



**NORFOLK AIRPORT AUTHORITY**

## **Board of Commissioners Meeting Packet**

**Malcolm P. Branch, Chair**

**Robert S. Bowen, A.A.E., Executive Director**

Thursday, July 22, 2021  
1:00 p.m.

Human Resources Conference  
Room A

**Norfolk International Airport  
2200 Norview Avenue  
Norfolk, Virginia 23518**

[NorfolkAirport.com](http://NorfolkAirport.com)

**BOARD OF COMMISSIONERS  
NORFOLK AIRPORT AUTHORITY  
July 22, 2021  
AGENDA**

**CALL TO ORDER**

**REGULAR AGENDA**

- Approval of Board Meeting Minutes June 24, 2021
  - Investment Portfolio Review  
**(Barbara Fava, Managing Director, PFM Asset Management LLC)**
- R-1** Recommendation to Approve the Extension of the Hudson-NIA Norfolk Joint Venture Retail Concession Agreement Lease  
**(William L. Nusbaum, Esquire, Chair, Concessions Committee)**
- R-2** Recommendation to Approve the Issuance of a Request for Proposals for Rental Car Service Concession  
**(William L. Nusbaum, Esquire, Chair, Concessions Committee)**
- R-3** Recommendation to Approve the Issuance of a Request for Proposals for Airport Common Carrier Ground Transportation Service Concession  
**(William L. Nusbaum, Esquire, Chair, Concessions Committee)**

**EXECUTIVE DIRECTOR'S REPORT**

**CHAIRMAN'S REPORT**

**OLD BUSINESS**

**NEW BUSINESS**

- Election of Officers for Fiscal Year 2022  
**(Peter G. Decker III, Chair, Nominating Committee)**
- Appointment of Assistant Secretaries for Fiscal Year 2022  
**(Peter G. Decker III, Chair, Nominating Committee)**

**CLOSED MEETING (If Required)**

**RECONVENE OPEN MEETING (If Required)**

**ADJOURNMENT**

# **Regular Agenda**



## NORFOLK AIRPORT AUTHORITY

### BOARD OF COMMISSIONERS MEETING MINUTES

**Thursday, June 24, 2021  
1:00 p.m.**

The Norfolk Airport Authority (NAA) Board of Commissioners Meeting was held on Thursday, June 24, 2021, at the Norfolk International Airport (NIA), Human Resources Conference Room A, Main Passenger Terminal, Malcolm P. Branch, Chair, presided.

**Commissioners Present:**

Malcolm P. Branch  
John R. Broderick  
Peter G. Decker III, Esquire  
Paul D. Fraim, Esquire  
Mekbib Gemedo  
Deborah H. Painter  
Bruce Smith

**Commissioners Absent:**

Michael B. Burnette, CCIM  
Dr. Harold J. Cobb, Jr., Emeritus Commissioner  
William L. Nusbaum, Esquire

**Staff Present:**

Robert S. Bowen, A.A.E., Executive Director  
Charles Braden, Director Market Development  
Jarred Roenker, Director of Finance  
Anthony E. Rondeau, Deputy Executive Director  
Engineering and Facilities  
Steven C. Sterling, Deputy Executive Director  
Administration and Operations  
Sheri Watts, Executive Administrative Assistant and  
Assistant Secretary of the Board

**Others Present:**

Jessica Dennis, Management Analyst, City of Norfolk  
Anita O. Poston, Esquire, General Counsel

**Welcome, and Call to Order (Malcolm P. Branch, Chair):**

Malcolm P. Branch, Chair, called the meeting to order at 1:00 p.m. Chairman Branch determined that a quorum was present as noted above.

**REGULAR AGENDA**

**Approval of Minutes of Board of Commissioners Meeting on March 25, 2021:**

Chairman Branch entertained a motion by Treasurer Gameda to approve the minutes for the meeting on Thursday, May 27, 2021; the motion was seconded by Vice-Chair Painter and unanimously approved.

**R-1 Recommendation to Approve the Arborist Airport Tree Condition Assessment**

**(Malcolm P. Branch, Chair, Facilities and Planning Committee:**

Staff is concerned about the deteriorating condition of numerous trees on the Airport's property and the potential impact on its infrastructure. On behalf of the Facilities and Planning Committee, Chair Branch recommended approval of the removal of unhealthy trees that threaten the Airport's infrastructure. The scope of work is described in the Tree Condition Assessment Report previously distributed to the Board. The recommendation was unanimously approved.

**R-2 Recommendation to Approve the Issuance of a Request for Qualification for**

**Government Relations and Lobbying Services (Robert A. Bowen, A.A.E., Executive Director):**

Two Capitols Consulting has represented the Authority's political interests in Washington D.C. and Richmond, VA since 2018. Their contract will expire on October 31, 2021. Mr. Bowen recommends the issuance of a Request for Qualifications (RFQ) for this service and distributed a draft RFQ to the Board. Chairman Branch entertained a motion by Vice-Chair Painter to issue the RFQ; the motion was seconded by Treasurer Gameda and unanimously approved.

**Executive Director's Report (Robert S. Bowen, A.A.E.):**

Mr. Bowen supplemented the Capital Projects Update.

Mr. Bowen announced that the next Airport Tenant Job Fair hosted by the Authority will be on Tuesday, June 29, 2021. Also, the Transportation Security Agency (TSA) will host a Precheck Mobile Enrollment Center at the Airport June 28 through July 2, 2021.

The Authority completed and passed its FAA inspection on June 16, 2021. The FAA Inspector noted that the Airport is one of the best he has inspected.

There has been a considerable increase in travel demand and airlines are adding capacity. In the past few months, the numbers of nonstop destinations, departures, and filled seats have all improved.

**Chairman's Report:**

Chairman Branch expressed his appreciation to the Staff for vigilance in tree management. He also congratulated the Authority for its successful FAA inspection.

**Old Business:** None

**New Business:** None

**Closed Meeting (1:28 p.m.):**

Treasurer Gameda moved that the Board of the Norfolk Airport Authority convene in a closed session, according to the exemption at §2.2-3711. A.1 of the Code of Virginia, to discuss and

consider the assignment, appointment, promotion, performance, and salary of the Executive Director of the Authority. The motion was duly seconded by Commissioner Decker and approved unanimously.

**Reconvene Open Meeting:**

Chairman Branch reconvened the Open Meeting at approximately 1:48 p.m. Treasurer Gameda moved for adoption of the following resolution: *Now, therefore, be it resolved that the Board of the Norfolk Airport Authority hereby certifies that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Code, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting.* The motion was duly seconded by Vice-Chair Painter.

A roll call vote was taken to approve the motion as follows:

**Roll Call:**

Commissioner	Response	Commissioner	Response
Chairman Branch	Yes	Vice-Chair Painter	Yes
Treasurer Gameda	Yes	Commissioner Broderick	Yes
Commissioner Burnette	Absent	Commissioner Decker III	Yes
Commissioner Fraim	Yes	Commissioner Nusbaum	Absent
Commissioner Smith	Yes		

**Adjournment:**

There being no further business, Treasurer Gameda moved that the meeting adjourn. The motion was seconded by Commissioner Broderick, and the Board unanimously approved adjournment at approximately 1:50 p.m. The next regular public meeting of the Board will be held on Thursday, July 22, 2021, at 1:00 p.m.

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Malcolm P. Branch  
Board Chair

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Robert S. Bowen, A.A.E.  
Executive Director





# Norfolk Airport Authority

## Economic Update and Portfolio Review

**Presented by Barbara Fava, Managing Director**

**July 22, 2021**

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PFM Asset  
Management LLC

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213 Market Street  
Harrisburg, PA 17101  
717-232-2723

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717.232.2723  
[pfm.com](http://pfm.com)

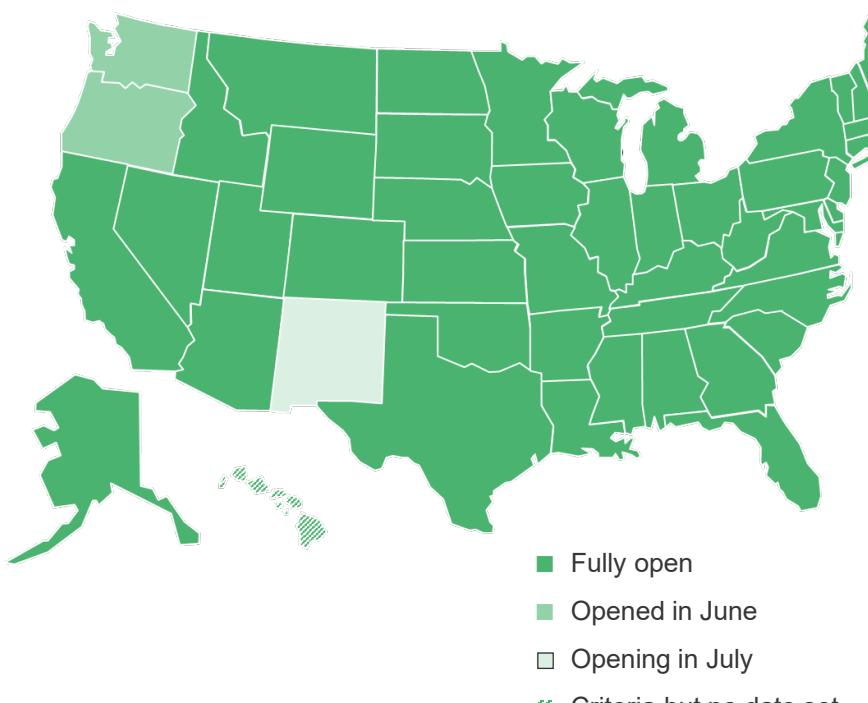


# Economic Update



## Reopening Economy Drives GDP Growth

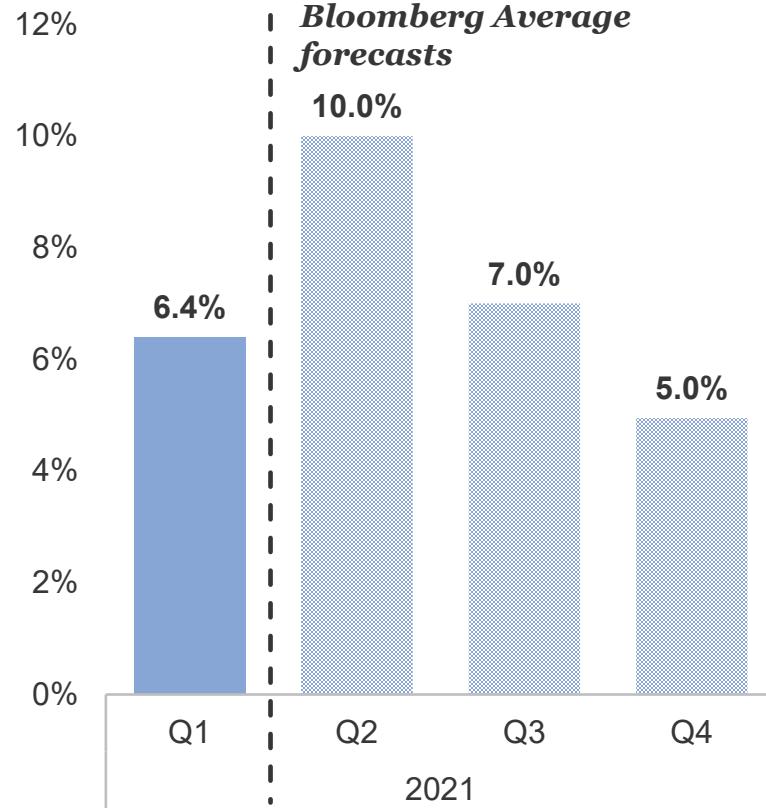
Reopening Status of U.S. States



U.S. GDP Forecasts

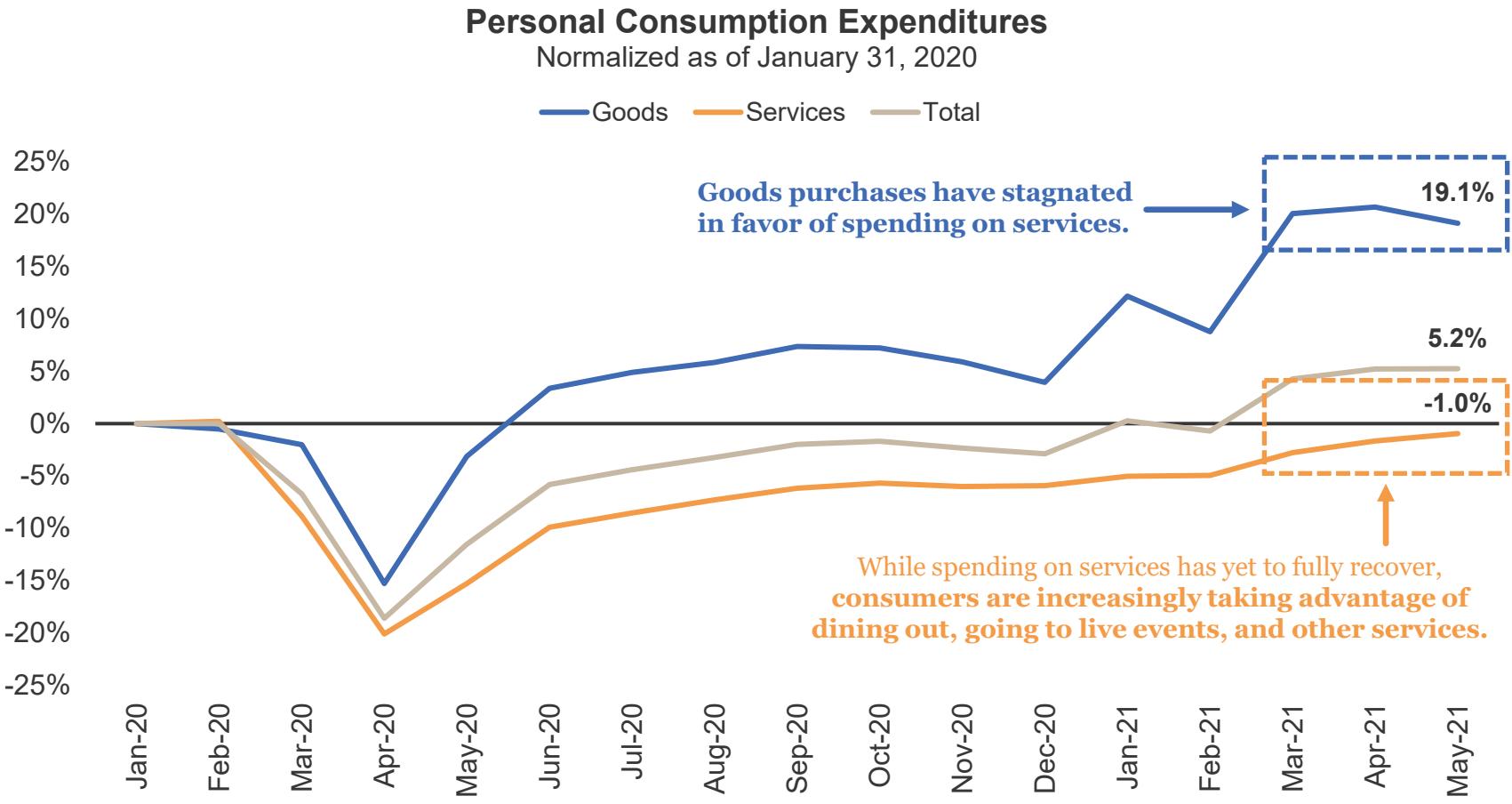
Annualized Rate

*Bloomberg Average forecasts*



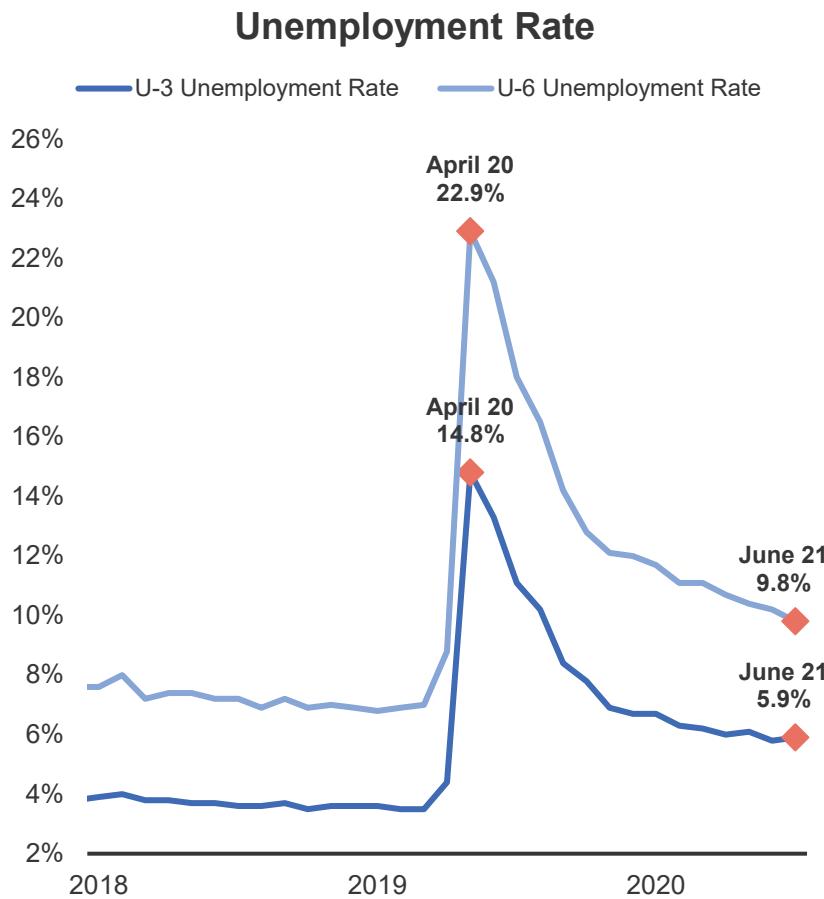


## Consumer Spending Experiencing a Shift to Services

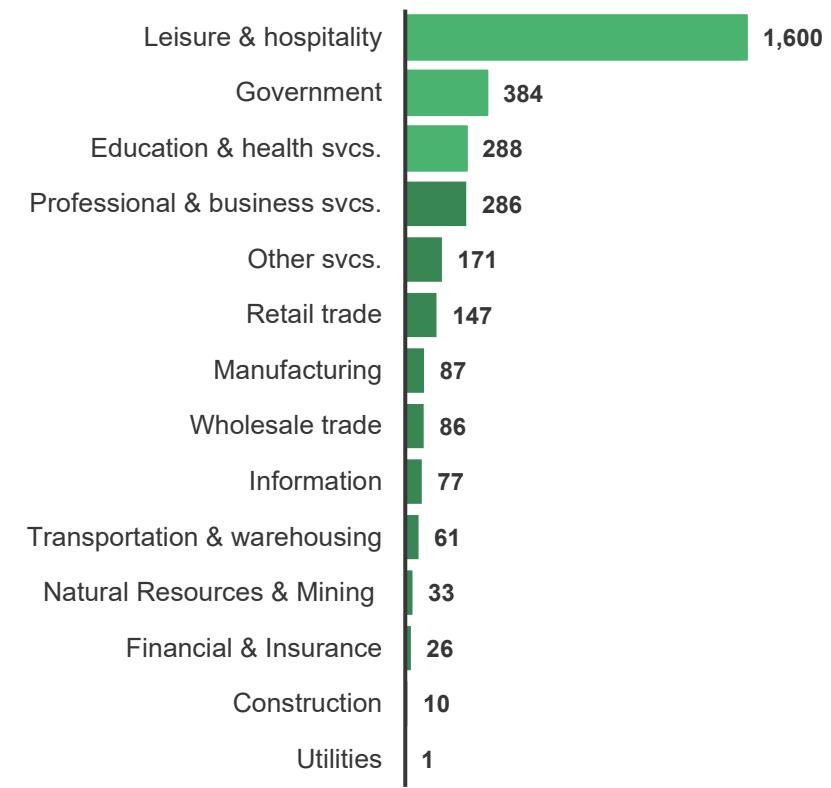




## Job Growth Picks Up in June

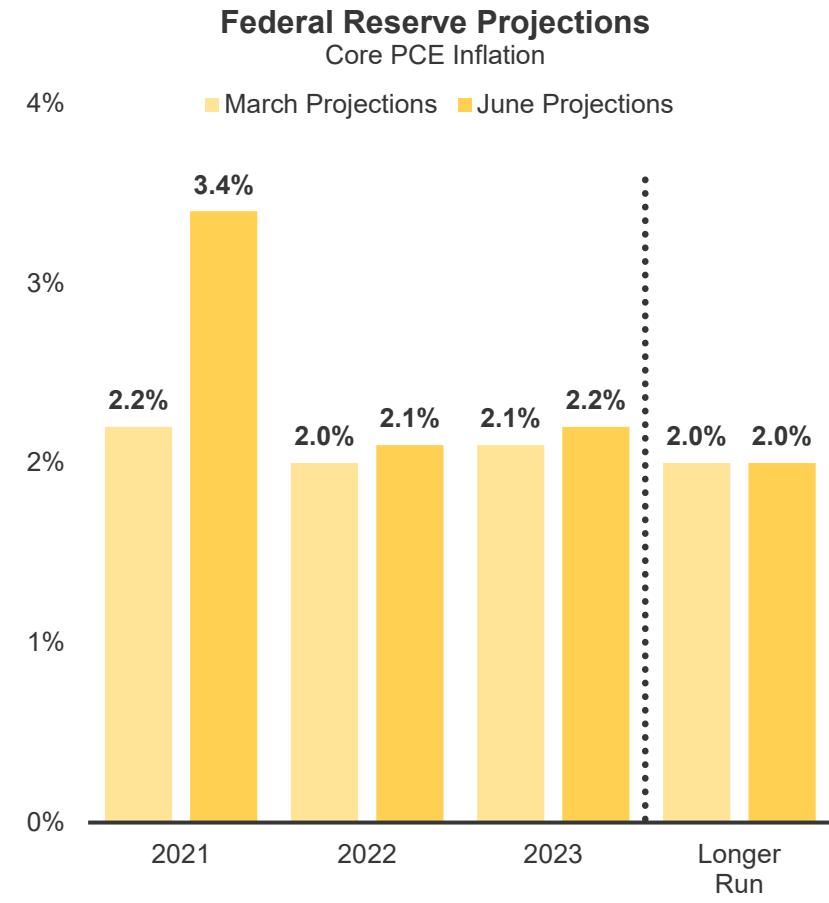
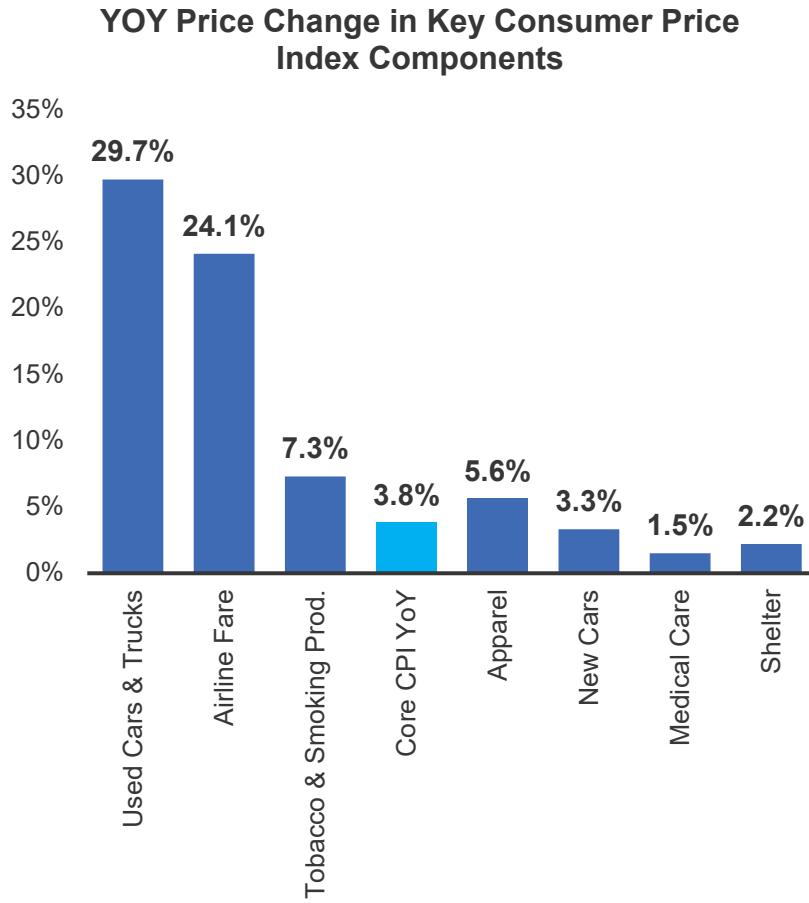


