, and does not have pending criminal charges of, the disqualifying criminal offenses listed in 49 CFR

§1542.209(d) or any comparable laws or regulations. Offeror further certifies that no individual or entity who has been convicted of, or has pending criminal charges of, the disqualifying criminal offenses listed above, will perform any work pursuant to the Concession or the Proposal Documents on the Authority property, unless the Offeror obtains the prior written approval of the Authority.

8. Offeror certifies that it has determined all requirements for permits, licenses, and certificates required by any regulatory agency (federal, state, and local) for Offeror to operate the Concession, and that Offeror has obtained or will be able to obtain all required permits, licenses, and certificates upon thirty (30) calendar days of receipt of the Notice of Intent to Award the Concession Agreement.

J. (Check the appropriate line) The Offeror DOES _____ DOES NOT _____ wish consideration as a Disadvantaged Business Enterprise.

The entire Proposal and all of the Proposal Documents, all papers required by it and all exhibits and other papers made a part thereof by its terms are incorporated herein and made a part of this Proposal.

L. Proposal Guarantee:

A Proposal Guarantee in the form of a cashier's check, a certified check or a bid bond issued by a surety authorized to do business in the Commonwealth of Virginia and made payable to the Authority, in the amount of \$5,000.00

accompanies this Proposal. Cash or other types of checks will not be accepted. The Proposal Deposit, which has been included with this Proposal, is submitted to the Authority by the Offeror with the full understanding that:

1. It guarantees that the Offeror will not withdraw its Proposal for a period of 120 calendar days after the Due Date. If the Proposal is accepted by the Authority, the Offeror will, in a timely manner, enter into the Concession Agreement with the Authority, provide all other required information and materials to the Authority and meet and/or perform all other obligations within 30 calendar days of written Notice of Intent to Award.
2. The Offeror's failure to enter into the Concession Agreement with the Authority, provide all other required information and other materials to the Authority, or meet and/or perform all other obligations within 30 days after the date of written Notice of Intent to Award shall be just cause for cancellation of the award by the Authority and the forfeiture of Proposal Deposit, which forfeiture shall be considered not as a penalty, but in liquidation of damages sustained by the Authority.
3. If the Authority cancels the Offeror's award as a result of the Offeror's failure, the Authority may, at its sole discretion, accept another Proposal or reject all Proposals.
4. If the award is not made to the Offeror, this Proposal Deposit shall be returned, without interest, after a Concession Agreement with the successful Offeror has been executed by the Authority.
5. If the Authority rejects all Proposals, this Proposal Deposit will be

returned, without interest.

The undersigned hereby designates the following contact information for notices to be delivered or mailed:

Name and title of the designated representative of the Offeror who is authorized to make representations and agreements with regard to this Proposal is: _____

The mailing address of Offeror is:

The telephone number of the Offeror is:

The facsimile number of the Offeror is:

The e-mail address of the Offeror is:

INTENTIONALLY LEFT BLANK

Witness the following signature(s):

SIGNATURE(S):

Printed Name of Offeror

Signed By: _____

Printed Name: _____

Title: _____

Date: _____

Witness

.....
If the Concessionaire is a partnership, **all general partners** are required to sign the Proposal and the Concession Agreement. If the Selected Offeror is a limited liability company, **all managing members** are required to sign the Proposal and the Concession Agreement. **Add additional signature pages as necessary.**

CERTIFICATE OF AUTHORITY & ACKNOWLEDGEMENTS

**IF OFFEROR IS A CORPORATION
OR LIMITED LIABILITY COMPANY**

I, the undersigned, as Secretary or Assistant Secretary of the Corporation or duly authorized representative of the Limited Liability Company submitting the foregoing Proposal, hereby certify that pursuant to the By-Laws and Resolutions of the Corporation or Operating Agreement of the Limited Liability Company, the agent who has signed this Proposal on behalf of the Offeror is authorized to do so.

Secretary or Assistant Secretary

(Corporate Seal)

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 2018, before me personally came and appeared _____, to me known, who being by me duly sworn, did depose and say that he is the _____ of Offeror and that he signed his name thereto by authority of the Board of Directors or Members.

Notary

My Commission Expires: _____

My Commission Number: _____

**ACKNOWLEDGEMENT OF OFFEROR
IF A PARTNERSHIP**

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 2018, before me personally came and appeared _____, known to me to be all the general partners of _____, who executed the same as and for the act and deed of said firm.

Notary

My Commission Expires: _____

My Commission Number: _____

**ACKNOWLEDGEMENT OF OFFEROR
IF A LIMITED PARTNERSHIP**

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 2018, before me personally came and appeared _____, known to me to be all the general partners of the limited partnership of _____, who executed the same as and for the act and deed of said limited partnership.

Notary

My Commission Expires: _____

My Commission Number: _____

BANK REFERENCE AUTHORIZATION

_____ *Date*

_____ *Name of Bank*

_____ *Address of Bank*

Attn: _____

_____ *Telephone #*

_____ *Email Address*

Dear Sir or Madam:

I have notified the Norfolk Airport Authority that you are the representative handling our accounts at our primary financial institution. Please provide the Authority with any requested information about our accounts.

Offeror: _____

_____ *Signature of Authorized Representative*

_____ *Account Numbers(s)*

SECTION III

THE CONCESSION AGREEMENT

RENTAL CAR SERVICE

NORFOLK INTERNATIONAL AIRPORT

August 1, 2018 – July 31, 2023

TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS	1
ARTICLE 2	CONCESSION.....	8
ARTICLE 3	TERM.....	11
ARTICLE 4	PAYMENTS.....	12
ARTICLE 5	STANDARDS OF SERVICE.....	16
ARTICLE 6	SECURITY DEPOSIT	17
ARTICLE 7	ACCEPTANCE AND USE OF CONCESSION AREA.....	18
ARTICLE 8	IMPROVEMENTS BY CONCESSION AREA.....	20
ARTICLE 9	REPAIRS AND MAINTENANCE OF CONCESSION AREA.....	22
ARTICLE 10	ACCESS TO CONCESSION AREA.....	24
ARTICLE 11	REPRESENTATIONS AND WARRANTIES OF CONCESSIONAIRE	25
ARTICLE 12	OBLIGATIONS AND COVENANTS OF CONCESSIONAIRE	27
ARTICLE 13	COMPLIANCE WITH LAW	30
ARTICLE 14	FEDERAL AIRPORT AID.....	45
ARTICLE 15	SUBORDINATION OF AGREEMENT.....	45
ARTICLE 16	OBLIGATIONS OF THE AUTHORITY	46
ARTICLE 17	CASUALTY DAMAGE	47
ARTICLE 18	MANAGEMENT AND PERSONNEL.....	48
ARTICLE 19	BOOKS AND RECORDS	49
ARTICLE 20	VENDING MACHINES	49

ARTICLE 21	SIGNS AND PUBLIC ADDRESS SYSTEM	50
ARTICLE 22	PARKING	50
ARTICLE 23	INDEMNITY BY CONCESSIONAIRE.....	51
ARTICLE 24	INSURANCE	52
ARTICLE 25	HAZARDOUS MATERIALS	58
ARTICLE 26	ASSIGNMENT OF AGREEMENT	60
ARTICLE 27	AGREEMENT BINDING UPON SUCCESSORS	61
ARTICLE 28	CONDEMNATION	61
ARTICLE 29	TERMINATION FOR CONVENIENCE	62
ARTICLE 30	DEFAULT BY CONCESSIONAIRE.....	62
ARTICLE 31	DEFAULT BY AUTHORITY	67
ARTICLE 32	EXTRAORDINARY TERMINATION BY CONCESSIONAIRE	67
ARTICLE 33	SURRENDER OF POSSESSION: HOLDING OVER.....	68
ARTICLE 34	REMOVAL OF PROPERTY	69
ARTICLE 35	WAIVERS	69
ARTICLE 36	WAIVER OF CLAIMS FOR ANTICIPATED PROFITS.....	70
ARTICLE 37	FORCE MAJEURE.....	70
ARTICLE 38	DISPUTES.....	71
ARTICLE 39	SITUS AND SERVICE OF PROCESS	72
ARTICLE 40	RELATIONSHIP OF PARTIES.....	73
ARTICLE 41	DEALING AND NOTIFICATION OF PARTIES	73

EXHIBITS TO CONCESSION AGREEMENT

Exhibit A – Concession Area

Exhibit B – Rental Car Customer Facility Charge Agreement

Exhibit C – Concessionaire's Property

Exhibit D – Employee Parking Rules and Regulations

Exhibit E – Historical Passenger Activity

Exhibit F - Rental Car Gross Receipts

THIS CONCESSION AGREEMENT made as of the 1st day of August, 2018 by and between the NORFOLK AIRPORT AUTHORITY ("Authority") and _____ ("Concessionaire"):

WITNESSETH:

For and in consideration of the mutual agreements hereinafter contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties covenant and agree as follows:

SECTION 1: DEFINITIONS

1.1. The following terms, when capitalized and used in the Agreement, shall have the meanings given below:

- a. Airport shall mean the Norfolk International Airport.
- b. Concession shall mean the Rental Car Service Concession described in this Agreement.
- c. Concession Agreement or Agreement shall mean this Concession Agreement together with the Proposal Documents, including the Request for Proposals, the Proposal Form, the Concessionaire's Proposal and all exhibits referenced within or attached to these documents.
- d. Concession Area shall mean the area consisting of (i) _____ square feet at the Arrivals Terminal Customer Service Counter, as shown on Exhibit A to this Concession Agreement; (ii) Rental Car Return Building Customer Service Counter Number _____, as shown on Exhibit A to this Concession

Agreement; (iii) the allotted parking spaces assigned to Concessionaire for parking ready cars awaiting rental and the allotted rows assigned to Concessionaire for returning vehicles in the Return Facility, all as assigned by the Authority; (iv) any other property or structures located in the area identified in subsections (i) through (iii) above and permanently affixed thereto; and (v) any Improvements now or in the future located thereon.

- e. Concessionaire shall mean the second party to this Agreement. Upon execution of this Concession Agreement, the "Selected Offeror" becomes the "Concessionaire" and shall fulfill all obligations stated for the "Offeror," "Selected Offeror" or "Concessionaire" in the Agreement.
- f. Concessionaire's Property shall mean any moveable trade fixtures, business equipment, inventory, trademarked items, signs, counters and other removable personal property installed in or on the Concession Area by Concessionaire at its expense and not permanently affixed thereto all as identified on **Exhibit C** to this Concession Agreement. Such Exhibit shall be amended as necessary by writing signed by the Authority to reflect any additions or deletions in Concessionaire's Property.
- g. Contract Year shall mean the twelve-month period from August 1 to July 31 of the following calendar year.
- h. Executive Director shall mean the Executive Director of the Authority or his designee.

i. Gross Revenue shall mean all receipts or revenue of every kind and character derived from, related to, arising out of, or payable on account of the Concession, except as expressly excluded in this definition. Receipts shall be deemed to derive from, relate to, arise out of, or be payable on account of the Concession upon the determination of the amount due for any transaction, regardless of actual payment, unless otherwise specifically authorized by the Authority in writing.

(1) Gross Revenue includes, but is not limited to:

(A) All monies or consideration of any kind paid or payable to Concessionaire for or in connection with vehicles contracted for, delivered, supplied or rented by Concessionaire to its customers whenever any such vehicle is (i) delivered at a point on the Airport to a customer, without regard to the manner in which or place at which Concessionaire has received the order for the vehicle; (ii) delivered off-Airport where either the arrangements for such vehicle rental were made at the Airport or where Concessionaire transports the customer to a site off the Airport; or (iii) delivered from the Airport;

(B) All monies or other consideration of any kind paid or payable to Concessionaire for all sales, rentals, products, and services provided to customers regardless of the ownership, area, fleet, or location assignment of the vehicles and

without regard to the manner in which, or place at which, the vehicles, products or services are furnished to Concessionaire's customers, and without regard to whether the vehicles or other products are returned to Airport or to some other location;

- (C) All fees and charges paid net of any discounts for the rental or leasing of vehicles pursuant to daily, weekly or other time charges and/or mileage;
- (D) All fees and charges paid for acceptance or renewal of personal accident or other types of insurance incidental to the rental of vehicles;
- (E) Net fees, commissions and charges derived by Concessionaire from the rental of cellular telephones, pagers personal or wireless communications or data transmission, satellite navigation services, including Internet-related or other portable telecommunications services, or other similar services or amenities;
- (F) Drop-off, valet, upgrade and underage driver fees or charges;
- (G) All monies and fees received from airlines, other corporate partners or travel agents as part of any promotion featuring fees or reduced rates as part of a package at or through the Airport;

- (H) Fees charged for the rental of infant restraint and child car seats or other items of personal property; and
 - (I) Other rental, reimbursement and service fees that are charged or otherwise collected by Concessionaire.
- (2) No deduction shall be allowed from Gross Revenue except as expressly listed in (A) through (F) of this subsection below:
- (A) Charges collected from the customer for damages to Concessionaire vehicles while the vehicle was in the customer's custody, or incurred as a result of illegal use of Concessionaire's vehicles;
 - (B) Amounts received as insurance proceeds or otherwise for loss of or damage to vehicles and other property of Concessionaire and for loss, conversion, or abandonment of Concessionaire's vehicles;
 - (C) Any tolls and sales or similar taxes imposed by law that are expressly charged to and paid by the customer and that are directly payable to the taxing or the collecting authority by Concessionaire;
 - (D) Fuel charges separately stated to and charged by customers.
 - (E) The sum paid by customers to Concessionaire for its waiver of customer's liability to Concessionaire for damage to the rental vehicle; (such charge being commonly known as a

Collision Damage Waiver (CDW) or a Loss Damage Waiver (LDW); and

(F) Amounts collected as a Customer Facility Charge (“CFC”) or similar fee payable to the Authority.

