



## CITY COUNCIL STAFF REPORT

DATE: June 15, 2011 CONSENT AGENDA  
SUBJECT: AGREEMENT AWARDS TO FIVE CAR RENTAL CONCESSIONAIRES  
AT PALM SPRINGS INTERNATIONAL AIRPORT:  
FROM: David H. Ready, City Manager  
BY: AIRPORT DEPARTMENT

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### SUMMARY

This action will award agreements to five firms for the privilege of operating rental car concessions at Palm Springs International Airport.

### RECOMMENDATION:

1. Award five airport rental car concession agreements to: Avis Budget Car Rental, LLC; The Hertz Corporation; Enterprise Rent-A-Car Company of Los Angeles, LLC d/b/a Alamo Rent A Car & National Car Rental; Enterprise Rent A Car Company of Los Angeles, LLC d/b/a Enterprise Rent-A-Car; DTG Operations, Inc d/b/a Dollar Rent A Car and Thrifty Car Rental for a term of three years.
2. Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS

The Federal Aviation Administration regulations require that all airport concession agreements be no longer than five years and the airport must conduct a public bid offering each time the agreements are renewed. The five-year agreements for the existing car rental firms at PSP airport will expire at the end of June 2011. In anticipation of this expiration, a formal Invitation for Bid (IFB) 11-06 was meticulously prepared by City Procurement and Airport staff and was issued on April 26, 2011 to solicit bids for five full service airport rental car concession operators. Prospective bidders were invited to attend a site visit on May 3, 2011 and bids were received and opened May 25, 2011.

The highest to lowest bid ranking was determined by the descending order of the Minimum Annual Guarantee (MAG) offered by each bidder. The MAG is the minimum

amount the car rental operators will guarantee to pay the airport each year as a concession fee. However as reflected in the contracts, the actual total fee paid each year will be the amount of either the MAG or ten percent of the operator's gross revenues over a one-year period, whichever is greater. In addition to this fee, the car rental concessionaires will pay a rental fee for counters in baggage claim, vehicle service facilities, vehicle ready return spaces, and overflow parking spaces. All these charges are consistent with past practice here at PSP Airport and within the industry.

The following five bids (MAG's) were received on May 25, 2011 by the City in the order of highest bid:

- 1.) The Hertz Corporation (Hertz), \$1,083,900
- 2.) Avis Budget Car Rental LLC (Avis/Budget), \$1,080,000
- 3.) DTG Operations, Inc. (Dollar/Thrifty), \$951,000
- 4.) Enterprise Rent-A-Car Company of Los Angeles (Alamo/National), \$870,456
- 5.) Enterprise Rent-A-Car Company of Los Angeles (Enterprise), \$868,123

Based on the results of this IFB, staff is recommending that the five qualified bids be awarded contracts that contain the Minimum Annual Guarantee amounts as submitted for the specified three (3) year term of July 1, 2011 through June 30, 2014.

The reasons for having a three-year contract term instead of the five is as follows: 1.) The shorter term would allow the airport latitude in addressing the anticipated short term car rental facilities improvements that will ineluctably change the layout of baggage claim counters and the location of the vehicle service facilities. 2.) Within three years it is expected that the economic recovery will have fully been realized and the airport growth trends will likely yield more fortuitous results in revenue guarantees with a new bid. 3.) The car rental industry is as dynamic as the airline industry with regards to acquisitions & consolidations therefore a new bid in a shorter time frame will allow for strategic adjustments to the airports concessions plans that more adequately address any unpredicted metamorphosis.

The acceptance of this bid as recommended will not only continue to be the largest single revenue source for the airport's enterprise fund, but it will also help mitigate a facility functionality issue. Specifically, there is a passenger bottleneck that occurs across from the baggage claim restrooms during peak flight times. This area becomes congested because of an amalgamation of several separate functions including; an information counter, restrooms, car rental counters with waiting lines, flight display unit, and two kiosk concessions. Now that the bid results are in and it is assured that all the current operators will still be represented, but only now requiring five counters instead of six counters, the airport will now be able to remove the counters across from the crowded area and this will provide needed mitigation of the bottleneck making it more efficient for all passengers. The counters in that area used by the airport's information

volunteers and the resort sales kiosk will also be removed or relocated to provide for an obstacle free hallway.

The Airport Commission at its May 18, 2011 meeting recommended that Airport Staff proceed with the City Council approval process if the bids were acceptable.

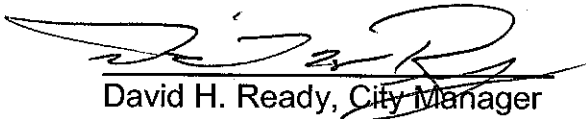
### FISCAL IMPACT

The total of these MAGs equal \$4,853,479 plus approximately \$185,000 projected in additional percentage payments as two of the concessionaires 10% concession fees are anticipated to exceed their new individual MAGS based upon 2010 gross revenue. The new MAGs equal 11.2% of the 2010 Car Rental gross on-airport revenue, which is a solid MAG rate considering the current industry economic conditions. As the economy and tourism industry here in the region continues to rebound, the additional percentage payments based upon 10% of gross revenue will also continue to increase during the three-year term.

The Customer Service Counters, Service Facility, Ready Return Space and Overflow Parking Space rental rates increased 9-10% with the new bids and will be subject to an annual Consumer Price Adjustment during the three-year term. This will result in approximately the same revenue stream as the current agreements.



Thomas Nolan,  
Executive Director, Airport



David H. Ready, City Manager

Attachment:  
Non-Exclusive Operating & Lease Agreement for the Operation of a Car Rental  
Concession at Palm Springs International Airport

**Non-Exclusive Operating and Lease Agreement  
No. \_\_\_\_\_**

**Between the City of Palm Springs**

**and**

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**For the Operation of a  
Car Rental Concession at  
Palm Springs International Airport**

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**Non-Exclusive Operating and Lease Agreement No. \_\_\_\_\_  
Between City of Palm Springs  
and**

**\_\_\_\_\_  
For the Operation of a Car Rental Concession  
AT  
Palm Springs International Airport**

THIS NON-EXCLUSIVE OPERATING AND LEASE AGREEMENT (Agreement), made and entered into this 1<sup>st</sup> day of July, 2011, by and between the CITY OF PALM SPRINGS, a municipal corporation (hereinafter referred to as City), and \_\_\_\_\_ (hereinafter referred to as Concessionaire), having its usual place of business at the Palm Springs International Airport, 3400 E. Tahquitz Canyon Way, Palm Springs, California 92262, and a permanent mailing address at \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, the City owns and operates the Palm Springs International Airport (hereinafter referred to as Airport), located in the City of Palm Springs, County of Riverside, State of California, at 3400 E. Tahquitz Canyon Way; and

WHEREAS, Concessionaire submitted a response to City's public solicitation for competitive bids for the Airport Rental Car Lease and Concession, Invitation for Bids (IFB) No.11-06, which was opened May 25, 2011; and

WHEREAS, the City operates the Airport as a governmental function for the primary purpose of providing to the public the service of air transportation; and

WHEREAS, rental car services at the Airport are essential for proper accommodation of passengers arriving at and departing from the Airport and for patrons of the Airport; and

WHEREAS, City and Concessionaire mutually desire to enter into this Agreement in order to provide, as a portion of ground transportation to the Airport, car rental services for the community and its visitors; and

WHEREAS, City has the right to permit the use of its property at the Airport and to grant the use of the Airport to Concessionaire for the operation of Concessionaire's car rental service and to fix the terms and conditions for such operations by the Concessionaire; and

WHEREAS, Concessionaire, for many years, has been engaged in the operations of an automobile rental business and is presently engaged in the performance of this type of service and is prepared, equipped and qualified to comply with the terms provided herein;

NOW, THEREFORE, the parties hereto, for and in consideration of the premises, covenants and agreements hereinafter contained to be observed and performed, the respective parties, DO HEREBY AGREE AS FOLLOWS:

## **ARTICLE 1**

### **RECITALS**

The foregoing recitals are true and correct and are hereby incorporated herein by reference.