### Change in Total Nonfarm Employment since December 2020 (thousands)



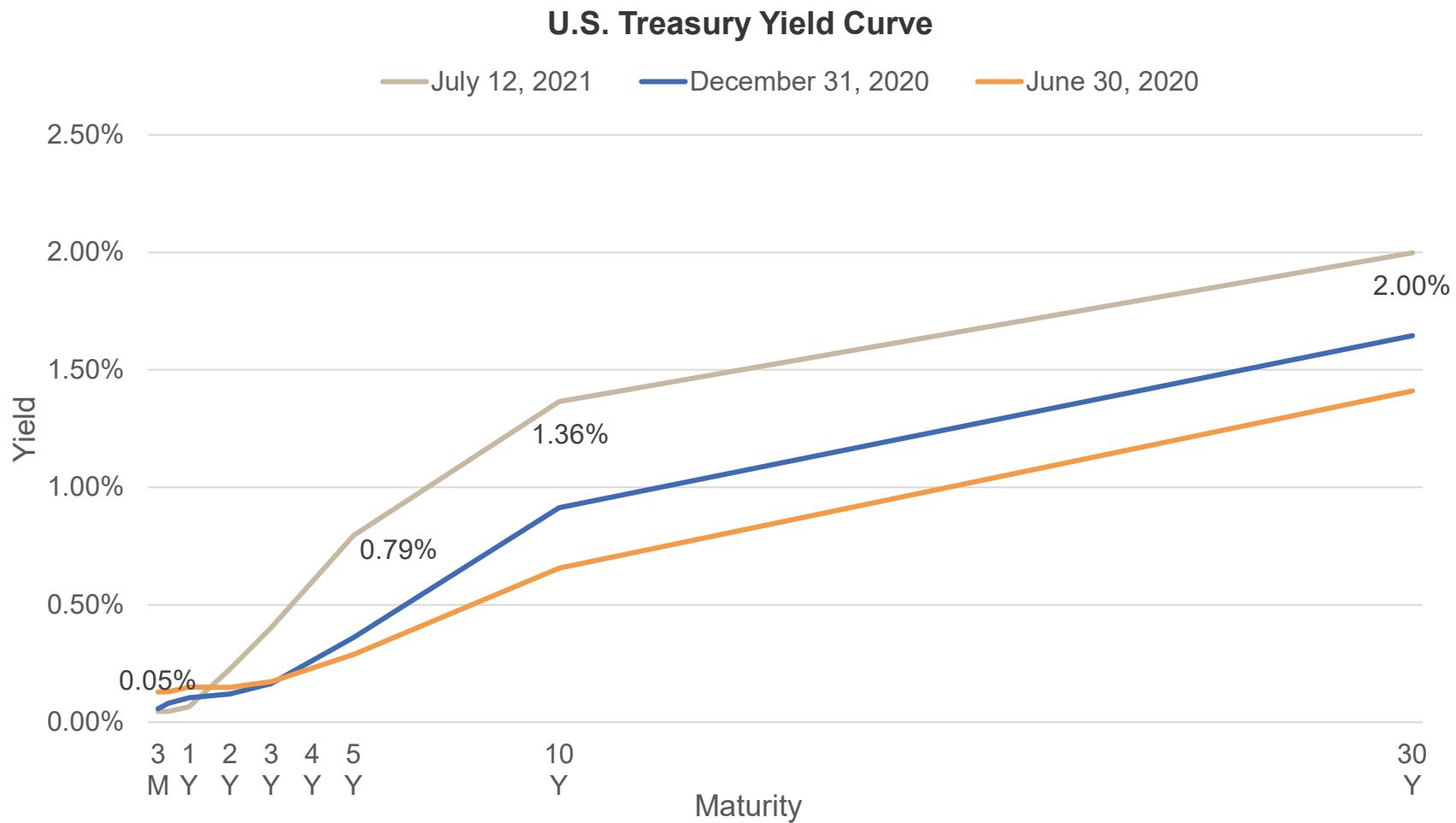


## Inflation Increases, But Driven by a Few Key Sectors



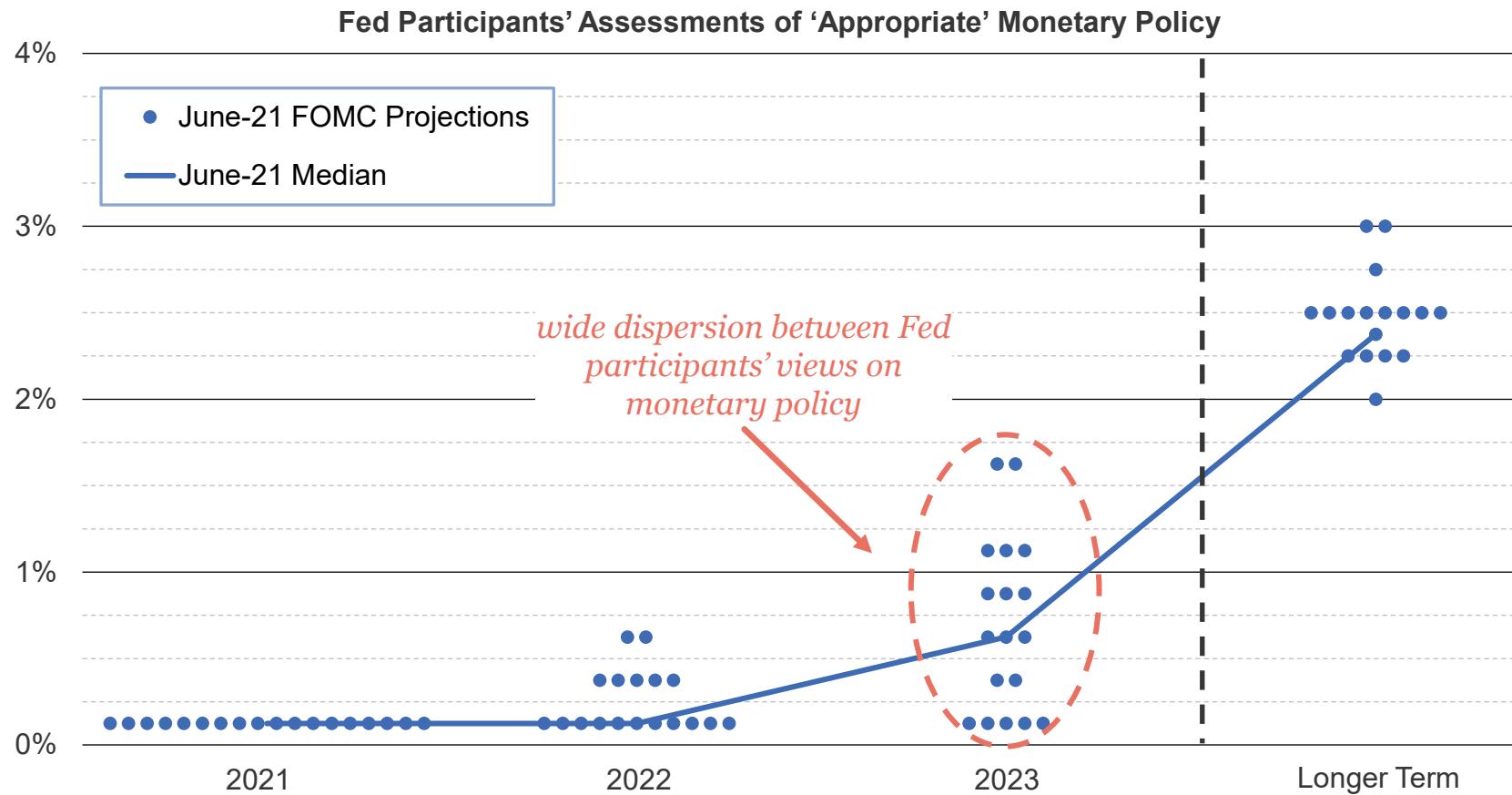


## Treasury Yield Curve





## Fed's "Dot Plot" Reflects Evolving Monetary Policy Views





# Portfolio Review



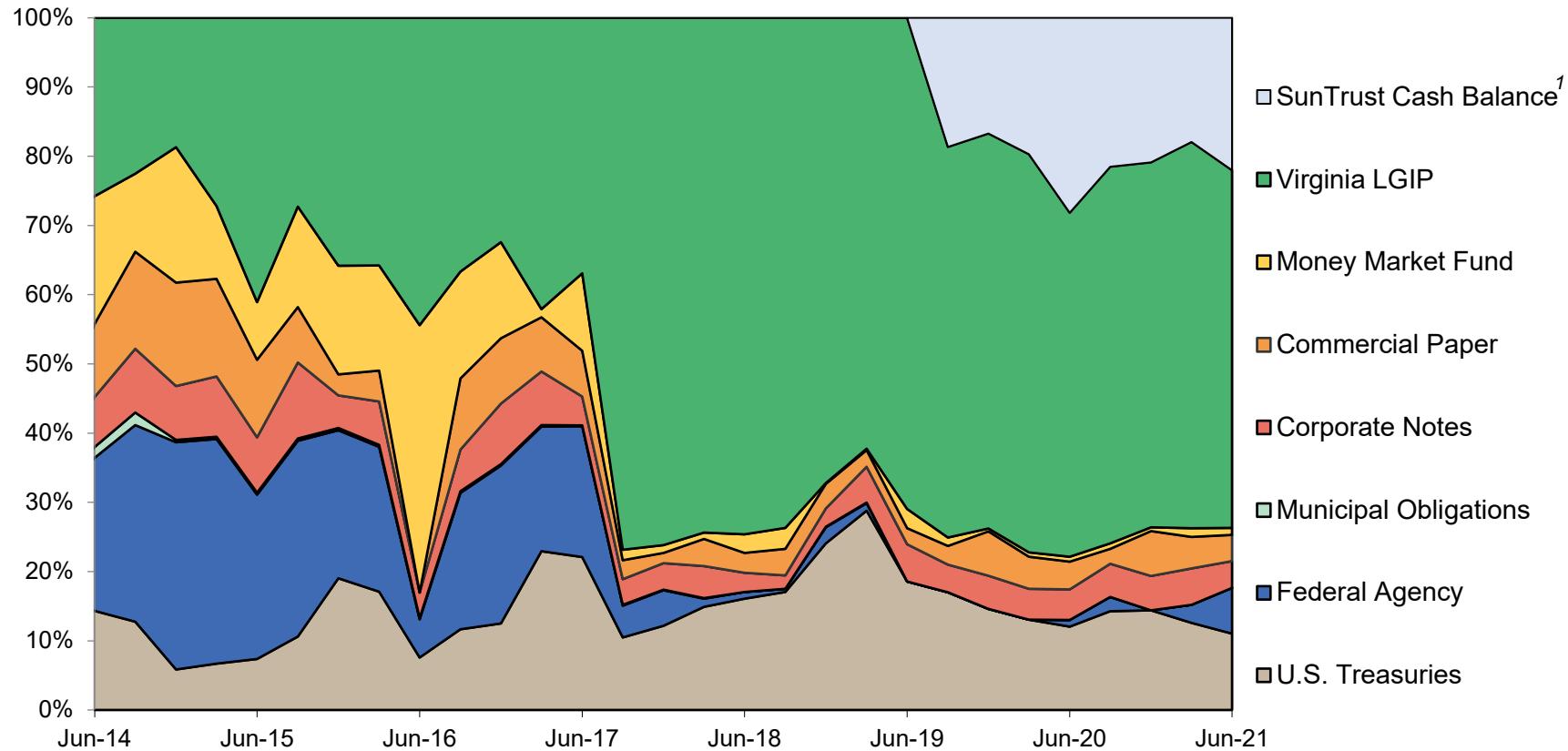
## Investment Report – 12 Months Ending June 30, 2021

Market Value	June 30, 2021	June 30, 2020	Change in Market Value
<b>SunTrust Cash Balance</b>	12,999,418.95	16,719,109.19	(3,719,690.24)
<b>Funds Invested with the Virginia LGIP</b>			
FBO Improvements	1,367,686.12	1,408,273.14	(40,587.02)
City Payment	100.71	482.65	(381.94)
Renewal	17,432,266.79	11,314,462.21	6,117,804.58
State Block	3,784,520.93	4,968,729.41	(1,184,208.48)
PFC	4,014,256.10	8,533,294.43	(4,519,038.33)
Capital Reserve Expenditure	1,964,379.87	1,529,707.34	434,672.53
CFC	1,963,265.90	1,746,383.40	216,882.50
<b>Total</b>	<b>43,525,895.37</b>	<b>46,220,441.77</b>	<b>(2,694,546.40)</b>
<b>Funds Managed By Legg Mason</b>			
Parking Escrow	15,550,482.26	13,152,227.51	2,398,254.75
<b>Total</b>	<b>15,550,482.26</b>	<b>13,152,227.51</b>	<b>2,398,254.75</b>
<b>Total Operating Funds</b>	<b>59,076,377.63</b>	<b>59,372,669.28</b>	<b>(296,291.65)</b>
<b>Held by U.S. Bank as Trustee</b>			
Debt Service Reserve Fund	6,987,899.73	7,823,780.35	(835,880.62)
2019 Project Fund	511,598.45	33,683,728.29	(33,172,129.84)
2019 Capitalized Interest Fund	1,391,784.18	4,109,820.90	(2,718,036.72)
<b>Total Bond Proceeds</b>	<b>8,891,282.36</b>	<b>45,617,329.54</b>	<b>(36,726,047.18)</b>
<b>Total Market Value</b>	<b>67,967,659.99</b>	<b>104,989,998.82</b>	<b>(37,022,338.83)</b>

(1) End of quarter trade-date market values of portfolio holdings, including accrued interest.



## Historic Portfolio Diversification





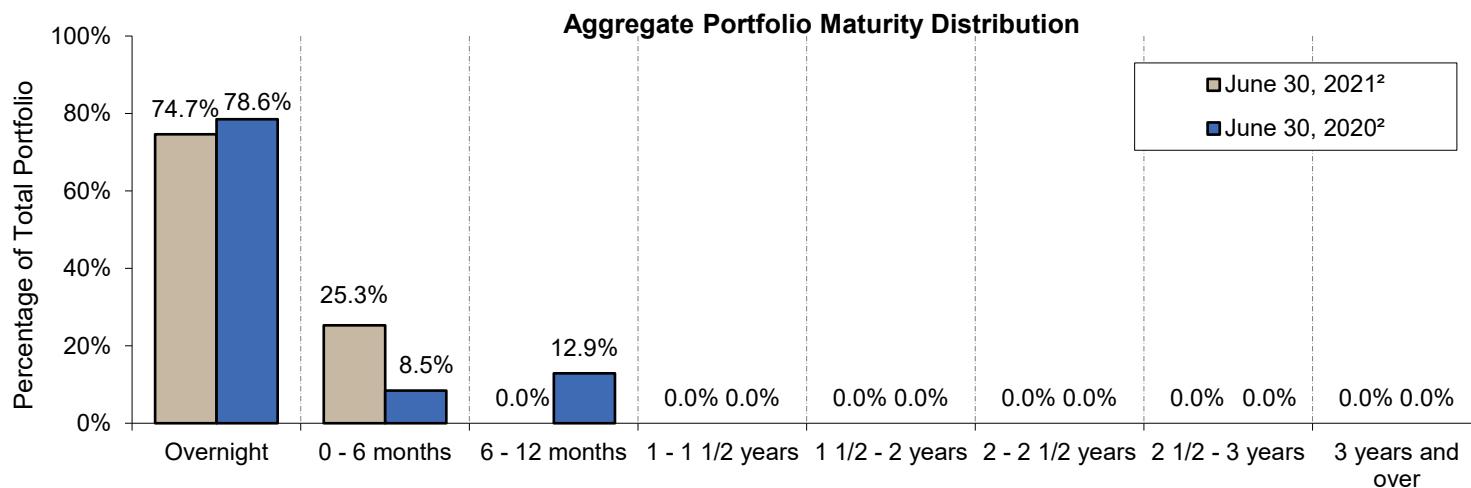
## Portfolio Composition by Issuer as of June 30, 2021

Security Type/Issuer <sup>1</sup>	Credit Rating	June 30, 2021 <sup>2</sup>	% of Portfolio	Permitted by Policy	In Compliance
<b>SunTrust Cash Balance</b>		<b>12,999,418.95</b>	<b>22.0%</b>	<b>100%</b>	<b>Yes</b>
<b>U.S. Treasury</b>	AA+ / Aaa	<b>6,524,753.60</b>	<b>11.0%</b>	<b>100%</b>	<b>Yes</b>
<b>Federal Agency</b>					
Federal Home Loan Banks	AA+ / Aaa	<b>3,899,760.93</b>	<b>6.6%</b>	<b>35%</b>	<b>Yes</b>
		<b>3,899,760.93</b>	<b>6.6%</b>	<b>100%</b>	<b>Yes</b>
<b>Commercial Paper</b>					
Caterpillar Financial Services	NR / NR	749,997.75	1.3%	5%	Yes
Toyoto Motor Credit Corp	A-1+ / P-1	749,940.75	1.3%	5%	Yes
USAA Cap Corp	A-1+ / P-1	749,898.00	1.3%	5%	Yes
		<b>2,249,836.50</b>	<b>3.8%</b>	<b>35%</b>	<b>Yes</b>
<b>Corporate Notes</b>					
Apple Inc.	AA+ / Aa1	756,808.41	1.3%	5%	Yes
Berkshire Hathaway Inc.	AA / Aa2	761,814.47	1.3%	5%	Yes
Microsoft Corp.	AAA / Aaa	755,622.88	1.3%	5%	Yes
		<b>2,274,245.76</b>	<b>3.8%</b>	<b>20%</b>	<b>Yes</b>
<b>Virginia LGIP</b>					
Virginia LGIP	AAAm	30,526,476.42	51.7%	85%	Yes
		<b>30,526,476.42</b>	<b>51.7%</b>	<b>85%</b>	<b>Yes</b>
<b>Money Market Mutual Fund</b>					
First American Funds	AAAm	601,885.47	1.0%	75%	Yes
		<b>601,885.47</b>	<b>1.0%</b>	<b>100%</b>	<b>Yes</b>
<b>Totals</b>		<b>\$59,076,377.63</b>	<b>100.0%</b>		



## Portfolio Maturity Distribution

Maturity Distribution <sup>1</sup>	June 30, 2021 <sup>2</sup>	June 30, 2020 <sup>2</sup>
Overnight	\$44,127,780.84	\$46,659,386.18
0 - 6 months	14,948,596.79	5,035,708.16
6 - 12 months	0.00	7,677,574.75
1 - 1 1/2 years	0.00	0.00
1 1/2 - 2 years	0.00	0.00
2 - 2 1/2 years	0.00	0.00
2 1/2 - 3 years	0.00	0.00
3 years and over	0.00	0.00
<b>Totals</b>	<b>\$59,076,377.63</b>	<b>\$59,372,669.09</b>



(1) Callable securities in portfolio are included in the maturity distribution analysis to their stated maturity date, although they may be called prior to maturity. Excludes the Debt Service Reserve Fund, 2019 Project Fund, and 2019 Capitalized Interest Fund  
(2) Summary statistics are based on market values from PFM pricing sources. Market values include accrued interest.



## Individual Portfolio Performance vs. Merrill Lynch 3-Month U.S. Treasury Note Index

Total Return <sup>1, 3, 6</sup>	Quarter Ended June 30, 2021	Annualized Quarter <sup>4</sup>	Fiscal Year <sup>5</sup> To Date	Annualized Fiscal Year To Date	Last 12 Months	Last 36 Months
Parking Escrow	0.02%	0.09%	0.17%	0.17%	0.17%	1.61%
Merrill Lynch 3 month U.S. Treasury Bill Index <sup>2</sup>	0.00%	0.00%	0.09%	0.09%	0.09%	1.34%



(1) Performance on trade-date basis, gross (i.e., before fees) in accordance with the CFA Institute's Global Investment Performance Standards (GIPS).

(2) Merrill Lynch Indices provided by Bloomberg Financial Markets.

(3) Includes money market funds in performance and duration computations.

(4) The annualized return assumes the quarterly report is compounded at the same rate for four quarters and is presented for reference only.