(3) Unless a sum is expressly and particularly excluded from Gross Revenue as defined in this Agreement, that sum shall be included in Gross Revenue. Sums that may be derived from sources similar but not identical to those described in this definition shall be included in Gross Revenue as determined in the sole discretion of the Authority. Gross Revenue may not be reduced by volume discounts unless the discount is documented for each transaction and the documentation is submitted with Concessionaire’s monthly report.

j. Hazardous Materials shall mean:

- (1) Asbestos in any form;
- (2) Urea formaldehyde foam insulation;
- (3) Polychlorinated biphenyls (“PCBs”); and
- (4) Any other chemical, material, or substance (including, without limitation, Permitted Substances as defined in this Agreement), waste or wastewater, pollutant, or emission which is regulated by any governmental entity as toxic or hazardous or exposure to which is prohibited, limited, or regulated by any governmental entity or which, even if not so regulated, may or could pose a hazard to the

health and safety of any person at the Airport as determined by the Authority in its sole discretion.

- k.** Improvements shall mean all structures and other items permanently affixed to, within, or on the Concession Area (including, but not limited to, interior walls, ceilings, floor coverings, electrical wiring, water pipes, plumbing, heating and air conditioning ducts and equipment, and all interior decoration and finishing), that are installed, before or after the signing of this Concession Agreement, to render the Concession Area ready to provide the Concession in accordance with the Agreement.
- l.** Permitted Substances shall mean the following Hazardous Materials when used in the Concession Area in strict compliance with all Airport regulations, applicable laws, and required permits or authorizations from governmental entities:
- (1) Automotive batteries, petroleum products, motor oils, and other customary automotive lubricants and fluids, when contained in their original containers or in vehicles as is necessary for their ordinary maintenance and operation; and
 - (2) Substances necessary for the ordinary cleaning and care of the Concession Area.
- m.** Service shall mean the provision of all activities, personnel, equipment, furnishings, and other items in furtherance of operating the Rental Car Service Concession at the Airport under the terms and conditions specified in the Agreement.

- n. Work or Concessionaire's Work shall mean all planning, design, and construction by Concessionaire or its agents needed to supply, install, and finish all Improvements and to otherwise render the Concession Area ready to conduct the Concession in accordance with the Agreement.
- 1.2 Definitions contained in any of the Proposal Documents also apply to all provisions of the Agreement.
 - 1.3 When a period of time is stated in days in the Proposal Documents, it is deemed to be a reference to calendar days unless expressly specified otherwise.

SECTION 2: CONCESSION

- 2.1. The Authority hereby grants to the Concessionaire the privilege to conduct and operate a Rental Car Service Concession in the Concession Area subject to the terms and conditions contained in the Agreement.
- 2.2. The Authority will assign customer service counter spaces in the Concession Area, as shown on Exhibits A-1 and A-2, based on the total Minimum Annual Guarantees (for the entire five (5) year term) offered in the Proposal with the Offeror providing the highest minimum annual guarantees having first choice of Concession Area locations.
- 2.3. The Authority will make initial assignments of parking spaces as follows:
 - a. Each Concessionaire will be tentatively allocated a number and location of ready parking spaces and return rows based on the ratio of the total Minimum Annual Guarantee offered by the Concessionaire to the total

Minimum Annual Guarantee offered by all accepted Concessionaire Proposals for the entire five year term of the Agreement.

- b.** After the tentative allocation is calculated pursuant to Section 2.3.a., the Authority will make appropriate adjustments, in its sole discretion, to provide each Concessionaire the opportunity to lease a minimum of approximately five percent (5%) of the total parking spaces available.
 - c.** If a Concessionaire does not desire to lease the minimum number of spaces, as provided under Section 2.3.b. above, the Authority will allocate these spaces to the other Concessionaires in accordance with criteria provided in Section 2.3.a. above.
- 2.4.** At the beginning of each subsequent Contract Year, the number of parking spaces shall be reallocated by the Authority to each Concessionaire as follows:
- a.** Each Concessionaire will be tentatively allocated a number of ready parking spaces and return rows based on a ratio of the Concessionaire's annual Gross Revenue generated during the preceding Contract Year, as compared to the total annual Gross Revenue of all rental car Concessionaires on the Airport during the same year. The location of the ready spaces (row location) will remain the same.
 - b.** After the tentative allocation is calculated in accordance with Section 2.4.a. above, the Authority will make appropriate adjustments, in its discretion, to provide each Concessionaire the opportunity to lease a minimum of approximately five percent (5%) of the total parking spaces available.

- c.** If a Concessionaire does not desire to lease the minimum number of parking spaces as provided in Section 2.4.b. above, the Authority will allocate spaces to other Concessionaires in accordance with the criteria provided in Section 2.4.a. above.
 - d.** The Authority shall reallocate spaces within four (4) months after the end of each Contract Year.
 - e.** The Authority will make the final decision regarding the specific number and location of parking spaces to be allocated to each Concessionaire. The Authority reserves the right to change the basis for allocating the parking spaces under Section 2.4.a. above during any subsequent Contract Year to use annual car rentals (i.e. the total number of customer rentals) instead of Gross Revenue as the criteria for allocating parking spaces.
- 2.5.** The Authority anticipates providing approximately 307 ready spaces to the rental car concessionaires at the commencement of this Agreement. The Authority reserves the right at any time upon sixty (60) days written notice to Concessionaire, to reduce the number of parking spaces allocated to the Concessionaire or to reduce the total number of parking spaces reserved for all Rental Car Service concessionaires and to change the location of such spaces as the operation of the Airport may dictate, and as a result, the total number of parking spaces available for Concessionaire or for all Rental Car Service concessionaires may not remain the same through the term of this Agreement. In the event that Authority reduces the Concessionaire's parking spaces by

greater than 10% in any Contract Year, Concessionaire shall have the right to terminate this Agreement at the end of such Contract Year by providing the Authority written notice of its intent to terminate at least this (30) days prior to the end of the Contract Year.

SECTION 3: TERM

- 3.1.** Commencement Date. The term of the Agreement shall begin on August 1, 2018 or such later date that the Authority shall designate by written notice to Concessionaire (the “Commencement Date”).
- 3.2.** In the event the Authority specifies a Commencement Date after August 1, 2018, the Concessionaire agrees to commence the term upon such later date without any claim of loss, provided that the Commencement Date shall not be delayed more than ninety (90) days without the written approval of both parties to this Agreement. The monthly payments to the Authority pursuant to Section 4 hereof shall be abated during any delay in the commencement of the term of this Agreement.
- 3.3.** Termination Date. This Agreement shall terminate on July 31, 2023 (the “Termination Date”) unless otherwise renewed or terminated as hereinafter provided. A delay in the Commencement Date shall not extend the Termination Date of this Agreement. All references to Termination Date in this Agreement shall include properly exercised renewal terms.

3.4. Extension of Term.

- a.** Notwithstanding any provision herein to the contrary, the Authority reserves the right to extend the term of the Agreement at the end of the initial or any renewal Term on all the same terms and conditions set forth herein for a total of up to one hundred eighty (180) days.
- b.** In addition, the Authority reserves the right to renew this Agreement for five (5) additional terms of one year each on the terms set forth herein, provided the parties shall agree in writing signed by both parties upon such payments to be required by Section 4 .
- c.** Authority shall provide Concessionaire notice of its intent to extend this Agreement not less than ninety (90) days prior to the Termination Date of the initial term or any renewal term.

3.5. Transition of Service. Concessionaire shall take all action reasonably necessary to provide a smooth transition of service to the concessionaires selected to provide the Service after the Termination Date and to ensure uninterrupted rental car service at the Airport.

SECTION 4: PAYMENTS

4.1. For the privilege of operating the Concession, Concessionaire agrees to pay to the Authority each month Rent and Concession Fees; and agrees to collect and remit to the Authority each month Customer Facility Charges, in the following amounts:

- a.** Rent: Concessionaire shall pay Rent for the Customer Service Counter space located in the Arrivals Terminal, payable without notice from the Authority, in advance on the first day of each month during the Term, one twelfth of the Annual Rent in the following amounts:

<u>Contract Year</u>	<u>Annual Rent per Square Foot</u>
August 1, 2018 – July 31, 2019	\$48.00
August 1, 2019 – July 31, 2020	\$49.00
August 1, 2020 – July 31, 2021	\$50.00
August 1, 2021 – July 31, 2022	\$51.00
August 1, 2022 – July 31, 2023	\$52.00

- b.** Customer Facility Charge: Concessionaire shall enter into a written agreement substantially similar to the form attached hereto as Exhibit B, to collect, report, and remit to the Authority a Customer Facility Charge (“CFC”).
- c.** Concession Fee: Concessionaire shall furnish to the Authority, in a format and level of specificity approved by the Authority, a report of its total number of car rental contracts and Gross Revenue for the preceding calendar month, and shall simultaneously pay the Authority the Concession Fee of (i) one-twelfth (1/12th) of the Minimum Annual Guarantee, or (ii) ten percent (10%) of Gross Revenue, whichever amount is greater. The Concession Fee is due and payable, without notice from the Authority, not later than the twentieth (20th) day of the month

immediately following the calendar month during which the business on which the fee is based occurred.

4.2 Abatement of Minimum Annual Guarantee: In the event that one of the following conditions exists during the term of this Agreement, the Minimum Annual Guarantee provided in Section 4.1.c. shall be abated and Concessionaire shall pay to the Authority ten percent (10%) of its Gross Revenue as provided in Section 4.1.c. for the period of time the condition continues to exist:

- a. Inability to Provide Vehicles: The operation of Concessionaire's Service at the Airport is affected by shortage or other disruptions in the supply of vehicles, gasoline or other goods necessary for the operation thereof which the Authority determines to be without fault of Concessionaire and which results in material diminution in Concessionaire's Gross Revenue for a full calendar month. For purposes of this Agreement, the term "material diminution" shall mean a reduction in Gross Revenue by greater than fifty percent (50%) of the average Gross Revenue for the six (6) consecutive months immediately preceding the month of the material diminution.
- b. Extreme Reduction in Number of Airline Passengers: If for any reason the number of passengers deplaning from scheduled commercial airline flights at the Airport during any calendar month shall be less than seventy-five percent (75%) of the number of such passengers in the same calendar month of the preceding Contract Year.

- 4.3** Within ninety (90) days after the close of each Contract Year, Concessionaire shall furnish to the Authority a sworn statement, certified by an independent certified public accountant, showing total Gross Revenue derived from its operation of the Concession for such Contract Year. If the aggregate of all Concession Fee payments made for any Contract Year shall exceed the greater of (i) the Minimum Annual Guarantee applicable for such year, or (ii) ten percent (10%) of Gross Revenue for such Contract Year, the excess shall be credited to Concessionaire's account, without interest, and applied against the next succeeding monthly payment(s). Upon expiration of the Agreement, a corresponding adjustment calculation shall be made and any credit balance due Concessionaire shall be reimbursed, without interest, by the Authority.
- 4.4** If such certified sworn statement indicates that Concessionaire has paid Authority less than the Minimum Annual Guarantee, Concessionaire shall pay Authority any deficiency not later than ten (10) days following delivery of the sworn statement to the Authority together with the Service Charge and interest applicable below.
- 4.5** Service Charge; Interest. All delinquent payments of any amounts due to the Authority by Concessionaire shall be subject to a Service Charge of two percent (2.0%) per month on the outstanding balance from the date such amount was due until paid. In addition to the Service Charge, the Authority shall be entitled to interest at the judgment rate applicable on the date the payment was due until paid, plus all costs of collection of amounts past due, including without limitation, attorneys' fees and court costs.

- 4.6** Concessionaire shall not list Rents or Concession Fees payable to the Airport as a separate item on its customer contracts, invoices or any other documentation provided to customers.
- 4.7** The payments specified herein shall begin on the Commencement Date of the Agreement and no allowance will be made for interruptions in operations as a result of the transition from a prior operator or delay in Concessionaire's Work.

SECTION 5: STANDARDS OF SERVICE

- 5.1** Concessionaire shall provide its customers with first class facilities and equipment, and shall offer only the highest, most courteous, prompt and effective Service necessary to meet all reasonable demands for the Service at the Airport. Such Service shall include, at a minimum:
- a.** Vehicles not more than two (2) model years old. Such vehicles shall be maintained in good operating condition, free from mechanical defects, and in a clean, neat, and attractive condition inside and outside.
 - b.** Staffing of the Customer Service Counter with sufficient personnel to provide the Service at all times during which regularly scheduled commercial airline arrivals occur at the Airport. The Authority may establish, in writing, such changes in the hours herein set forth as it deems necessary to serve the needs and requirements of the Airport and its customers and invitees. Concessionaire shall comply with such hours established and shall not change operating hours without prior written approval from the Authority.

5.2 Concessionaire covenants and agrees to offer all Concession Services at reasonable prices. The Authority reserves the right to request from Concessionaire a list of its charges and fees for Services offered by Concessionaire; such list shall be provided within five (5) days of receipt of the Authority's request.

5.3 Deceptive Practices: Concessionaire shall not misrepresent to the public its prices or the terms and provisions of its vehicle rental agreement or those of its competitors. Concessionaire shall fully inform each customer, prior to the execution of such customer's vehicle rental agreement, of all fees and charges applicable to such customer's rental. If the Authority determines, after notice and opportunity for Concessionaire to comment, that any of Concessionaire's business practices are unreasonable, deceptive, or unconscionable, Concessionaire shall immediately cease such practices upon receipt of written order to do so from the Authority. Failure to comply with the Authority's order to cease such practices shall constitute a default by Concessionaire under this Agreement.

SECTION 6: SECURITY DEPOSIT

6.1 Upon the execution of the Concession Agreement by Concessionaire and delivery thereof to the Authority, Concessionaire shall also deliver to the Authority as a Security Deposit, a cashier's check, certified check, irrevocable letter of credit from a bank insured by FDIC, or a performance bond issued by a surety authorized to do business in the Commonwealth of Virginia, in the amount of

one-twelfth (1/12th) of Concessionaire's Minimum Annual Guarantee for the first Contract Year.

- 6.2** This Security Deposit shall remain in the possession of the Authority during the full term of the Concession Agreement as security for Concessionaire's full, faithful, and prompt performance of and compliance with, on the part of the Concessionaire, all of the provisions, terms, and conditions of the Concession Agreement.
- 6.3** The Authority shall have the right to use the Security Deposit and any interest thereon or any part thereof in whole or partial satisfaction of any of its claims or demands against Concessionaire. In the event the Authority shall use the Security Deposit or any part thereof, Concessionaire shall, on demand of the Authority and within two (2) business days thereafter, deposit with the Authority the sum necessary to maintain the Security Deposit at the amount herein set out.
- 6.4** If the Security Deposit is in the form of a cashier's check or certified check, it shall be deposited by the Authority in an interest-bearing account. The Authority will return the Security Deposit with any interest earned to Concessionaire upon termination of the Concession Agreement, less any monies owed the Authority.