## **ARTICLE 2**

### **DEFINITIONS**

- 2.01 "Airport" means the Palm Springs International Airport, located at 3400 E. Tahquitz Canyon Way, Palm Springs, California, owned and operated by the City of Palm Springs.
- 2.02 "Agreement Year" means the twelve (12) month period, beginning on July 1, 2011 and ending on June 30, 2012, and each twelve (12) month period thereafter, until the termination of this Agreement
- 2.03 "Annual Percentage Payment" means ten percent (10%) of Concessionaire's annual Gross Revenues.
- 2.04 "Brand" for purposes of the Agreement, means a distinct rental car service brand or trade name that is used for the purpose of customer identification, reservations, and rental car transactions.
- 2.05 "Collusion" means the unlawful communication between unaffiliated rental car competitor firms.
- 2.06 "Concession" means the rental car concession operated by Concessionaire pursuant to the terms and conditions of this Agreement.
- 2.07 "Concession Fees" means the fees payable by Concessionaire to City pursuant to Section 5.01(A) and (B).

- 2.08 "Consolidated Rental Car Service Facility" means the planned new single facility that will be constructed to replace the existing five separate rental car service facilities and which will be financed by the CFC funding.
- 2.09 "Customer Facility Charge" or "CFC" means the fee imposed by CITY on each and every customer of the Concessionaire with respect to customer contracts at the Airport.
- 2.10 "Designated Premises" means the Ready Spaces/Return Lanes, Customer Service Counters, Overflow Parking Spaces and the Maintenance and Service Facilities as shown on Exhibits A, B, C, and D attached hereto and incorporated herein by reference and described more particularly below:
- A. Ready Return Spaces/Lanes adjacent to the north side of the Terminal Building as depicted on Exhibit A.
  - B. Overflow Parking Spaces: are located in the parking lot as depicted on Exhibit B.
  - C. Customer Service Counters: five (5) counters are located in the baggage claim area of the Terminal Building as depicted on Exhibit C.
  - D. Maintenance and Service Facilities: five (5) facilities are located as depicted on Exhibit D.
- 2.11 "Executive Director of Aviation" means the person designated by the City holding said position and having the responsibilities and authority described herein or his designees.
- 2.12 "Airport Concession Disadvantaged Business Enterprise (ACDBE) has the same meaning as set forth in 49 CFR, part 23 (Code of Federal Regulations) as now or hereafter amended or any successor regulation.
- 2.13 "FAA" means the Federal Aviation Administration.
- 2.14 "Facility Rental" means the annual rental rate payable by Concessionaire to City for Concessionaire's use and occupancy of the assigned Designated Premises pursuant to Section 5.03.
- 2.15 "Gross Revenues" means all monies due Concessionaire, whether paid or unpaid, from any and all customers for the use, rental lease or sale of vehicles and any additional services or accessories contracted for, delivered, supplied or rented at or from the Airport regardless of where, how (cash, credit, barter or otherwise) or by whom payment is made; whether the customer is transported

from the Airport to an off-Airport place of business; or where the vehicle is picked up or returned. Unless revenues are expressly and specifically excluded from Gross Revenues, all revenues derived from, arising out of or becoming payable on account of the Concession, whether directly or indirectly, shall be included in Gross Revenues. Gross Revenues shall include, but shall not be limited to:

- A. Time and/or mileage charges, after discounts taken at the time of rental, assessed by Concessionaire to its customers.
- B. Premiums on any and all insurance sold, including personal accident insurance, personal effects and cargo insurance, life insurance and any other insurance sold in connection with a vehicle rental.
- C. Sums received from customers for Collision Damage Wavier (CDW) protection and Loss Damage Waiver (LDW) protection.
- D. Any and all add-on fees and charges including extra driver coverage, underage driver coverage and vehicle upgrade charges.
- E. Any and all fees and charges for equipment, supplies and incidental items which are made available and charged for separate from the vehicle including, but not limited to, sporting equipment, cellular telephones, pagers, child restraint seats, video equipment, and any other incidental items and services.
- F. All local revenue derived from a vehicle rental or vehicle sales transaction with a customer who has not deplaned at the Airport, yet the rental transaction occurred at the Airport. It also includes revenue derived from a vehicle rental or vehicle sales transaction from any of the fixed base operator (FBOs) located on the airport.
- G. All charges attributable to any vehicle originally rented at the Airport, which is exchanged at any other location of Concessionaire.
- H. All proceeds from the long-term lease of vehicles from any location on the Airport.
- I. Amount charged to Concessionaire's customers at the commencement or the conclusion of the rental transaction for the cost of furnishing and/ or replacing fuel provided by Concessionaire.
- J. Amount charged by Concessionaire as a pass through to its Customers of Concession Fees, including, but not limited to, any Recovery Fee as provided in Section 5.14.
- K. Charges commonly referred to as "drop charges" or "intercity fees."
- L. If the retail sale of a vehicle is directly related and preceded by a rental of the vehicle at the Airport, then the NET proceeds from the sale of vehicle

shall be included in Gross Revenue that is subject to the Concession Fee.

Gross Revenues shall not include:

- M. The CFC added to each customer contract or otherwise charged to or assessed on each customer of the Concessionaire.
  - N. Amount of any sales taxes or other similar excise taxes, now or hereafter levied or imposed, which are separately stated and collected from customers.
  - O. Any sums received as insurance proceeds, or payments from Concessionaire's customers or insurers for damage to vehicles or other property of Concessionaire.
  - P. Sums received as the result of the loss, conversion, or abandonment of Concessionaire's vehicles.
  - Q. Sums received from the sale of equipment, not vehicles used in the operation of the Concession, the use of which Concessionaire wishes to discontinue.
  - R. Any retroactive discounts from gross revenues, including corporate volume discounts, are specifically prohibited.
  - S. Sums received as payment for parking tickets and other traffic violations and fines.
  - T. Carbon Offsets fees paid by a customer and remitted to a Third Party
- 2.16 "Minimum Annual Guarantee" (MAG) means a minimum amount to be paid to City on an annual basis during each Agreement Year as set forth in Section 5.01(A).
- 2.17 "Monthly Percentage Payment" means ten percent (10%) of Concessionaire's monthly Gross Revenues.
- 2.18 "Response" means Concessionaire's response to City's Invitation for Bids #11-06 which was opened May 25, 2011.
- 2.19 "Terminal" means the main structures at the Airport where ticket counters, center lobby, baggage claim, and gate concourses are located and are depicted on Exhibit E.
- 2.20 "TSA" means the Transportation Security Administration.

**ARTICLE 3**  
**TERM OF OPERATING AGREEMENT**

- 3.01 Term. The term of this Agreement shall be for a period of three (3) years, commencing on July 1, 2011 (the Commencement Date) and terminating on June 30, 2014 (the Term), unless sooner terminated as provided herein.
- 3.02 Delivery of Assigned Designed Premises. Should City be unable to deliver possession of the assigned Designated Premises as of the Commencement Date, rent shall be abated until possession is delivered. Concessionaire shall have no other remedy for such late delivery, nor shall such delay extend the term of this Agreement. If possession cannot be delivered within sixty (60) days of the Commencement Date, Concessionaire shall have the right to terminate this Agreement.

**ARTICLE 4**  
**PRIVILEGES AND PREMISES**

- 4.01 Description of Specific Privileges, Uses and Rights. City hereby grants to Concessionaire the following non-exclusive specific privileges, uses and rights, all of which shall be subject to the terms, conditions and covenants set forth herein:
- A. To conduct and operate a high quality rental car concession at the Airport from the Designated Premises.
  - B. To offer for rent additional services or accessories to complement the basic vehicle rental from the assigned Designated Premises. Such additional services or accessories may include the right to offer for sale related loss and collision damage waiver protection, personal injury and accident insurance, supplemental liability, uninsured motorist, and personal effects insurance; and to provide customer service features such as baby car seats and cellular telephones.
  - C. To offer for sale used rental vehicles from the Designated Premises.
- 4.02 Description of General Privileges, Uses and Rights. In addition to the specific privileges granted pursuant to Section 4.01, City hereby grants to Concessionaire:
- A. Nonexclusive use of the public areas within the Terminal for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder. For purposes of this Agreement, "Public Areas" means the public corridors, restrooms and other areas within the Terminal

that the general public has the right to access. Public Areas shall at all times be subject to the exclusive control and management of City. City shall have the full right and authority to make all rules and regulations as City may in its sole discretion deem proper, pertaining to the proper operation and maintenance of the Public Areas; and

- B. Nonexclusive right of ingress to and egress from the Terminal over and across public roadways and walkways serving the Airport for Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents and authorized sublessees, if any, in connection with its operations hereunder.

Nothing herein contained shall be construed to grant to Concessionaire, its employees, contractors, patrons, invitees, suppliers of service, agents or authorized sublessees, if any, the right to use or occupy any space or area at the Airport improved or unimproved that is leased or assigned to a third party, or, except as expressly set forth in Section 4.02(A) and (B) above, City has not leased to Concessionaire pursuant to this Agreement. The general privileges, uses and rights granted in this Section 4.02 shall be subject to the terms, conditions and covenants set forth herein.