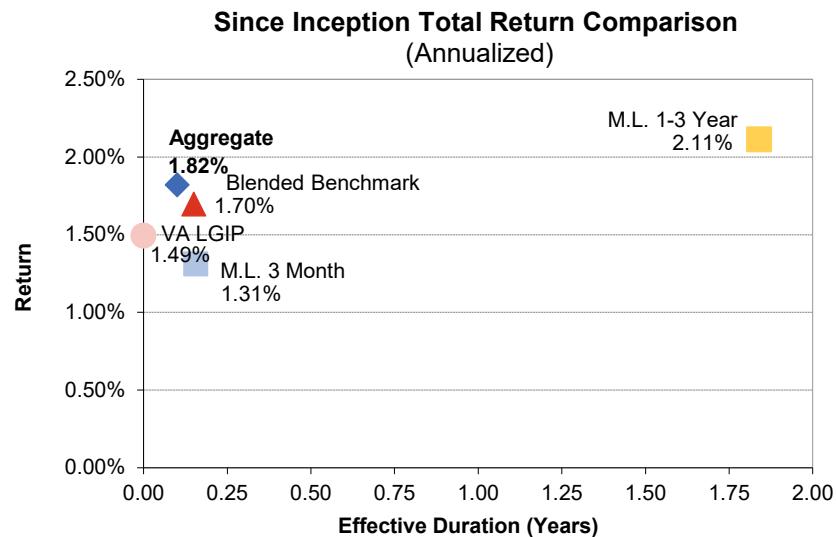
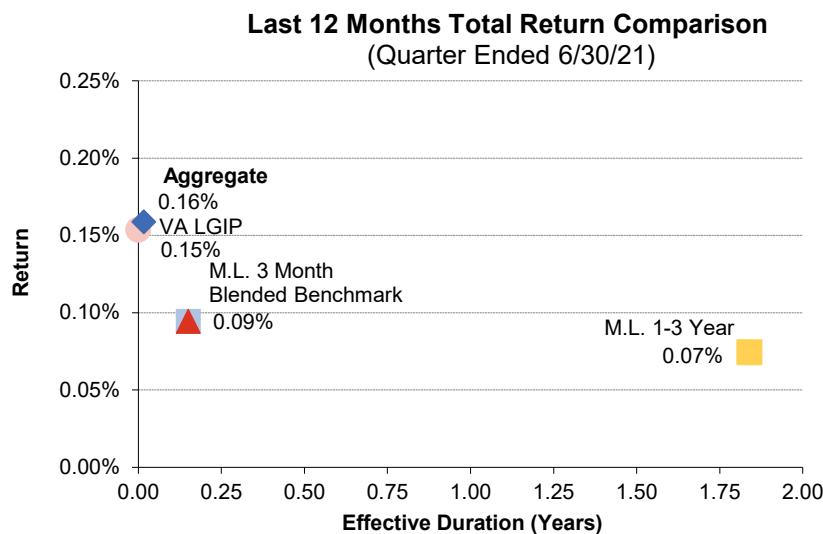
(5) Fiscal year performance is calculated from July 1<sup>st</sup>.

(6) Portfolio performance is computed using the transaction information obtained from the bank custodian.



# Aggregate Portfolio Performance

Total Return <sup>1, 3, 6</sup>	Quarter Ended June 30, 2021	Annualized Quarter <sup>4</sup>	Fiscal Year <sup>5</sup> To Date	Annualized Fiscal Year To Date	Last 12 Months	Last 36 Months
Aggregate Portfolio	0.02%	0.08%	0.16%	0.16%	0.16%	1.47%
Virginia LGIP	0.02%	0.07%	0.15%	0.15%	0.15%	1.40%
Merrill Lynch 3-month U.S. Treasury Index <sup>2</sup>	0.00%	0.00%	0.09%	0.09%	0.09%	1.34%
Merrill Lynch 1-3 Year U.S. Treasury Note Index <sup>2</sup>	-0.03%	-0.13%	0.07%	0.07%	0.07%	2.68%
Blended Benchmark <sup>7</sup>	0.00%	0.00%	0.09%	0.09%	0.09%	1.33%



(1) Performance on trade-date basis, gross (i.e., before fees) in accordance with the CFA Institute's Global Investment Performance Standards (GIPS).

(2) Merrill Lynch Indices provided by Bloomberg Financial Markets.

(3) Performance covers all of the funds, except for the Debt Service Reserve Fund, 2019 Project Fund, and 2019 Capitalized Interest Fund. Includes money market funds in performance and duration computations.

(4) The annualized return assumes the quarterly report is compounded at the same rate for four quarters and is presented for reference only.

(5) Fiscal year performance is calculated from July 1<sup>st</sup>.

(6) Portfolio performance is computed using the transaction information obtained from the bank custodian

(7) Performance for the Blended Benchmark is computed by weighting the respective benchmarks by actual allocation between the Short-Term and Long-Term Portfolios on a monthly basis.



# Bond Proceeds



# 2019 Capitalized Interest Fund

## Portfolio Recap

- The Capitalized Interest Fund is held entirely in a money market fund.
- No securities were purchased during the quarter.

## Maturity Distribution

	June 30, 2021	June 30, 2020
Overnight	\$1,391,784.18	\$1,392,554.83
0 - 6 months	0.00	0.00
6 - 12 months	0.00	1,351,540.33
1 - 1 1/2 years	0.00	1,365,725.74
1 1/2 - 2 years	0.00	0.00
2 - 2 1/2 years	0.00	0.00
2 1/2 - 3 years	0.00	0.00
3 years and over	0.00	0.00
<b>Totals</b>	<b>\$1,391,784.18</b>	<b>\$4,109,820.90</b>

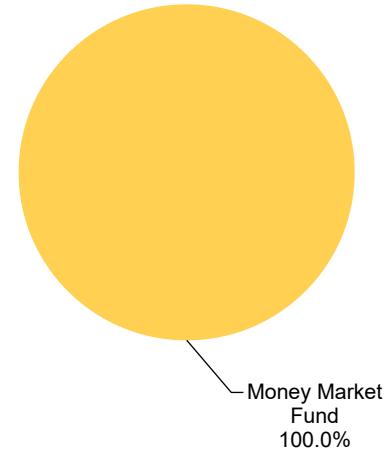
## Statistics

	June 30, 2021	June 30, 2020
Duration	0.00	0.49
Yield at Market	0.03%	0.16%
Yield at Cost	0.03%	1.27%

## Portfolio Composition

Security Type <sup>1</sup>	June 30, 2021	% of Portfolio
U.S. Treasuries	0.00	0.0%
Federal Agencies	0.00	0.0%
Commercial Paper	0.00	0.0%
Municipal Obligations	0.00	0.0%
Corporate Notes/Bonds	0.00	0.0%
Money Market Fund	1,391,784.18	100.0%
Virginia LGIP	0.00	0.0%
<b>Totals</b>	<b>\$1,391,784.18</b>	<b>100.0%</b>

**Portfolio Composition**  
(as of 6/30/21)





# Debt Service Reserve Fund

## Portfolio Recap

- The Debt Service Reserve Fund is invested in a Federal Agency maturing in June 2023, as well as a money market fund.
- At the end of June, there were several maturities in the account. PFM has instructed Legg Mason to purchase \$2.5 million in a 3-year U.S. Treasury yielding 0.44% and \$2.4 million in a 1-year U.S. Treasury yielding 0.07%.

## Maturity Distribution

	June 30, 2021	June 30, 2020
Overnight	\$5,127,487.33	\$3,038,188.53
0 - 6 months	0.00	0.00
6 - 12 months	0.00	0.00
1 - 1 1/2 years	0.00	4,785,591.82
1 1/2 - 2 years	1,860,412.40	0.00
2 - 2 1/2 years	0.00	0.00
2 1/2 - 3 years	0.00	0.00
3 years and over	0.00	0.00
<b>Totals</b>	<b>\$6,987,899.73</b>	<b>\$7,823,780.35</b>

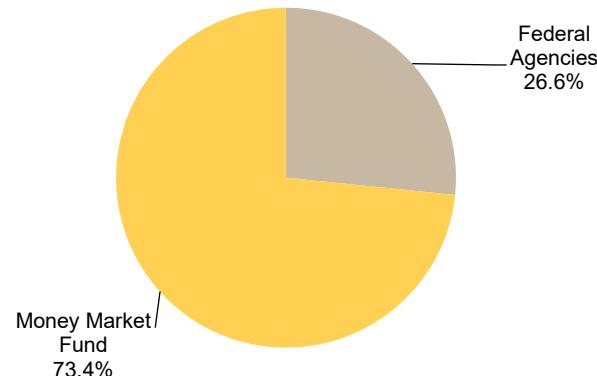
## Statistics

	June 30, 2021	June 30, 2020
Duration	0.53	0.61
Yield at Market	0.09%	0.15%
Yield at Cost	0.10%	1.16%

## Portfolio Composition

Security Type <sup>1</sup>	June 30, 2021	% of Portfolio
U.S. Treasuries	0.00	0.0%
Federal Agencies	1,860,412.40	26.6%
Commercial Paper	0.00	0.0%
Municipal Obligations	0.00	0.0%
Corporate Notes/Bonds	0.00	0.0%
Money Market Fund	5,127,487.33	73.4%
Virginia LGIP	0.00	0.0%
<b>Totals</b>	<b>\$6,987,899.73</b>	<b>100.0%</b>

**Portfolio Composition**  
(as of 6/30/21)





# 2019 Project Fund

## Portfolio Recap

- The Project Fund is held entirely in a money market fund.
- During the past quarter, Legg Mason purchased \$3.7 million of U.S. Treasuries, \$1.1 million of Federal Agencies, and \$325,000 of commercial paper.

## Maturity Distribution

	June 30, 2021	June 30, 2020
Overnight	<b>\$511,598.45</b>	\$5,057,546.06
0 - 6 months	<b>0.00</b>	28,626,182.23
6 - 12 months	<b>0.00</b>	0.00
1 - 1 1/2 years	<b>0.00</b>	0.00
1 1/2 - 2 years	<b>0.00</b>	0.00
2 - 2 1/2 years	<b>0.00</b>	0.00
2 1/2 - 3 years	<b>0.00</b>	0.00
3 years and over	<b>0.00</b>	0.00
<b>Totals</b>	<b>\$511,598.45</b>	<b>\$33,683,728.29</b>

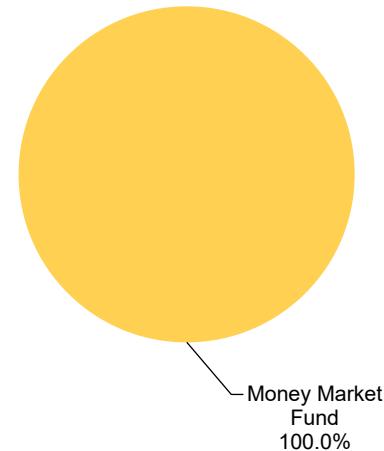
## Statistics

	June 30, 2021	June 30, 2020
Duration	0.00	0.15
Yield at Market	0.03%	0.32%
Yield at Cost	0.03%	0.97%

## Portfolio Composition

Security Type <sup>1</sup>	June 30, 2021	% of Portfolio
U.S. Treasuries	0.00	0.0%
Federal Agencies	0.00	0.0%
Commercial Paper	0.00	0.0%
Municipal Obligations	0.00	0.0%
Corporate Notes/Bonds	0.00	0.0%
Money Market Fund	511,598.45	100.0%
Virginia LGIP	0.00	0.0%
<b>Totals</b>	<b>\$511,598.45</b>	<b>100.0%</b>

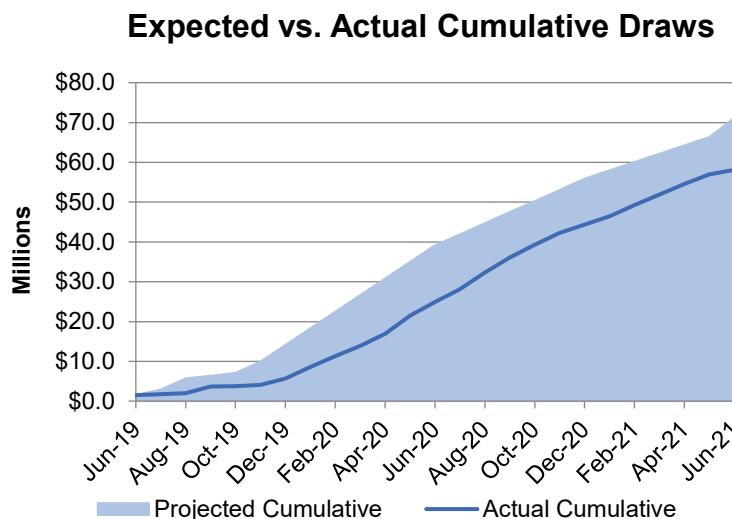
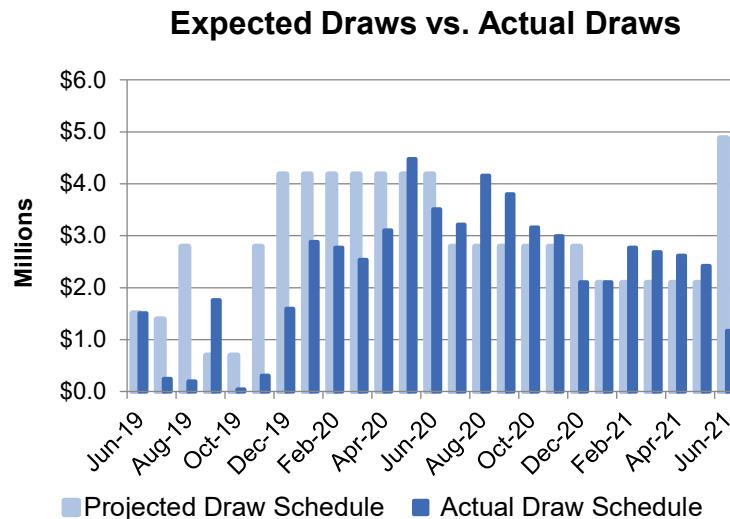
**Portfolio Composition**  
(as of 6/30/21)





## 2019 Project Fund Portfolio Summary

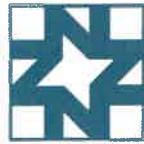
Total Portfolio Value	June 30, 2021	June 30, 2020	Project Inception to Date <sup>1</sup>
Market Value	\$511,598.45	\$33,683,728.29	
Amortized Cost	\$511,598.45	\$33,838,321.57	
Project to Date Earnings			\$988,297.18
Yield to Maturity at Market	0.03%	0.32%	
Yield to Maturity at Cost	0.03%	0.97%	
Internal Rate of Return <sup>2</sup>			1.49%
Duration	0.00	0.08	
Net Draws	\$1,170,384.00	\$3,510,393.82	\$58,145,058.85





# **R1 - Recommendation to Approve the Extension of the Hudson-NIA Norfolk Joint Venture Retail Concession Agreement Lease**

**William L. Nusbaum, Esquire, Chair  
Concessions Committee**



July 14, 2021

Mr. William L. Nusbaum, Esquire, Chair, Concessions Committee  
Mr. John R. Broderick, Vice-Chair, Concessions Committee

Re: Hudson-NIA Joint Venture Retail Concession Agreement Lease Extension

Dear Bill and John,

Hudson Group with their Disadvantaged Business Enterprise partner, the NIA Corporation, have operated the Retail concessions as a Joint Venture at the Norfolk International Airport since July 1, 1999. During the past twenty-two years they have successfully operated their various stores located in the Departures Terminal and on both concourses. They have made significant investments in capital improvements and have had their leases extended in 2008, 2012 and 2016 to enable them to make a sufficient return on these investments.

In 2016 their lease was extended to June 30, 2026, for a minimum additional capital investment of \$1.736 million with no further extensions authorized. As stated in the attached letter from Ms. Laura Alphran, Vice President, Business Development for Hudson Group, the effects of the COVID-19 pandemic have caused significant disruptions to air travel and precipitous drops in airport concession sales and profit. As a result, the Hudson-NIA Joint Venture is requesting a two (2) year extension of their Lease to offset losses in 2020 and 2021.

The Hudson-NIA Joint Venture has made great efforts to re-open and maintain services from their pre- and post-security stores since the un-precedented reduction of passenger activity in the Pandemic's early months of 2020. When passenger activity started to recover during the Summer of 2020 Hudson-NIA added high quality pre-packaged sandwiches, wraps and salads, as well as coffee and non-alcoholic services. These items make perfect "grab and go" options for passengers and flight crews since the airlines have ceased food and beverage service on their flights, and the Airport's food and beverage concessionaire has been slow to resume normal operations. The Hudson-NIA stores are currently all open and operating, but with limited hours for some stores.

It is staff's recommendation that the Board approve a one-year extension of the Hudson-NIA Concession Agreement Lease to June 30, 2027.

Please let me know if you have any questions. I will place this matter on the agenda for Board action at its meeting scheduled for July 22, 2021.

Sincerely,



Robert S. Bowen, A.A.E.  
Executive Director

Enclosure

Copy w/attachment: Commissioners  
Anita O. Poston, Esquire



May 13, 2021

Robert S. Bowen A.A.E.  
Executive Director  
Norfolk Airport Authority  
Norfolk International Airport  
2200 Norview Avenue  
Norfolk, Virginia 23518

**Re: Request to Extend Contract**

Dear Mr. Bowen:

Since the commencement of Hudson-NIA JV operations at Norfolk International Airport (ORF) in 1999, we have continued to set and achieve first class standards in customer service, operations and merchandising. We are proud to be partners with the Airport Authority and to provide a pleasant and friendly shopping experience for passengers visiting ORF.

The worldwide COVID-19 pandemic has caused significant disruptions to air travel and precipitous drops in airport concession sales and profit. Recent articles by industry experts indicate that traffic will not return to 2019 levels until possibly 2024/2025.

We deeply appreciate the support ORF has provided to offset the impacts of COVID-19 and its effect on business operations. It is clear that the duration and severity of the pandemic is unlike anything we have seen as an industry.

As a result, our Venture respectfully requests a two (2) year extension to offset losses in 2020 and 2021. Passenger traffic calendar year 2020 decreased by 55% over 2019 and sales were down 45%. January through March 2021 traffic decreased by 40%.

We implore your assistance to enable Hudson and our ACDBE partner, NIA Corp to continue to endure, recover and rebuild. In lieu of the above, our Joint Venture appreciates your consideration of an extended two (2) year extension. We look forward to your response.

Sincerely,

Laura Alphran  
Vice President, Business Development  
[lalphran@hudsongroup.com](mailto:lalphran@hudsongroup.com)

# **R2- Recommendation to Approve the Issuance of a Request for Proposals for Rental Car Service Concession**

**William L. Nusbaum, Esquire, Chair  
Concessions Committee**



July 13, 2021

Mr. William L. Nusbaum, Esquire, Chair, Concessions Committee  
Mr. John R. Broderick, Vice-Chair, Concessions Committee

Re: Request for Proposals for Rental Car Service Concession

Dear Bill and John,

As a result of the revenue decline associated with the COVID-19 pandemic in 2020, the Hertz Corporation (Hertz, Dollar and Thrifty) filed for Chapter 11 Bankruptcy. As a result of this filing, the Thrifty brand ceased operations at the Norfolk International Airport.

Please find enclosed a memorandum from Steve Sterling, Deputy Executive Director for Administration and Operations, which provides more information about the Hertz bankruptcy, Thrifty's departure from the airport, and the ongoing effects of the pandemic on rental car operations at the Airport. I agree with Steve's recommendation to solicit proposals from interested rental car agencies to operate the facilities vacated by Thrifty.

It is my recommendation that the Board approve the issuance of the enclosed Request for Proposals for the operation of a rental car service concession in the former Thrifty facilities, and that staff be approved to award the contract to the most responsive offeror.

Please let me know if you have any questions. I will place this matter on the agenda for Board action at its meeting scheduled for July 22, 2021.

Sincerely,

Robert S. Bowen, A.A.E.  
Executive Director

Enclosures

Copy w/encl: Commissioners  
Anita O. Poston, Esquire

# **REQUEST FOR PROPOSALS AND CONCESSION AGREEMENT**

## **RENTAL CAR SERVICE**

**NORFOLK AIRPORT AUTHORITY**

**NORFOLK INTERNATIONAL AIRPORT**

**NORFOLK, VIRGINIA**

**OCTOBER 1, 2021 – JULY 31, 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**

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## **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 select one (1) rental car brand that will reflect the prestige and dignity of the Airport and the services these facilities provide to the public. The Authority intends to fill a vacant rental car position for the remainder of the rental car contract term, which is slightly less than two (2) years. No more than one branded operator will operate in any Concession Area and only one recognized brand will be operated pursuant to this 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](mailto:ssterling@norfolkairport.com)

1.5 Pre-proposal Conference. A Pre-proposal conference will be held on **August 4, 2021 at 1:30 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 **August 13, 2021 at**

**5:00 p.m.** Answers will be posted by **August 18, 2021 at 5:00 p.m.** The Authority will accept clarification requests pertaining to the answers posted until **August 20, 2021**. 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) September 9, 2021** (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 one (1) paper copy of Offeror's Proposal and all attachments along with a pdf copy of all submittals on CD-Rom or thumb drive 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 one (1) 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 one-half percent (1.5% through 9/30/2021) of total expenditures of goods and services for rental car service operations

at the Airport. The Authority is in the process of establishing the goal for the next three-year period.

### 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.

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**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 July 23, 2021, 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 the first 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 One Hundred and Seventy-five Thousand Dollars (\$175,000.00) for any

Contract Year will not be considered.

1<sup>st</sup> Contract Year, ending in 2022: \$\_\_\_\_\_

The Minimum Annual Guarantee for Contract Year 2 will be the greater of

(i) Ninety percent (90%) of the actual Concession Payment to the Authority in the preceding contract year; or, (ii) the Minimum Annual Guarantee for the first contract year.

- 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:

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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 \_\_\_\_\_, 2021, 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 \_\_\_\_\_, 2021, 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 \_\_\_\_\_, 2021, 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**

**October 1, 2021 – July 31, 2023**



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## **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 October, 2021 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.
- I. 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, offered in the Proposal.
- 2.3. The Authority will make initial assignments of parking spaces as follows:
  - a. The Concessionaire will be tentatively allocated a number and location of ready parking spaces and return rows.
  - 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 total 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 October 1, 2021 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 October 1, 2021, 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, 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 ten percent (10%) of Gross Revenue. 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 subconcessionaire was engaged or so that the Concessionaire can substitute another ACDBE or non-ACDBE concessionaire after contract award.

- c. Before transmitting its request to the Authority to terminate and/or substitute an ACDBE subconcessionaire, the Concessionaire must give notice in writing to the ACDBE subconcessionaire, 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.