SECTION 7: ACCEPTANCE AND USE OF CONCESSION AREA

- 7.1** Concessionaire acknowledges that it has had an opportunity to its satisfaction to inspect the Concession Area. Concessionaire accepts the Concession Area "as is" in the condition existing on the Commencement Date of this Concession Agreement.

- 7.2** Concessionaire shall use the Concession Area in full compliance with all provisions of the Agreement solely for the purpose of providing and operating the Concession and for no other purpose whatsoever unless otherwise approved in writing by the Authority. All operations of Concessionaire authorized under the Agreement must occur within the Concession Area.
- 7.3** The rights and privileges herein granted to Concessionaire are nonexclusive. Nothing herein shall be deemed to grant Concessionaire any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) for the conduct of any activity on the Airport, except that Concessionaire shall have the right to use the Concession Area in accordance with the terms of this Agreement.
- 7.4** The Authority reserves the right to establish additional concessions at the Airport similar to those to be provided under the terms of the Agreement as it may deem to be necessary in its sole discretion.
- 7.5** The Authority reserves the right to recapture all or a portion of the Concession Area during the term of this Agreement if the Authority, in its sole discretion, determines that all or such portion is required for public facilities, utilities, or other uses directly related to the efficient operation of the Airport and the furnishing of air transportation services. In such event, the Authority shall either offer substitute space or make a proportionate adjustment to the Concession Fee, effective on the date of such recapture. Nothing in this paragraph shall be deemed to require that the Authority provide substitute space which shall be in the sole discretion of the Authority.

SECTION 8: IMPROVEMENTS TO CONCESSION AREA

- 8.1** Concessionaire, at its own expense, may make Improvements to the Concession Area as may be required for providing the Concession Service under the terms and conditions in the Agreement, provided that Concessionaire shall not make any additions to, or alterations or modifications of, the Concession Area without first obtaining the written approval of the Authority.
- 8.2** Prior to commencing its Work, Concessionaire shall submit to the Authority for its review and approval detailed plans, designs, and specifications, including its cost estimates and proposed contractors for its Work. No change, addition, or alteration shall be made in the scope or extent of Concessionaire's Work as approved by the Authority without first obtaining approval in writing from the Authority. The approval by the Authority of the plans and specifications refers only to the approval of the general architectural and aesthetic plans set forth therein. The Authority cannot and will not approve such plans and specifications for architectural or engineering design or compliance with applicable federal, state, local laws, statutes, ordinances, codes, rules and regulations or rules and regulations issued by Authority. By approving such plans and specifications, the Authority assumes no liability or responsibility therefor or for any defect in any Improvement constructed according to such plans and specifications. The Authority reserves the right to reject any plans and specifications submitted, and shall state its reasons, in writing, for such rejection.
- 8.3** Concessionaire's Work shall comply with applicable federal, state, and local statutes, ordinances, building codes, and rules and regulations. Concessionaire

shall procure all building, fire and safety, and other permits necessary in connection with its Work.

- 8.4** Within ten (10) days after notification by the Authority of its approval, Concessionaire shall commence its Work in the Concession Area in accordance with the conditions of approval and schedule agreed to by the Authority. Concessionaire shall be fully liable to the Authority for any damage that results from its Work. All deliveries of materials and supplies shall be made through routes designated by the Authority.
- 8.5** All Work, equipment supplied and installed, and decor furnished by Concessionaire, as herein provided, shall be at Concessionaire's sole cost and expense, free and clear of liens for labor and material, and Concessionaire shall hold the Authority harmless from any liability in respect thereto.
- 8.6** Before commencing its Work, Concessionaire shall furnish its Performance and Payment Bond in the form acceptable to the Authority in the amount of one hundred percent (100%) of its total construction costs to guarantee completion of its Work.
- 8.7** Concessionaire shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen, and workers, and all claims lawfully made against it by other third persons arising out of or in connection with the performance of any Work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them.
- 8.8** Nothing herein contained shall be deemed to constitute consent to the creation of any lien or claim against the Concession Area or any part thereof, any

Improvements thereto or thereon, or any other part of the Airport, and Concessionaire shall not permit any lien to be attached to such areas.

8.9 Upon the completion of all Improvements, title thereto shall be automatically transferred to and vested in the Authority. During the term of the Agreement, Concessionaire, at its expense, shall maintain, replace, and keep in good repair and operating condition all Improvements.

8.10 Concessionaire shall retain title to Concessionaire's Property.

SECTION 9: REPAIRS AND MAINTENANCE OF CONCESSION AREA

9.1 Concessionaire, at its own expense, shall maintain the Concession Area in a good state of repair and operating condition, including the replacement and refurbishing of any such items as may require same during the term of the Agreement, whether installed by the Authority or Concessionaire.

9.2 Concessionaire shall furnish, at its own expense, janitorial service for the Concession Area and all other areas assigned to Concessionaire for its exclusive use, if any, and shall maintain such areas and all the furnishings and equipment included therein in a safe, clean, neat, and sanitary condition at all times satisfactory to the Authority. Concessionaire shall be responsible for collection and daily removal of its refuse and waste from the Concession Area.

9.3 In the event Concessionaire fails to commence repairs, replacements or refurbishing required hereunder within a period of ten (10) days after written notice from the Authority to do so, or fails to complete same within the date specified in such notice, the Authority may, at its option, and in addition to all

such other remedies which may be available to it, repair, replace or refurbish any such item included in said notice and the cost thereof shall be paid by Concessionaire immediately upon demand.

9.4 Concessionaire shall have the right to contract for delivery of its requirements for any material necessary to the Service. All deliveries shall be made through the designated service area or as may be otherwise designated by the Authority.

9.5 The Authority will perform custodial services in all public use areas adjacent to the Customer Service Counter in the Concession Area shown in Exhibit A, but Concessionaire shall use its best efforts to keep such public use areas adjacent to the Customer Service Counter free of trash.

9.6 Ready and Return Parking Facilities:

a. The Authority will assume responsibility for the routine maintenance and repair of the pavement, paint markings and common signage of the Ready and Return parking facilities.

b. Concessionaire and any other rental car service concessionaires will, collectively, assume responsibility for the routine cleaning of all trash and debris from the Ready and Return facilities (including the parking lots) at least once weekly, and for snow removal from any portion of the parking lots or circulation road between the parking lots. This may be accomplished by the concessionaires collectively engaging a commercial cleaning vendor to provide the service, with the cost prorated according to the number of spaces occupied by each concessionaire, or by any other effective method agreed upon by the concessionaires as long as the

results are satisfactory to the Authority. If the concessionaires cannot collectively agree to perform this maintenance, then the Authority will hire a service vendor to perform the work, assess an additional administration fee equal to 25% of the cost of such service and prorate the charges according to the number of spaces occupied by each concessionaire. The Authority shall collect trash from trash collection containers located within the Ready and Return parking facilities.

SECTION 10: ACCESS TO CONCESSION AREA

- 10.1** The Concessionaire, its customers, invitees, employees, other concessionaires, suppliers of material, and furnishers of services, shall have the right of ingress and egress between the Concession Area and the city streets or public ways used in common with others having similar rights. The Authority may temporarily or permanently close any such roadway and any other area at the Airport presently or hereafter used as such, so long as an equivalent means of ingress and egress remains available to Concessionaire.
- 10.2** Concessionaire hereby releases and discharges the Authority, its successors and assigns, of and from any and all claims, demands, or causes of action arising or alleged to arise out of the closing of any street, roadway or other area, whether on or off the Airport.
- 10.3** The Authority, by its employees, agents, representatives, and other concessionaires shall have the right at all reasonable times to enter upon the Concession Area for the purpose of inspecting the same and for observing the

performance by Concessionaire of its obligations under the Agreement and otherwise.

10.4 Without limiting the foregoing, the Authority, through its employees, agents, representatives, concessionaires, and furnishers of utilities and other services shall have the right to maintain existing and future utility, mechanical, electrical and other systems, and to enter upon the Concession Area at all reasonable times upon prior notice as set forth hereinabove, except during an emergency (which includes any event involving Hazardous Materials) when no notice is required, to make such investigations, tests, repairs, replacements, remediation, or alterations as the Authority may deem necessary or advisable and, from time to time, to construct or install over, in or for access to other parts of the Airport otherwise not conveniently accessible; provided, however, that the exercise of such rights shall not unreasonably interfere with the use and occupancy of the Concession Area by Concessionaire, and that every reasonable effort shall be made to restore the Concession Area to the condition existing prior to the exercise of such rights.

10.5 The exercise of any or all of such rights by the Authority, or others acting on behalf of the Authority, shall not be construed to be an eviction of Concessionaire nor be the grounds for any abatement of the Concession Fee, or charge of any type, nor for any claim or demand for damages, consequential or otherwise.

SECTION 11: REPRESENTATIONS AND WARRANTIES OF CONCESSIONAIRE

11.1 Concessionaire represents and warrants to the Authority that:

- a.** It is duly organized and validly existing under the laws of its jurisdiction, incorporation or establishment;
- b.** It has the power and the authority to enter into and perform its obligations under the Agreement and to pay any payments and other fees required under the Agreement;
- c.** The Agreement has been duly authorized, executed, and delivered by it and constitutes a legal, valid, and binding obligation of it enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency, and similar laws affecting creditor's rights generally, and subject as to enforceability to general principles of equity regardless of whether enforcement is sought in a proceeding in equity or at law;
- d.** Its execution and delivery of the Agreement and its performance of its obligations hereunder do not and will not constitute or result in a default under, a breach or violation of, or the creation of any lien or encumbrance on any of its property under, its charter or by-laws (or equivalent organizational documents), or any other agreement, instrument, law, ordinance, regulation, judgment, injunction, or order applicable to it or any of its property;
- e.** All consents, authorizations, and approvals requisite for its execution, delivery, and performance of the Agreement have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any

governmental authority or regulatory body is required for such execution, delivery or performance; and

- f. To the best of its knowledge, there is no proceeding pending or threatened against it at law or in equity, or before any governmental instrumentality or in any arbitration, which would materially impair its ability to perform its obligations under the Agreement, and there is no such proceeding pending against it which purports or is likely to affect the legality, validity or enforceability of the Agreement.

SECTION 12: OBLIGATIONS AND COVENANTS OF CONCESSIONAIRE

12.1 Concessionaire covenants to the Authority that as long as it shall have any obligations under the Agreement it shall:

- a. Provide a Service for no more than one brand or service mark in the Concession Area.
- b. Perform annual status checks through the Virginia Division of Motor Vehicles on driver's licenses of personnel in its employment who are operating Concessionaire's vehicles on the Airport to insure each employee holds a current valid license.
- c. Not operate a chauffeur-driven vehicle business.
- d. Provide the Service pursuant to its Proposal and in accordance with this Agreement consistent with the Standards of Service set forth in Section 5 herein, except as modified by written agreement with the Authority.

- e. Conduct an operation that complies with the highest standards for providing the Service promptly, reliably, efficiently, and courteously to meet all reasonable demands therefore on a fair, equal, and nondiscriminatory basis.
- f. Furnish all equipment, supplies, material, and personnel necessary for the Service.
- g. Obtain and maintain in full force and effect all authorizations, consents, approvals, permits, licenses, and certificates required by any governmental or other authority (federal, state, or local) to provide and operate the Service. Concessionaire shall notify the Authority immediately in writing in the event that any such authorization, consent, approval, permit, license, or certificate is terminated, revoked, restricted, suspended, forfeited, or otherwise lost for any reason.
- h. Use its best efforts in every proper manner to maintain, develop, and increase the business conducted by it hereunder.
- i. Not divert or cause to be diverted any business provided under the Agreement or which may be provided by other tenants and concessionaires on the Airport.
- j. Not place any furnishings of any type, including desks, chairs, file cabinets, coat racks, safes, etc., within the Customer Service Counter area or areas visible to the general public without prior written approval of the Authority.

- k.** Not place any merchandise, furnishings, displays, or Concessionaire's Property outside the Concession Area at any time.
- l.** Conduct its operations in an orderly and proper manner so as not to unreasonably annoy, disturb, or be offensive to others on or near the Airport. Concessionaire shall take all reasonable measures to eliminate vibrations tending to damage any equipment, structures, buildings, or portions of buildings.
- m.** Be responsible for the conduct, demeanor, and appearance of its employees and invitees and of those doing business with it. Upon receipt of any complaint or objection to the conduct, demeanor, or appearance of the employees, invitees or those doing business with the Concessionaire, Concessionaire shall immediately take all reasonable steps necessary to remove the cause of the complaint or objection.
- n.** Except where the Authority has specifically assumed responsibility for trash removal herein, be responsible for the proper storage and removal from the Airport of all garbage, debris, and other waste materials, arising out of its operation. Concessionaire shall not use any facilities of the Authority for such purpose without the prior written consent of the Authority. No such garbage, debris, or other waste materials shall be thrown, discharged, or deposited into or upon the waters on or bordering the Airport.
- o.** Not do or permit to be done anything that may interfere with free access and passage on the Airport.

- p. Pay all taxes, fees, license charges, and other assessments of any nature whatsoever arising in connection with any aspect of the Service, as well as all such taxes and other assessments against Concessionaire's Property, and secure all necessary city, state, and federal licenses. Concessionaire agrees to pay all such taxes, fees, license charges, and other assessments directly to the appropriate governmental entity, without involving the Authority.

SECTION 13: COMPLIANCE WITH LAW

- 13.1** Without limiting the specific obligations set forth in this Section, Concessionaire shall observe and obey and shall ensure that its officers, employees and agents, observe and obey, all federal, state, and local laws and ordinances, including all governmental rules, regulations, decisions, and orders of any nature whatsoever applicable to the operations of the Airport or to Concessionaire's operation at the Airport whether presently in force or enacted during the term of the Agreement (hereinafter "governmental rules"). Concessionaire shall also take such action as may be reasonably necessary to ensure that its guests, invitees and those doing business with it at the Airport observe and obey such governmental rules.
- 13.2** Concessionaire, its representatives, successors in interest, and assigns will not discriminate against any person on the grounds of race, color, sex, creed, or national origin, nor exclude any person from participation in, nor deny the benefits of or be otherwise subjected to discrimination in the provision of the

Service, or in the construction of any Improvements relating to the Concession Area or the furnishing of the Service thereon.