- 4.03 Restrictions of Privileges, Uses and Rights. The rights granted hereunder are expressly limited to the operation and management of a rental car concession. Concessionaire covenants and agrees that the Designated Premises shall be used solely for the uses permitted in Sections 4.01 and 4.02 above and for no other purposes whatsoever. Concessionaire hereby acknowledges and agrees that the car rental concession herein granted is not an exclusive concession and the City shall have the right to deal with and perfect arrangements with any other individual or individuals, company or corporation to engage in a like car rental concession activity at the Airport, provided that there are not more than five car rental concessions operating out of the Terminal Building. In the event that any contract granted by the City to any other on-site automobile rental Concessionaire shall contain any provisions more favorable to such Concessionaire than the terms herein granted, then, at the option of Concessionaire, which option shall be exercised by providing written notice to City, this Agreement shall be amended to include such more favorable terms and any off-setting burdens that may be imposed on any such other Concessionaire. The intent of this provision is to ensure that Concessionaire is competing on as equal of terms as possible with any additional Concessionaire and, as a result, no other Concessionaire shall enjoy any rights, profits or conditions more favorable to such Concessionaire than those enjoyed by Concessionaire.

- 4.04 Condition of the Designated Premises and Airport. Concessionaire expressly acknowledges that it has inspected the assigned Designated Premises and Airport and accepts the same "As Is, Where Is" in the condition existing as of the



Effective Date, together with all defects latent and patent, if any. Concessionaire further acknowledges that City has made no representations or warranties of any nature whatsoever regarding the Airport or the Designated Premises, including, but not limited to, the physical and/or environmental condition of the Designated Premises, or any improvements located thereon, or the value of the Designated Premises or improvements, or the suitability of the Designated Premises, or any improvements, or Concessionaire's legal ability to use the Designated Premises for Concessionaire's intended use thereof.

City agrees to indemnify and hold harmless Concessionaire from and against all judgments, suits, liabilities, losses, costs, judgments, orders, obligations, damages or claims arising out of or in any way related to the existence of any Hazardous Materials placed on, in or under the Premises by any person or entity other than Concessionaire or any person or entity acting for, by or through Concessionaire or with Concessionaire's permission or acquiescence.

- 4.05 Dual Branding. The City acknowledges that certain parent companies may own two or more separate trade or brand names and may at times operate each separately or jointly. Nothing contained herein shall prevent Concessionaire from including no more than two (2) separate brand and/or trade names owned by the same parent company in its Response. Such arrangements shall not be considered to constitute collusion under the terms of this Agreement.

Concessionaire shall be prohibited from operating at the Airport under any brand name or trade name other than the brand name(s) or trade name(s) that it originally designated in its Response, unless this Agreement has been assigned or sublet during its Term with the approval of City pursuant to the terms and conditions of Article 15 herein. In no event, however, may more than a total of two (2) trade or brand names be used. Except in the event of assignment or subletting during the Term of this Agreement as indicated above, Concessionaire shall operate and maintain all signage only under the brand or trade name(s) originally designated in its response to the IFB. No other brand name shall be used or displayed by Concessionaire at the Airport or upon the Premises.

If Concessionaire utilizes any particular brand or trade name under a license or franchise agreement, Concessionaire represents and warrants to the City that Concessionaire has been granted the right to use any such brand or trade name that may be used at the Premises for the entire term of this Agreement, pursuant to a franchise or license agreement (the Franchise Agreement) with the trade name owner (a Franchisor).

At the City's request, Concessionaire agrees to provide the City with a copy of the Franchise Agreement and reasonable evidence that such agreement remains in full force and effect. Concessionaire agrees that the termination of

Concessionaire's right to use Concessionaire's brand or trade name at the Designated Premises or to conduct a Rental Car Concession at the Premises of the type then conducted by or under license from Franchisor under the brand or trade name, shall constitute a material breach of Concessionaire's obligations under this Agreement.

Except as provided herein, "More than two (2) or Multiple Branding" is prohibited.

- 4.06 Right to Relocate or Replace Customer Service Counter. City reserves the right to relocate all of the Customer Service Counter Spaces within the Terminal Building if required to ensure the operational effectiveness of the Terminal Building and concourses and, if City agrees, to reimburse such Relocation Costs to Concessionaire through Concession Fee credits. Said relocation shall be undertaken from original counter selection to an area of comparable size and quality as is reasonably practicable. "Relocation Costs" shall mean the reasonable and actual out-of-pocket expenses incurred by Concessionaire to move from the existing assigned Customer Service Counter Space to a substituted area (Substituted Premises) and the unamortized cost of Customer Service counter improvements made by Concessionaire, if any, that cannot be relocated to the Substituted Premises. The unamortized cost of the improvements shall be determined in accordance with Generally Accepted Accounting Principles with a useful life not to exceed the term of the this Agreement

Upon completion of such relocation, Concessionaire shall provide City with a statement certified by a financial officer of Concessionaire: (1) setting out Concessionaire's Relocation Costs; and (2) itemizing the improvements made by Concessionaire that cannot be relocated to the Substituted Premises and showing the calculation of the unamortized value of such improvements. Copies of invoices shall accompany said statement for such Relocation Costs. City shall thereafter reimburse Concessionaire for such Relocation Costs by crediting the Privilege Fee thereafter due until the Relocation Costs are reimbursed. City reserves the right to replace the actual counters to improve the appearance and function of the units, and with the majority consent of the five (5) Concessionaires, use Customer Facility Charge (CFC) Funds to cover the expense.

- 4.07 Ready Return Space/Lane Allocation/Reallocation. The City will assign the location of the Ready Return Spaces and Return Lanes within the Ready Return Space/Lane Lot for the first Agreement Year of the term to the top five (5) Concessionaires based upon the Minimum Annual Guarantees. Ready Return Lanes 5/6 counts as one lane for this allocation.

At the commencement of this Lease, Concessionaire will be assigned \_\_\_ Ready

Return Spaces and Ready Return Lane # \_\_\_\_ based on the ratio of Concessionaire's Annual Minimum Annual Guarantee set forth in Section 5.01.A. specified for the top five (5) Concessionaires in order from highest to fifth lowest MAG.

For all subsequent years of the Agreement, the number of Ready Spaces will be reallocated to each Concessionaire based on a ratio of Concessionaire's Gross Revenues for the preceding Agreement Year to the total Gross Revenues of the top five (5) highest Gross Revenue On-Airport Car Rental Concessionaires for the preceding Agreement Year.

For all subsequent years of the Agreement, the Return Lane reallocation, if any, will be given to the top five (5) Concessionaires in descending order based on the Gross Revenues for the preceding Agreement Year.

In the event a City audit of Gross Revenues determines an error in Gross Revenues of Concessionaire, the City may adjust the assigned Ready Return Spaces/Lanes based on the corrected Gross Revenues.

The reallocation of Ready Return Spaces/Lanes shall take place on September 1 of each subsequent Agreement Year.

Should TSA impose security rules that negate the above process by reducing the total number of Ready Return Spaces/Lanes, the Airport shall have the right to adjust allocations.

- 4.08 Overflow Parking Spaces. The Overflow Parking Spaces shall be used to park Concessionaire's vehicles awaiting for or returning from customer rental, or for purposes of fleet rotation. The City, based on Concessionaire's request and space availability, shall designate overflow Parking Spaces on a first come, first served basis depicted in Attachment "B" hereto, and incorporated herein by reference. The fee per space per day will be \$1.35 (One dollar thirty five cents).
- 4.09 Off-Airport Car Rentals. The City will continue to require off-airport car rental operators to obtain a permit as stipulated in the City's Comprehensive Fee Schedule and pay nine (9%) percent of gross revenue privilege fee for business transacted with Airport passengers and customers as long as legally allowable. Nothing contained within this Section 4.09 shall be construed to mean that granting of said permit is the granting of a concession within the meaning of this Agreement, nor shall any provision of this subsection be construed to require the City to extend any more favorable economic terms established for off-airport car rental operators, including percentage fees, to Concessionaires.
- 4.10 Selection of Customer Service Counter / Service Facility Location. The selection

of the Customer Service Counter and Service Facility location will be awarded to the top five (5) Concessionaires based upon the Minimum Annual Guarantees. The final Customer Service Counter configuration will be determined at the time of award. The Airport will expeditiously complete the modifications, which are very elementary, and will coordinate the move and shuffle with the Rental Car Concessionaires so that there is only one move accomplished in a minimal amount of time. All Concessionaires will be required to lease one (1) Airport Service Facility. Service Facility locations will be grandfathered for successful incumbent Concessionaires for the entire term of this Agreement. New Concessionaires will be required to lease a Service Facility location that was or is to be vacated by an unsuccessful bidder/incumbent Concessionaire. Selection of vacant and available Service Facilities will be made using the highest to lowest Minimum Annual Guarantees of the new Concessionaires. In the event of a dispute regarding the provisions of this Article or the selection/assignment of Customer Service Counter or Service Facility locations, the City shall in its sole discretion have the right and authority to assign said locations to the Concessionaires. Should a new Consolidated Service Facility be constructed and made available prior to June 30, 2014, the City shall have the sole discretion to assign Concessionaires to the new facility and base the assigned positions on the highest to lowest Minimum Annual Guarantees of incumbent Concessionaires. An entirely new agreement will be negotiated and executed with each incumbent Rental Car Concessionaire for space within the Consolidated Rental Car Facility.