<b>FORMS OF COVERAGE</b>	<b>MINIMUM LIMITS</b>
<b>Workers' Compensation</b>	Statutory Benefits for Virginia
<b>Employer's Liability</b>	\$500/\$500/\$500,000 or Amount Necessary for Excess Liability Underwriters
Retention or Deductible	None
<b>Commercial General Liability on an occurrence basis as follows:</b>	
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
<b>Business Automobile Liability for owned, non-owned, hired, leased, and rented vehicles:</b>	
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
<b>Excess Third-Party Liability</b>	
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

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(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 therefrom. 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**

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Robert S. Bowen, Executive Director

ATTEST:

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Assistant Secretary

**CONCESSIONAIRE:**

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(agency)

By: \_\_\_\_\_  
(Signature)

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(Printed Name)

Title: \_\_\_\_\_

WITNESS:

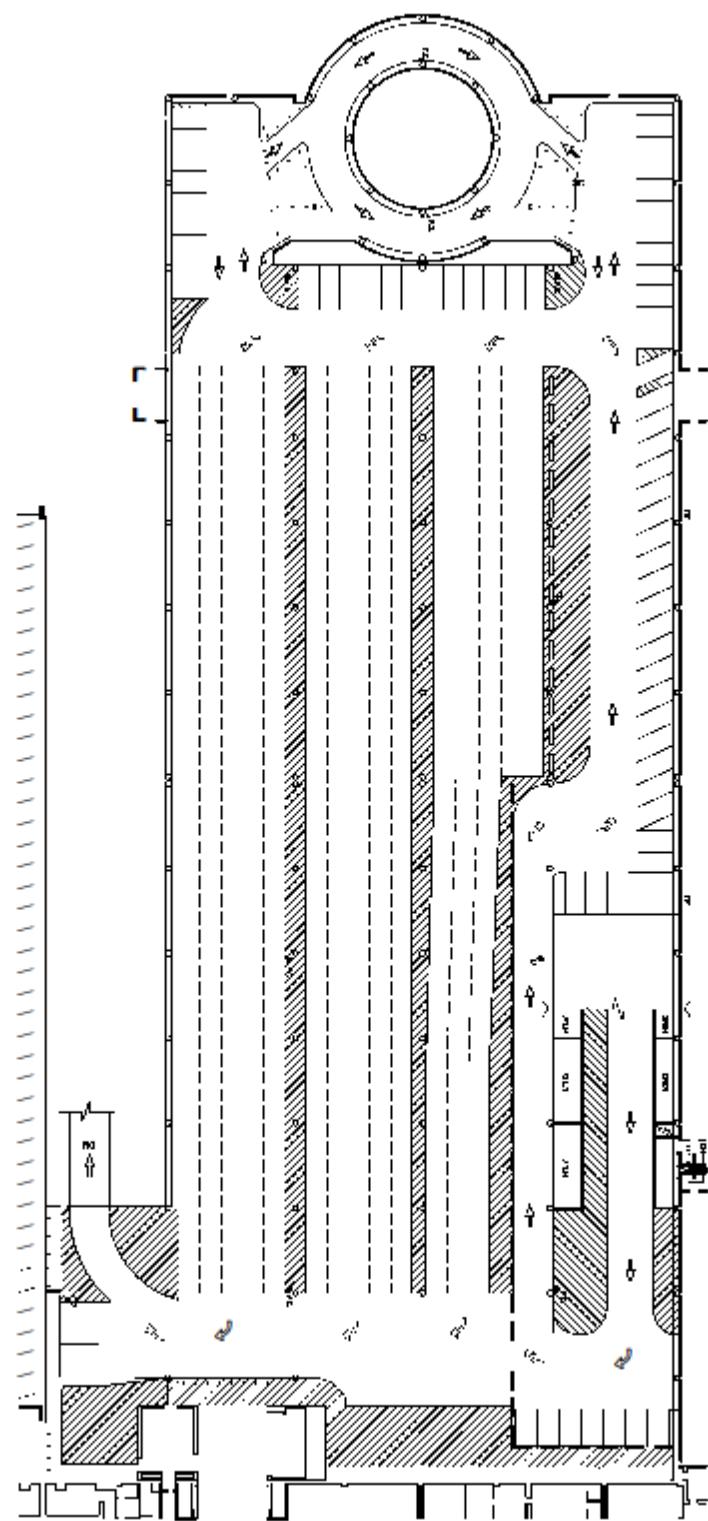
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Title: \_\_\_\_\_

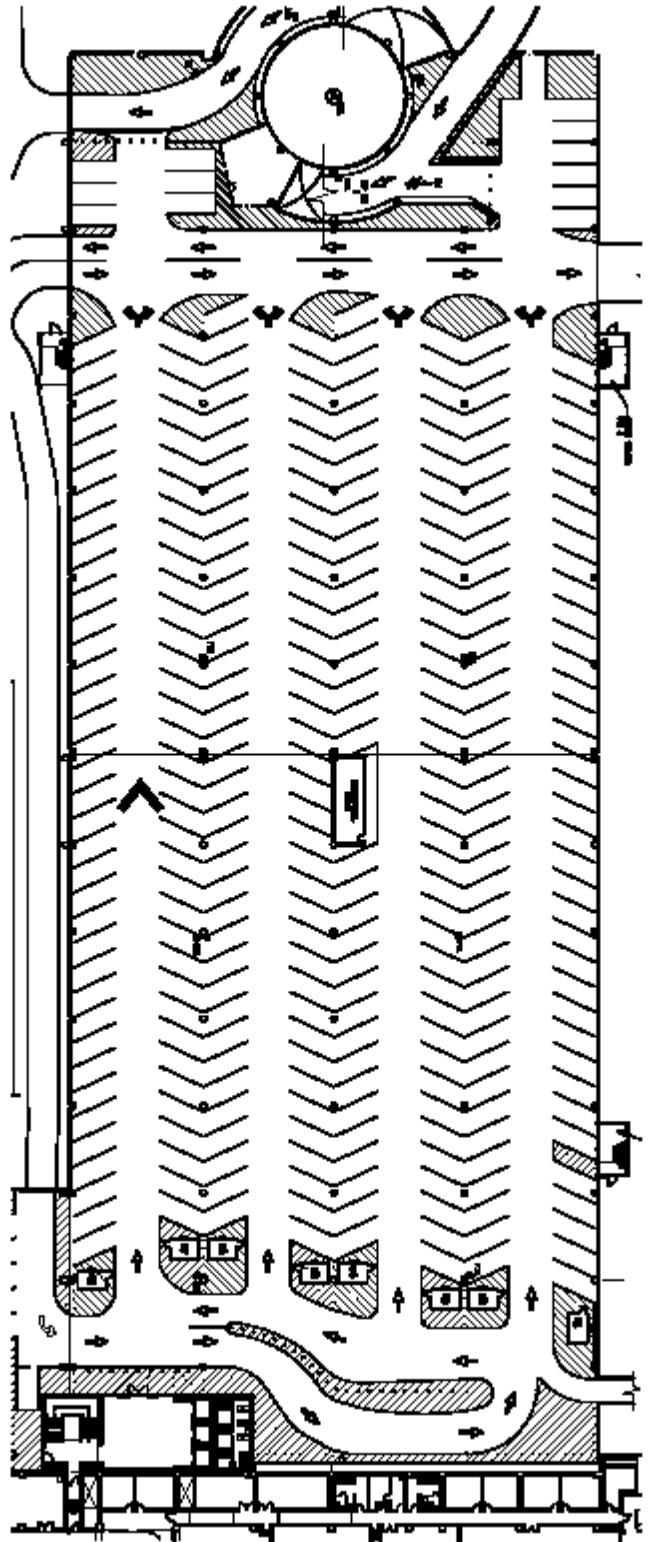
# **EXHIBIT A**

## **CONCESSION AREA**

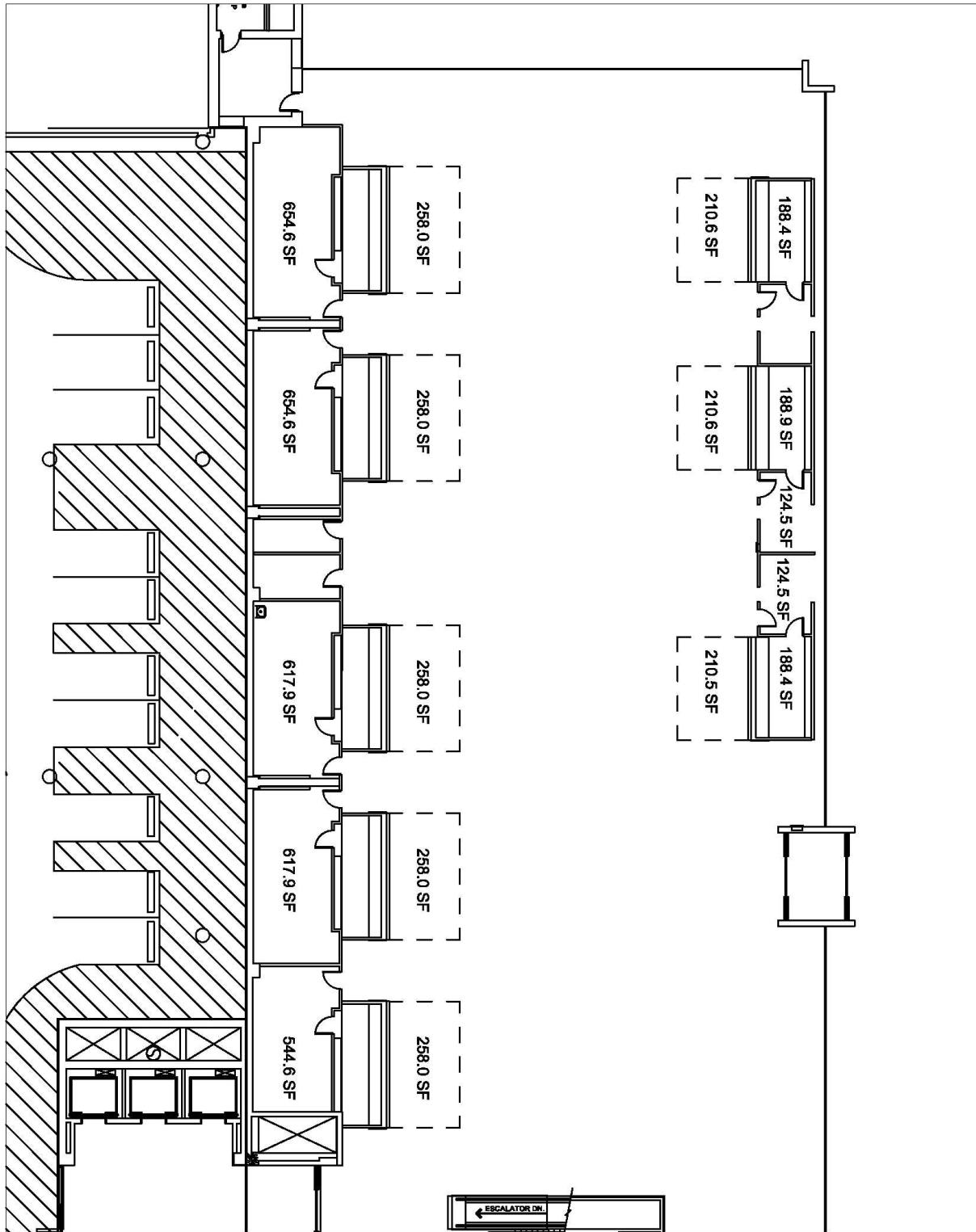
# **Rental Car Return Row Booth and Spaces**



# **Rental Car Ready Booth and Spaces**



# Rental Car Counter Spaces



# **EXHIBIT B**

## **RENTAL CAR CUSTOMER FACILITY CHARGE AGREEMENT**

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**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 October 1, 2021, 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 October 1, 2021, 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 October 1, 2021, 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 (20<sup>th</sup>) 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**

NORFOLK INTERNATIONAL AIRPORT  
Rules, Regulations and Parking Agreement  
**Tenant Employee Parking Program**  
(effective February 2021)

As operator of Norfolk International Airport, the Norfolk Airport Authority (Authority) provides parking accommodations for employees of Airport Tenants which are under contract/lease with the Authority. Generally, the contract/lease between the Authority and the Airport Tenant addresses "parking" on the Airport.

To establish effective controls governing employee parking, the Authority hereby establishes the following Rules and Regulations for the Tenant Employee Parking Program at Norfolk International Airport:

1. Tenant employee parking is to be used in conjunction with official business duties and is available at location(s) designated by the Authority. Currently, the public Long Term Parking facilities have been designated as authorized location(s) for tenant employee parking. **Unauthorized tenant employees parking in any Short Term Parking facility will be required to pay the parking fees accrued and will not be eligible for reimbursement.**
2. Tenants will be invoiced a fee of \$25.00 per month, or any part thereof, for each employee enrolled in this program. This rate is subject to future increases at the discretion of the Norfolk Airport Authority.
3. The signatory of each Airport Tenant (including Airlines) will be responsible for requesting issuance of a parking access card for each authorized Tenant employee in accordance with the following criteria and procedures:
  - a. Each Tenant employee enrolled in this program will receive one parking access card. This parking access card will be specially encoded to allow entry and exit into authorized locations for Tenant employee parking. **This parking access card may not be utilized by anyone other than the employee to whom the credential was issued. This parking access card shall not be altered in any way or stored near credit cards or any other type of magnetic source.**
  - b. There will be a \$25.00 replacement fee for all lost, stolen, or damaged cards.
  - c. The signatory of each Airport Tenant (including Airlines) will be responsible for obtaining and issuing employee parking access cards to their authorized employees. **UNDER NO CIRCUMSTANCES** will anyone other than the

signatory retrieve employee parking access cards directly from the Authority. For definition purposes, **AUTHORIZED EMPLOYEES ARE THOSE PERSONS WHO WORK DIRECTLY FOR A TENANT UNDER CONTRACT/LEASE WITH THE AUTHORITY AND WORK ON THE NORFOLK INTERNATIONAL AIRPORT PROPERTY. NON-BASED AIRLINE CREW MEMBERS ARE NOT CONSIDERED AUTHORIZED EMPLOYEES.**

- d. The Authority will invoice Airport Tenants monthly for each employee registered in this program. Payment for employee monthly parking fees is due thirty (30) days after invoiced by the Authority.
  - e. The signatory of each Airport Tenant (including Airlines) will be responsible for sending a request to de-activate the parking access card for a terminated employee. This notification should be sent to:  
[employeeparking@norfolkairport.com](mailto:employeeparking@norfolkairport.com). Failure to do so will result in the continued billing of all appropriate fees associated with the parking access card.
  - f. Tenant employees must have their parking access card and their SIDA badge or other photo identification in their possession at the time of exit. **Tenant employees that do not have either of these items will be required to pay the parking fees accrued and will not be eligible for reimbursement.**
  - g. Tenant employees agree to abide by all signs, pavement markings, and Airport rules and regulations while utilizing any parking facility at the Norfolk International Airport.
- 4. Employees of Airport Tenants with independent facilities not located in the Departures Terminal or Arrivals Terminal are not eligible for parking privileges under this program.
  - 5. These Rules and Regulations are subject to modification at the discretion of the Authority.

I have read and understand the Rules, Regulations and Parking Agreement for the Tenant Employee Parking Program detailed above and agree to abide by the same. I further understand that my participation in this program can be terminated for failure to follow any of the terms detailed above and/or at the sole discretion of the Authority.

Tenant/Company Name (Print) \_\_\_\_\_

Tenant Signatory Name (Print) \_\_\_\_\_ Date \_\_\_\_\_

Tenant Signatory (Sign) \_\_\_\_\_

Tenant Signatory Telephone #\_\_\_\_\_

Tenant Signatory Email: \_\_\_\_\_

Tenant Employee Name (Print) \_\_\_\_\_ Date \_\_\_\_\_

Tenant Employee Name (Sign) \_\_\_\_\_

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-PARKING OFFICE USE ONLY-

Parking Access Card Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Number: \_\_\_\_\_

Parking Access Card Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Number/s: \_\_\_\_\_

Notes:

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# **EXHIBIT E**

## **HISTORICAL PASSENGER ACTIVITY**

NORFOLK AIRPORT AUTHORITY  
NORFOLK INTERNATIONAL AIRPORT

# **EXHIBIT F**

## **RENTAL CAR GROSS RECEIPTS**

**Norfolk Airport Authority  
Norfolk International Airport  
Car Rental Commission  
Contract Year 2021**

<u>Month</u>	<u>Deplaned Passengers</u>	<u>Alamo</u>	<u>Avis</u>	<u>Budget</u>	<u>Dollar</u>	<u>Enterprise</u>	<u>Hertz</u>	<u>National</u>	<u>Thrifty</u>	<u>Totals</u>
August	78,787	\$ 46,605.77	\$ 94,535.58	\$ 70,445.15	\$ 32,672.87	\$ 83,190.12	\$ 61,354.66	\$ 50,484.95	\$ 23,703.97	\$ 461,984.08
September	72,474	\$ 42,396.25	\$ 68,571.69	\$ 59,242.92	\$ 32,151.51	\$ 80,573.75	\$ 44,907.55	\$ 41,943.69	\$ 20,159.22	\$ 389,945.58
October	78,071	\$ 43,973.11	\$ 66,904.43	\$ 61,202.25	\$ 33,186.90	\$ 85,118.54	\$ 52,407.11	\$ 49,182.08	\$ 16,601.37	\$ 408,575.79
November	77,142	\$ 34,574.88	\$ 59,419.97	\$ 51,657.58	\$ 31,767.25	\$ 83,363.41	\$ 45,349.02	\$ 47,781.37	\$ 15,674.65	\$ 369,568.13
December	89,839	\$ 26,022.71	\$ 55,470.83	\$ 47,777.78	\$ 31,349.63	\$ 62,647.04	\$ 34,636.23	\$ 36,883.48	\$ 4,782.45	\$ 299,570.15
January	63,253	\$ 19,955.59	\$ 44,467.65	\$ 46,257.22	\$ 28,767.79	\$ 52,250.32	\$ 29,326.46	\$ 34,224.69	\$ -	\$ 255,259.72
February	58,130	\$ 15,636.15	\$ 44,070.10	\$ 56,656.61	\$ 34,860.25	\$ 65,976.27	\$ 41,710.87	\$ 39,232.01	\$ -	\$ 288,131.26
March	92,471	\$ 45,986.42	\$ 73,400.65	\$ 96,106.97	\$ 62,071.71	\$ 80,325.07	\$ 57,623.21	\$ 65,544.00	\$ -	\$ 461,003.73
April	117,386	\$ 45,986.42	\$ 97,364.28	\$ 136,652.00	\$ 59,528.42	\$ 94,325.39	\$ 76,416.13	\$ 65,544.00	\$ -	\$ 575,836.64
May	146,814	\$ 47,932.45	\$ 135,362.02	\$ 181,741.79	\$ 71,817.75	\$ 109,722.38	\$ 109,515.75	\$ 71,788.57	\$ -	\$ 727,860.71
June									\$ -	
July									\$ -	
<b>Totals</b>	<b>874,467</b>	<b>\$ 386,068.76</b>	<b>\$ 739,577.20</b>	<b>\$ 807,740.27</b>	<b>\$ 418,149.78</b>	<b>\$ 797,482.29</b>	<b>\$ 553,246.99</b>	<b>\$ 602,584.85</b>	<b>\$ 80,921.66</b>	<b>\$ 4,267,776.79</b>

\* Updated Numbers

R-Retired

**R3 - Recommendation to  
Approve the Issuance of a  
Request for Proposals for  
Airport Common Carrier  
Ground Transportation Service  
Concession**

**William L. Nusbaum, Esquire, Chair  
Concessions Committee**



July 13, 2021

Mr. William L. Nusbaum, Esquire, Chair, Concessions Committee  
Mr. John R. Broderick, Vice-Chair, Concessions Committee

Re: Request for Proposals for Common Carrier Ground Transportation Service

Dear Bill and John,

As a result of declining sales over the past few years and revenue disruptions caused by the COVID-19 pandemic, James River Transportation ceased their airport common carrier ground transportation service at the Norfolk International Airport in March 2020.

Please find enclosed a memorandum from Steve Sterling, Deputy Executive Director for Administration and Operations, which provides more information about James River Transportation's departure from the airport and the effects of the pandemic on common carrier ground transportation services. I agree with Steve's recommendation to solicit proposals from interested common carrier ground transportation providers to operate this service at airport.

It is my recommendation that the Board approve the issuance of the enclosed Request for Proposals for the operation of the airport common carrier ground transportation service concession, and that staff be approved to award a contract to the most responsive offeror.

Please let me know if you have any questions. I will place this matter on the agenda for Board action at its meeting scheduled for July 22, 2021.

Sincerely,

Robert S. Bowen, A.A.E.  
Executive Director

Enclosures

Copy w/encl: Commissioners  
Anita O. Poston, Esquire



## **Memorandum**

July 12, 2021

**TO:** Robert S. Bowen, Executive Director  
**FROM:** Steven C. Sterling, Deputy Executive Director A&O  
**COPIES:** Anthony E. Rondeau, Deputy Executive Director E&F  
**SUBJECT:** Request to Issue RFP for Common Carrier Concession

As you'll recall, on March 24, 2020, authorities with James River Transportation notified me that they were closing their Norfolk Airport Common Carrier Ground Transportation operation effective that same day. The notification cited the decline in sales over the previous few years, coupled with the unsustainable revenue disruptions caused by COVID-19 as the factors driving the closure. The term of this agreement was February 1, 2017 through January 31, 2022. At the time, under a separate agreement, James River Transportation also provided shuttle transportation between the employee lot and the terminal building. The Authority had very recently suspended employee bus operations and relocated employee parking to the long-term parking garage both as a cost-saving and health-mitigation strategy. Both the Authority and James River Transportation eventually mutually agreed to terminate both agreements immediately without early termination penalties.

As the passenger traffic has resumed, I recommend we solicit proposals from Common Carrier Transportation agencies to provide this service. I further recommend that offer a five (5)-year term with similar fixed rental costs as was offered to James River Transportation. Regarding the concession fee, I recommend the proposers quote a percentage of gross revenues in their offer. We will consider this quote when comparing the proposals. I also recommend we not require a Minimal Annual Guarantee (MAG) as in the past. The risk associated with a MAG requirement at this point in the recovery of passenger traffic would likely deter many interested parties from pursuing this opportunity. Our main goal would be to re-establish this ground transportation service for our passengers.