13.3 Compliance with Civil Rights Law and Regulations

Concessionaire agree 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 during any period in which Federal assistance is extended to the Airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the Authority for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. The period during which the Authority retains ownership or possession of the property.

13.4 Nondiscrimination Requirements

During the term of this Concession, Concessionaire, for itself, its assignees, consultants and successors in interest (hereinafter referred to collectively as the "Concessionaire") agrees as follows:

- a. Compliance with Regulations: The Concessionaire will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- b. Non-discrimination: The Concessionaire, with regard to the work performed by it during the Concession, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- d. Information and Reports: The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts,

other sources of information, and its facilities as may be determined by the Authority or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the Authority or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of a Concessionaire's noncompliance with the Non-discrimination provisions of this Agreement, the Authority will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - (1) Withholding payments to the Concessionaire until the Concessionaire complies; and/or
 - (2) Cancelling, terminating, or suspending the Agreement, in whole or in part.
- f. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs one through five in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Concessionaire becomes involved in, or is threatened with litigation by a

subcontractor, or supplier because of such direction, the Concessionaire may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

13.5 Transfer of Real Property Acquired or Improved Under the Concession Agreement

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Authority pursuant to the provisions of the Airport Improvement Program grant assurances.

- a. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
- b. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from

participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- c. With respect to licenses, leases, permits, etc., in the event of breach of any of the above nondiscrimination covenants, the Authority will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.
- d. With respect to a deed, in the event of breach of any of the above nondiscrimination covenants, the Authority will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will thereupon revert to and vest in and become the absolute property of the Authority and its assigns.

13.6 Clauses for Construction/Use/Access to Real Property Acquired Under the Concession

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the Authority pursuant to the provisions of the Airport Improvement Program grant assurances.

- a. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be

otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

- b. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, the Authority will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.
- c. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the Authority will there upon revert to and vest in and become the absolute property of the Authority and its assigns.

13.7 Concessionaire shall comply with and enforce, as is currently or may be required, all rules, policies, and procedures of the Transportation Security Administration (TSA) and all other governmental entities pertaining to airport security which affect Concessionaire's operation on the Airport and the Concession Area. In this connection, Concessionaire shall be responsible to ensure that no

unauthorized person enters any Security Identification Display Area (SIDA) which has been or may be designated by the Authority in its Airport Security Plan.

13.8 Concessionaire shall not knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

13.9 Pursuant to Virginia Code Section 2.2-4312 or any comparable state or federal law, Concessionaire agrees to

- a. provide a drug-free workplace for its employees;
- b. post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Concessionaire's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- c. state in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire that the Concessionaire maintains a drug-free workplace; and
- d. include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the payment and interest provisions of Virginia Code Section 2.2-4354 with respect to each lower tier subcontractor.
- e. include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-concessionaire or vendor.

- 13.10** The Concessionaire shall provide the Authority a true copy of any notice, warning, summons, or other legal process for the enforcement of any laws, ordinances, rules, regulations, decisions, or orders which pertain directly or indirectly to the operation of the Concession immediately upon receipt of same. Concessionaire shall indemnify and hold the Authority harmless from and against any and all claims, actions, damages, liabilities, fines, penalties, costs, and expenses including attorney fees suffered or incurred by the Authority as a result of Concessionaire's noncompliance with any applicable laws, ordinances, rules, regulations, decisions, or orders.
- 13.11** Concessionaire shall have such time within which to comply with the aforementioned laws, ordinances, rules, regulations, decision, or orders as the authorities enforcing the same shall allow.
- 13.12** Concessionaire covenants and agrees that it will not enter into any agreements or understandings, whether or not binding, with any person, firm, association, corporation, or other entity, which would be in violation of applicable federal, state and/or local law.
- 13.13** Compliance With Airport Rules and Regulations. Concessionaire shall observe and obey, and shall ensure that its officers, employees, agents, guests, invitees, and those doing business with it observe and obey, all applicable rules and regulations of the Authority, now in effect or hereinafter promulgated, governing the conduct and operation of the Airport. The Authority agrees that, except in cases of emergency, it will give notice to Concessionaire of all such rules or regulations adopted by it at least five (5) days before Concessionaire shall be

required to comply therewith. Copies of the rules and regulations are available at the offices of the Authority.

13.14 Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Concession Agreement, Concessionaire agrees to comply with non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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, sub-recipients 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 U.S.C. §§ 12131 – 12189) as implemented by DOT regulations at 49 CFR parts 37 and 38;
- The FAA’s Non-discrimination statute (49 U.S.C. § 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 non-discrimination 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, Concessionaire

must take reasonable steps to ensure that LEP persons have meaningful access to Concessionaire programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).

13.15 The Concession Agreement and any subcontracts incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. The Concessionaire must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

13.16 The Concession Agreement and subcontracts incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Concessionaire retains full responsibility to monitor compliance of the Concessionaire and any subcontractors with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety

and Health Administration.

13.17 Replacement of an ACDBE

- a. The Authority will require the Concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession-specific goal. Concessionaire shall notify the Authority immediately of the ACDBE's inability or unwillingness to perform and shall provide reasonable documentation.

Concessionaire must obtain prior written approval of the substitute ACDBE and provide copies of new or amended subcontracts, or documentation of good faith efforts. The Authority shall approve such substitution only if the Authority finds that the Concessionaire has good cause to terminate the ACDBE firm. For purposes of this subsection, good cause includes the following circumstances:

- (1) The listed ACDBE subconcessionaire fails or refuses to execute a written contract;
- (2) The listed ACDBE subconcessionaire fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Good cause does not exist if the failure or refusal of the ACDBE subconcessionaire to perform its work on the subcontract results from the bad faith or discriminatory action of the Concessionaire;

- (3) The listed ACDBE subconcessionaire fails or refuses to meet the reasonable, non-discriminatory bond requirements of the Concessionaire.
 - (4) The listed ACDBE subconcessionaire becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (5) The listed ACDBE subconcessionaire is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - (6) A determination by the Authority that the ACDBE subconcessionaire is not a responsible contractor;
 - (7) The listed ACDBE subconcessionaire voluntarily withdraws from the Concession and provides to the Authority written notice of its withdrawal;
 - (8) The listed ACDBE is ineligible to receive ACDBE credit for the type of work required;
 - (9) An ACDBE owner dies or becomes disabled with the result that the listed ACDBE subconcessionaire is unable to complete its work on the contract;
 - (10) Other documented good cause that the Authority has determined compels the termination of the ACDBE subconcessionaire.
- b. Good cause does not exist if the Concessionaire seeks to terminate an ACDBE it relied upon to obtain the Concession so that the

Concessionaire can self-perform the work for which the ACDBE subcontractor was engaged or so that the Concessionaire can substitute another ACDBE or non-ACDBE subcontractor after contract award.

- c. Before transmitting its request to the Authority to terminate and/or substitute an ACDBE subcontractor, the Concessionaire must give notice in writing to the ACDBE subcontractor, with a copy to the Authority, of its intent to request to terminate and/or substitute, and the reason for the request. The Concessionaire must give the ACDBE five (5) days to respond to the Concessionaire's notice and advise the Authority and the Concessionaire of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Authority should not approve the Concessionaire. If required in a particular case as a matter of public necessity (e.g., safety), the Authority may provide a response period shorter than five (5) days.
- d. The provisions of this section apply to pre-award deletions of or substitutions for ACDBE firms put forward by Offerors in negotiated procurements.
- e. Failure to comply with this provision shall constitute a breach of the Concession Agreement and grounds for termination by the Authority.

SECTION 14: FEDERAL AIRPORT AID

14.1 Concessionaire acknowledges that the Authority has received, and may in the future apply for and receive, grants of money for the benefit of the Airport, from (i) the FAA pursuant to 49 U.S.C. §40101 et seq., and other federal law; (ii) the Virginia Department of Aviation; and (iii) the City of Norfolk. In connection therewith, the Authority has undertaken or may undertake certain obligations respecting its operation of the Airport and the activities of its lessees, concessionaires, permittees, and contractors thereon.

14.2 Concessionaire covenants and agrees that the Agreement is subject to, and incorporates, any requirements imposed on the Authority by the FAA, Commonwealth, City, or any other governmental body as a result of such grant or grants. Concessionaire covenants and agrees that if the FAA or any other governmental office or body having jurisdiction for the enforcement of the obligations of the Authority resulting from such grant or grants shall make any orders, recommendations or suggestions to the Authority or Concessionaire regarding or affecting the performance of Concessionaire, Concessionaire shall upon written notice from the Authority, promptly comply therewith.

SECTION 15: SUBORDINATION OF AGREEMENT

15.1 The Agreement shall be subordinate to the provisions of any existing or future agreement between the Authority and the City of Norfolk, the Commonwealth of Virginia, or the United States, relative to the operation, maintenance, or development of the Airport. In the event any such future provision materially

impairs Concessionaire's ability to perform this Agreement, Concessionaire shall have the option to terminate the Agreement on six (6) months written notice to the Authority.

- 15.2** The Agreement shall be subject to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record; and any land use or zoning laws or regulations of the Commonwealth of Virginia and the City of Norfolk.

SECTION 16: OBLIGATIONS OF THE AUTHORITY

- 16.1** The Authority agrees that upon payment of all rents and fees set forth herein during the term of this Agreement and any extension or renewal thereof, Concessionaire shall have the peaceful right to use the Concession Area for its Service in accordance with all the rights and privileges herein stated.
- 16.2** The Authority agrees to furnish to Concessionaire electricity for normal lighting in the Concession Area, and heating and air conditioning in the appropriate seasons and lighting as required in or about the Customer Service Counter. Concessionaire shall furnish, at its own expense, all telephone line charges, internet and data services, phone equipment and the cost of maintenance therefore.
- 16.3** In consideration of the Authority providing utilities, Concessionaire hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of any such utility or the delivery or removal system therefore or Act of God, tornado, civil

commotion, riot, explosion, collapse of building, fire or collision. Concessionaire hereby expressly releases and discharges the Authority, its officers, Commissioners and employees for any and all demands, claims, actions and causes of action arising from any of the aforesaid.

- 16.4** The Authority agrees to make all reasonable efforts to prevent the solicitation or transaction of vehicle rental business at the Airport, including automobile rental advertising displays or direct access telephone lines by any person or organization whatsoever, other than Concessionaire or other rental car concessionaires who have entered into a similar agreement with the Authority.

SECTION 17: CASUALTY DAMAGE

- 17.1** In the event that the Concession Area is damaged or destroyed, in whole or in part, from any cause whatsoever including, without limitation, fire, flood, storm, earthquake, vandalism or trespass, Concessionaire shall forthwith proceed with the replacement of, or the reconstruction work necessary to restore, the Improvements to the condition and function existing prior to the occurrence of such damage or destruction, and all costs and expense incurred in connection therewith, whether or not covered by insurance proceeds, shall be paid by Concessionaire. In performing such reconstruction and restoration, Concessionaire shall fully comply with Section 8 herein.

- 17.2** In the event of casualty, regardless of cause, the Authority shall have no responsibility to reimburse Concessionaire for any unamortized costs of capital improvements made to the Concession Area, including without limitation

Concessionaire's Improvements, or any incidental or consequential damages, including, but not limited to, lost profits which may be sustained by Concessionaire or any loss or damage to any of Concessionaire's Property.

- 17.3** In the event that the Airport, or a majority thereof, is damaged or destroyed to the extent that operations within the Airport, including the Concession Area, cannot occur for a period in excess of ninety (90) days, then either party may terminate this Agreement upon written notice to the other specifying the date of termination.

SECTION 18: MANAGEMENT AND PERSONNEL

- 18.1** Concessionaire shall have in charge at all times a competent and experienced manager who shall be responsible for the day-to-day operation and maintenance of the Service under the Agreement. Concessionaire further agrees that upon notification by the Authority of its dissatisfaction with the manager's performance, Concessionaire shall place the manager on probation for thirty (30) days and, if the manager's performance does not improve to the satisfaction of the Authority, Concessionaire shall immediately replace the manager with one satisfactory to the Authority.
- 18.2** All employees or agents of Concessionaire who provide services to the public or who work within view of the public shall wear good quality attractive attire or uniforms appropriate to the Concession Area and duty to which they are assigned and the services they perform. All uniforms used shall be approved by the Authority prior to use, and no substitution shall be permitted without prior approval of the Authority.

18.3 Personnel performing the Service shall be neat, clean, and courteous. Concessionaire shall not permit its agents, servants or employees to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, or to solicit business outside the Concession Area in any manner whatsoever except through the use of signs constructed, installed and maintained in accordance with this Agreement.

SECTION 19: BOOKS AND RECORDS

19.1 Concessionaire shall maintain, in accordance with generally accepted accounting practices, throughout the term of the Agreement and for five years (5) thereafter, records and books of account relating in any way to its operation of the Service, which records and books of account shall be made available upon demand at reasonable times for audit and inspection by the Authority. If such records and books of account are maintained outside the City of Norfolk, Concessionaire shall reimburse the Authority for expenses incurred in sending representatives to inspect such records wherever maintained, such expense to include but not be limited to, transportation, lodging, food, and other out-of-pocket expenses resulting from the necessity to leave Norfolk.

SECTION 20: VENDING MACHINES

20.1 The installation of vending machines which dispense food, beverages, chewing gum, tobacco products or any other merchandise shall not be permitted within the Concession Area.

SECTION 21: SIGNS AND PUBLIC-ADDRESS SYSTEM

21.1 All signs must be constructed and erected in accordance with standards approved by the Authority and at no cost to the Authority. Prior to the erection, construction, or placing of any such signs or advertising matter in the Concession Area, Concessionaire shall submit to the Authority, for its written approval, such drawings, sketches, design dimensions and type, number and character of the sign of advertising matter and such other information as necessary to obtain such approval.

21.2 Concessionaire shall not hang or affix any sign, poster or other form of display material anywhere outside the Concession Area, nor shall Concessionaire hang any posters, forms of advertising, or any object from the ceiling of the Concession Area.