- 4.11 Security/Safety Meeting. Prior to the commencement of operations under this agreement, and at least annually thereafter, Concessionaire shall meet with the other car rental Concessionaires operating on the Airport and Airport management to discuss and agree upon parking, recalculation and reallocation of Ready Return Spaces/Lanes, automobile movement procedures and Security/Safety procedures to be utilized by car rental Concessionaires operating at the Airport. Said operating procedures shall specifically address procedures covering the receipt, storage and dispensing of automobile fuel at the Maintenance Facility Spaces. Safety procedures applicable to the installation, maintenance, and safety checks of storage and dispensing equipment will be included. The Executive Director of Aviation shall have the right to resolve all disputes, disagreements or conflicts that may arise.

**ARTICLE 5**  
**CONCESSION FEES, FACILITY RENTAL, ACCOUNTABILITY AND**  
**PERFORMANCE GUAARANTEE**

- 5.01 Concession Fees. For the concession privileges granted hereunder, Concessionaire shall pay to City Concession Fees equal to the greater of the

Minimum Annual Guarantee or Annual Percentage Payment for each Agreement Year throughout the Term of this Agreement. Concession Fees shall be payable in advance by installment as provided for herein and shall be reconciled on an annual basis in accordance with the provisions of Section 5.11 below.

- A. Minimum Annual Guarantee (MAG). Concessionaire shall pay to City, commencing upon the Commencement Date and on the first day of each and every month throughout the Term of this Agreement, one-twelfth (1/12) of the Minimum Annual Guarantee for the applicable Agreement Year without demand, deduction, holdback or setoff. Concessionaire agrees the MAG for each Agreement Year shall be \$\_\_\_\_\_.
- B. Monthly Percentage Payment. Within twenty (20) days after the beginning of each and every month throughout the Term of this Agreement, Concessionaire shall deliver a Statement of Gross Revenues (as hereinafter defined) for the preceding month to the Airport. In the event the Monthly Percentage Payment is greater than (1/12) of the MAG for the applicable Agreement Year, Concessionaire shall pay the difference to City with the Statement of Gross Revenues. This fee is for the privilege to engage in business at Airport and is not for lease of the Concession Premises. Concessionaire shall be liable for any State Sales Tax thereon, should such "privilege fee" now or hereafter be held to be taxable by the State of California.

5.02 Abatement of Minimum Annual Guarantee. In the event for any reason the number of passengers deplaning on scheduled airline flights at the Airport during any calendar month shall be less than 65 percent (65%) of deplaning passengers for the same month previous year, or in the opinion of the Executive Director of Aviation, the operation of Concessionaire's car rental business at the Airport is affected, through no fault of Concessionaire, by shortages or other disruption in the supply of automobiles, gasoline or other goods necessary to the conduct of such business, and said shortages or other disruption results in the material diminution in Concessionaire's monthly gross receipts and said shortage or other disruption is not caused by a labor dispute involving Concessionaire (such diminution to be satisfactorily demonstrated by Concessionaire to Executive Director of Aviation, and the final decision to be solely that of Executive Director of Aviation), then, in that event, Concessionaire shall not be required to pay to City that portion of the MAG that would otherwise be due and payable in accordance with the requirements of Section 5.01(A) above for that month. During the abatement period, Concessionaire shall continue to pay to City the Monthly Percentage Payment with the Statement of Gross Revenues (as hereinafter defined), and, if applicable, City shall credit Concessionaire a pro-rated portion of any payment of the MAG as may have been paid in advance. Concessionaire acknowledges and agrees that Concessionaire shall remain

liable for payment of the full Annual Percentage Payment notwithstanding City's waiver of its right to receive any portion of the MAG.

5.03 Facility Rental. In addition to the Concession Fees, Concessionaire shall pay to City for the use and occupancy of the assigned Designated Premises, an annual Facility Rental described as follows:

- A. For the lease of \_\_\_\_\_ (#) Ready Return Spaces and # \_\_\_\_\_ Ready Return Lane located in the Ready Return Spaces/Lane Lot depicted on Attachment "A" hereto and incorporated herein by reference, Concessionaire shall pay to the City an annual fee for each Ready Return Space in an amount equal to \$1,200.00 (one thousand two hundred dollars) per space multiplied by the total number of spaces allocated to Concessionaire for the Agreement Year, for the total sum of \$ \_\_\_\_\_ annually, payable in twelve equal monthly installments of \$ \_\_\_\_\_, payable in advance and without demand on the first day of each month of this Agreement commencing July 1, 2011.
- B. For the lease of a Customer Service Counter at a rate of \$40.00 (forty dollars) per square foot per annum Counter # \_\_\_\_\_ consisting of \_\_\_\_\_ square feet, depicted in Attachment "C" hereto and incorporated herein by reference, the sum of \$ \_\_\_\_\_ annually, payable in twelve equal monthly installments of \$ \_\_\_\_\_, payable in advance and without demand, on the first day of each calendar month of this Agreement, commencing July 1, 2011.
- C. For the lease of a Maintenance Service Facility at a rate of \$0.75 (seventy five cents) per square foot per annum Service Facility # \_\_\_\_\_ consisting of \_\_\_\_\_ square feet, depicted in Attachment "D" hereto, and incorporated herein by reference, the sum of \$ \_\_\_\_\_ annually, payable in twelve equal monthly installments of \$ \_\_\_\_\_, payable in advance and without demand, on the first day of each calendar month of this Agreement commencing July 1, 2011.
- D. Facility rental rates identified in Sections 4.08 and 5.0.3, paragraphs A, B and C are subject to a Consumer Price Index (CPI) adjustment each year on the anniversary date of the agreement. The rent adjustment will be adjusted upward or downward by the same percentage increase or decrease, occurring during the previous twelve months, in the Consumer Price Index for all Urban Consumers (CPI-U) for LA/Riverside/Orange County, CA (published by the Bureau of Labor Statistics, U.S. Department of Labor), or applying a similar index if the CPI-U is not published or available.

5.04 Unpaid Fees. All payments required to be made to the City hereunder shall bear

interest at the City's then current rate charged on overdue accounts or the maximum non-usurious interest rate, whichever is less, if not paid within 15 days from the date due. Said interest shall be calculated on a daily basis and shall be due and payable when billed. City shall not be prevented from terminating this Agreement for default in payment due to City pursuant to this Agreement or from exercising any other remedies contained herein or implied by law.

- 5.05 Diversion of Gross Revenues. Concessionaire shall not intentionally divert, through direct or indirect means, any of Concessionaire's rental car or related business with Airport's customers to off-airport locations of Concessionaire or affiliates of Concessionaire without including the Gross Revenues of such transactions, as defined in Section 2.13, in Concessionaire's reported Gross Revenues. Any such intentional diversion of Gross Revenues shall constitute a breach of contract and the City shall have the right to immediately terminate this Agreement upon determination by the City or its auditors that an intentional diversion exists or has occurred. Concessionaire shall not modify its accounting treatment or rename or redefine services or products.
- 5.06 Sales and Use Tax. Concessionaire shall pay monthly to City any sales, use or other tax, or any imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the rents, use or occupancy of the assigned Designated Premises imposed by the United States of America, the State of California, or City of Palm Springs, notwithstanding the fact that the statute, rule, ordinance or enactment imposing the same may endeavor to impose the tax on City.
- 5.07 Net Agreement. This Agreement in every sense shall be without cost or expense to City including, without limitation, cost and expenses relating to the development, maintenance, improvements and operation of the assigned Designated Premises.
- 5.08 Place of Payments. All payments required to be made by the Concessionaire under this Agreement shall be made payable to the City of Palm Springs, delivered or mailed postage prepaid to:

City of Palm Springs  
Finance Department  
Post Office Box 2743,  
Palm Springs, CA 92263-2743

or at such other place the City as the place of payment may hereinafter designate as in writing.