If approved, I have developed the attached Request for Proposals document that will be publicly posted. Please let me know if you have any questions or would like to further discuss this matter.

Thank you,

Steve Sterling

**NORFOLK AIRPORT AUTHORITY  
NORFOLK INTERNATIONAL AIRPORT**

**REQUEST FOR PROPOSALS AND  
PROPOSED CONCESSION AGREEMENT**

**AIRPORT COMMON CARRIER  
GROUND TRANSPORTATION SERVICE**

**July 23, 2021**

**PART I**

**REQUEST FOR PROPOSALS**

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## **SECTION 1. REQUEST FOR PROPOSALS.**

1.1 The Norfolk Airport Authority (“Authority”), acting by and through its Executive Director, requests Proposals from Offerors to enter into a Concession Agreement to provide necessary vehicles, equipment, furnishings, and personnel to operate a Common Carrier Ground Transportation Service Concession as described herein (“Service”) at the Norfolk International Airport (“Airport”) in Norfolk, Virginia.

1.2 The Proposal Documents. This document consists of three (3) parts and the respective exhibits and attachments, if any; together these documents are referred to as the “Proposal Documents”.

**Part 1:** The Request for Proposals (“RFP”), which is divided into Sections and has page numbers beginning at “R-1.”

**Part 2:** The Proposal Form, which has page numbers beginning at “P-1” and which, when properly completed and attached to the other information provided by an Offeror, forms the Offeror’s Proposal.

**Part 3:** The Concession Agreement, which is divided into Articles and has page numbers beginning at “C-1.”

1.3 The final agreement entered into by the Selected Offeror and the Norfolk Airport Authority will be considered to include all three parts of the Proposal Documents, including any exhibits and attachments. Prospective Offerors are encouraged to review the Proposal Documents in their entirety before submitting a Proposal.

1.4 Copies. Additional copies of the Proposal Documents are available upon request to Steve Sterling, Deputy Executive Director of Administration and Operations, Norfolk Airport Authority, Norfolk International Airport, Norfolk, Virginia 23518-5807 (Facsimile 757-857-3265). The documents are also available on the Airport’s website, located at the following link:  
<http://www.norfolkairport.com/about-us/business-opportunities>

1.5 Unauthorized Contact. Except the communications with the Deputy Executive Director of Administration and Operations as 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 shall be cause for disqualification of the Offeror. The Authority will not meet individually with any Offeror prior to receipt of proposals.

**1.6 The Authority has scheduled a Pre-Proposal Conference on August 4, 2021.**

This Conference will be held in the Airport Conference Room A at 10:30 a.m. (local time).

a. The purpose of the Conference will be to discuss the requirements and objectives of this RFP, to answer any questions about the elements of the RFP, and to answer any general questions Offerors may have about the Concession. Authority representatives will be available, and Offerors will be permitted to perform an initial site visit of the Concession Area.

b. Offerors are encouraged to attend the Conference and to submit any questions concerning this RFP, in writing, in advance of the Conference. Questions may be sent by either U.S. Mail, courier, facsimile transmission (757-857-3265), or email at [ssterling@norfolkairport.com](mailto:ssterling@norfolkairport.com).

c. At the Conference, the Authority will attempt to answer all written questions received in advance as well as those received at the Conference. **Any other questions must be submitted in writing and must be received by the Authority by 5:00 p.m. (local time) on Friday, August 13, 2021.** The questions, and the answers to the questions, will be distributed, without attribution, to all interested potential Offerors so that all potential Offerors have the same information.

d. Any changes in the requirements of this RFP that result from the questions or the Conference will be made by addendum to the RFP.

**SECTION 2. SUBMISSION OF PROPOSALS.**

**2.1 Proposals will be received until 2:00 p.m. (local time) on August 26, 2021 (the "Due Date") in the Administrative Offices of the Authority, Norfolk International Airport, Norfolk, VA 23518-5807.** An original and two (2) copies of an Offeror's Proposal must be contained in a sealed envelope labeled "Airport Common Carrier Ground Transportation Service Concession Proposal," conspicuously endorsed with the Offeror's name, and showing the Due Date and time the Proposal is to be received. Responders must also submit one (1) electronic copy of their complete response on a thumb drive or DVD utilizing Microsoft Office tools. Proposals must be delivered in sufficient time for receipt by the Authority not later than the Due Date. Proposals or modifications thereto received after the Due Date will not be considered. Proposals will be opened and considered at the discretion of the Authority.

2.2 The Proposal must be submitted upon the forms furnished by the Authority and must give **all** required information. The Proposal must be signed on behalf of the Offeror and the acknowledgment made in the form provided. Optional or additional items must be clearly identified.

2.3 It is essential that the information and requirements of the Proposal Documents be carefully studied and adhered to in the preparation and submission of Proposals. Any award will be based upon the Authority's analysis of the Proposals and upon the evaluation criteria contained herein. Failure to comply with the restrictions and provisions contained herein may be cause for rejection of the Proposal.

2.4 In making the 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.

### **SECTION 3. QUALIFYING AND SUPPLEMENTAL INFORMATION.**

3.1 In its Proposal, an Offeror must provide evidence that it is fully competent to provide the Service 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 substantial, continuous, and recent experience providing comparable services to the public.

3.2 In addition to the requirements of 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.

3.3 The giving of the aforesaid notice to any Offeror shall not be construed as an acceptance of Offeror's Proposal.

3.4 The Authority reserves the right to consider, in its evaluation and selection process, such additional information obtained from Offerors or as the Authority may obtain from its independent investigation of Offerors.

## **SECTION 4. INFORMATION ACCOMPANYING PROPOSALS.**

A Proposal shall consist of a completed Proposal Form, the following information that must accompany the Proposal Form, and any other requirements set forth in the Proposal Documents:

### **4.1 General Information About Offeror:**

- a. The legal name and principal address of the Offeror.
- b. The nature of the Offeror entity, i.e. corporation, partnership, individual, limited liability company, or other.
- c. If Offeror is a corporation, provide the following:
  - (1) The full legal name and address of each officer and director.
  - (2) Certificate of good standing issued by the Virginia State Corporation Commission not more than sixty (60) days prior to the submission of Offeror's Proposal.
  - (3) 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 Secretary of the Commonwealth of Virginia evidencing the Offeror's legal qualifications to transact business in the Commonwealth of Virginia.
- d. If Offeror is a partnership, provide the following:
  - (1) The full legal name and address for each partner, designating any general partners and limited partners.
  - (2) A copy of Offeror's partnership agreement.
  - (3) Evidence that the Offeror is legally qualified to transact business in the Commonwealth of Virginia.
- e. If Offeror is a limited liability company, provide the following:
  - (1) A statement of the names and addresses of the members, designating any managing members.
  - (2) A copy of Offeror's articles of organization.
  - (3) A copy of the current operating agreement.
  - (4) A Certificate of Fact for Offeror.
  - (5) Evidence that the Offeror is legally qualified to transact business in the Commonwealth of 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, provide the information requested in subsections c, d and e above, as appropriate, for each such entity.

g. Provide the following information regarding the finances and financial responsibility of Offeror and any of the individuals or entities identified in the responses to subsections c, d and e above as officers, directors, members and partners of Offeror which either (i) own or control any interest in the Offeror which equals or exceeds one-half of Offeror's units of ownership or control; (ii) are actively engaged in the management of Offeror; or (iii) will be actively involved in the operation of the Concession ("Controlling Party"):

(1) Federal income tax returns filed for the last two years.

(2) Either (i) a balance sheet and income statement, certified by a certified public accountant who is not otherwise an employee of Offeror, showing the net worth of Offeror as of a date not earlier than 120 days prior to the date established for receipt of the Proposals, and the net income of the Offeror for a twelve-month period ending as of a date not earlier than 120 days prior to the date established for the receipt of the Proposals; or (ii) a balance sheet and income statement for Offeror's preceding fiscal year, certified by a certified public accountant who is not otherwise an employee of Offeror, and the net income of the Offeror for the Offeror's preceding fiscal year, along with a statement from said certified public accountant indicating that the present financial condition of the Offeror is at least as good as that shown on the balance sheet and income statement submitted.

(3) The name and address of the primary bank of Offeror and any Controlling Party with the name and telephone number of the bank representative handling the account and a signed copy of the form identified as **Proposal Exhibit A** for Offeror and each Controlling Party.

(4) A credit report on Offeror and any Controlling Party issued by a nationally recognized credit report agency (e.g., Equifax, Experian) dated within thirty (30) days of the date of Offeror's Proposal.

(5) The name, address and nature of any other business enterprise currently owned or operated by Offeror and any Controlling Party, or anticipated to be owned or operated during the Term of the Concession.

h. For Offeror, each Controlling Partner and each officer and employee of Offeror who will be directly involved in the supervision, direction, management or operation of the Concession:

(1) Provide a fingerprint-based criminal history record check if the individual or entity has been convicted of a felony, a misdemeanor that involves moral turpitude (e.g., lying, cheating, or stealing), or has pending criminal charges of any nature.

(2) Certify that the individual or entity has never been convicted of, and does not have pending criminal charges of, the disqualifying criminal offenses listed in 49 CFR §1542.209(d), as amended, or any comparable regulations.

(3) State whether any such individual or entity 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.

(4) State whether any such individual or entity 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.

(5) Provide the information requested in **Proposal Exhibit B**.

i. If applicable, information and documentation pertaining to Disadvantaged Business Enterprise (“DBE”) status.

#### **4.2 Information About Affiliates, if any:**

a. For purposes of the Proposal and Concession Agreement, the term “Affiliate” shall be defined in accordance with the regulations applicable to small businesses under 15 U.S.C. § 631 et. seq., as the same may be amended from time to time. Entities or individuals are considered to be Affiliates of each other under this Proposal and Concession Agreement when one controls or has the power to control the other, or a third party (or parties) controls or has the power to control both. Factors relevant to affiliation include ownership, management, previous relationships with or ties to another entity, and contractual relationships. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships shall be treated as Affiliates. With regard to a corporation, a person is an Affiliate if the person owns or controls, or has the power to control, fifty percent (50%) or more of its voting stock, or a block of stock which affords control because

it is large compared to other outstanding blocks of stock. If two or more persons each owns, controls or has the power to control less than fifty percent (50%) of the voting stock of an entity, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an Affiliate.

b. Identify every Affiliate of Offeror and for each such Affiliate not otherwise identified as a Controlling Party, provide all the same information requested in subsection 4.1 above with respect to the Offeror, except that the items in subsections h and i must be provided only for Affiliates which control or have the power to control the Offeror. The Authority, however, reserves the right to request such additional information regarding other Affiliates as the Authority shall determine necessary or appropriate.

#### 4.3 Service Information:

a. Detailed information relating to concessions or other business ventures that the Offeror has operated or is currently operating that are comparable to the Service. 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 comparable business.

b. Copies of the licenses, permits and/or certificates Offeror currently has to provide the Service, and a list of any licenses, permits and/or certificates for which Offeror intends to apply.

c. A proposed operating plan for the Service to be provided which plan shall address, at a minimum, the following:

(1) Locations to be served with schedules and rates.  
(2) Offeror's proposed rate schedule for the Service to include the basis for assessing fares.

(3) A Plan for Financing and operating the first year of the Concession in the format of **Proposal Exhibit C**, or in a comparable form.

(4) Illustrative examples of fares to and from the Airport and the originations and destinations shown in **Proposal Exhibits D and E**.

(5) A description of the vehicles to be used in providing the Service, including but not limited to type and number, model, age, color and mileage of vehicles and such

other information as necessary to assure compliance with the Standards of Service in the Concession Agreement.

(6) The Offeror's plan to minimize waiting time for passengers at the Airport and to provide timely service to passengers traveling to the Airport.

(7) A list of the individual positions and responsibilities of the persons currently employed or to be hired to provide the Service.

(8) The full legal names and addresses of each individual who will serve in a managerial or supervisory position with regard to the Service and for each such individual, detailed information to establish to the satisfaction of the Authority the individual's qualifications and experience.

d. A safety and security plan to assure that people and property using the Service, and other people and property at the Airport, are safe and secure at all times, including but not limited to:

(1) The alcohol and/or drug testing program to be applied to all employees who will provide the Service;

(2) The criminal and security background check program that will be applied to all employees who will provide the 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), as may be amended, or any comparable regulations;

(3) The vehicle maintenance plan to be followed for the vehicles to be used to provide the Service;

(4) The driver training for the vehicle operators for the Service; and

(5) Whether Offeror intends to participate in the Voluntary Driving Record Monitoring Program of the Virginia Department of Motor Vehicles ("DMV").

d. Written certification 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 Service, and that Offeror has or will be able to obtain all required permits, licenses, and certificates upon one hundred twenty (120) calendar days of receipt of the Notice of Intent to Award the Concession Agreement. 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 with a copy of any application and other information provided to such regulatory agencies and continuously keep Authority fully informed of the status of each application.

e. 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, timely, and efficient service in a clean, attractive, and professional environment. The Authority shall be the sole judge of the qualifications of the Offeror.

f. A detailed marketing and public relations plan to promote the service and to assure that travelers using the Airport are aware of the Service in order to maximize utilization and revenue.

## **SECTION 5. PROPOSAL GUARANTEE.**

5.1 Each Offeror shall submit with its Proposal a Proposal Guarantee in the amount of Five Thousand and 00/100 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 the Commonwealth of Virginia. The Proposal Guarantee of all Offerors will be retained by the Authority, without interest, until execution of the Concession Agreement by the Authority.

5.2 After the execution of the Concession Agreement, the Proposal Guarantees of all non-defaulting Offerors shall be returned without interest thereon.

## **SECTION 6. INSPECTION AND CONDITION OF FACILITIES.**

6.1 Each Offeror may, and is encouraged to, inspect the Concession Area at the Airport, but must make reasonable prior arrangements with the Deputy Executive Director of the Authority for this purpose. No statement by any Authority representative before or during the inspection shall be a part of this procurement and may not be relied upon by the Offeror.

6.2 The Authority shall deliver the applicable Airport facilities to Concessionaire in an **"AS IS, WHERE IS"** condition, without representation or warranty of any kind. The Authority shall have no obligation to alter, renovate, or otherwise change the applicable Airport facilities in any manner whatsoever. By submitting a Proposal, Offeror is deemed to agree that the Concession Area is in a condition suitable for the Concession, and installation of any Improvements required of the Concessionaire under the terms of the Proposal and Concession

Agreement. The Offeror further agrees to accept the facilities as of date of delivery without further recourse to the Authority in regard thereto.

## **SECTION 7. NEGOTIATIONS.**

7.1 The Authority may award a Concession Agreement based on the initial Proposals received, without conducting any negotiations or discussions concerning such Proposals and, accordingly, each initial Proposal should be submitted on the most favorable terms.

7.2 After receipt of Proposals, negotiations may be conducted with one or more Offerors as determined by the Authority. After these negotiations, the Authority will select the Offeror submitting the Proposal with the best overall benefit to the Authority, as determined by the Authority in its sole discretion.

## **SECTION 8. BASIS FOR AWARD.**

8.1 The Authority reserves the right to withdraw the Proposal and Concession Agreement at any time for any reason, to reject any or all Proposals or modifications thereto, and to waive any informalities in Proposals received. The Authority reserves the right to make any award on the basis of the Proposal that it determines, in its sole discretion, best meets the requirements of the Authority as set forth in this Proposal and Concession Agreement.

8.2 The Authority's selection of a Proposal will be based upon an evaluation of the Offeror, and where applicable, its Affiliates, as being both responsive and responsible, and as being the most advantageous to the Authority, with no single evaluation factor being necessarily determinative. The Authority reserves the right to consider the following factors and others without specific prior identification, and without predetermined weight, as it may deem appropriate in evaluating the Proposals received and making its selection:

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 Service.

b. The Offeror's proposed operating, safety and security plans.

c. The financial condition of Offeror, and if relevant, any Controlling Party and Affiliates, and the ability to obtain adequate financing to perform those functions necessary for the Service.

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 (percentage of gross revenue) the Offeror has proposed to pay the Authority.
- g. Offeror's DBE participation, if applicable.
- h. Offeror's proposed rates and fares and policies for establishing the rates and fares to be charged to the public for its Services.
  - i. Offeror's management policies.
  - j. If applicable, Offeror's plans for Improvements as they involve use of space, décor, and quality of equipment and furnishings.
  - k. Offeror's vehicle maintenance plan.
  - l. Offeror's plans for marketing and promoting the service.

8.3 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 the Proposal, or other written statements of commitments, such as financial assistance and subcontracting.
- b. Other existing 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, other financial companies, state county, and municipal departments and agencies and other public airports.
- e. 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.
- f. The results of background investigations of Offerors made to verify information furnished or to secure additional information the Authority may deem necessary or desirable.

## **SECTION 9. ACCEPTANCE OR REJECTION OF PROPOSAL.**

9.1 Within ninety (90) days after the Due Date for receipt of Proposals, or as soon thereafter as it may act, the Authority will select one of the Proposals and will reject all other

Proposals or will reject all Proposals. The Authority reserves the right to reject all Proposals if it deems such to be in the best interest of the Airport.

9.2 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.

9.3 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.

9.4 The Authority reserves the right to waive any and all defects in form in any Proposal.

## **SECTION 10. EXECUTION OF CONCESSION AGREEMENT.**

10.1 Within fifteen (15) 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 Proposal and Concession Agreement completed in accordance with the Proposal submitted by Offeror and as accepted by Authority.

10.2 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 11. FAILURE TO EXECUTE CONCESSION AGREEMENT.**

11.1 Should the Selected Offeror fail or refuse to execute the Concession Agreement as provided herein, 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, 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.

11.2 Upon such failure, refusal, or other default, 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 12. FAILURE TO OBTAIN PERMITS.**

12.1 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 Service 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, (ii) withdraw the Proposal Documents without making an award, or (iii) take such other action as the Authority shall determine appropriate.

## **SECTION 13. DISADVANTAGED BUSINESS ENTERPRISE.**

13.1 It is the policy of the Authority that, in compliance with U. S. Department of Transportation (“DOT”) Regulations 49 C.F.R. Parts 23 and 26, as may be amended, and other applicable federal, state, and local statutes or regulations that may apply, a business which qualifies as an Airport Concession Disadvantaged Business Enterprise (“ACDBE”) shall have the maximum opportunity to participate in the Authority’s concession contracts and leases for the Airport. In compliance with 49 C.F.R. Parts 23 and 26, the Authority has an “ACDBE Concession Plan” setting forth the Authority’s policy pertaining to ACDBE participation in Airport concessions. The Authority’s overall ACDBE Concession participation goal for all eligible concessions at the Airport is twelve and one-half percent (12.5%) of gross revenue.

13.2 In conformity with the requirements of 49 C.F.R. Parts 23 and 26, as may be amended, Concessionaire agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of this Concession Agreement. The Concessionaire agrees to include the above statement in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements permitted under this procurement.

13.3 All DBE participants under the Concession Agreement must be certified by the Virginia Department of Small Business and Supplier Diversity ('SBSD') or the Metropolitan Washington Airports Authority ('MWAA').

13.4 The Concessionaire shall submit such reports or other documentation as may be required by the Authority for the purpose of demonstrating compliance with this Section 13.

[END OF PART I]

## **PART II**

## **PROPOSAL FORM**

(to be submitted in response to the Request for Proposals and Proposed  
Concession Agreement for Airport Common Carrier Ground  
Transportation Service, issued by the Norfolk Airport Authority,  
dated July 23, 2021)

## **PROPOSAL FORM**

### **AIRPORT COMMON CARRIER GROUND TRANSPORTATION SERVICE CONCESSION NORFOLK INTERNATIONAL AIRPORT**

TO: NORFOLK AIRPORT AUTHORITY

**A.** The undersigned \_\_\_\_\_, a  
(Name of Offeror)<sup>1</sup>  
\_\_\_\_\_, organized and existing under the laws of the State of  
(Type of Entity)<sup>2</sup>  
\_\_\_\_\_, hereby offers to enter into a contract with the Norfolk Airport  
(State of Formation), hereby offers to enter into a contract with the Norfolk Airport  
Authority ("Authority"), in the form entitled "Norfolk International Airport, Airport Common  
Carrier Ground Transportation Service Concession Agreement," attached hereto and  
incorporated herein, for the establishment and operation of the Concession as specified in the  
Proposal Documents.

**B.** In furtherance of this Proposal, the Offeror offers to pay to the Authority during  
the term of the Concession Agreement a fee, referred to hereinafter as the "Concession Fee,"  
equal to:

\_\_\_\_\_ percent (\_\_\_\_%) (Insert fixed percentage offered) of Offeror's Gross  
Revenues

**A fixed percentage rate of less than 6% will not be accepted.**

**C.** The Offeror acknowledges that payment of the Concession Fee, in addition to a  
Fixed Rent and other possible charges, is subject to, and further explained by, all the other terms  
set forth in the Proposal Documents.

**D.** This Proposal shall be irrevocable for a period of ninety (90) days after the Due

---

<sup>1</sup> Give the full legal name of the entity or individual making the proposal.

<sup>2</sup> State whether Offeror is a corporation, limited liability company, partnership, limited partnership or individual.

Date. To induce the selection of this Proposal by the Authority, the Offeror hereby makes each and every representation and agreement made by "Concessionaire" in the Concession Agreement and agrees that the selection of this Proposal shall have the effect provided in the RFP furnished herewith and that effect only. Notwithstanding any statement therein to the contrary, the Offeror agrees that 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. All or any part of the information may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under letters of patent specifically identified by written attachment hereto. All financial information given as a part of this Proposal will remain confidential only to the extent permitted by law.

E. The Offeror hereby affirms that the Proposal contained herein is in no way conditioned upon any predetermined level of aviation activity or passenger activity at the Airport, past, present, or future. Offeror has not relied on any representations of the Authority's staff, either orally or in writing, as to the level of Concession 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 exhibits attached to the Proposal Documents. The Proposal contained herein is based solely on Offeror's own knowledge of the airport common carrier ground transportation service concession business and its own assessment of the market potential at the Airport for such a concession.

F. (Check the appropriate line) The Offeror DOES \_\_\_\_\_, or DOES NOT \_\_\_\_\_ wish consideration as a Disadvantaged Business Enterprise.

**G. CERTIFICATIONS:**

(1) Offeror hereby certifies that no officer, director, employee, or agent of the Offeror has been convicted of, or has pending criminal charges of, the disqualifying criminal offenses identified in Section 4.1(h)(2) of the Request for Proposals will perform any work

pursuant to the Proposal and Concession Agreement on the property of the Authority, without first obtaining the express prior approval of the Authority for that particular employee or agent.