21.3 The Authority shall have the right, in its sole discretion, to install one or more public address system speakers in the Concession Area for announcing Airport information. Concessionaire shall not install any public address, paging, or other audio system in the Concession Area without the express written approval of the Authority.

SECTION 22: PARKING

22.1 The Authority may permit the officers, employees, invitees, and business visitors of Concessionaire to park vehicles in areas designated by the Authority for such purpose. The fee, if any, for such parking shall be paid by Concessionaire or the

operator of the vehicle. Regulations governing employee parking are attached as Exhibit D to the Agreement.

SECTION 23: INDEMNITY BY CONCESSIONAIRE

23.1 Concessionaire shall protect, defend, indemnify, and hold the Authority and its Commissioners, officers, directors, employees, and agents completely harmless from any and all liabilities, losses, suits, actions, claims, judgments, fines, expenses, or demands of any character (including, but not limited to, court costs and attorney fees), brought because of any injuries (including death) or damages received or sustained by or any person, persons, or property arising out of or related, in whole or in part, in any way to the provision of the Service or the operations of Concessionaire, its successors, contractors, sub-contractors, suppliers, agents, employees or invitees, including but not limited to injuries or damages arising from or on account of (i) any neglect in safeguarding the Concession Area; (ii) the use of unacceptable materials in constructing the Improvements; (iii) any negligent acts or omissions, or misconduct of Concessionaire; (iv) any infringements of patent, trademark, or copyright; (v) any claims or amounts arising or recovered under Concessionaire's worker's compensation coverage, or any other law, ordinance, order, or decree; (vi) the use, release or disposal on or off the Airport of Hazardous Materials; and (vii) the protection of or damages to the Airport or its passengers, guests, invitees and employees.

- 23.2** Any funds due Concessionaire under and by virtue of the Agreement, as may be considered necessary by the Authority for such purpose, may be retained for the use of the Authority or, in case no such funds are due, Concessionaire's Security Deposit may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Authority. Such funds due Concessionaire will not be withheld when Concessionaire produces evidence satisfactory to the Authority in the form hereinafter prescribed, that Concessionaire is adequately protected by commercial general and automobile liability and property damage insurance, provided that the foregoing provisions shall in no way be deemed released, waived, or modified in any respect by reason of any insurance or surety provided by Concessionaire under the Agreement.
- 23.3** Concessionaire shall give immediate notice to the Authority but not more than in twenty-four (24) hours following any injury (including death), loss or damage (or claim therefore),.

SECTION 24: INSURANCE

- 24.1** Concessionaire shall purchase and maintain, at its expense, such insurance as is customarily maintained by similar business enterprises at commercial airports, which insurance must include, but is not necessarily limited to, the insurance required by the provisions of this Section. Concessionaire agrees to keep all insurance policies in effect during the full Term of this Agreement, notwithstanding an early termination by the Authority pursuant to Section 29 or

any other provision of this Agreement. Concessionaire shall maintain insurance in companies acceptable to the Authority of the kinds and in the amounts herein specified, with companies licensed and qualified to conduct business within the Commonwealth of Virginia, and having a current A. M. Best Key Rating of at least A, and a financial rating of at least "X," in the prescribed form or such other form as is, in its sole discretion, acceptable to the Authority. If any part of the Service is permitted by the Authority to be subcontracted, Concessionaire shall require the subcontractor to comply with this Section and all other provisions of the Agreement relating to insurance.

24.2 Forms of Coverage; Limits. In accordance with the above, Concessionaire shall maintain the following forms of insurance coverage and the greater of the corresponding minimum limits of liability set forth below or those imposed by law. The Authority reserves the right to modify these insurance requirements during the Term of this Agreement to reflect operational and market conditions.

<u>FORMS OF COVERAGE</u>	<u>MINIMUM LIMITS</u>
Workers' Compensation	Statutory Benefits for Virginia
Employer's Liability	\$500/\$500/\$500,000 or Amount Necessary for Excess Liability Underwriters
Retention or Deductible	None
Commercial General Liability on an occurrence basis as follows:	
Combined Single Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations	\$2,000,000

Each Occurrence Limit	\$1,000,000
Aggregate Personal Injury and Advertising Injury	\$1,000,000
Fire Damage Limit (any one fire)	\$100,000
Medical Expense Limit (any one person)	\$10,000
Retention or Deductible	None
Hold Harmless Agreement	Existence stated in CGL contract
Business Automobile Liability for owned, non-owned, hired, leased, and rented vehicles:	
Liability	\$1,000,000
Medical Payments	\$5,000
Uninsured Motorist	\$1,000,000
Hired, Rented & Leased Autos	\$1,000,000
Non-Owned Autos	\$1,000,000
Retention or Deductible	None
Comprehensive Deductible	Concessionaire's Choice
Collision Deductible	Concessionaire's Choice
Excess Third-Party Liability	
General Aggregate	\$4,000,000
Products-Completed Operations	\$4,000,000
Each Incident Limit	\$4,000,000
Retention	None or \$10,000 Maximum
Over and Above these Primary Placements: Commercial General Liability Business Auto Liability Including Hired and Non-Owned Auto Liability Employers Liability	

Concessionaire shall also maintain commercial property insurance upon all Improvements at full replacement cost which shall be written on Causes of Loss Special form, or equivalent. Commercial General Liability shall include coverage for: (i) Contractual Liability; (ii) Contractor's Protective Liability, including, but not limited to, coverage for explosion, collapse, and damage to underground utilities,

and completed operations for 24 months after the work has been completed; and (iii) the Broad Form Comprehensive General Liability Endorsement as included in the commercial general liability form, which shall include all of the aforementioned coverage.

24.3 Evidence of Insurance Coverage: Concessionaire shall submit, prior to the Commencement Date, along with the executed Agreement, the standard "ACORD" insurance certificate forms (or comparable insurance certificate form(s) acceptable to the Authority) signed by an authorized representative of the insurance companies, certifying that the insurance coverage required hereunder is in effect for the Service and Work covered by the Agreement. Such insurance certificate shall contain a specific reference to the indemnity clause in Section 23 of this Agreement. The insurance certificate shall indicate that the Authority will be given at least thirty (30) days advance written notice of cancellation or non-renewal of any insurance required hereunder. Concessionaire also shall provide authorization for its insurance company to deliver copies of any certificates of insurance covering the insurance required hereunder to the Authority within ten (10) days following a request by the Authority to the insurance company or its agent for such copies. On all policies of insurance, the Authority shall be an additional insured or loss payee, as applicable. If available, the policy shall provide for a waiver of subrogation against the Authority.

24.4 Cost of Insurance Coverage: The cost of all insurance required by the Agreement shall be paid by Concessionaire. Notwithstanding the provisions of this paragraph, the Authority shall have the right to pay the premium for each

insurance policy required under the Agreement and Concessionaire agrees to reimburse the Authority for all premiums and related expenses associated with the procurement of the necessary insurance coverages under the terms and conditions of the Agreement. Failure of the Authority to secure such insurance for Concessionaire shall not impose any liability upon the Authority and such failure shall not operate to waive or invalidate any obligation assumed hereunder by Concessionaire.

24.5 Notice of Claims: Concessionaire shall provide Authority immediate notice in writing of any claim made on Concessionaire's insurance. The Authority agrees to notify Concessionaire promptly in writing of any claim, demand, or action arising out of an occurrence related to the performance of the Agreement of which the Authority has knowledge and to cooperate with Concessionaire in the investigation hereof.

24.6 Limitation of Liability: The Authority shall not be liable or responsible for any loss or damage to any real and personal property of Concessionaire, including Concessionaire's Property, vehicles or other equipment, be it mobile, portable or fixed, including loss of income and extra expense associated with any incident, arising out of any incident that is the proximate cause of any peril included within the "Special Causes of Loss" form of the standard Commercial Property Policy as used within the Commonwealth of Virginia, and including additional perils of flood, the dishonest acts of either the Authority's or Concessionaire's employees, earthquake, earth movement, the backup of sewers or drains, collapse of any building or structure, weather conditions, acts of God, or any other cause of loss

arising out of nature. Concessionaire shall fully insure all such property against such perils.

24.7 Third Party Beneficiaries: Nothing in this Agreement shall cause or create in the public or any individual or other entity a third party beneficiary or authorize anyone not a party to the Agreement to maintain an action for personal injuries or property damage pursuant to the terms or provisions of the Agreement.

24.8 Defense of Claims. Concessionaire shall defend, with counsel approved by the Authority, any and all suits brought against the Authority, and its representatives, officers, agents and employees by any employee or other person (whether employed by Concessionaire or not) for damage to real or personal property and/or injury to persons (including death) alleged or claimed to have been caused by or through the performance of Concessionaire, and shall indemnify and hold harmless the Authority, and its representatives, officers and agents and employees of each of them from and against any and all claims arising out of the operations by Concessionaire, and whether or not such claim or claims are based in whole or in part on the negligence of any one or more of them, except that Concessionaire shall not be liable for any gross negligence on the part of the Authority. Concessionaire shall pay, liquidate and discharge any and all claims or demands for personal injury (including death), and for loss or damage to any and all property caused by, growing out of or incidental to the performance by Concessionaire of the Service or the condition of the Concession Area, including, without limitation, damage to the property of the Authority, and including all other damages and all costs and expenses of such suits and attorneys' fees. The

obligation set forth in this Section shall specifically include, without limitation, all claims and judgments arising or alleged to arise with respect to protection of or damages to the Concession Area and any other areas of the Airport.

SECTION 25: HAZARDOUS MATERIALS

- 25.1** Concessionaire shall not use, install, generate, store, treat, transport, or dispose of any Hazardous Material, except Permitted Substances, in any part of the Airport, or otherwise cause or permit any part of the Airport to contain or have upon it any Hazardous Materials except Permitted Substances.
- 25.2** Concessionaire shall ensure that all Hazardous Materials are contained, identified, characterized, packaged, labeled, stored, transported, and disposed of in accordance with all applicable local, state, and federal laws and regulations. Concessionaire shall only ship or transport Hazardous Materials, or waste generated from Hazardous Materials, using properly licensed or permitted transporters, and Concessionaire shall only dispose of Hazardous Materials or waste generated from Hazardous Materials at facilities properly licensed and permitted for such disposal.
- 25.3** Concessionaire shall promptly notify the Authority in writing of any notice, order, or pending or threatened action by, or received from, any regulatory agency or other governmental body, or any claims made by any third party, relating to Hazardous Materials at the Airport, and shall promptly furnish the Authority with copies of any documents or legal pleadings in connection therewith.

25.4 Concessionaire shall immediately notify the Authority of any releases, spills, overfills, leaks, discharges or emissions of any Hazardous Materials. Concessionaire shall make, and shall provide the Authority with copies of, all required filings and notifications to federal, state and local authorities related to any such releases or other occurrences set forth in the preceding sentence or related to its use or management of Permitted Substances. In addition, the Authority shall have the right, but shall not be obligated, to notify any federal, state, or local governmental authority of information which may come to its attention with respect to Hazardous Materials at the Airport and Concessionaire releases the Authority from any claims of loss, damage, liability, expense or injury relating to or arising from, directly or indirectly, any such disclosure which arises from any release, spill, overfill, leak discharge, or emission of Hazardous Material related to Concessionaire's operations.

25.5 If at any time during the Term of this Agreement the Authority has any basis to suspect that Concessionaire has failed to observe or perform any provision, covenant, condition, or agreement contained in this Agreement related to Hazardous Materials, and in all events, upon the termination of this Agreement or upon the occurrence of a default, the Authority may require Concessionaire, at the Authority's option **(a)** to provide the Authority, at Concessionaire's expense, a full or partial environmental inspection or audit, prepared by a qualified consultant approved by the Authority, certifying as to the presence or absence of Hazardous Materials; or **(b)** to permit the Authority to inspect or audit the area in question at Concessionaire's expense.

SECTION 26: ASSIGNMENT OF AGREEMENT

- 26.1** Concessionaire shall not at any time sell, assign, transfer, pledge or otherwise encumber in any manner whatsoever the Agreement nor any part thereof, nor transfer, encumber or sublet any portion of the Concession Area, nor any Improvements thereon or thereto for any purpose, nor allow others to use the Concession Area without the prior written consent of the Authority.
- 26.2** Concessionaire acknowledges that the prior experience requirements set forth in the Proposal Documents were a material basis upon which Concessionaire was awarded this Agreement and that any assignee or successor must meet such requirements at the time of assignment or transfer. In addition, Concessionaire acknowledges that its financial capability as demonstrated during the procurement stage was a material basis upon which Concessionaire was awarded this Agreement and that meeting and maintaining the financial capability requirements are critical to Concessionaire's ability to perform under this Agreement. Accordingly, in addition to any other requirements which the Authority may impose, Concessionaire acknowledges and agrees that any assignee or successor must meet the financial capability standard in the Proposal Documents at the time of the assignment or transfer and must thereafter maintain the required levels of financial capability throughout the remaining term of this Agreement.
- 26.3** No assignment shall in any way affect or diminish Concessionaire's obligation to perform all of the terms and provisions contained in the Agreement.

26.4 The sale or transfer of (i) the controlling stock of a closely held corporation, (ii) the controlling interest in a partnership or limited liability company, (iii) a sale or transfer of a controlling interest in Concessionaire by a Controlling Party, or the transfer of interest by merger, acquisition or similar corporate transfer or transfer by operation of law, whether in a single transaction or as a result of more than one transaction, shall be considered as an assignment for the purpose of this Section.

SECTION 27: AGREEMENT BINDING UPON SUCCESSORS

27.1 Notwithstanding the prohibition on assignment set forth above, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto as may be permitted herein.

SECTION 28: CONDEMNATION

28.1 In the event of the acquisition by condemnation or the exercise of the power of eminent domain by a governmental entity (which for these purposes shall not be deemed to include the Authority) of any interest in all or part of the Concession Area, Concessionaire shall not institute any action or proceeding or assert any claim against the Authority for compensation or consideration of any nature whatsoever, and any provision herein contained contrary to the provisions of this Section shall have no force or effect. All compensation awarded or paid upon such a total or partial taking of the Concession Area shall belong to and be the property of the Authority without any participation by Concessionaire.