- 5.09 Monthly Reports of Gross Revenues. Within twenty (20) days after close of each month of throughout the Term of this Agreement, Concessionaire shall submit to

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the Airport, in a form and detail satisfactory to the City, a Statement of Gross Revenues that details Gross Revenues for the prior calendar month. The Concessionaire shall attach payment per Section 5.01B if applicable to its Statement of Gross Revenues.

The City reserves the right to reasonably prescribe or change reporting forms, their methods and time of submission, and payment schedule. The City shall first submit the alterations to Concessionaire in writing specifying the desired changes.

5.10 Accounting Records. Concessionaire shall keep, throughout the Term of this Agreement, all books of accounts and records customarily used in this type of operation, in accordance with Generally Accepted Accounting Principals prescribed by the American Institute of Certified Public Accountants or any successor agency thereto. Such books of accounts and records shall be retained and be available for three (3) years from the end of each Agreement Year, including three (3) years following the expiration or termination of this Agreement. City shall have the right to audit and examine during normal business hours all such books of accounts and records relating to Concessionaire's operations hereunder. If the books of accounts and records are kept at locations other than the Airport, Concessionaire shall, at its sole cost and expense, arrange for them to be brought to a location convenient to the auditors for City in order for City to conduct the audits and inspections as set forth in this Article. Concessionaire shall maintain a record of each vehicle rental agreement or vehicle sales agreement written at the Airport, including a copy of each original agreement signed by Concessionaire's customer. Accountability for the numerical sequence of contracts issued and unissued shall be maintained. Accounting records of Concessionaire shall be stored sequentially, or in such other manner approved by the Airport, to provide reasonable and expeditious access for audit purposes hereunder. Failure to maintain books of accounts and records as required under this Section 5.10 shall be deemed to be a material breach of this Agreement. The obligations arising under this Section 5.10 shall survive the expiration or termination of this Agreement.

5.11 Audit Requirements. Within one hundred twenty (120) days after the close of each Agreement Year, Concessionaire shall provide to the City an audit report on all Gross Revenues from operations at the Airport and from the operations of any of Concessionaire's subsidiaries, contractors, management companies, or related or affiliated companies involved in providing services covered by this Agreement. The audit report shall cover the preceding Agreement Year. The audit report shall be prepared by an independent Certified Public Accountant, not a regular employee of Concessionaire, in accordance with Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants or any successor agency thereto or PCAOB, as appropriate. The



audit report shall include the following:

- A. Schedule of all revenues by category and month and a schedule of the payments made to City.
- B. Schedule summarizing the total number of vehicle rental transactions and any sales taxes collected by month.
- C. The total amount of Concession Fees that have been paid to City in accordance with this Agreement.
- D. The audit report shall include an opinion on the schedule of all revenues by category and by month, the schedule of payments to City, and the calculation of Concession Fees during the period.

Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion, as defined by the American Institute of Certified Public Accountants or any successor agency thereto, shall be deemed to be a material breach of this Agreement. If the audit report indicates that the amount of Concession Fees (together with any sales taxes thereon) due and owing for any Agreement Year is greater than the amount paid by Concessionaire to City during such Agreement Year, the Concessionaire shall pay the difference to City with the audit report. If amount of Concession Fees actually paid by Concessionaire to City during any Agreement Year exceeds the Concession Fees due and owing for such Agreement Year, the City shall credit the overpayment in the following order: (i) against any past due amounts owed to City by Concessionaire, including interest and late fees; (ii) against currently outstanding, but not yet due, Concession Fees owed to City by Concessionaire; (iii) against future Concession Fees which will become due during the succeeding Agreement Year; and (iv) against any other sums payable by Concessionaire to City. Notwithstanding the foregoing, in the event of an overpayment by Concessionaire during the final Agreement Year, the City shall credit the overpayment against any remaining amounts owed to City, including interest and late fees, and refund to Concessionaire any overpayment amount in excess of the credit.

- 5.12 Audit by City. Notwithstanding any provision in this Agreement to the contrary, Executive Director of Aviation or its representative(s) may at any time perform audits of all or selected operations performed by Concessionaire under the terms of this Agreement. In order to facilitate the audit performed by City, Concessionaire agrees to make suitable arrangements with the Certified Public Accountant who is responsible for preparing the audit report on behalf of Concessionaire pursuant to Section 5.11 to make available to City's representative(s) working papers that deal with calculations and testing relevant to the audit performed by the Certified Public Accountant. City or its representative(s) shall make available to Concessionaire a copy of the audit report prepared by or on behalf of City. Concessionaire shall have thirty (30)

days from receipt of the audit report from City or its representative(s) to provide a written response to the City regarding the audit report. Concessionaire agrees that failure of Concessionaire to submit a written response to the audit report in accordance with the requirements of this Section 5.12 shall constitute acceptance of the audit report as issued.

If any audit performed by or on behalf of the City for any period discloses an under reporting of Gross Revenues, Concessionaire shall forthwith report and pay to City amounts due plus interest from the date upon which the correct Concession Fee report and payment originally was to be made at the City's then current interest rate charged on overdue accounts, or the highest amount of interest allowed by law if said interest is deemed usurious. If any audit discloses an under reporting by three (3) percent or more for any period, Concessionaire shall reimburse the City for the cost of said audit. The rights granted to the City herein shall be cumulative and in addition to any and all rights and remedies the City may have at law, equity or otherwise by the terms of this Agreement.

- 5.13 Internal Controls. Concessionaire shall establish and maintain a reasonably adequate system of internal controls, including a revenue control system. Concessionaire shall require its outside auditors providing the audited statement and opinion required by Section 5.11, to notify Concessionaire and the City of any weakness in Concessionaire's system of internal control coming to the auditor's attention during the course of said audit. Concessionaire shall take the appropriate action to remedy any weakness reported.
- 5.14 Concession Pass-Through. The Concessionaire acknowledges that the percentage fee payments by Concessionaire to the City under this agreement are for the Concessionaire's privilege to use the Airport facilities and access the Airport market and are not fees imposed by the City upon Concessionaire's customers. The City does not require, but will not prohibit, a separate statement of and charge for the percentage fee on customer invoices or rental agreement (Recovery Fee), provided that such Recovery Fee is in full compliance with California laws and regulations and meets the following conditions:
- A. Such Recovery Fee must be titled "Concession Recovery Fee" "Concession Recoupment Fee" or such other appropriate name.
  - B. Recovery Fee must be shown on the customer rental agreement and invoiced with other Concessionaire charges (i.e. above the line).
  - C. Recovery Fee as stated on the invoice and charged to the customer shall be no more than eleven and one-tenths percent (11.11%) of Gross Revenues and shall be specifically included in the Definition of Gross Revenues for purposes of remittance to the City.
  - D. Concessionaire shall neither identify, treat, nor refer to the Recovery Fee

as a tax, nor imply that City is requiring pass through of such fee.

- E. Concessionaire shall comply with all applicable laws, including Federal Trade Commission requirements and any commitment to or contractual obligation by Concessionaire with any group of State Attorneys General.

5.15 Customer Facility Charge.

- A. During the Term of this Agreement, City will impose, and the Concessionaires will collect and remit to City, a Customer Facility Charge (CFC). The amount of each CFC shall be payable directly by each of the customers of the Concessionaire as a separately identified charge for rental car transaction entered into by said customer. The CFC amount for any of Concessionaire's automobiles contracted for or picked up at the Airport pursuant to a customer contract will be in the amount authorized by applicable California legislation. The proceeds from the CFC shall be used for the planning, design and construction of common rental car facilities. The CFC shall remain in effect until terminated by City in its sole discretion. The current CFC rate is \$10.00 (ten dollars) per transaction. City may at its own discretion, with the input of its Concessionaires as required by law, change the CFC rate.
- B. Collection of Customer Facility Charges. Concessionaire shall separately state the amount of the CFC in all of its customer contracts and collect the CFC from its customers on behalf of City. Concessionaire agrees that the CFC is not income, revenue or any other asset to Concessionaire; that Concessionaire has no ownership or property interest in such CFCs; and that Concessionaire hereby waives any claim to a possessory or ownership interest in the CFCs. Concessionaire agrees that it holds such CFCs in trust for the benefit of the City, and that the City (or a trustee on its behalf) has complete possessory and ownership rights to such CFCs.
- C. Reporting and Audit. Concessionaire shall report to City by the twentieth (20<sup>th</sup>) day of each month the number of transactions that it processed during the preceding month, and at such time remit to City all amounts it has collected as CFCs from its customers during the preceding month without deduction or set-off. Concessionaire shall be responsible for the amounts of any CFCs that it does not collect from its customers. Any such amounts not remitted by the twentieth (20<sup>th</sup>) day of the month shall be assessed as a fee payable by Concessionaire equal to two (2%) of such amount per month until paid. City shall have the right to audit the records of Concessionaire, pursuant to Section 5.12 of this Agreement, to assure compliance with this provision. Further, if City determines that a Concessionaire has failed for any reason to collect and remit the proper

amount of CFCs for any fiscal year, such Concessionaire will be required to pay to City an amount equal to the amount of any such deficiency applicable to its Customer Contracts for the fiscal year in question plus the amount of any fees and penalties owed pursuant to the terms of this Agreement.