(2) Neither Offeror nor any Controlling Party has ever been denied a permit, license, or certificate necessary to provide any transportation services. 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.

(3) Neither the Offeror or any Controlling Party has ever applied for and withdrawn an application for a license, permit, or certificate necessary to provide any transportation service. 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.

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

The designated representative of the Offeror 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: \_\_\_\_\_

(\*) Witness the following signatures:

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

**SIGNATURES:**

(1) \_\_\_\_\_  
Printed Name of Offeror

Signed By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

\*\*\*\*\*

(2) \_\_\_\_\_  
Printed Name of Offeror

Signed By: \_\_\_\_\_  
General Partner

\_\_\_\_\_  
Witness

\*\*\*\*\*

(3) \_\_\_\_\_  
Signature of Offeror

\_\_\_\_\_  
Witness

\*\*\*\*\*

(\*) If corporation or limited liability company, execute at line (1) above and complete Certificate of Authority on the page provided. If partnership or limited partnership, execute at line (2) above. If individual, execute at line (3) above. If the Concessionaire is a partnership, **all general partners** will be required to sign the Proposal and the Concession Agreement. If the Selected Offeror is a limited liability company, **all managing members** will be required to sign the Proposal and the Concession Agreement. **Add additional signature pages as necessary.**

**CERTIFICATE OF AUTHORITY**

**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 under and pursuant to the Bylaws and Resolutions of the Corporation, or Operating Agreement and Resolutions of the Limited Liability Company, as applicable, the agent who has signed this Proposal on behalf of the Offeror is fully authorized to do so.

---

Secretary or Assistant Secretary

(Corporate Seal)

**ACKNOWLEDGMENT OF OFFEROR  
IF A CORPORATION OR LIMITED LIABILITY COMPANY**

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 he signed his name thereto by authority of the Board of Directors or Members.

---

Notary

My Commission expires: \_\_\_\_\_

**ACKNOWLEDGMENT OF OFFEROR  
IF A PARTNERSHIP**

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally came and appeared \_\_\_\_\_, known to me to be a general partner of the firm of \_\_\_\_\_, who executed the same as and for the act and deed of said firm.

---

Notary

My commission expires: \_\_\_\_\_

**ACKNOWLEDGMENT OF OFFEROR  
IF A LIMITED PARTNERSHIP**

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally came and appeared \_\_\_\_\_, known to me to be a general partner of the limited partnership of \_\_\_\_\_, who executed the same as and for the act and deed of said limited partnership.

---

Notary

My commission expires: \_\_\_\_\_

\*\*\*\*\*

**ACKNOWLEDGMENT OF OFFEROR  
IF AN INDIVIDUAL**

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally came and appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument.

---

Notary

My commission expires: \_\_\_\_\_

**Proposal EXHIBIT A**

**BANK REFERENCE AUTHORIZATION**

---

*Date*

---

*Name of Bank*

---

*Address of Bank*

---

---

To Whom It May Concern:

Please provide the Norfolk Airport Authority with requested information about my account(s).

Offeror: \_\_\_\_\_

---

*Signature of Authorized Representative*

---

*Account Numbers(s)*

## **Proposal EXHIBIT B**

### **QUESTIONNAIRE**

This Questionnaire must be completed by Offeror, each Controlling Party, and each officer and employee of Offeror who will be directly involved in the supervision, direction, management or operation of the Concession. Please submit a separate questionnaire for each of the above parties. If your answer to any question is "yes," attach a separate sheet of paper on which you set forth the facts in detail and designating by number the question to which you refer.

1. State whether you have been, or presently are, a party to or otherwise involved (except as a witness) in:
  - A. any civil or administrative action or legal proceeding;
  - B. any criminal or quasi-criminal action or legal proceeding (whether involving a felony, misdemeanor, minor misdemeanor, or any traffic offense); or
  - C. any action or legal proceeding in a juvenile court.
2. Have you ever been summoned for a violation of any other statute, regulation or ordinance?
3. Do you have any outstanding or unpaid fines, court costs, or tickets, including those for traffic or parking violations?
4. Have you ever been granted immunity from prosecution?
5. Have you ever been cited or arrested for contempt of court for any reason, including, but not limited to, failure to appear as a witness or answer a subpoena or jury summons?
6. Has your driver's license ever been revoked or suspended within the last ten (10) years?
7. To your knowledge, have you ever been denied a security clearance, or has a security clearance previously granted to you ever been revoked? If your answer is "yes," explain fully, including the name of the issuing agency, the security designation, and the particulars of the revocation or denial of the clearance.
8. Have you ever held, or submitted an application, or in any way applied for a license or certificate, the procurement of which requires proof of good character (including whether you withdrew your application for any reason)? If so, as to each license or certificate, identify the type of license or certificate and state the date it was granted, the name and complete

current mailing address of the authority issuing it, whether the license or certificate has been refused or revoked, and whether you have been reprimanded, censured, or otherwise disciplined as the holder of the license or certificate.

9. Have you ever been discharged or asked to resign by any employer? If your answer to this question is "yes," identify the employer and give the full particulars as to the reason you were discharged or asked to resign.

10. Have you ever been suspended, censured, reprimanded, disqualified or otherwise disciplined as a member of any profession?

11. Have you ever been removed from any office, public or private, because of conduct reflecting upon your character, or have any charges been made or filed or proceedings instituted against you because of conduct reflecting on your character?

12. Have there ever been or are there now pending any charges, complaints, or grievances (formal or informal) concerning your conduct as a member of any profession or as a holder of public office?

13. Have you ever filed or been the subject of a petition in bankruptcy? If your answer to this question is "yes," attach a copy of your bankruptcy petition, including a copy of all schedules and all orders entered in the case.

14. Have you ever been the subject of a trusteeship, receivership, wage attachment or garnishment proceeding?

15. Have you any unsatisfied judgments against you?

16. Have you ever had a credit card revoked or defaulted on a loan or other debt? For any credit card revocations or loan defaults, list the creditor's name, current address, and your account number. If any court or agency proceedings were involved, state the names, case numbers, and dates of all court or agency proceedings; the dispositions made thereof; the names and addresses of the courts or agencies in which the records may be found; and the name and address of your legal counsel in each proceeding.

**Proposal EXHIBIT C**

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**PLAN FOR FINANCING THE FIRST YEAR OF OPERATIONS**

---

**DATE:** \_\_\_\_\_

**NAME OF OFFEROR:** \_\_\_\_\_

**Anticipated Revenue:**

Fees for Services \_\_\_\_\_

Income From Investments \_\_\_\_\_

Other (*Specify*) \_\_\_\_\_

\_\_\_\_\_

**TOTAL REVENUE** \$ \_\_\_\_\_

**Anticipated Expenses:**

Concession Fee \_\_\_\_\_

Parking Fee \_\_\_\_\_

Customer Service Counter Rent \_\_\_\_\_

Fuel \_\_\_\_\_

Salaries and Wages \_\_\_\_\_

Employee Benefits \_\_\_\_\_

Payroll Taxes \_\_\_\_\_

Office Expenses \_\_\_\_\_

Utilities \_\_\_\_\_

Maintenance and Repairs \_\_\_\_\_

Equipment \_\_\_\_\_

Other Taxes \_\_\_\_\_

Motor Vehicles \_\_\_\_\_

Interest and Insurance \_\_\_\_\_

Other (*Specify*) \_\_\_\_\_

\_\_\_\_\_

**TOTAL EXPENSES:** \$ \_\_\_\_\_

**Proposal EXHIBIT D**

**EXAMPLES OF FARES  
AIRPORT COMMON CARRIER GROUND TRANSPORTATION SERVICES  
NORFOLK INTERNATIONAL AIRPORT**

DESTINATION FROM AIRPORT/ ORIGINATION TO AIRPORT	FARE	
	1 Passenger	3 Passengers/Same Location (Fare Per Passenger)
Doubletree by Hilton Norfolk Airport		
Quality Lake Wright Suites (Norfolk)		
Holiday Inn Executive Center		
Portsmouth Radisson		
Portsmouth Naval Hospital		
Chesapeake Municipal Center		
Chesapeake Conference Center		
Old Dominion University		
Sentara Norfolk General Hospital		
Sentara Leigh Memorial Hospital		
Sentara Virginia Beach Hospital		
Sentara Bayside Hospital		
Downtown Suffolk		
Fort Eustis		
Fort Monroe		
Norfolk Naval Base		
Oceana Naval Air Station		
Downtown Norfolk (Federal Building)		
Virginia Beach Municipal Center		
Fort Story		
Williamsburg Inn		
Kingsmill on James (Williamsburg)		
6000 Block Powhatan Avenue (Norfolk)		
800 Block Jamestown Crescent (Norfolk)		
1300 Block Harmott Avenue (Norfolk)		
5700 Block Colter Court (Virginia Beach)		
Kitty Hawk, North Carolina		
Elizabeth City, NC (Coast Guard Base)		

**Name of Offeror:** \_\_\_\_\_

**Proposal EXHIBIT E**

**EXAMPLES OF FARES  
AIRPORT COMMON CARRIER GROUND TRANSPORTATION SERVICE  
NORFOLK INTERNATIONAL AIRPORT**

<b>DESTINATION FROM AIRPORT/ ORIGINATION TO AIRPORT</b>	<b>FARE (Per Passenger)</b> Assume 3 unrelated passengers sharing vehicle to 3 different locations
<b>TRIP #1:</b>	
Doubletree by Hilton Norfolk Airport	
Quality Lake Wright Suites (Norfolk)	
Virginia Wesleyan College	
<b>TRIP #2:</b>	
Portsmouth Radisson	
Portsmouth Naval Hospital	
Portsmouth City Hall	
<b>TRIP #3:</b>	
Chesapeake Municipal Center	
Chesapeake Conference Center	
Chesapeake General Hospital	
<b>TRIP #4:</b>	
Old Dominion University	
Sentara Norfolk General Hospital	
WHRO (Hampton Boulevard, Norfolk)	
<b>TRIP #5:</b>	
800 Block of Jamestown Crescent (Norfolk)	
6400 Block of Argall Crescent (Norfolk)	
1300 Block of Bolling Avenue (Norfolk)	
<b>TRIP #6:</b>	
Fort Monroe	
Hampton City Hall	
Omni Hotel (Newport News)	
<b>TRIP #7</b>	
Williamsburg Inn	
Williamsburg Lodge	
William & Mary College	

<b>TRIP #8:</b>	
Virginia Beach Oceanfront – 5 <sup>th</sup> Street	
Virginia Beach Oceanfront – 21 <sup>st</sup> Street	
Virginia Beach Oceanfront – 57 <sup>th</sup> Street	
<b>TRIP #9:</b>	
Oceana Naval Air Station	
Dam Neck	
Virginia Aquarium & Marine Science Center	

**Name of Offeror:** \_\_\_\_\_

## **PART III**

# **NORFOLK INTERNATIONAL AIRPORT**

## **CONCESSION AGREEMENT**

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THIS CONCESSION AGREEMENT (this "Concession Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the NORFOLK AIRPORT AUTHORITY, a political subdivision of the Commonwealth of Virginia (the "Authority"), and \_\_\_\_\_ ("Concessionaire").

**WITNESSETH:**

The Authority and the Concessionaire, 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, covenant and agree as follows:

**ARTICLE 1**

**DEFINITIONS**

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

- a. Airport shall mean the Norfolk International Airport.
- b. Authority shall mean the Norfolk Airport Authority, owner and operator of the Airport.
- c. Agreement shall mean and include this Concession Agreement, the Request for Proposals, the Concessionaire's Proposal, and all exhibits and appendixes referenced within or attached to these documents.
- d. Concession Area shall mean the Customer Service Counter, the five (5) curbside parking spaces and any areas shown on **Appendix A**, the Improvements thereon, and any other structures and other items permanently affixed or permanently located therein.
- e. Concessionaire or Selected Offeror shall mean the second party to this Agreement. Upon execution of this Concession Agreement, the "Selected Offeror" becomes the "Concessionaire" and shall, as such, fulfill the obligations stated for either "Selected Offeror" or "Concessionaire" in the Agreement.
- f. Concessionaire's Property shall mean any vehicles, 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 identified on **Appendix B** hereto, and as amended from time to time.

g. Concessionaire's Work or Work shall mean all planning, design, and construction work needed to supply, install, and finish all Improvements and to otherwise render the Concession Area ready to provide the Service in accordance with the Agreement.

h. Gross Revenue shall mean the fares and other charges paid or payable to Concessionaire whether by cash, credit, credit card or otherwise for the Ground Transportation Service effected by Concessionaire at the Airport (including any fees, assessments and/or charges assessed under this Agreement or otherwise) without regard for the manner in which or place at which Concessionaire has received the order for said Service and regardless of the ownership, area or location of the vehicle used. The Concessionaire shall have the right to conduct part of its operations on a credit basis, provided the risk of such operation shall be borne solely by Concessionaire; Concessionaire shall report all income, both cash and credit, regardless of whether collected or not, and no deduction shall be allowed for write-offs and/or adjustments. Concessionaire shall make no deduction from Gross Revenue for the payment of franchise taxes or taxes levied on Concessionaire's activities, facilities or equipment located at the Airport.

Gross Revenues shall not include the following:

(i) The amount of any federal, state or municipal sales or other similar taxes separately stated and collected from customers of Concessionaire now or hereafter levied or imposed;

(ii) Any sums received by Concessionaire for damaged automobiles or other property or for the loss, conversion or abandonment of automobiles and/or vehicles;

(iii) Revenues derived from the sale of used fleet motor vehicles;

(iv) Any sums collected as tips or gratuities and actually given to drivers or other employees of the Concessionaire.

i. 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 to render the Concession Area ready to provide the Service in accordance with the Agreement.

j. Service shall mean the provision of all necessary vehicles, equipment, furnishings and personnel to operate the Common Carrier Ground Transportation Concession at the Airport under the terms and conditions specified in the Agreement.

1.2 Definitions contained in any of the Proposal Documents also apply to all provisions of the Agreement.

## **ARTICLE 2**

### **USE AND PRIVILEGES**

2.1 The Authority hereby grants to the Concessionaire, subject to the terms and conditions herein, the right to conduct and operate a Common Carrier Ground Transportation Concession business at the Airport as follows:

a. The right and privilege to pick up and transport passengers desiring public transportation services to and from the Airport and from points within the cities of Virginia Beach, Chesapeake, Suffolk, Portsmouth, Franklin, Poquoson, Norfolk, Hampton, Newport News and Williamsburg, and the counties of Isle of Wight, Southampton, Surry, James City and York, as authorized under applicable city and county ordinances, as amended, and elsewhere as Concessionaire may be authorized to serve under applicable state and local laws governing intercity transportation. The Service is to be what is known in the airport industry as line-haul (schedule/demand) common carrier ground transportation service.

b. The right to use and occupy the Customer Service Counter located in a shelter situated on the roadway median at the Arrivals Terminal as shown on **Appendix A** attached hereto and made a part hereof.

c. The right to use and occupy certain curbside parking spaces reserved for Concessionaire's vehicles while providing the services herein. The Authority shall reserve the right to designate the location and number of spaces and to modify the location and/or number of spaces. The Authority makes no commitment to provide Concessionaire parking for other vehicles on the Airport.

d. The right to use and occupy the Customer Service Counter located inside the Arrivals terminal building as shown on **Appendix A-1** attached hereto and made a part hereof.

2.2 Use of the Concession Area. Concessionaire shall use the Concession Area in full compliance with all provisions of the Agreement solely for the purpose of providing and operating the Service 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. The rights and privileges herein granted to Concessionaire are nonexclusive.

2.3 Acceptance of Concession Area. Concessionaire acknowledges that it has had an opportunity to its satisfaction to inspect the Concession Area. Concessionaire accepts the Concession Area “**AS IS, WHERE IS**” in the condition existing on the date of the commencement of this Concession Agreement, and without representation or warranty of any kind.

2.4 Nothing herein shall be deemed to grant Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, or 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.

2.5 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. Subject to any requirements of state or federal procurement laws, Concessionaire shall be given the first opportunity to provide such additional services, providing that a satisfactory agreement can be reached between the parties concerned. Upon the failure of Concessionaire to provide such services within sixty (60) days after request to do so by the Authority, the Authority reserves the right to provide the services itself or under a separate agreement. The Authority agrees that if rights and privileges similar to those in the Agreement are granted to any other person, corporation, or other entity, such rights and privileges shall not be granted on more favorable terms than herein stated.

2.6 Designation of Concession Area. The Authority reserves the right to recapture all or a portion of the Concession Area during the term of this Agreement if the Board, 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 Board may offer substitute space. Nothing in this paragraph 2.6 shall be deemed to require that the Authority provide substitute space which shall be in the sole discretion of the Authority.

## **ARTICLE 3**

### **TERM**

3.1    **Commencement Date.**   The term of the Agreement shall begin on the “Commencement Date,” which shall be the date that the Authority shall designate by written notice to Concessionaire promptly following receipt by Authority of evidence satisfactory to the Authority that Concessionaire has obtained all required permits, licenses and certificates to operate the Concession.

3.2    **Termination Date.**   The term of this Agreement shall be for a period of approximately five (5) years, beginning on the Commencement Date and terminating on June 30, 2025.

3.3    **Renewal and Extension of Time.**

a.       Notwithstanding any other provisions herein to the contrary, the Authority reserves the right to extend the term of the Agreement on all the same terms and conditions set forth herein on a month-to-month basis for a period of up to six (6) months.

b.       At its option, after the initial term, the Authority may renew this Agreement for an additional period of up to five (5) years on the terms and conditions herein, but with such rentals and fees as may be mutually agreeable between the Authority and Concessionaire.

c.       Authority shall provide Concessionaire notice of its intent to extend or renew this Agreement not less than sixty (60) days prior to the Termination Date.

3.4    **Transition of Service.**   Concessionaire shall take all reasonable steps to coordinate with the current concessionaire, as may be applicable, a smooth transition of service within ten (10) days of execution of this Concession Agreement.

## **ARTICLE 4**

### **PAYMENTS**

4.1    For the privilege of operating the Concession in compliance with the terms and conditions set forth in the Agreement, Concessionaire agrees to pay to the Authority the following payments:

a.       **Fixed Rent.**   The Fixed Rent for the Concession Area shall be Three Hundred Fifty and 00/100 Dollars (\$350.00) per month.

b. Concession Fee. The Concession Fee shall be the percentage of annual Gross Revenue offered by Concessionaire in its Proposal.

c. Parking Fee. The Parking Fee for the five (5) curbside parking spaces shall be Three Hundred Seventy-Five and 00/100 Dollars (\$375.00) per month.

4.2 The Fixed Rent and Parking Fee shall be payable in advance and shall be due, without notice or demand from the Authority, on the first (1<sup>st</sup>) day of the month.

4.3 The Concession Fee shall be due and payable monthly, without notice from the Authority, on the fifteenth (15th) day of the month following the month during which the business on which the fee is based occurred. Concessionaire shall furnish to the Authority a report in a format and level of specificity approved by the Authority describing Concessionaire's Gross Revenue and the number of passengers carried to and from the Airport, for the preceding calendar month and shall simultaneously pay the Authority the percentage of Gross Revenue offered by Concessionaire in its Proposal.

4.4 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 all Gross Revenue derived from its operation of the Concession Area for the contract year.

4.5 Delinquent Payments. 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 until paid. In addition to such service charge, the Authority shall be entitled to interest at the judgment rate plus all costs of collection of amounts past due, including without limitation, attorneys' fees and court costs.

4.7 Concessionaire shall not list Concession Fees payable to the Airport as a separate item on its customer contracts or invoices.

## **ARTICLE 5**

### **BOOKS AND RECORDS**

5.1 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, recording all transactions in any way connected with its operation at the Airport, 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 wherever such records may be 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.

## **ARTICLE 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 Five Thousand and 00/100 Dollars (\$5,000.00).

6.2 This security deposit shall remain in the possession of the Authority during the full term of the Concession Agreement as security for the 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 said 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 so use the 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 deposit at the amount herein set forth.

6.4 If such 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 said deposit with any interest earned to Concessionaire upon the expiration or termination of the Concession Agreement, less any monies owed the Authority.

## **ARTICLE 7**

### **IMPROVEMENTS BY CONCESSIONAIRE**

7.1 Concessionaire, at its own expense, shall make any Improvements to the Concession Area, including modifications to heat and air conditioning, as may be required for providing the Service under the terms and conditions in the Agreement.

7.2 Concessionaire shall not make any additions to, or alterations or modifications of, the Concession Area without first obtaining the written approval of the Authority. Prior to commencing its Work, Concessionaire shall submit to the Authority for its review and approval its detailed plans, designs, and specifications, including its cost estimates and proposed contractors for its Work. No substantial 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.

7.3 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.

7.4 Concessionaire, within ten (10) days after notification by the Authority of its approval, 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.

7.5 The payments specified in Article 4 herein shall begin on the Commencement Date of the Agreement and no allowance will be made for delay in Concessionaire completing its Work.

7.6 All work done, equipment supplied and installed, and decor furnished by Concessionaire, as herein provided, shall be at its 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.

7.7 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.

7.8 Concessionaire shall pay all claims lawfully made against it by its contractors, subcontractors, materialmen, and workmen, 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.

7.9 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.

7.10 Upon the completion of the installation 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. During the term of the Agreement, the Concessionaire, at its expense, shall maintain insurance upon all Improvements which insurance coverage shall name the Authority as an additional named insured.

7.11 Concessionaire shall retain title to Concessionaire's Property. A list of such property shall be agreed to between Concessionaire and the Authority and shall be attached to the Agreement as **Appendix B**.

## ARTICLE 8

### **REPRESENTATIONS AND WARRANTIES OF CONCESSIONAIRE**

8.1 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, assuming the due authorization, execution and delivery hereof by the other parties hereto, 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. 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.

## **ARTICLE 9**

### **OBLIGATIONS AND COVENANTS OF CONCESSIONAIRE:** **COMPLIANCE WITH LAW**

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

a. Provide the Service pursuant to its Proposal and in accordance with this Agreement consistent with the Standards of Service set forth herein, except as modified by written agreement with the Authority.

b. 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 service basis.

c. Furnish all equipment, supplies, material, and personnel necessary for the Service.

d. 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.

e. Use its best efforts in every proper manner to maintain, develop, and increase the business conducted by it hereunder.

f. 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.

g. Not place any merchandise, furnishings, displays, or Concessionaire's Property outside the Concession Area at any time.

h. 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.

i. 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.

j. Be responsible for the proper storage and removal from the Airport of all garbage, debris, and other waste materials, arising out of its operation, and 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.

k. Not do or permit to be done anything which may interfere with free access and passage on the Airport.

l. Pay all taxes and assessments of any nature whatsoever arising in connection with any aspect of the Service, as well as all taxes and assessments against Concessionaire's Property, and secure all necessary city, state, and federal licenses.