28.2 Nothing contained herein shall be construed or preclude Concessionaire from recovering directly from the condemning authority the value of any claim, as may exist, for loss of business, or depreciation, damage, or cost of removal, or for the value of Concessionaire's Property; provided, however, that no such claim shall diminish or otherwise adversely affect the Authority's award.

SECTION 29: TERMINATION FOR CONVENIENCE

29.1 The Authority reserves the right to cancel and terminate the Agreement for its convenience, for any reason whatsoever, upon sixty (60) days written notice to Concessionaire. In the event of such termination, Concessionaire shall not be entitled to recover any damages from the Authority including, without limitation, lost profits or overhead costs of any nature.

SECTION 30: DEFAULT BY CONCESSIONAIRE

30.1 The occurrence of any of the following shall constitute a default by Concessionaire:

- a.** Concessionaire fails to make or cause to be made any payment required herein when due, or fails to provide the insurance herein;
- b.** Concessionaire fails to observe or perform any provision, covenant, condition, or agreement contained in this Agreement related to Hazardous Materials and such failure is not cured immediately upon Concessionaire becoming aware of the failure or upon notice of such failure given by the Authority; provided that if such observance or performance requires work

to be done, actions to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied immediately but can be done, taken or remedied within a reasonable period of time, no default shall be deemed to have occurred or to exist if, and so long as, Concessionaire shall commence such work, action, or other remedy immediately and shall diligently and continuously prosecute the same to completion;

- c. Concessionaire fails to observe or perform any other provision, covenant, condition, or agreement contained in the Agreement, and such failure continues for a period of five (5) days after written notice of such failure and requiring the same to be remedied, shall have been given by the Authority; provided that if such observance or performance requires work to be done, actions to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied within such 5-day period but can be done, taken or remedied within a reasonable period of time, no default shall be deemed to have occurred or to exist if, and so long as, Concessionaire shall commence such work, action, or other remedy within such 5-day period and shall diligently and continuously prosecute the same to completion;
- d. Concessionaire fails on three occasions during any twelve month period to observe or perform any provision, condition, covenant, or agreement in the Agreement even if each such failure shall be cured within the time provided in subsection (b) or (c) above.

- e. Any warranty, representation, certification, financial statement, or other information made or furnished by Concessionaire at any time (as “Offeror,” “Selected Offeror,” or “Concessionaire”) is determined by the Authority, in its sole judgment, to be false or misleading.
- f. If Concessionaire, or any successor or assignee, while in possession, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.
- g. If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against Concessionaire, or if a receiver or trustee shall be appointed of all or substantially all of the property of Concessionaire and such proceedings shall not be dismissed or the receivership or trusteeship vacated within thirty (30) days after the institution or appointment.
- h. If Concessionaire shall vacate the Concession Area or abandon the Service;
- i. If the Service or any controlling interest in Concessionaire shall be transferred to or shall pass to or devolve on any other party, except in the manner permitted herein; or
- j. The criminal felony conviction of Concessionaire or any Controlling Party (as defined in the Request for Proposal) of Concessionaire.

30.2 In the event of any default by Concessionaire under the Agreement, in addition to any other remedies available at law or in equity, the Authority shall have the following rights, options, and remedies which shall be construed and held to be cumulative, and no one of them shall be exclusive of the other:

- a.** The Authority shall have the right to cancel and terminate the Agreement upon giving ten (10) days written notice to Concessionaire.
- b.** The Authority may elect, but shall not be obligated, to make any payment required of Concessionaire or comply with any agreement, term, or condition required by the Agreement to be performed by Concessionaire. The Authority shall have the right to assume the Service or perform any obligation of the Concessionaire for the purpose of correcting or remedying any such default and to continue the Service until the fault has been corrected or remedied, but any expenditure by the Authority shall not constitute a waiver or release of the default of Concessionaire or the right of the Authority to take any action as may be otherwise permissible at law or equity or under the Agreement in the case of any default.
- c.** The Authority may recover from Concessionaire the payments due the Authority for the balance of the term, which sum shall be due immediately, and all damages proximately resulting from the breach, including the cost to the Authority for providing the Service or performing any obligation of the Concessionaire or remedying any such default.
- d.** The Authority shall have the right, but not the obligation, to remove all or any part of Concessionaire's Property located on the Airport and to sell

such property and apply the proceeds to any damages incurred by the Authority, or to store Concessionaire's Property in a public warehouse or at a place selected by the Authority, without liability therefore, at the expense and risk of Concessionaire.

- 30.3** If the Authority pays any sum or incurs any cost as a result of a default, Concessionaire shall reimburse the Authority for all such costs or expenses within ten (10) days from the date of Concessionaire's receipt of the invoice. If Authority personnel is used in the performance of any work as a result of a default, Concessionaire shall reimburse the Authority at an hourly rate equal to two (2) times the rate of pay (including benefits) normally received by each employee. If material is used in the performance of any work as a result of a default, Concessionaire shall reimburse the Authority at two (2) times the cost of acquisition by the Authority of all such material.
- 30.4** Concessionaire shall pay all expenses incurred by the Authority in the collection of any payments, damages, or other monies due, or that are incurred by the Authority in any action or proceeding that arises or results from a default, including, but not limited to, court costs and attorney's fees.
- 30.5** The rights of termination described above shall be in addition to any rights and remedies that the Authority shall have pursuant to the Agreement or at law or in equity, and the exercise by the Authority of any right of termination shall be without prejudice to any other such rights or remedies.

SECTION 31: DEFAULT BY AUTHORITY

31.1 Concessionaire's sole remedy against the Authority for its default shall be the right to terminate the Agreement upon ninety (90) days written notice to the Authority if the Authority fails to comply with provisions of the Agreement and such failure is not cured by the Authority within sixty (60) days of receipt of written notice from Concessionaire.

SECTION 32: EXTRAORDINARY TERMINATION BY CONCESSIONAIRE

32.1 The Agreement shall be subject to termination by Concessionaire in the event of any of the following events:

- a.** The permanent abandonment of the Airport as a commercial air terminal.
- b.** The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof in such a manner as to substantially restrict Concessionaire from operating there from for a continuous period in excess of ninety (90) days.
- c.** Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the Authority's use of the Airport in such a manner as to substantially restrict Concessionaire from conducting its Services hereunder, provided that such injunction remains in force for a period of ninety (90) days.

32.2 Any misconduct, negligence or breach by any other tenant or concessionaire at the Airport shall not release Concessionaire of its obligations herein.

32.3 In the event Concessionaire terminates the Agreement pursuant to this Section, Concessionaire shall have no right to seek or recover any damages against the Authority by reason of the termination of the Agreement.

SECTION 33: SURRENDER OF POSSESSION; HOLDING OVER

33.1 On the date of the expiration or other termination of the Agreement, the Concessionaire covenants and agrees to yield and deliver, peaceably and promptly, the Concession Area to the Authority, all being in good condition as required by the Agreement.

33.2 Upon the expiration or termination of the Agreement, Concessionaire shall, upon notice from the Authority, take all reasonable steps to cooperate with the designated replacement concessionaire to ensure a smooth transition of the Service.

33.3 If Concessionaire holds over and remains in possession of the Concession Area after the expiration or other termination of the Agreement, without the written approval of the Authority, the Authority may treat such holdover as a month to month tenancy, subject to all the terms and conditions provided in the Agreement, except that any applicable payments shall be equal to 150% of the payments in effect immediately prior to the date of the holding over.

33.4 In addition to any payments as set forth above, Concessionaire shall be liable to the Authority for any and all loss or damages that result from holding over by Concessionaire without the written approval of the Authority.

33.5 It is expressly agreed that the acceptance of any payment by the Authority from Concessionaire in the event that Concessionaire holds over shall not constitute a waiver by the Authority of its right to immediate possession of the Concession Area or any other right at law or equity or pursuant to the Agreement.

SECTION 34: REMOVAL OF PROPERTY

34.1 Upon the expiration or termination of the Agreement, or under any other circumstances permitting or requiring Concessionaire to remove all Concessionaire's Property, Concessionaire shall remove such property in a manner and at a time that shall permit continued, uninterrupted operation of the Service. Removal operations shall commence at a time specified by the Authority and shall be completed within five (5) calendar days, but Concessionaire's Property shall be subject to any lien that the Authority may have for any unpaid rents or other fees and charges due under the terms of the Agreement.

34.2 Concessionaire shall repair all damage done to the Concession Area or other Airport property resulting from the removal of Concessionaire's Property, and shall restore the Concession Area to the state of good repair that existed prior to the installation of Concessionaire's Property, less normal wear and tear.

SECTION 35: WAIVERS

35.1 Every provision herein imposing an obligation upon Concessionaire is a material inducement and consideration for the execution of the Agreement. No waiver by the Authority of any of the terms, covenants, or conditions of the Agreement, or

noncompliance therewith, shall be deemed as a waiver at any time thereafter of the same or any other term, covenant, or condition herein contained, nor of the strict and prompt performance thereof.

35.2 No delay, failure, or omission of the Authority to re-enter the Concession Area or to exercise any right, power, privilege, or option arising from any default, or subsequent acceptance of payment of any sort then or thereafter accrued shall impair any such right, power, privilege, or option, nor be construed as a waiver of any such default or acquiescence therein.

35.3 Time is of the essence for all purposes of this Agreement. No notice by the Authority shall be required to restore or revive time as being of the essence hereof after waiver by the Authority of any event of default in one or more instances.

SECTION 36: WAIVER OF CLAIMS FOR ANTICIPATED PROFITS

36.1 Concessionaire waives any claims against the Authority and its Commissioners, officers, directors, agents, or employees for loss of anticipated profit in any suit or proceeding involving the Agreement or any part thereof.

SECTION 37: FORCE MAJEURE

37.1 If either party hereto shall be delayed, hindered in, or prevented from, the performance of its obligations under the Agreement by reason of riots, insurrection, war, acts of God, terrorism or other reason of like nature, not the fault of such party (hereinafter, "Permitted Delay"), such party shall be excused

for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time sought by Concessionaire for a Permitted Delay shall be conditioned upon it providing written notice of such Permitted Delay to the Authority within five (5) calendar days of the event causing the Permitted Delay.

- 37.2** In no event shall Concessionaire be relieved of its obligations to pay the Concession Fee by reason of a Permitted Delay or otherwise except as specifically set forth in the Agreement.

SECTION 38: DISPUTES

- 38.1** Concessionaire shall submit all claims, of any nature or basis, in writing, to the Executive Director of the Authority within ten (10) days of the occurrence allegedly giving rise to such claim. Any claim not timely submitted to the Executive Director is waived.

- 38.2** The Executive Director shall respond to such written claim within thirty (30) days of the receipt of the claim by either: (i) making a written determination with respect to the claim, or (ii) making a written request for additional information. If requested, Concessionaire shall provide all requested additional information within ten (10) days of the date of the Executive Director's request, or the claim is waived. Thereafter, the Executive Director shall make a written determination with respect to the claim within twenty (20) days after receipt of the additional information. In either case, the Executive Director's written determination shall be final and conclusive unless within thirty (30) days from the date of the

Executive Director's written determination, Concessionaire requests, in writing, an appeal to the Authority's Board of Commissioners ("the Board") stating specifically all grounds of appeal.

- 38.3** The Board shall use its best efforts to hear any such appeal within one hundred twenty (120) days after the Board's receipt of the written appeal. At such hearing, Concessionaire shall be afforded such opportunity to be heard and to offer relevant evidence in support of its appeal as may be determined by the Board in its sole discretion.
- 38.4** The decision of the Board shall be final and conclusive unless appealed by Concessionaire within thirty (30) days from the date of such decision to the Circuit Court for the City of Norfolk and found by the Court to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith.
- 38.5** Concessionaire shall diligently continue performance of the Agreement, including as may be directed by the Executive Director or the Board, regardless of whether such dispute is pending or on appeal, and regardless of the outcome of such dispute or appeal.

SECTION 39: SITUS AND SERVICE OF PROCESS

- 39.1** The Circuit Court for the City of Norfolk shall have exclusive jurisdiction and venue with respect to all disputes, actions, and proceedings arising from or under the Agreement, regardless of the nature or basis of the dispute, provided that any suit, action, or other proceeding involving exclusive federal jurisdiction that

relates in any way to the Agreement shall be filed in the U.S. District Court for the Eastern District of Virginia, Norfolk Division.

- 39.2** Concessionaire consents to the jurisdiction and venue of the Norfolk Circuit Court and waives personal service of any and all process upon Concessionaire in all such actions or proceedings, and consents that all such service or process shall be made by certified mail, return receipt requested, directed to Concessionaire at the address herein stated, and service so made shall be deemed to be completed two (2) days after the same shall have been mailed as aforesaid.

SECTION 40: RELATIONSHIP OF PARTIES

- 40.1** It is understood and agreed that nothing in the Agreement is intended or should be construed as in any way creating or establishing a partnership between the Authority and Concessionaire or of creating a joint venture, or as establishing Concessionaire as the agent, representative, or employee of the Authority for any purpose or in any manner whatsoever.

- 40.2** Concessionaire is to be, and shall remain, an independent contractor with respect to the Service and any other actions performed under the Agreement or any part thereof.

SECTION 41: DEALINGS AND NOTIFICATION OF PARTIES

- 41.1** Whenever Concessionaire is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with the Authority, Concessionaire shall deal with the Authority's authorized representative. The Authority's

authorized representative shall be its Executive Director unless or until the Authority shall give Concessionaire written notice to the contrary.

- 41.2** All notices from one party to the other under the Agreement shall be in writing, delivered by hand or by recognized commercial courier services or mailed by registered or certified mail to the address indicated herein, with the right to change addresses upon written notice of one party to the other.

Norfolk Airport Authority:
Executive Director
Norfolk Airport Authority
Norfolk International Airport
2200 Norview Avenue
Norfolk, Virginia 23518-5807

(Concessionaire)

SECTION 42: INTERPRETATION

- 42.1** The Agreement shall be construed according to the laws of the Commonwealth of Virginia.
- 42.2** The language of the Agreement shall be construed according to its fair meaning, and not strictly for or against either the Authority or Concessionaire.
- 42.3** The table of contents, titles, and section headings appearing herein are solely for convenience of reference for the parties and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of the Agreement.
- 42.4** If any provision of the Agreement is determined to be void or unenforceable for any reason by any court of competent jurisdiction, then such determination shall

not affect any other provision of the Agreement and all such other provisions shall remain in full force and effect.