- D. Use of CFC Proceeds. City will apply and use the amounts of CFCs remitted to it as follows:

**First:** to the payment of debt service on debt obligations incurred by City in connection with the planning, design and construction of common rental car facilities.

**Second:** to repay City for the annual amortization of any amounts of City's funds expended on or invested in capital rental car facilities;

**Third:** to fund a reserve against any future shortfalls in CFC revenues;

**Fourth:** to make up any deficiencies in the amount of CFCs collected in prior years or to defray all or part of a future fiscal year's CFC expenditure requirement;

**Fifth:** to decrease or prepay the amounts of any indebtedness that City has incurred in connection with the planning, design and construction of common rental car facilities;

**Sixth:** to be held in reserve to pay the cost of future improvements to common rental car facilities or anything else allowed by the law.

- 5.16 Performance Guarantee. Concessionaire shall be required to comply with the following performance security requirement prior to commencement of activities:

Prior to commencing operations at the Airport pursuant to this Agreement, Concessionaire must post with the City, and Concessionaire must thereafter continuously maintain for the entire term, a performance bond or such other guarantee form acceptable to the Executive Director of Aviation and City Attorney, equal to fifty percent (50%) of the dollar value of its Minimum Annual Guarantee for the term of the concession agreement to cover Concessionaire's performance of all of its obligations under this Agreement for the entire term. If Concessionaire elects to submit a performance bond, the performance bond to be provided by Concessionaire and its surety shall be in a form acceptable to the City. The surety company shall be licensed to do business in California, and shall be otherwise acceptable to the City. Concessionaire shall be responsible for paying all required bond premiums.

Such Performance Bond shall not contain any exclusion or condition based on a time-period for the discovery of, and the making of a claim for any loss which is less than one year after the expiration date of such Performance Bond. In other

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words, the Performance Bond shall allow the City to make a claim under the Bond, for losses which totally or partially occurred during the period of such Bond. Such extended claim discovery and/or claim reporting period shall be for a period of at least one year or longer after the expiration of such Bond. Such Bond shall not contain any wording that would allow for the cancellation or reduction in coverage under the Bond, other than at the listed expiration date, provided that 30-days notice of such expiration is given to the City before termination of coverage at any such expiration date.

An annually renewable Performance Bond may be substituted by the Concessionaire each year in lieu of providing a single Bond.

The performance bond shall be payable to the City in the event Concessionaire defaults in any of its monetary or other obligations to the City hereunder.

## **ARTICLE 6**

### **CONSTRUCTION OF IMPROVEMENTS**

- 6.01 Required Improvements. Concessionaire shall, at its sole cost and expense, install all improvements and trade fixtures necessary and customary for the operation of a rental car concession within the assigned Designated Premises in accordance with the requirements of this Section 6.
- 6.02 Alterations, Improvements or Additions. Concessionaire shall make no alterations, additions or improvements to the assigned Designated Premises, without the prior written approval of the Executive Director of Aviation, which approval may be granted or withheld by the Executive Director of Aviation at the Executive Director's sole discretion.
- 6.03 Construction Requirements. All improvements, alterations and additions made by Concessionaire to the assigned Designated Premises shall be of high quality and meet all applicable Federal, State and local laws, regulations, rules and requirements. Prior to the commencement of construction, one (1) full and complete set of plans and specifications for all improvements, alterations and/or additions shall be submitted to the Executive Director of Aviation for approval, which approval may be granted or withheld in the Executive Director's sole discretion. All improvements shall be completed in accordance with construction standards established by the Airport and the plans and specifications approved by the Airport.
- 6.04 Construction Insurance/Indemnification Requirements. Concessionaire shall be required to carry comprehensive public liability insurance during construction per Article 10; if an independent contractor does the construction, the contractor in

Concessionaire and City's name shall procure insurance. All insurance shall be in the limits and coverage's acceptable to City's Risk Management Department. Concessionaire shall indemnify and hold City harmless for any and all claims, demands, damages, costs or expenses of any nature, including defense costs by reason of construction or alteration by Concessionaire.

- 6.05 No Liens. Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by City to subject the estate of City to liability under the Construction Lien Law of the State of California. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by City, Concessionaire shall file a notice satisfactory to City in the Public Records of Palm Springs, California stating that the City's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the assigned Designated Premises or other City property in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim, or transfer same to security within ten (10) days, City may do so and thereafter charge Concessionaire, and Concessionaire shall promptly pay to City upon demand all costs incurred by City in connection with the satisfaction or transfer of such claim, including, but not limited to, attorney's fees.
- 6.06 As-Built Drawings. Within ninety (90) days after completion of all work, Concessionaire shall furnish to the City, at no charge, a complete set of as-built drawings. Concessionaire agrees that, upon the request of the City, Concessionaire will inspect the assigned Designated Premises jointly with the City to verify the as-built drawings.

## **ARTICLE 7**

### **ALTERATIONS AND IMPROVEMENTS**

- 7.01 Title to Improvements. All fixtures and improvements that are constructed or placed upon the assigned Designated Premises, excluding furnishings, equipment and trade fixtures, (the Improvements) shall become the absolute property of City upon termination or expiration of this Agreement and City shall have every right, title, and interest therein, free and clear of any liens, mortgages encumbrances.
- 7.02 Removal of Improvements. City shall be entitled, at its option, to have the assigned Designated Premises returned to City free and clear of some or all of the Improvements at Concessionaire's sole cost and expense. In such event, City shall provide timely notification to Concessionaire of its election to require removal of Improvements and, to the extent possible, City shall notify

Concessionaire at least sixty (60) days prior to the expiration or termination of this Agreement. Concessionaire shall have sixty (60) days from date of notice within which to remove the Improvements. If Concessionaire fails to remove the Improvements, City may remove the Improvements. Concessionaire agrees that Concessionaire shall fully assume and be liable to City for payment of all costs of removal of the Improvements (whether direct or indirect) incurred by City, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall be due and payable City within thirty (30) days from the date of the written notice provided by the Airport. The obligations arising under this Article 7 shall survive the expiration or termination of this Agreement.

The Concessionaire shall not be required to remove any permanent improvements, including, but not limited to demising walls. Concessionaire shall only be required to remove personal property and trade fixtures and shall be required to leave the Premises in a clean and good condition, ordinary wear and tear excepted.

- 7.03 Maintenance Service Facility Improvements. Notwithstanding the provisions of Section 7.02, Concessionaire hereby acknowledges that it is and will continue to be the owner and operator of all improvements, alterations, fixtures and appurtenances installed at the assigned Maintenance Service Facility Space, including, but not limited to, the Underground Storage Tank System. Unless a new Agreement is entered into with Concessionaire for the assigned Maintenance Service Facility Space, upon the expiration or sooner termination of this agreement, Concessionaire hereby agrees to either (i) sell said improvements, alterations, fixtures and appurtenances including, but not limited to, the Underground Storage Tank System, to a car rental Concessionaire that the city has approved to enter into a car rental concession agreement with City, which sale shall be at a price mutually agreeable to Concessionaire and such car rental Concessionaire and which sale shall be effective on the expiration or sooner termination of this Agreement; or (ii) remove, at Concessionaire's sole cost and expense, such improvements, alterations, fixtures and appurtenances, including the Underground Storage Tank System, from the assigned Maintenance Service Facility Space within thirty (30) days of the expiration or sooner termination of this Agreement and to assess, remove, remediate, cleanup, monitor, dispose of and mitigate any Covered Hazardous Materials released on or in the assigned Maintenance Service Facility Space as more specifically provided in Section 16.01, to closure from all appropriate regulatory agencies. If Concessionaire elects to remove said improvements, Concessionaire shall turn over the assigned Maintenance Service Facility to City in the condition the assigned Maintenance Service Facility existed prior to the installation of said improvements, reasonable wear and tear excepted. Upon the last day of the term of this Agreement, Concessionaire shall surrender the Designated Premises to City in the same condition as received, and in a good,

sanitary and clean condition, reasonable use and wear thereof excepted.