**9.2 Compliance With the Law.** 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 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. Without limiting the generality of the foregoing, Concessionaire specifically agrees as follows:

a. Concessionaire, its representatives, successors in interest, and assigns, as part of the consideration hereof, 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 Services, or in the construction of any Improvements relating to the Concession Area or the furnishing of services thereon.

b. Concessionaire shall use the Concession Area in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21, entitled "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuations of Title VI of the Civil Rights Act of 1964," as may be amended, which is expressly incorporated herein and made a part hereof by reference.

c. Concessionaire shall comply with all applicable provisions of the Americans with Disabilities Act, Public Law 101-336 ("ADA"), as may be amended, with regard to the operations of the Service. Concessionaire shall indemnify the Authority for any damages suffered by or liability imposed on the Authority as a result of Concessionaire's failure to comply with the obligations and responsibilities imposed by the ADA.

d. Concessionaire shall undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, as amended, or any subsequent comparable regulation, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in or receiving the services or benefits of any program or activity covered by this regulation. Concessionaire assures that it will require that its covered sub-organizations provide assurance to Concessionaire that they similarly will undertake affirmative action programs and that they will require like assurance from their sub-organizations, as required by 14 C.F.R. Part 152, Subpart E, as amended, which is expressly incorporated herein and made a part hereof by reference.

e. 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.

f. Anti-Discrimination.

(i) During the performance of this Agreement, Concessionaire agrees

as follows:

(A) The Concessionaire will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Concessionaire. The Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(B) The Concessionaire, in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire, will state that such Concessionaire is an equal opportunity employer.

(C) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this Section.

(ii) The Concessionaire will include the provisions of the foregoing Sections 9.2(f)(i)(A), (B), and (C) in every subcontract or purchase order of over Ten Thousand and 00/100 Dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor.

g. Immigration. Concessionaire does not, and shall not during the performance of this Agreement, knowingly employ any unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, as the same may be amended.

h. Drug-Free Workplace. During the performance of this Agreement, the Concessionaire agrees to (i) provide a drug-free workplace for the Concessionaire's employees; (ii) 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; (iii) 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 (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over Ten Thousand and 00/100 Dollars (\$10,000.00), so that the provisions will be binding upon each

subcontractor or vendor.

i. Ethics in Public Contracting. The Concessionaire shall not offer or receive any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with the Services provided under this Agreement. The Concessionaire shall not confer on any public employee having official responsibility for the Services under this Agreement any payment, loan, subscription, advance, deposit of money, services, or anything more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

**9.3 Compliance With Airport Rules and Regulations.**

a. 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.

b. 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.

9.4 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 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.

9.5 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.

9.6 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.

## **ARTICLE 10**

### **INGRESS AND EGRESS**

10.1 The Concessionaire, its customers, invitees, employees, contractors, 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.

## **ARTICLE 11**

### **FEDERAL AIRPORT AID**

11.1 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 Federal Aviation Administration (“FAA”), pursuant to the Federal Airport Act of 1946, the Airport and Airways Development Act of 1970 (“ADAP”), and the Airport and Airway Improvement Act of 1982 (“AIP”), as the same may hereafter be amended and/or replaced by comparable legislation from the FAA; (ii) the Department of Aviation of the Commonwealth of Virginia; 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.

11.2 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 promptly comply therewith.

## **ARTICLE 12**

### **OBLIGATIONS OF THE AUTHORITY**

12.1 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, and provided that

Concessionaire is in full compliance with the terms and conditions of this Agreement, Concessionaire shall have the peaceful right to use the Concession Area for its Service in accordance with all the rights and privileges herein stated.

12.2 The Authority agrees to furnish to Concessionaire electricity for normal lighting, heating during the heating season, and air-conditioning as required in or about the Concession Area. Concessionaire shall furnish, at its own expense, all telephone line charges, internet services, phone equipment and the cost of maintenance for all three required by it.

## **ARTICLE 13**

### **LOCAL MANAGEMENT**

13.1 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.

## **ARTICLE 14**

### **STANDARDS OF SERVICE**

14.1 Concessionaire shall provide the public and the air traveler with first class facilities and vehicles, nondiscriminatory services and shall offer only high-quality, prompt and effective ground transportation services adequate to meet all reasonable demands for the Service at the Airport.

14.2 Concessionaire acknowledges the desire of the Authority, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler adequate and competent ground transportation services throughout the year on a seven-day week.

14.3 Concessionaire's vehicles shall be maintained in good operating order, free from known mechanical defects, and in a neat and attractive condition inside and outside. Vehicles are to be no more than three (3) years old based on date purchased, with no more than One Hundred Fifty Thousand (150,000) miles. All vehicles are to be maintained in accordance with the manufacturer's published maintenance and service standards. Vehicles are to be licensed in Virginia, and may not be used if they will not pass Virginia vehicle safety requirements.

Vehicles are to be clean inside and out, showing no interior damage, with an attractive exterior finish, free of collision or paint damage. The operator will maintain written service records for each vehicle which shall be available for review by the Authority upon request.

14.4 Concessionaire covenants and agrees to offer all services at reasonable prices. The Authority reserves the right to request from Concessionaire a list of the rates for each type of service offered by Concessionaire and Concessionaire shall provide such a list within ten (10) days of receipt of the Authority's request. A copy of any application by Concessionaire with the Department of Motor Vehicles ("DMV") will be provided to the Authority simultaneously upon its submission to DMV.

14.5 In the event Concessionaire fails to pick up a passenger who has made arrangements for delivery to the Airport by Concessionaire within fifteen (15) minutes of the time scheduled for pick up, Concessionaire shall promptly reimburse the passenger the full amount of any prepaid fare to the Airport. In addition, if the passenger is not picked up as scheduled, Concessionaire shall promptly reimburse the passenger the difference between the Concessionaire's fare and any costs incurred in procuring an alternate transportation service. If such a passenger misses his scheduled aircraft departure due to Concessionaire's failure to pick up in accordance with prior arrangements, Concessionaire shall also reimburse any additional costs incurred by the passenger as a result of missing the scheduled flight, including but not limited to the following: (i) additional ticketing costs associated with changes in airline itinerary, (ii) cost of overnight accommodations at a local hotel, (iii) cost of transportation between Airport and hotel, and (iv) meals normally occurring during the time the passenger is delayed. Failure of Concessionaire to properly compensate passengers as provided herein will be considered an Event of Default.

14.6 Furnish and operate at all times a sufficient number of suitable vehicles to maintain convenient first class service in accordance with the standards set forth herein between the Airport and all service points authorized by Concessionaire's licenses, certificates and/or permits, as well as those other points to which service such as herein contemplated is normally provided. Concessionaire shall guaranty that no passenger is required to wait at the Airport for an unreasonable period before a vehicle is available to provide such passenger's requested ground transportation.

14.7 Provide motor vehicles which are properly constructed, maintained and equipped

and of such type to fulfill all the requirements of the Service required herein. Such vehicles shall be standard five-passenger, four-door vehicles and/or standard vans with seating capacity not to exceed fifteen (15) passengers. Custom "limousines" are not acceptable vehicles for this Service.

14.8 Promptly notify the Authority in writing of any and all additions or deletions of motor vehicles to or from the Service.

14.9 Minimum Hours of Operation. The service to be provided by Concessionaire as required and authorized under the Agreement shall be made available to the patrons of the Airport, and the Customer Service Counter shall be staffed with sufficient personnel to provide such service at all times during which regularly scheduled commercial airline aircraft arrivals shall occur at the Airport, to include coverage of late arriving aircraft.

a. The Authority may designate, in writing, such changes in the hours herein set forth as it believes necessary to serve the needs and requirements of the traveling public. Concessionaire shall comply with such hours established and shall not change operating hours without prior written approval from the Authority.

b. Concessionaire's telephone shall be operational 24 hours a day, 7 days a week, so that a customer may call and receive information regarding Concessionaire's hours of service.

14.10 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 uniforms. All uniforms used shall be approved by the Authority prior to use, and no substitution shall be permitted without prior approval of the Authority.

14.11 Personnel performing services hereunder shall be neat, clean and courteous, and Concessionaire shall not permit its agents, servants or employees so engage 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.

14.12 Norfolk Naval Base Access Permit. Concessionaire shall obtain the necessary permit(s) to provide pickup and drop off services on the Norfolk Naval Base.

## **ARTICLE 15**

### **REPAIRS AND MAINTENANCE**

15.1 Concessionaire shall furnish, at its own expense, janitorial service for the Concession Area and all other areas assigned or leased to Concessionaire for its exclusive use, 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.

15.2 Concessionaire, at its own expense, shall maintain the Improvements and Concessionaire's Property 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.

15.3 In the event Concessionaire fails to commence such 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 thirty (30) days after 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 upon demand.

15.4 In the event that the Concession Area is damaged or destroyed, in whole or in part, from any cause whatsoever, Concessionaire shall forthwith proceed with the replacement of, or the reconstruction work necessary to restore the area to the condition and function existing prior to the occurrence of such damage or destruction, and all costs and expense incurred in connection therewith, not covered by Concessionaire's insurance proceeds, shall be paid by Concessionaire.

15.5 Concessionaire shall have the right to contract for delivery of its requirements for any material necessary to the Service and shall be responsible for the collection and daily removal of its refuse and waste from the Concession Area. All deliveries shall be made through the designated service area or as may be otherwise designated by the Authority.

## **ARTICLE 16**

### **VENDING MACHINES**

16.1 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.

## **ARTICLE 17**

### **SIGNS AND PUBLIC ADDRESS SYSTEM**

17.1 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 or advertising matter as necessary to obtain such approval, which approval may be withheld in the Authority's sole discretion.

17.2 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.

17.3 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.

## **ARTICLE 18**

### **PARKING**

18.1 The Authority may permit the officers, employees, invitees, and business visitors of Concessionaire to park vehicles in such 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 **Appendix C** to the Agreement.

## **ARTICLE 19**

### **FIRE OR CASUALTY DAMAGE**

19.1 In the event that Improvements or Concessionaire's Property are damaged or destroyed, in whole or in part, from any cause whatsoever including vandalism or trespass, Concessionaire shall forthwith proceed with the replacement of, or the reconstruction work necessary to restore the area to the condition and function existing prior to the occurrence of such damage or destruction, and all costs and expense incurred in connection therewith, not covered by Concessionaire's insurance proceeds, shall be paid by Concessionaire.

19.2 In no event shall Authority be responsible to reimburse Concessionaire any incidental or consequential damages, including, but not limited to, lost profits which may be sustained by Concessionaire.

## **ARTICLE 20**

### **INDEMNITY BY CONCESSIONAIRE**

20.1 Concessionaire shall protect, defend, indemnify, and hold the Authority and its commissioners, officers, directors, and employees, completely harmless from any and all liabilities, losses, suits, actions, claims, judgments, fines, or demands of any character, including, but not limited to, court costs and attorney's fees, brought because of any injuries (including death) or damages received or sustained by 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, subcontractors, suppliers, agents, employees or invitees, including but not limited to injuries or damages arising (i) on account of or in consequence of any neglect in safeguarding the Concession Area; (ii) through use of unacceptable materials in constructing the Improvements; (iii) because of any negligent acts or omissions, or misconduct of Concessionaire; (iv) because of any claims for or amounts recovered by any infringements of patent, trademark, or copyright; (v) from any claims or amounts arising or recovered under Concessionaire's worker's compensation coverage, or any other law, ordinance, order, or decree; and (vi) claims arising or alleged to arise with respect to protection of or damages to the Airport or its passengers, guests, invitees and employees.

20.2 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, except that funds due Concessionaire will not be withheld when Concessionaire produces satisfactory evidence, 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.

20.3 In the event of any such injury (including death), or loss or damage (or claims or claims therefore), Concessionaire shall give immediate notice thereof to the Authority within twenty-four (24) hours of the event.

## **ARTICLE 21**

### **INSURANCE**

21.1 Concessionaire's Insurance. Concessionaire shall maintain 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 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, in the prescribed form or such other form as is, in its sole discretion, acceptable to the Authority.

21.2 Forms of Coverage; Limits. In accordance with the above, Concessionaire and any subtenants shall maintain the following forms of insurance coverage and corresponding minimum limits of liability:

<b><u>FORMS OF COVERAGE</u></b>	<b><u>MINIMUM LIMITS</u></b>
<b><u>Workers' Compensation</u></b>	<b><u>Statutory Limits for Virginia</u></b>
<b><u>Employer's Liability</u></b>	
Bodily Injury By Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee
<b><u>Commercial General Liability on an occurrence basis as follows:</u></b>	
Combined Single Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations	\$1,000,000
Each Occurrence Limit	\$1,000,000
Aggregate Personal Injury and Advertising Injury	\$1,000,000
Fire Damage Limit	\$100,000
Medical Expense Limit	\$5,000

<b>Business Automobile Liability for owned, non-owned, hired, leased, and rented vehicles:</b>	
Combined Single Limits	\$1,000,000
Uninsured Motorists	\$1,000,000

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 shall include all of the aforementioned coverages.

21.3 Evidence of Insurance Coverage: Concessionaire shall submit, 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. Said insurance certificate shall indicate that the Authority will be given written notice at least forty-five (45) days prior to cancellation or non-renewal of any insurance required hereunder. Insurance company shall further agree to deliver copies of any insurance policies covering the insurance required hereunder to the Authority within ten (10) days following a request by the Authority 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.

21.4 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.

21.5 Notice of Claims: In addition to the provisions of Section 21.4 above, 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.

21.6 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 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.

21.7 Third Party Beneficiaries: Concessionaire and the Authority specifically agree that it is not intended by any of the provisions nor any part of the Agreement to cause or create in the public or any individual or other entity a third party beneficiary or to 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.

21.8 Defense of Claims. Concessionaire shall defend 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 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 reasonable attorneys' fees. The obligation set forth in this Article shall specifically include, without limitation, all claims and judgments arising or alleged to arise with respect to protection of or damages to adjacent areas of the Airport.

## **ARTICLE 22**

### **RIGHTS OF ENTRY RESERVED**

22.1 The Authority, by its employees, agents, representatives, and contractors 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.

22.2 Without limiting the foregoing, the Authority, through its employees, agents, representatives, contractors, 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 to make such repairs, replacements, 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.

22.3 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 Fixed Rent, Concession Fee, or charge of any type, nor for any claim or demand for damages, consequential or otherwise.

## **ARTICLE 23**

### **SUBORDINATION OF AGREEMENT**

23.1 The Agreement shall be subordinate to the provisions of any existing or future agreement between the Authority and the City of Norfolk, Commonwealth of Virginia, or the United States, relative to the operation, maintenance, or development of the Airport, the execution of which has been or may be required as a condition precedent to the granting of city, state or federal funds for the benefit of the Airport. In the event any such future provision

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

23.2 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.

## **ARTICLE 24**

### **ASSIGNMENT OF AGREEMENT**

24.1 Concessionaire shall not at any time sell, assign, transfer, pledge or otherwise encumber in any manner whatsoever the Agreement nor any part thereof, nor 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, which consent may be withheld in the Authority's sole discretion.

24.2 Concessionaire acknowledges the importance of the experience, financial capability, and performance criteria that are set forth in the Proposal Documents and that Concessionaire was selected only as a result of Concessionaire's demonstration of Concessionaire's ability to meet and comply with such criteria. Accordingly, Concessionaire agrees that any assignee or transferee of this Agreement must, at the time of assignment or transfer, meet such experience, financial capability, and performance requirements, and thereafter must continue to comply with such requirements throughout the remaining term of this Agreement. Specifically, Concessionaire acknowledges that the prior experience requirements set forth in the bid 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, 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.

24.3 No assignment or sublease shall in any way affect or diminish Concessionaire's obligation to perform all of the terms, covenants, conditions, and provisions contained in the Agreement.

24.4 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, or (iii) a sale or transfer of a controlling interest in any Affiliate, 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 Article.

## **ARTICLE 25**

### **AGREEMENT BINDING UPON SUCCESSORS**

25.1 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.

## **ARTICLE 26**

### **CONDEMNATION**

26.1 In the event of the acquisition by condemnation or the exercise of the power of eminent domain (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.

26.2 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 or the award of the Trustee of the presently outstanding Airport Revenue Bonds or future Revenue Bond Issues.

## **ARTICLE 27**

### **DEFAULT**

27.1 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 the Agreement, and such failure continues for a period of five (5) days after written notice of such failure, 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;

c. Concessionaire repeatedly fails 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 above.

d. Any warranty, representation, certification, financial statement, or other information made or furnished by Concessionaire at any time is determined by the Authority, in its sole judgment, to be false or misleading in any material respect;

e. 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.

f. 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.

g. If Concessionaire shall vacate or abandon the Service;

h. 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

i. The criminal conviction of Concessionaire, any Principal of Concessionaire, or any Affiliate of Concessionaire. For purposes of this Section, the term

Principal shall include a shareholder, director, officer, general manager, partner, or member of Concessionaire.

j. Concessionaire is determined by Authority to have committed any of the actions which constitute a reason for denial, suspension or revocation by DMV of a certificate, license, permit, decal or vehicle registration, whether or not DMV imposes such sanction.

27.2 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 immediately by giving to Concessionaire written notice of the cancellation and termination.

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 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 all damages proximately resulting from the breach, including the cost to the Authority for providing the Service and the payments due the Authority for the balance of the term, which sum shall be due immediately.

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.

27.3 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.

27.4 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.

27.5 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.

27.6 Default by Authority: 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 within sixty (60) days of receipt of written notice from Concessionaire.

## ARTICLE 28

### **EXTRAORDINARY TERMINATION BY CONCESSIONAIRE**

28.1 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 therefrom 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.

28.2 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.

## **ARTICLE 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 thirty (30) 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; provided, however, that Concessionaire may recover the unamortized costs of capital improvements made to the Concession Area which have not been depreciated at the time of termination.

29.2 For purposes of this Section, the unamortized costs of capital improvements shall be calculated on the basis of a straight line, ten (10) year depreciation schedule.

## **ARTICLE 30**

### **SURRENDER OF POSSESSION; HOLDING OVER**

30.1 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.

30.2 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.

30.3 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.

30.4 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.

30.5 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.

## **ARTICLE 31**

### **REMOVAL OF PROPERTY**

31.1 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 operation shall commence at a time specified by the Authority and shall be completed within five (5) 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.

31.2 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.

## **ARTICLE 32**

### **RELATIONSHIP OF PARTIES**

32.1 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. This Agreement is not intended to, and in no event shall it be construed as, granting Permittee any express or implied right or authority to bind the Authority in any manner whatsoever.

32.2 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. Concessionaire shall be solely responsible for paying any and all applicable income and payroll taxes, employment taxes, social security, Medicare, and the like, related to any remuneration received by Concessionaire in performing the Services and any other actions under this Agreement.

## **ARTICLE 33**

### **WAIVERS**

33.1 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.

33.2 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.

33.3 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.

## **ARTICLE 34**

### **WAIVER OF CLAIMS FOR ANTICIPATED PROFITS**

34.1 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.

## **ARTICLE 35**

### **FORCE MAJEURE**

35.1 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, a "Permitted Delay," or the "Permitted Delays"), 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 ten (10) days of the event causing the Permitted Delay.

35.2 In no event shall Concessionaire be relieved of its obligations to pay the Concession Fee or the Fixed Rental except as otherwise set forth in the Agreement.

## **ARTICLE 36**

### **DISPUTES**

36.1 Concessionaire shall submit all claims, of whatsoever 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.

36.2 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 writing 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 thirty (30) 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.

36.3 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. The decision of the Board shall be final and conclusive unless appealed by Concessionaire within thirty (30) days 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.

36.4 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.

## **ARTICLE 37**

### **SITUS AND SERVICE OF PROCESS**

37.1 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.

37.2 Concessionaire consents to the jurisdiction and venue of the aforesaid 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 completed two (2) days after the same shall have been posted as aforesaid.

## **ARTICLE 38**

### **CONCESSIONAIRE'S DEALINGS WITH THE AUTHORITY**

38.1 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.

38.2 The Authority's authorized representative shall be its Executive Director, unless or until the Authority shall give Concessionaire written notice to the contrary.

## **ARTICLE 39**

### **NOTIFICATION**

39.1 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.

If to Norfolk Airport Authority:

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

If to Concessionaire:

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## **ARTICLE 40**

### **INTERPRETATION**

40.1 The Agreement shall be construed according to the laws of the Commonwealth of Virginia, without regard to its conflicts of law principles.

40.2 The language of the Agreement shall be construed according to its fair meaning, and not strictly for or against either the Authority or Concessionaire.

40.3 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.

40.4 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.

40.5 The Agreement constitutes the entire agreement between the Authority and Concessionaire. Each of its documents, and the exhibits and appendixes attached hereto, are incorporated herein by this reference as if fully set forth herein and made apart therefrom. 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. Signature page follows.]