42.5 The Agreement constitutes the entire agreement between the Authority and Concessionaire. Each of its documents and exhibits is incorporated herein by this reference as if fully set forth herein and made apart thereof. The Concessionaire and Authority may modify or supplement any provision of this Agreement, however, no change in, modification of, or supplement to, the Agreement shall be valid or enforceable unless it is in writing and signed by the duly authorized representatives of both the Authority and Concessionaire.

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

Witness the following signatures and seals:

NORFOLK AIRPORT AUTHORITY

Robert S. Bowen, Executive Director

ATTEST:

Assistant Secretary

CONCESSIONAIRE:

(agency)

By: _____
(Signature)

(Printed Name)

Title: _____

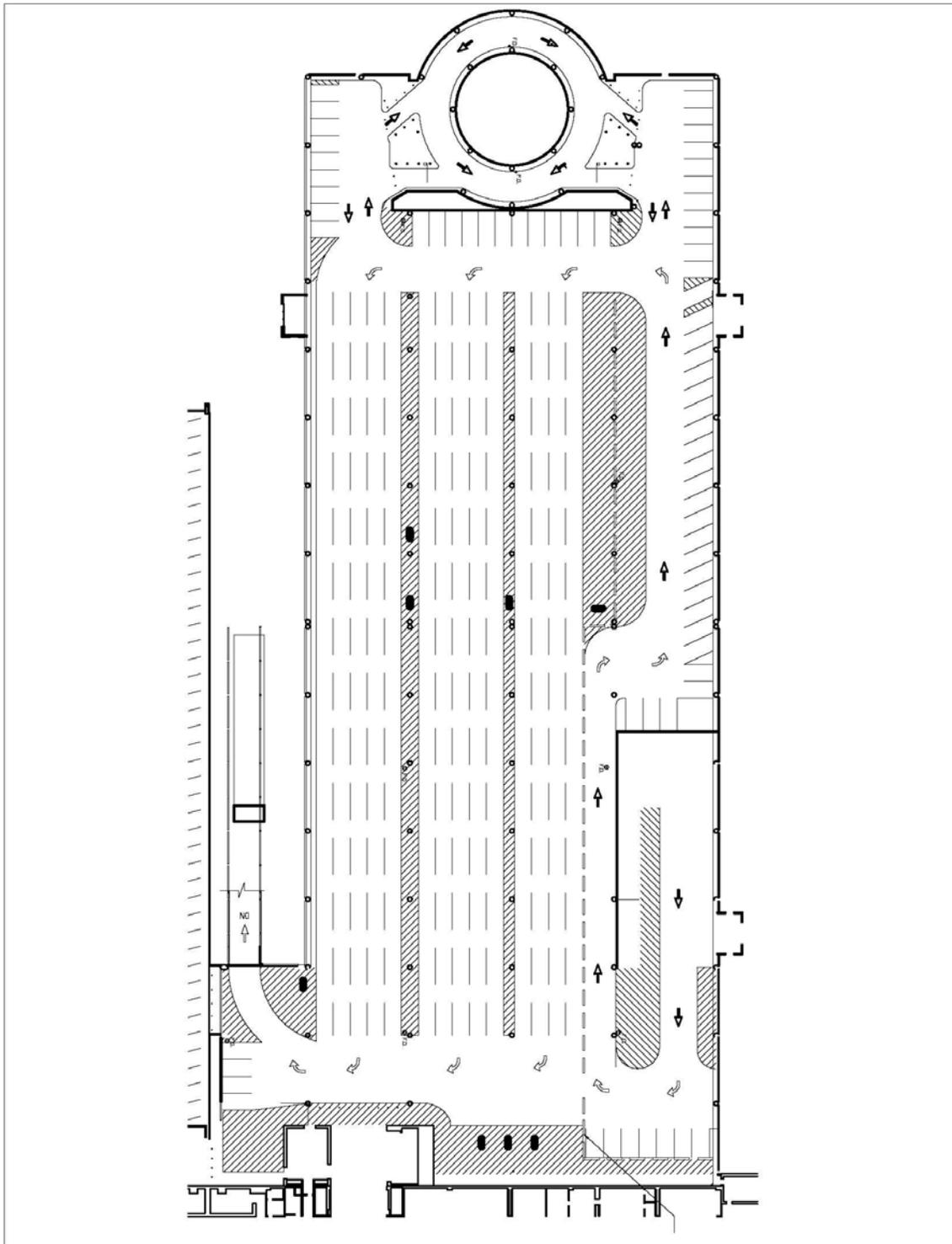
WITNESS:

Title: _____

EXHIBIT A

CONCESSION AREA

Rental Car Return Row Spaces



Rental Car Counter Spaces

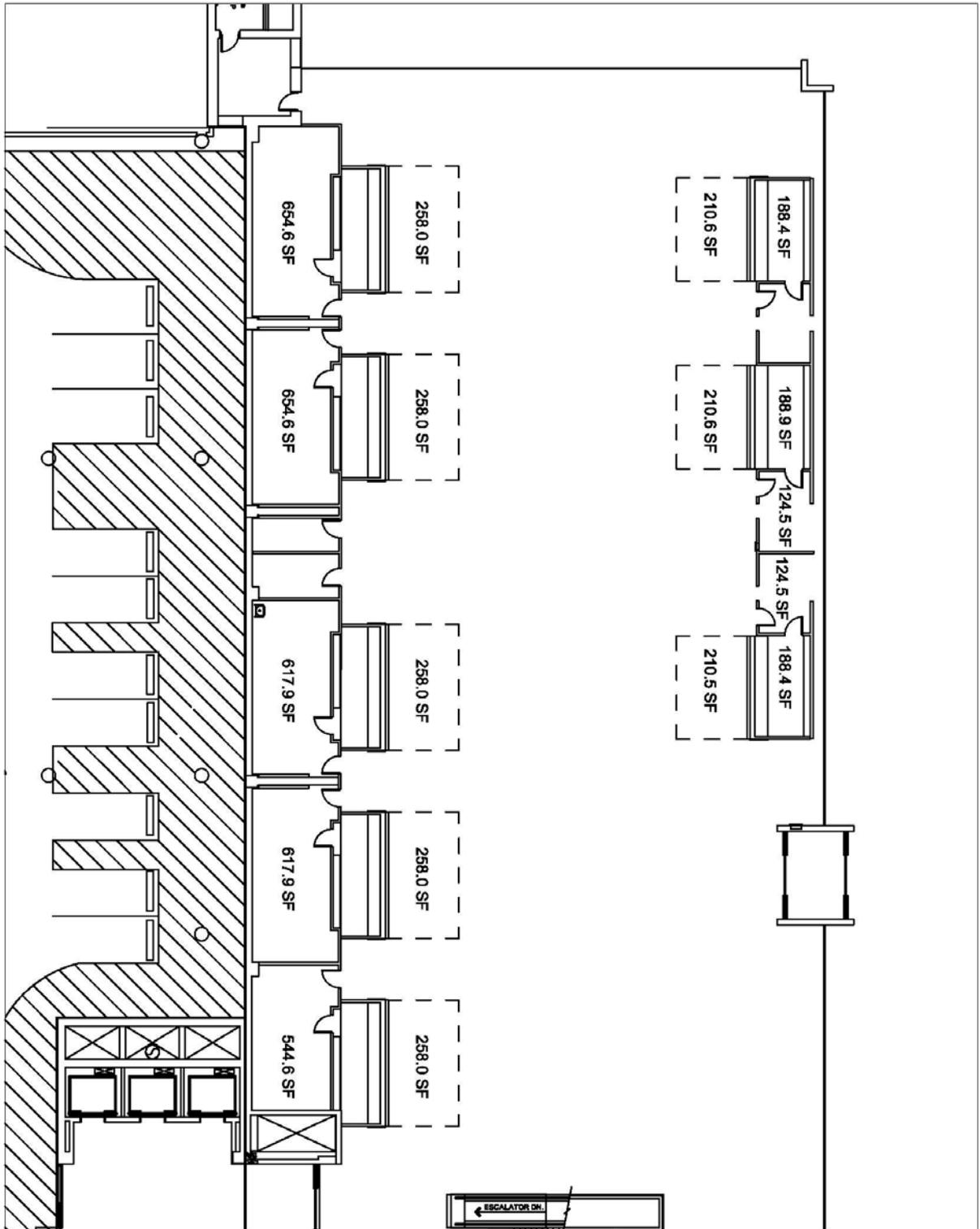


EXHIBIT B

RENTAL CAR CUSTOMER FACILITY CHARGE AGREEMENT

RENTAL CAR CUSTOMER FACILITY CHARGE

AGREEMENT

by and between

THE NORFOLK AIRPORT AUTHORITY

and

RENTAL CAR

CUSTOMER FACILITY CHARGE AGREEMENT

THIS RENTAL CAR CUSTOMER FACILITY CHARGE (CFC) AGREEMENT (hereinafter referred to as “Agreement”, made and dated as of August 1, 2018, is by and between the **NORFOLK AIRPORT AUTHORITY** (hereinafter referred to as the “Authority”), a political subdivision of the Commonwealth of Virginia, and _____ (hereinafter referred to as the “Concessionaire”).

WITNESSETH

WHEREAS, the Concessionaire operates a Rental Car Service Concession on the Norfolk International Airport (hereinafter referred to as the “Airport”) pursuant to the Concession Agreement dated as of _____; and

WHEREAS, the Concessionaire, along with other rental car service concessionaires, will charge and collect a “Customer Facility Charge” (as described herein) in accordance with the terms hereof and remit such amounts collected to the Authority, to be used to pay certain expenses associated with the operation of the rental car service concessions at the Airport.

NOW, THEREFORE, the parties to this Agreement hereby formally covenant and agree as follows:

SECTION 1. Definitions

The following terms shall have the meanings specified in this Agreement, unless the context otherwise requires:

1.1 “Agreement” shall mean, this Agreement, together with the other Rental Car Customer Facility Charge Agreements having the same terms as set forth herein, executed between the Authority and each of the other concessionaires.

1.2 “Airport” shall mean the Norfolk International Airport.

1.3 “Authority” shall mean the Norfolk Airport Authority.

1.4 “Concessionaire” shall mean the Concessionaire named in this Agreement.

1.5 “Concession Agreement” shall mean that certain Rental Car Concession Agreement, as amended or supplemented from time to time, pursuant to which Concessionaire, on a non-exclusive basis with other concessionaires that have executed a concession agreement, operates a rental car service concession at the Airport.

1.6 “Rental Vehicle Transaction Day” shall mean each 24-hour period or portion thereof for which a rental vehicle customer is charged rental for a vehicle that is paid in the form of currency, credit or promotional coupon, or for which a rental vehicle customer is given complimentary use of a vehicle, regardless of the duration or length of the rental contract therefor.

SECTION 2. Term

The term of this Agreement shall commence and shall become effective on August 1, 2018, and shall expire on July 31, 2023, unless otherwise extended by mutual agreement between the Authority and the Concessionaire.

SECTION 3. Customer Facility Charge

- 3.1** Commencing on or about August 1, 2018, the Concessionaire shall charge and collect a Customer Facility Charge for each Rental Vehicle Transaction Day from each customer of the Concessionaire that rents or otherwise enters into a similar arrangement for the use of a vehicle with the Concessionaire at the Airport. Such Customer Facility Charges shall reimburse the Authority for the cost of providing rental car concession services and facilities as the Authority may deem appropriate. The amount of the Customer Facility Charge shall be determined by the Authority from time to time and communicated to the Concessionaire as provided in section 3.5 hereof. The amount of the Customer Facility Charge shall be the same amount as the Customer Facility Charge charged and collected by other concessionaires pursuant to their concession agreements. As more specifically set forth in Section 5, the Concessionaire shall maintain such books and records as shall be sufficient to document the receipt by the Concessionaire and the payment to the Authority of all Customer Facility Charges collected, received, paid and remitted.
- 3.2** The Customer Facility Charge may be set forth as a separate line item in each rental agreement and identified as Customer Facility Charge or a “CFC Fee.” The Concessionaire agrees (i) not to identify the Customer Facility Charge in its vehicle rental agreement or otherwise as a tax or imposition that is payable to the Authority, the Airport, or a general tax or imposition that represents a monetary benefit to the Authority or the Airport, (ii) that it will otherwise comply with the provisions of the Concession Agreement as to the invoicing of the Customer Facility Charge to its customers; and (iii) that it will comply with all applicable laws

with respect to the Customer Facility Charge, including any requirements of the Federal Trade Commission.

- 3.3** The Concessionaire agrees that it will not intentionally, directly or indirectly, divert rental vehicle business from the Airport or consent or otherwise acquiesce to any such diversion or otherwise take any action that, but for such action, would result in a Customer Facility Charge being imposed and collected. Among other acts, and without limitation, if the Concessionaire, or an employee or agent thereof, advises or suggests to a potential customer arriving at the Airport that such customer or potential customer instead rent a vehicle at a Concessionaire location other than at the Airport, regardless of the reason, and does not charge a Customer Facility Charge as a result of such transaction, then the Concessionaire shall be deemed to have intentionally diverted business hereunder. Such covenant shall also apply to any affiliate of the Concessionaire.
- 3.4** The Customer Facility Charges collected by the Concessionaire shall be the sole property of the Authority, and the Concessionaire shall have no legal or equitable interest in the Customer Facility Charges it collects. The Customer Facility Charges collected by the Concessionaire may be commingled with other Concessionaire revenues, but shall always be accounted for separately from the Concessionaire's other sources of revenue and from any other funds of the Concessionaire.
- 3.5** Upon the Authority's determination of the amount of the Customer Facility Charge to be charged and collected by the Concessionaire during each Contract Year, and upon redetermination or readjustment thereof, the Authority shall promptly provide written notice of the amount of the Customer Facility Charge to the Concessionaire, and the date on which the Concessionaire shall begin charging and collecting the specified Customer Facility Charge, which date shall be no earlier than thirty (30) days after the date of the submission of the notice to the Concessionaire, and shall be the same date for all concessionaires.
- 3.6** The Concessionaire shall, and hereby agrees, to remit all Customer Facility Charges collected, along with a report detailing the total Rental Vehicle Transaction Days, directly to the Authority on the twentieth (20th) day of each month, with respect to Customer Facility Charges collected during the immediately preceding month. In the event a remittance date hereunder falls on a day that is not a Business Day, the payment shall be due and remitted on the following Business Day, and no additional amounts shall be due as a result.