**ARTICLE 8**  
**OBLIGATIONS OF CONCESSIONAIRE**

- 8.01 Maintenance and Repair. Concessionaire shall, at its sole cost and expense, maintain the assigned Designated Premises and improvements and appurtenances thereto, in a safe and presentable condition consistent with good business practice, industry standards and in accordance with all applicable Federal, State and local laws, regulations and rules. Concessionaire shall repair all damages to the assigned Designated Premises caused by its employees, patrons, invitees, suppliers of service, or furnishers of material, or any other person whomsoever, and all damages caused by or resulting from or in any way arising out of Concessionaire's operations thereon or Concessionaire's use of the assigned Designated Premises. Concessionaire shall maintain and repair all equipment thereon. Concessionaire shall repaint and refurbish its facilities as may be deemed necessary in the reasonable discretion of the City.

The City may inspect the assigned Designated Premises to identify items in need of maintenance or repair and report in writing to the Concessionaire those items in need of maintenance and repair. Concessionaire agrees that it shall abide by the decision of the City with respect to any and all such maintenance or repair. The City shall reasonably judge Concessionaire's performance under this Section 8.01 as to the quality of maintenance and repair. Upon written notice by the City to Concessionaire, Concessionaire shall perform the required maintenance or repair in accordance with the City's decision. If Concessionaire has not made a good faith effort, as determined by the City, to begin to perform the maintenance or repair within ten (10) days after receipt of the City's written notice and to diligently pursue the same to completion, City shall have the right to enter the assigned Designated Premises and perform the necessary maintenance or repair, and Concessionaire hereby expressly agrees that it shall fully assume and be liable to City for payment of the costs thereof, plus twenty-five percent (25%) administrative overhead. Such maintenance or repair cost, plus the administrative cost, shall be due and payable within thirty (30) calendar days of the City's billing therefore.

8.02 Concession Service Standards.

- A. Subject to the terms and conditions of this Agreement, Concessionaire shall operate and manage the Concession for the purpose of providing rental car services to the traveling public and shall conform in all respects to all applicable Federal, State and local laws, regulations and rules.
- B. The assigned Designated Premises shall be staffed and operated seven



(7) day per week, commencing not less than thirty (30) minutes prior to the first scheduled flight and ending not less than thirty (30) minutes after the last scheduled flight, except as otherwise approved in writing by the Executive Director of Aviation.

- C. Concessionaire shall cause its employees to conduct themselves at all times in a courteous manner towards the public or other tenants and to provide prompt, efficient and safe service.
- D. Concessionaire shall employ a sufficient number of trained personnel to handle customer service, vehicle maintenance, car handling and office or administrative duties incidental to the operation of the car rental concession granted hereunder. Concessionaire must have sufficient personnel to handle peak season rental car rental and return activities in order to keep terminal building queuing from blocking passenger flow and to keep rental return vehicles from blocking public roadways.
- E. Concessionaire shall be responsible for the conduct, demeanor and appearance of its officers, agents, employees and representatives. Attendants and other employees, while on duty, shall wear uniforms which shall be subject to approval by the Executive Director of Aviation who shall take due regard of the existence of franchise agreements specifying uniforms. Uniforms shall, at all times, be maintained in a neat, orderly and clean condition.
- F. Concessionaire shall at all times during the term of this Agreement maintain at the Airport, at its sole cost and expense, an adequate number of automobiles for rental to meet all reasonably foreseeable demands by passengers and other users. Said automobiles shall not be older than two years previous to the current model year. All automobiles shall be clean, neat and attractive inside and out and be maintained in good mechanical condition. The City reserves the right to disapprove any automobile provided by Concessionaire for public use. The City shall submit notice in writing of its disapproval and the reasons thereof to the Concessionaire. Concessionaire shall forthwith withdraw said unsatisfactory automobile from its Airport rental fleet.
- G. Concessionaire recognizes that from time-to-time the City may cause quality assurance reviews of the Concession to be conducted. Such reviews may include inspection of the assigned designated premises used in the operation of the Concession. Concessionaire agrees to fully cooperate in such quality assurance reviews and to immediately take whatever actions are necessary to correct any deficiencies.

#### 8.03 Concession Operational Standards.

- A. Concessionaire shall furnish service on a fair, reasonable and

nondiscriminatory basis to all users of the Airport. Concessionaire shall furnish good, prompt, courteous and efficient service adequate to meet all reasonable demands for its service at said Airport. Concessionaire shall keep the Designated Premises in a safe, clean, orderly and inviting condition at all times, satisfactory to the City. All services and property sold must conform in all respects to federal, state, county and municipal laws, ordinances, and regulations.

- B. Concessionaire shall not, through its officers, agents, representatives or employees, divert or cause to be diverted any prospective concession patrons from the Airport to another location. If any such diversion does occur, the diverted transaction shall be deemed to have occurred at the Airport and the cost of such diverted rental shall be included in Concessionaire's Gross Revenues.
- C. Concessionaire shall not permit its employees nor any other person under its control to engage in open or public disputes or conflicts. Concessionaire shall be responsible for the conduct, demeanor and appearance of its officers, agents, employees and representatives. Attendants and other employees, while on duty, shall wear uniforms which shall be subject to approval by the Executive Director of Aviation who shall take due regard of the existence of franchise agreements specifying uniforms. Uniforms shall, at all times, be maintained in a neat, orderly and clean condition. Customer service personnel and attendants shall be trained by Concessionaire to render a high degree of courteous and efficient service, and it shall be the responsibility of the Concessionaire to maintain close supervision over said personnel to assure the rendering of a high standard of service to the public and the patrons of the car rental concession. Upon objection from the Executive Director of Aviation concerning the conduct, demeanor or appearance of such persons, Concessionaire shall take all steps necessary to remove the cause of the objection.
- D. The assigned Designated Premises shall be operated and maintained in a safe, clean, orderly and inviting condition at all times.
- E. Except such advertising and promotional items as may be purchased from the Airport's advertising Concessionaire or which the Executive Director of Aviation has previously approved as permanent signage to be installed within the assigned Designated Premises, Concessionaire shall be strictly prohibited from posting any signage which advertises inducements, including, but not limited to, automobile rental rates, fuel charges, makes and models of automobiles, automobile equipment and amenities, availability of automobiles and any other type of promotional information or incentive.
- F. Concessionaire shall not permit its agents or employees to engage in the

overt or offensive solicitation or pressure sales tactics for rentals or related services offered by Concessionaire on or about the Airport. The City shall be the sole judge as to whether the conduct of Concessionaire's representative constitutes a violation of this subsection and, upon notice from the Executive Director of Aviation, Concessionaire shall take all steps necessary to eliminate the offensive conduct or condition. This restriction shall include the approaching of any person by an employee or any other representative of Concessionaire for the purpose of offering information regarding Concessionaire or conducting surveys. This restriction shall apply at all times and at all Terminal locations.

- G. The public access area located in front of Concessionaire's reservation counter may be cordoned-off, at the option of Concessionaire, for the purpose of customer queuing. The area is included in the assigned Designated Premises and therefore is considered in the calculation of Facility Rental. The public access area extends the length of Concessionaire's reservation counter and ten feet (10") from the front of the counter. Such use of the public access area requires that Concessionaire utilize only such barrier stanchions as specifically designated by the Executive Director of Aviation and that the placement and condition of such stanchions be maintained in a neat and orderly manner and in good repair at all times.
- H. Concessionaire shall not represent itself as a provider of for-hire transportation services nor render services, which are customarily provided by the operators of such transportation services.
- I. Nothing contained herein shall require Concessionaire to own, unconditionally or otherwise, vehicles used in the operation of the Concession; provided, however, all vehicles used in the operation of the Concession shall be owned, leased, or rented by Concessionaire or an affiliate. Concessionaire may obtain such vehicles from any supplier.
- J. All contracts, advertising, solicitation and publicity regarding Concessionaire shall be made in Concessionaire's lawful trade/brand name and shall not in any manner misrepresent the relationship between City and Concessionaire nor City's interest herein.
- K. Concessionaire shall make service available at the Customer Service Counter Space year-round seven days a week commencing not less than thirty (30) minutes prior to the first scheduled flight and ending not less than thirty (30) minutes after the last scheduled flight. Automobile rentals and customer service shall be available through staffing of the Customer Service Counter Space. The Executive Director of Aviation shall have the right, upon written request from Concessionaire, to approve changes to the above referenced business hours, if he, at his sole discretion, determines such change of staffing hours is necessary.