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

**AUTHORITY:**

**NORFOLK AIRPORT AUTHORITY,**  
a political subdivision of the  
Commonwealth of Virginia

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

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

Title: \_\_\_\_\_

**ATTEST:**

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Assistant Secretary

**CONCESSIONAIRE:**

\_\_\_\_\_,

a \_\_\_\_\_

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

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

Title: \_\_\_\_\_

**ATTEST:**

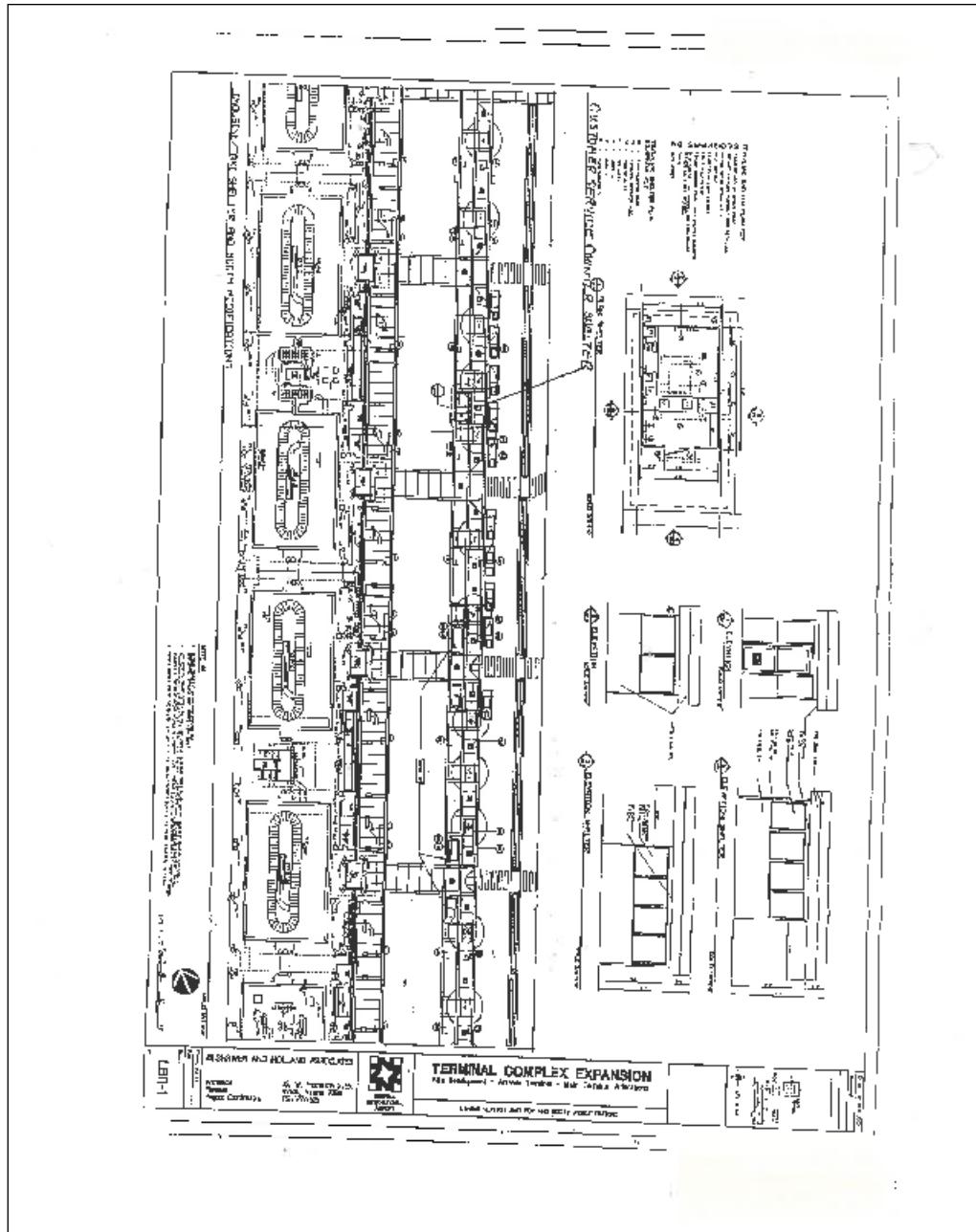
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Secretary

# **Concession Agreement**

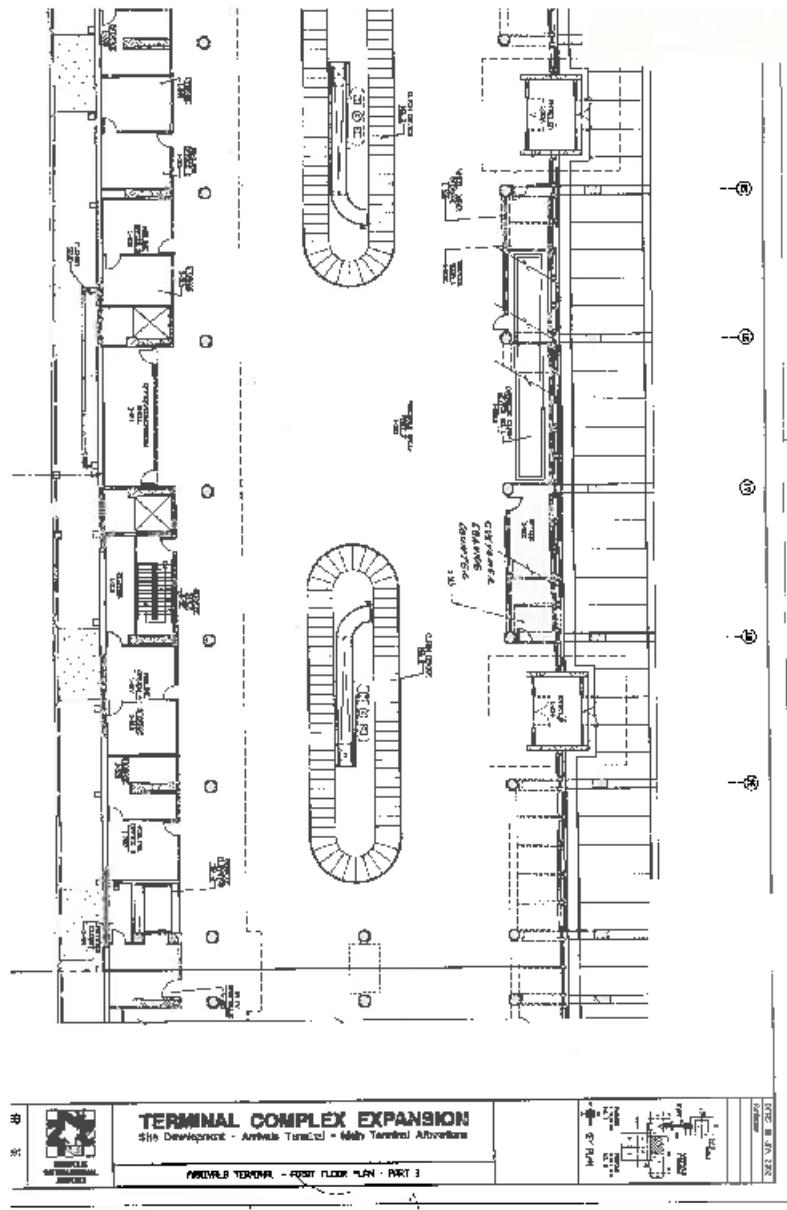
## **APPENDIX A**

## **CONCESSION AREAS NORFOLK INTERNATIONAL AIRPORT**



**Concession Agreement**  
**APPENDIX A-1**

**CONCESSION AREAS NORFOLK INTERNATIONAL AIRPORT**



**Concession Agreement  
APPENDIX B**

**CONCESSIONAIRE'S PROPERTY**

**Concession Agreement**  
**APPENDIX C**

NORFOLK INTERNATIONAL AIRPORT  
Rules, Regulations and Parking Agreement  
**Tenant Employee Parking Program**  
(effective February 2021)

As operator of Norfolk International Airport, the Norfolk Airport Authority (Authority) provides parking accommodations for employees of Airport Tenants which are under contract/lease with the Authority. Generally, the contract/lease between the Authority and the Airport Tenant addresses "parking" on the Airport.

To establish effective controls governing employee parking, the Authority hereby establishes the following Rules and Regulations for the Tenant Employee Parking Program at Norfolk International Airport:

1. Tenant employee parking is to be used in conjunction with official business duties and is available at location(s) designated by the Authority. Currently, the public Long Term Parking facilities have been designated as authorized location(s) for tenant employee parking. **Unauthorized tenant employees parking in any Short Term Parking facility will be required to pay the parking fees accrued and will not be eligible for reimbursement.**
2. Tenants will be invoiced a fee of \$25.00 per month, or any part thereof, for each employee enrolled in this program. This rate is subject to future increases at the discretion of the Norfolk Airport Authority.
3. The signatory of each Airport Tenant (including Airlines) will be responsible for requesting issuance of a parking access card for each authorized Tenant employee in accordance with the following criteria and procedures:
  - a. Each Tenant employee enrolled in this program will receive one parking access card. This parking access card will be specially encoded to allow entry and exit into authorized locations for Tenant employee parking. **This parking access card may not be utilized by anyone other than the employee to whom the credential was issued. This parking access card shall not be altered in any way or stored near credit cards or any other type of magnetic source.**
  - b. There will be a \$25.00 replacement fee for all lost, stolen, or damaged cards.
  - c. The signatory of each Airport Tenant (including Airlines) will be responsible for obtaining and issuing employee parking access cards to their authorized employees. **UNDER NO CIRCUMSTANCES** will anyone other than the signatory retrieve employee parking access cards directly from the Authority. For definition purposes, **AUTHORIZED EMPLOYEES ARE THOSE PERSONS**

**WHO WORK DIRECTLY FOR A TENANT UNDER CONTRACT/LEASE WITH THE AUTHORITY AND WORK ON THE NORFOLK INTERNATIONAL AIRPORT PROPERTY. NON-BASED AIRLINE CREW MEMBERS ARE NOT CONSIDERED AUTHORIZED EMPLOYEES.**

- d. The Authority will invoice Airport Tenants monthly for each employee registered in this program. Payment for employee monthly parking fees is due thirty (30) days after invoiced by the Authority.
  - e. The signatory of each Airport Tenant (including Airlines) will be responsible for sending a request to de-activate the parking access card for a terminated employee. This notification should be sent to:  
[employeeparking@norfolkairport.com](mailto:employeeparking@norfolkairport.com). Failure to do so will result in the continued billing of all appropriate fees associated with the parking access card.
  - f. Tenant employees must have their parking access card and their SIDA badge or other photo identification in their possession at the time of exit. **Tenant employees that do not have either of these items will be required to pay the parking fees accrued and will not be eligible for reimbursement.**
  - g. Tenant employees agree to abide by all signs, pavement markings, and Airport rules and regulations while utilizing any parking facility at the Norfolk International Airport.
4. Employees of Airport Tenants with independent facilities not located in the Departures Terminal or Arrivals Terminal are not eligible for parking privileges under this program.
5. These Rules and Regulations are subject to modification at the discretion of the Authority.

I have read and understand the Rules, Regulations and Parking Agreement for the Tenant Employee Parking Program detailed above and agree to abide by the same. I further understand that my participation in this program can be terminated for failure to follow any of the terms detailed above and/or at the sole discretion of the Authority.

Tenant/Company Name (Print) \_\_\_\_\_

Tenant Signatory Name (Print) \_\_\_\_\_ Date \_\_\_\_\_

Tenant Signatory (Sign) \_\_\_\_\_

Tenant Signatory Telephone #\_\_\_\_\_

Tenant Signatory Email: \_\_\_\_\_

Tenant Employee Name (Print) \_\_\_\_\_ Date \_\_\_\_\_

Tenant Employee Name (Sign) \_\_\_\_\_

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-PARKING OFFICE USE ONLY-

Parking Access Card Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Number: \_\_\_\_\_

Parking Access Card Issued by: \_\_\_\_\_ Date: \_\_\_\_\_ Number/s: \_\_\_\_\_

Notes:

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# **Executive Director's Report**

## **Robert S. Bowen, A.A.E.**

## Capital Projects Update -July 13, 2021

### **Parking Revenue Control System Replacement**

- General Contractor – HUB Parking Technology USA
- This project will replace the entry and exit terminals at all the public parking lots and garages.
- Programming design is in progress for the Parking Reservation System. This system will allow travelers to pre-book and pre-pay for garage parking in advance of their travel. This feature will be accessible from the airport website.
- All Authority employees have been issued the new parking access card for the new system. Distribution of these access cards to tenant employees is mostly complete.
- All lanes in Garage complex are open, with the exception of 1 cashier lane in the Garage D construction area.

### **General Aviation Fuel Farm Replacement**

- General Contractor – Oil Equipment Sales and Service Co., Inc. (OESSCO)
- Project will replace the Underground Aviation Fuel Tank at the General Aviation Facility with an above ground tank at the fuel farm.
- Tank has been ordered for the project and Contractor will set the construction schedule once all materials are on site.

### **Taxiway 'C' North Rehabilitation**

- General Contractor is Virtexco
- Project will start August 16<sup>th</sup> with completion schedule for October 30<sup>th</sup>.
- This project will rubblize and overlay Taxiway 'C' from Taxiway 'H' to the approach end of Runway 5/23.

### **Garage 'A' Elevator Modernization**

- Contractor is Thyssenkrupp
- The existing elevators will have their electronic controls, motors and cabling modernized.
- This will allow for increased reliability since the major components will be better supported by the manufacturers after the update.
- The effort will be completed one elevator at a time to minimize disruptions, project is currently scheduled to be completed by the end of December.

### **HVAC Renovation**

- General Contractor is Virtexco
- Contracts are being routed for signatures.
- Construction schedule and notice to proceed date will be set in the coming weeks.
- This project will replace a cooling tower, an air handler, two tug bay heaters and provide limited duct cleaning in the Departures building.
- Replacement of this equipment will increase the reliability of our HVAC system and provide additional energy efficiencies.

#### **Garage D**

- General Contractor – Hourigan Construction – SWaM Certified in Virginia
- Contract substantial complete date is 8/19/2021 - Currently on schedule.
- Hourigan is continuing to work on interior finishes.



#### **FUNDING SUMMARY**

- 31 total projects in various stages of planning, design and construction

<b>Overall Budget</b>	<b>Funding Source</b>	<b>Balance Remaining</b>
<b>\$96,082,000</b>	<b>Totals</b>	<b>\$22,140,320</b>
\$58,000,000	Bonds	\$514,540
\$15,800,000	Parking	\$13,886,125
\$15,200,000	AIP	\$3,770,975
\$2,450,000	State Ent.	\$1,334,920
\$750,000	FBO	\$616,885
\$1,250,000	Capital Reserve	\$968,794
\$150,000	CFC	\$45,518
\$2,482,000	Renewal	\$1,002,563

## **NEW BUSINESS**

- **Election of Officers for  
Fiscal Year 2022**
- **Appointment of  
Assistant Secretaries  
for Fiscal Year 2022**

**Peter G. Decker III, Esquire, Chair  
Nominating Committee**



July 16, 2021

Dear Commissioners,

On behalf of the Nomination Committee, it is my recommendation that the Board re-appoint Malcolm P. Branch, Chairman; Deborah H. Painter, Vice-Chairman; and Mekbib Gemedo, Treasurer of the Norfolk Airport Authority Board of Commissioners. I am pleased to announce that Chairman Branch, Vice-Chairman Painter, and Treasurer Gemedo have agreed to continue in their present offices.

The appointees, subject to the approval of the Board, will serve for a one-year term to end on June 30, 2022.

The Committee would like to convey its gratitude for their dedicated leadership and service this past year.

Sincerely,

*Peter G. Decker III*  
Peter G. Decker III (Jun 29, 2021 18:31 EDT)

Peter G. Decker III  
Committee Chair, Nomination Committee

Enclosures: Letter of Appointee Acceptance for Commissioners Malcolm P. Branch,  
Deborah H. Painter, and Mekbib Gemedo

C: Robert S. Bowen, A.A.E.  
Executive Director



June 1, 2021

Mr. Malcolm P. Branch  
334 West Olney Road  
Norfolk, Virginia 23507

Dear Chairman Branch,

Undeniably, the year 2020 has been exceptionally difficult – not just because of the pandemic. The year 2020 has challenged us as leaders, to think of creative ways to do business.

Your exceptional and active leadership and governance as Norfolk Airport Authority Chairman of the Board of Commissioners, and Committee Chair for the Facilities and Planning Committee have helped the Authority through this difficult period.

The Nomination Committee would like to re-appoint you as its Chairman for another year, July 1, 2021 – June 30, 2022.

If you accept the re-appointment, the Committee will bring the recommendation to the full Board for a vote during the scheduled July 2021 meeting.

On page 2, sign/date the appropriate response and email the signed document to Sheri Watts, [swatts@norfolkairport.com](mailto:swatts@norfolkairport.com). Your response will be greatly appreciated by Monday, June 7, 2021.

Thank you for your dedicated leadership and service for Fiscal Year 2021.

Sincerely,

*Peter G. Decker III*  
Peter G. Decker III (Jun 3, 2021 12:02 EDT)

Peter G. Decker III, Esquire,  
Committee Chair, Nomination Committee

C: Robert S. Bowen, A.A.E.  
Executive Director

Sheri Watts  
Assistant Secretary

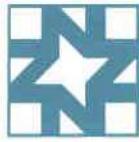
1. I, **Malcolm P. Branch**, **accept** the re-appointment to serve as Chairman for the Norfolk Airport Authority Board of Commissioners, July 1, 2021 – June 30, 2022.



A handwritten signature in black ink, appearing to read "Malcolm P. Branch". Below the signature is a horizontal line.

Signature/Date

2. I, **Malcolm P. Branch**, am **unable** to accept the re-appointment as Chairman of the Norfolk Airport Authority Board of Commissioners, July 1, 2021 – June 20, 2022.



June 1, 2021

Ms. Deborah H. Painter  
123 College Place, P-7  
Norfolk, Virginia 23510

Dear Vice-Chair Painter,

Undeniably, the year 2020 has been exceptionally difficult – not just because of the pandemic. The year 2020 has challenged us as leaders, to think of creative ways to do business.

Your exceptional and active leadership and governance as Norfolk Airport Authority Vice-Chair and Committee Chair of the Finance Audit Committee have helped the Authority through this economically difficult period.

The Nomination Committee would like to re-appoint you as its Vice-Chair for another year, July 1, 2021 – June 30, 2022.

If you accept the re-appointment, the Committee will bring the recommendation to the full Board for a vote during the July 2021 meeting.

On page 2, sign/date the appropriate response and email the signed document to Sheri Watts, [swatts@norfolkairport.com](mailto:swatts@norfolkairport.com). Your response will be greatly appreciated by Monday, June 7, 2021.

Thank you for your dedicated leadership and service for Fiscal Year 2021.

Sincerely,

**Peter G. Decker III**

Peter G. Decker III, Esquire  
Committee Chair, Nomination Committee

C: Robert S. Bowen, A.A.E.  
Executive Director

Sheri Watts  
Assistant Secretary

1. I, **Deborah H. Painter**, accept the re-appointment to serve as Vice-Chair for the Norfolk Airport Authority Board of Commissioners, July 1, 2021 – June 30, 2022.



Deborah H. Painter  
Signature/Date 6/1/21

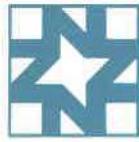
2. I, **Deborah H. Painter**, am **unable** to accept the re-appointment as Vice-Chair of the Norfolk Airport Authority Board of Commissioners, July 1, 2021 – June 20, 2022.

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Signature/Date

**Signature:** Peter G. Decker III  
Peter G. Decker III [Jun 3, 2021, 11:02 EDT]

**Email:** pdecker3@decklaw.com



June 1, 2021

Mr. Mekbib Gemedo  
717 Yarmouth Street  
Norfolk, Virginia 23510

Dear Treasurer Gemedo,

Undeniably, the year 2020 has been exceptionally difficult – not just because of the pandemic. The year 2020 has challenged us as leaders, to think of creative ways to do business.

Your exceptional and active leadership and governance as Norfolk Airport Authority Treasurer of the Board of Commissioners, Committee Vice-Chair for General Aviation, and your participation in the planning of the Authority's 1<sup>st</sup> Strategic Plan have helped the Authority through this difficult period.

The Nomination Committee would like to re-appoint you as its Treasurer for another year, July 1, 2021 – June 30, 2022.

If you accept the re-appointment, the Committee will bring the recommendation to the full Board for a vote during the July 2021 meeting.

On page 2, sign/date the appropriate response and email the signed document to Sheri Watts, [swatts@norfolkairport.com](mailto:swatts@norfolkairport.com). Your response will be greatly appreciated by Monday, June 7, 2021.

Thank you for your dedicated leadership and service for Fiscal Year 2021.

Sincerely,

*Peter G. Decker III*

Peter G. Decker III (Jun 3, 2021 11:03 EDT)

Peter G. Decker III, Esquire,  
Committee Chair, Nomination Committee

C: Robert S. Bowen, A.A.E.  
Executive Director

Sheri Watts  
Assistant Secretary

1. I, **Mekbib Gemedo**, accept the re-appointment to serve as Treasurer for the Norfolk Airport Authority Board of Commissioners, July 1, 2021 – June 30, 2022.



June 4, 2021

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Signature/Date

2. I, **Mekbib Gemedo**, am **unable** to accept the re-appointment as Treasurer of the Norfolk Airport Authority Board of Commissioners, July 1, 2021 – June 20, 2022.

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Signature/Date

# NAA BOC Re-Appointment Letter\_06.30.2021

Final Audit Report

2021-06-29

Created:	2021-06-29
By:	Kaylee Fuller (kfuller@decklaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAArVgQYNqFF0nO7iTZndlTgjHpCUuXCOtB

## "NAA BOC Re-Appointment Letter\_06.30.2021" History

-  Document created by Kaylee Fuller (kfuller@decklaw.com)  
2021-06-29 - 2:59:55 PM GMT- IP address: 75.187.54.121
-  Document emailed to Peter G. Decker III (pdecker3@decklaw.com) for signature  
2021-06-29 - 3:00:13 PM GMT
-  Email viewed by Peter G. Decker III (pdecker3@decklaw.com)  
2021-06-29 - 3:01:50 PM GMT- IP address: 174.206.97.166
-  Document e-signed by Peter G. Decker III (pdecker3@decklaw.com)  
Signature Date: 2021-06-29 - 10:31:25 PM GMT - Time Source: server- IP address: 174.206.97.166
-  Agreement completed.  
2021-06-29 - 10:31:25 PM GMT





July 16, 2021

Mr. Peter G. Decker III, Chair, Nominating Committee

Dear Pete,

The Board of Commissioners' Bylaws states that the Board may appoint one or more Assistant Secretaries whose duties shall be specifically designated by the Secretary (Executive Director). The person or persons so appointed need not be a Commissioner.

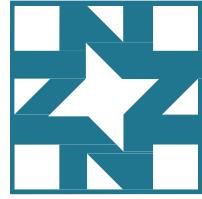
Currently, Sheri Watts, Executive Administrative Assistant; and Steven Sterling, Deputy Executive Director for Administration and Operations, serve as Assistant Secretaries for the Board.

It is my recommendation that both Sheri Watts and Steven Sterling be re-appointed as Assistant Secretaries for a one-year term ending July 31, 2022.

Sincerely,

Robert S. Bowen, A.A.E.  
Executive Director

**ADJOURNMENT**



**Norfolk Airport Authority**  
Board of Commissioners Meeting  
Thursday, July 22, 2021  
1:00 p.m.

I, MOVE THAT THE BOARD ADJOURN AND THAT THE  
NEXT REGULAR PUBLIC SESSION OF THE BOARD  
BE HELD AT  
1:00 P.M.,  
ON THURSDAY, AUGUST 26, 2021  
IN THE  
HUMAN RESOURCES CONFERENCE ROOM A, MAIN  
PASSENGER TERMINAL,  
NORFOLK INTERNATIONAL AIRPORT  
OR AS OTHERWISE DETERMINED AND NOTICED.