SECTION 4.

Obligation of Concessionaire.

The Concessionaire shall charge and collect the Customer Facility Charge at the exact rate determined by the Authority and set forth by the Authority in the notice to the Concessionaire as provided in Section 3.5 above, and no more or no less. The Concessionaire is obligated and agrees to remit to the Authority the full amount of any and all Customer Facility Charges actually collected. The Concessionaire shall not levy or charge any fee to the Authority for the collection of the Customer Facility Charge nor retain any percentage thereof as payment for the collection of the Customer Facility Charge.

SECTION 5. Records and Audits.

The Concessionaire shall keep full, true and accurate accounts, records, books and data, which shall show all Customer Facility Charges in respect of its business upon the Airport. During the term of this Agreement and for one year following the end of the term, Concessionaire shall keep in the Norfolk area books and records in accordance with generally accepted accounting principles, such books and records to cover the immediately preceding five year period. All such books and records of the Concessionaire shall be open for inspection by authorized representatives of the Authority at reasonable times during business hours. If records are maintained at corporate offices outside of the Norfolk area, then requests for information shall be responded to and completed within seventy-two (72) hours of Concessionaire's receipt of the request.

IN WITNESS WHEREOF, the Authority and Concessionaire have caused this Agreement to be executed by their duly authorized representatives all as of the date first above written.

Remainder of Page intentionally left blank

NORFOLK AIRPORT AUTHORITY

By: _____

Title: _____

By: _____

Title: _____

EXHIBIT C

CONCESSIONAIRE'S PROPERTY

**Concession Agreement
EXHIBIT C**

CONCESSIONAIRE'S PROPERTY

TO BE PROVIDED BY CONCESSIONAIRE

EXHIBIT D

EMPLOYEE PARKING RULES AND REGULATIONS

EMPLOYEE PARKING RULES AND REGULATIONS NORFOLK INTERNATIONAL AIRPORT

As operator of Norfolk International Airport, the Norfolk Airport Authority (Authority) has assumed responsibility for providing parking accommodations for employees of Airport tenants that have contracts or leases with the Authority. In order to establish effective controls to govern such employee parking, the Authority hereby establishes the following "Rules and Regulations Governing Employee Parking" at Norfolk International Airport:

1. Airport employee parking is available only at location(s) designated by the Authority. An employee shuttle bus provides service to and from the terminal building as appropriate.
2. Each employee who exercises employee parking privileges at the Airport shall be assessed monthly parking fee of \$20.00, or such fee as the Authority may, from time to time, establish.
3. Parking hang tags and/or identification access control cards for all authorized Airport employees will be issued in accordance with the following criteria and procedures:
 - a. One hang tag and one identification access control card will be issued to each employee.
 - b. Hang tags will be issued for periods of one year with an expiration date of December 31 of each year.

- c. There will be no refunds for lost or stolen parking hang tags.
- d. A replacement fee of \$5.00 will be charged for each lost or stolen identification access control card.
- e. Each Airport tenant, including the airlines, will be responsible for obtaining employee parking hang tags for their employees from the Authority. Employees may not purchase employee parking hang tags directly from the Authority.
- f. Unless the manager or other authorized representative of the Airport tenant has authorized the Authority, in writing, to charge the cost of employee parking hang tags, payment will be required at the time hang tags are purchased. The Authority will, if authorized in writing, invoice Airport tenants monthly for employee parking hang tags issued. Payment for hang tags charged is due ten (10) days after invoiced by the Authority.
- g. The manager of each Airport tenant shall be responsible to obtain and issue parking hang tags for their authorized Airport employees. For definition purposes, AUTHORIZED EMPLOYEES ARE THOSE PERSONS WHO WORK DIRECTLY FOR A TENANT UNDER CONTRACT/LEASE WITH THE AUTHORITY AND WORK ON THE AIRPORT AND SHALL NOT INCLUDE NON-BASED AIRLINE CREW MEMBERS.
- h. The cost for new or replacement hang tags purchased during any month will be prorated as follows: If purchased between the 1st

and 7th of the month, full price; 8th - 14th of the month, 75% of the price; 15th - 21st of the month, 50% of the price; 22nd - 28th of the month, 25% of the price; 29th through the end of the month, no charge.

- i. Hang tags must be clearly and conspicuously displayed so as to be easily located by Airport police. The parking hang tag will be either displayed on the left side of the dash in such a manner as to be clearly visible through the windshield from the outside of the vehicle or hung from the rearview mirror.
- j. Airport tenants should require terminating employees to return their hang tag for issuance to a new employee or return the hang tag to the Authority for credit. Failure to do so will result in the continued billing of all appropriate fees associated with such hang tag. Airport tenants will be required to pay the applicable monthly employee parking fee for each hang tag that is issued.
- k. Failure to properly display the required hang tag will result in the vehicle being ticketed, towed and impounded, with the vehicle owner responsible for paying all applicable towing and impound fees. **NO WARNING NOTICES WILL BE ISSUED BY AIRPORT POLICE. NO GRACE PERIOD.**
- l. Airport employee parking hang tags may be purchased by Airport tenants in the Authority's Accounting Office from 9:00 a.m. until 4:30 p.m., Monday through Friday (except Holidays).

- m. Temporary employee parking permits will not be issued.
Temporary employees may use any public parking lot.

4. Employees of Airport tenants with independent facilities not located in the Main Passenger Terminal are not eligible for parking privileges in the designated employee parking lot.

5. These Rules and Regulations are subject to modification at the discretion of the Authority.

EXHIBIT E

HISTORICAL PASSENGER ACTIVITY

		NORFOLK AIRPORT AUTHORITY NORFOLK INTERNATIONAL AIRPORT AIRLINE PASSENGER COUNT												
		Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
2009	On	115,360	105,633	134,910	151,423	160,989	162,837	171,569	163,981	136,301	140,219	125,844	133,537	1,701,382
	Off	121,369	108,420	140,024	149,872	162,581	161,540	171,429	162,566	136,936	139,885	127,498	128,853	1,708,074
	Total	236,729	212,053	274,934	301,295	323,570	324,377	342,998	326,547	273,237	279,204	253,342	262,400	3,409,456
2010	On	107,280	100,773	128,799	138,647	148,586	159,741	171,140	168,657	136,044	139,622	130,786	131,225	1,659,297
	Off	112,586	98,924	132,204	140,208	151,414	162,897	173,794	167,498	137,138	139,161	132,464	124,400	1,673,179
	Total	220,276	199,697	261,003	278,855	300,000	322,738	344,934	336,155	273,182	278,783	263,250	255,625	3,332,476
2011	On	105,100	85,389	122,820	133,606	148,920	156,818	163,726	147,040	128,691	129,423	128,580	130,867	1,589,349
	Off	110,740	85,409	128,195	134,719	153,800	158,198	164,207	148,650	128,608	129,263	128,190	126,149	1,604,039
	Total	215,840	180,802	251,015	268,325	302,720	315,016	327,933	295,690	257,299	258,686	256,770	257,016	3,193,388
2012	On	103,885	102,617	127,113 *	135,020	148,555	160,184 *	165,181 *	166,843	135,345	132,840	135,214	135,837	1,645,214
	Off	108,488	101,237	130,940 *	138,510	149,748	161,348 *	165,031 *	165,735	134,947	132,345	135,095	131,473	1,654,488
	Total	212,373	203,854	258,053 *	273,530	298,303	321,533 *	330,212 *	332,578	270,292	265,185	270,309	267,310	3,299,702
2013	On	105,628	95,278	123,053	121,750	139,197	151,723	156,043	148,159	128,877	128,615	118,985	139,095	1,548,573
	Off	108,409	95,982	120,320	131,851	142,504	151,572	156,195	148,313	125,652	128,189	122,827	132,488	1,653,782
	Total	214,037	191,260	243,373	253,601	281,701	303,295	312,238	296,472	254,529	256,804	241,812	271,583	3,172,355
2014	On	101,537	95,087	119,704	127,571	141,353	140,381	139,978	135,731	116,377	122,200	114,977	120,936	1,477,150
	Off	106,550	94,527	125,489	128,675	142,524	140,584	141,468	139,081 *	116,391	122,788	114,094	115,775	1,485,156
	Total	208,087	189,614	245,193	256,246	283,877	280,965	281,446	274,812 *	232,768	244,988	229,071	236,711	2,962,306
2015	On	97,651	88,651	110,031	120,662	139,895	143,481	147,957	147,844	127,864	138,135	125,709	127,380	1,510,610
	Off	102,156	89,881	114,041	121,682	137,780	143,710	151,146	146,905	125,952	134,895	128,039	124,028	1,523,997
	Total	200,417	178,532	224,072	242,344	277,675	287,191	299,103	294,749	253,816	273,030	253,748	251,408	3,034,607
2016	On	104,199	98,591	122,566	128,874	150,222	157,112	155,889	150,074	135,790	136,129	133,428	133,075	1,599,917
	Off	108,673	99,473	121,558	134,410	151,894	151,851	156,289	152,475	135,599	135,924	133,213	127,922	1,609,668
	Total	212,772	198,064	244,124	263,284	302,116	309,063	312,178	302,549	271,389	272,053	266,641	260,997	3,209,585
2017	On	109,598	100,826	127,804	133,586	151,089	151,288	153,363	150,584	137,113	148,043	146,246	1,539,351	
	Off	113,417	100,981	129,855	137,361	162,034	160,452	165,759	161,871	134,427	149,833	144,789	1,550,793	
	Total	223,015	201,807	257,659	270,947	313,123	311,740	319,122	312,455	271,540	297,876	291,035	0	3,090,144

*Stateline 2012 was based on data from the Norfolk Community-USA 2014-2015 Survey

EXHIBIT F

RENTAL CAR GROSS RECEIPTS

**NORFOLK AIRPORT AUTHORITY
NORFOLK INTERNATIONAL AIRPORT
CONDUCTOR VEHICLE CATEGORY**

Month	Deposits Received	Net Revenue	% (of Revenue)	Area Revenue	% (of Revenue)	Sublet Revenue	% (of Revenue)	Dealer Revenue	% (of Revenue)	Enterprise Revenue	% (of Revenue)	Other Revenue	% (of Revenue)	Net Revenue	% (of Revenue)	Monthly Total	% (of Revenue)	TOTALS
August	161,896	292,842.30	18.1%	303,149.87	14.2%	1,588,194.71	21.7%	528,292.58	1.7%	838,423.78	14.2%	\$1,204,324.83	13.8%	\$2,144,044.0	11.0%	\$2,436,187.51	4.5%	\$2,436,187.51
September	110,728	201,444.41	10.5%	202,172.17	7.0%	2,581,111.27	10.0%	317,447.42	3.4%	500,048.19	12.4%	1,100,490.00	20.2%	\$972,244.4	7.0%	\$1,306,671.23	4.8%	\$1,306,671.23
October	134,347	241,886.60	12.4%	239,021.9	7.2%	1,601,445.89	7.0%	1,100,104.30	3.9%	375,439.26	1.2%	390,102.02	1.2%	\$977,442.72	13.4%	\$2,020,200.73	6.2%	\$2,020,200.73
November	138,428	249,103.27	12.4%	235,544.09	10.3%	937,181.07	10.4%	274,806.47	3.8%	370,324.81	1.8%	27,032.40	0.1%	\$804,869.84	7.1%	\$2,020,200.73	6.2%	\$2,020,200.73
December	124,158	242,781.20	12.4%	247,209.46	10.5%	203,322.00	10.2%	310,461.20	4.0%	254,447.30	10.5%	80,823.00	1.0%	\$370,247.26	1.0%	\$2,020,200.73	6.2%	\$2,020,200.73
January	119,894	234,044.40	11.7%	250,000.00	14.1%	316,229.94	27.0%	17,000.00	0.7%	280,152.00	15.8%	371,111.30	10.7%	\$273,600.19	14.9%	\$2,436,187.51	10.0%	\$2,436,187.51
February	110,894	234,044.40	11.7%	250,000.00	14.1%	316,229.94	27.0%	17,000.00	0.7%	280,152.00	15.8%	371,111.30	10.7%	\$273,600.19	14.9%	\$2,436,187.51	10.0%	\$2,436,187.51
March	110,894	234,044.40	11.7%	250,000.00	14.1%	316,229.94	27.0%	17,000.00	0.7%	280,152.00	15.8%	371,111.30	10.7%	\$273,600.19	14.9%	\$2,436,187.51	10.0%	\$2,436,187.51
April	110,894	234,044.40	11.7%	250,000.00	14.1%	316,229.94	27.0%	17,000.00	0.7%	280,152.00	15.8%	371,111.30	10.7%	\$273,600.19	14.9%	\$2,436,187.51	10.0%	\$2,436,187.51
May	110,894	234,044.40	11.7%	250,000.00	14.1%	316,229.94	27.0%	17,000.00	0.7%	280,152.00	15.8%	371,111.30	10.7%	\$273,600.19	14.9%	\$2,436,187.51	10.0%	\$2,436,187.51
June	110,894	234,044.40	11.7%	250,000.00	14.1%	316,229.94	27.0%	17,000.00	0.7%	280,152.00	15.8%	371,111.30	10.7%	\$273,600.19	14.9%	\$2,436,187.51	10.0%	\$2,436,187.51
July	110,894	234,044.40	11.7%	250,000.00	14.1%	316,229.94	27.0%	17,000.00	0.7%	280,152.00	15.8%	371,111.30	10.7%	\$273,600.19	14.9%	\$2,436,187.51	10.0%	\$2,436,187.51
Total	1,180,112	2,272,000.10	9.1%	\$1,192,208.19	12.7%	\$1,113,317.48	19.4%	\$2,100,246.42	4.2%	\$2,100,246.42	13.4%	\$1,210,400.00	13.1%	\$1,192,208.19	11.1%	\$2,436,187.51	4.2%	\$2,436,187.51