- L. The day-to-day operation and management of the Concession shall be under the direct supervision of an active, qualified and competent manager who shall at all times be subject to the direction and control of Concessionaire. Prior to the Commencement Date, Concessionaire shall designate in writing to the City the name, address and telephone number of the manager who at all times shall be the authorized representative of Concessionaire for all matters relating to the Concession. Concessionaire shall provide written notice to the City of any change in its manager within seven (7) days of the change and shall include any change of address or telephone number.
- M. Concessionaire, its agents, employees and suppliers shall not block any areas used for ingress and egress by Airport traffic and shall not interfere with the activities of City, its agents, employees, any other Airport Concessionaires or tenants, or any other authorized person.
- N. The services provided by Concessionaire shall be strictly limited to those permitted herein. Concessionaire shall not engage in any other business activity from the assigned Designated Premises or any other location on the Airport without benefit of a validly executed agreement entered into with City for the provision and conduct of such other business activity.
- O. Ready Return Spaces described in Section 2.08.A are solely for the parking of Lessee's automobiles available for rental and the return by customers of automobiles rented. No storing, servicing or washing of automobiles shall be permitted in the parking spaces area. Parking of vehicles other than automobiles complying with Section 8.02 shall not be permitted upon the Concession Premises: this includes trucks, jitneys, junk cars, etc.
- P. Concessionaire may also, at its option, provide car rental service for customers at Airport Fixed Base Operators, who have been authorized by Lessor to engage Airport Car Rental Concessionaires for this purpose; provided that Concessionaire shall so notify City in writing of its intent to do so. Gross receipts derived from such car rentals shall be included in the calculation of the monthly Percentage Fee payable to City pursuant to Section 5.01 of this Agreement.
- Q. Concessionaire shall provide, install and maintain, at its sole cost and expense, within the Assigned Premise, office furnishings, fixtures and communication systems and equipment as may be necessary for the effective and efficient operation of the Concession.
- R. The Maintenance Service Facility Space described in Section 2.08.D shall be maintained by Concessionaire in good order and repair. The area shall be used solely for the servicing of its vehicles rented in the course of business under this Lease, and for no other purpose. Due to the close

proximity of the Service Facility to an abutting residential area, the Concessionaire shall implement operational and functional procedures that mitigate noise generating activities, related horn honking, vacuuming, engine revving, car locator alarms, and tire squealing.

- S. Concessionaire shall diligently and adequately provide for the trimming of the trees on its Designated Premises. Such trees shall be maintained in such a manner that they are trimmed back to the edge of the curb at all times.
- T. Concessionaire shall not, under any circumstances or at any time, allow keys to be left in vehicles in the return area of the ready/return lot.

8.04 Utilities. City shall provide electricity and water used or consumed in or on the assigned Designated Premises located at the Terminal Building. Concessionaire will provide telephone, computer service at its own cost. Concessionaire shall pay, before delinquency, all charges for electric, gas, water, sewer, telephone, computer and all other utility services used in, upon or about the assigned Maintenance Service Facility Space.

8.05 Trash and Refuse. Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the assigned Designated Premises and shall provide for its timely removal to the central collection point to be provided by the City. Concessionaire shall provide and use suitable covered fireproof receptacles for all trash and other refuse on or in connection with the assigned Designated Premises. Piling of boxes, cartons, barrels, or other similar items in view of a public area shall not be permitted. Concessionaire shall make a reasonable attempt at recycling all trash if practical.

Transporting Merchandise, Trash, and refuse associated with operation of the car rental concession hereunder to and from the assigned Designated Premises, Concessionaire shall use only carts, vehicles, or conveyances that are sealed and leak proof and that are equipped with wheels suitable for operating on carpets without damage hereto.

8.06 Tree Maintenance. Concessionaire shall be responsible for the ongoing tree trimming and maintenance of the trees located curbside at the assigned Maintenance Service Facility to eliminate public road obstruction.

8.07 Cleanliness of Premises. The assigned Designated Premises and all equipment and materials used by Concessionaire shall at all times be clean, sanitary and free from rubbish, refuse, food scraps, garbage, dust, dirt, rodents, insects, and other offensive or unclean materials. The Concessionaire will not sell or permit the sale of any food or beverages on or from the assigned Designated Premises

The City shall reasonably determine whether Concessionaire is in compliance with the obligations as provided for herein and shall provide Concessionaire with written notice of any violations of Concessionaire's obligations. Immediately upon Concessionaire's receipt of the City's written notice of violation, Concessionaire shall commence such corrective action as required by City or as may be necessary to remedy such non-compliance to satisfaction of City. If corrective action is not initiated within ten (10) days of receipt of City's written notice and pursued to completion in a diligent manner, the City may cause the same to be accomplished and Concessionaire hereby expressly agrees that Concessionaire shall assume and be liable to City for payment of all such costs, plus twenty-five percent (25%) for administrative overhead. Such costs, plus the administrative cost, shall constitute additional rent and shall be due and payable within thirty (30) consecutive days from the City's billing therefore.

- 8.08 Security. Concessionaire acknowledges and accepts full responsibility for the security and protection of the assigned Designated Premises and any and all inventory and equipment now existing or hereafter placed on or installed at the Airport, and for the prevention of unauthorized access to its facilities and expressly agrees to comply with all rules and regulations of City and of any and all other governmental entities that now or may hereafter have jurisdiction over such security. Concessionaire fully understands that the police security protection provided by City is limited to that provided to any other business situated at the Airport, and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the assigned Designated Premises shall be the sole responsibility of Concessionaire and shall involve no cost to City.
- 8.09 Airport Security Program. Concessionaire agrees to observe all security regulations and other requirements of any agency of the Federal government, including, but not limited to, the FAA and TSA, applicable to Concessionaire, as such regulations or requirements have been or may be amended, including without limitation, TSA Part 1542 of the Code of Federal Regulations and Title 49, Part 1500 of the Code of Federal Regulations. Concessionaire agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by City, and to take such steps as may be necessary or directed by City to insure that sublessees, employees, invitees and guests observe these requirements. Concessionaire shall conduct background checks of its employees to the extent required by any Federal, State or local law or if, to the extent permitted by law, required by the City. The City shall have the right to require the removal or replacement of any employee of Concessionaire at the Airport that the City has reasonably determined may present a risk to public safety or the security of the Airport. If as a result of the acts or omissions of Concessionaire, its sublessees, employees,

invitees or guests, City incurs any fines and/or penalties imposed by the FAA or TSA; any expense in enforcing the regulations of the FAA or TSA or the rules or regulations of City; or any expense in enforcing the Airport Security Program, then Concessionaire agrees to pay to City all such costs and expenses, including all costs of administrative proceeding, court costs, and attorneys fees and all costs incurred by City in enforcing this provision. Concessionaire further agrees to rectify any security deficiency or other deficiency as may be determined by City, the FAA or TSA. In the event Concessionaire fails to remedy any such deficiency, City may do so at the cost and expense of Concessionaire. Concessionaire acknowledges and agrees that City may take whatever action is necessary to rectify any security deficiency or any other deficiency identified by City, the FAA or TSA.

## **ARTICLE 9 SIGNAGE**

9.01 Signage. City shall install all signs necessary or required for the direction of pedestrian and vehicular traffic on the sidewalks, ways and roads within the Terminal Building and Designated Premises. All directional signs in the Terminal Building, including any additions thereto, shall be installed by the City. No signs or advertisements pertaining to Concessionaire's car rental business shall be installed or maintained outside of or within the Designated Premises until Concessionaire has submitted to the Executive Director of Aviation for approval, in writing, such drawings, sketches, design dimension and type and character of such signs and advertisements proposed to be placed therein or thereon and any payments, conditions, restrictions or limitation in respect to the use thereof stated by the Executive Director of Aviation in his written approval thereof shall become conditions hereof as if set forth herein at length.

## **ARTICLE 10 INSURANCE**

Concessionaire shall, at its sole expense, maintain in full force and effect at all times during the Term of this Agreement, the insurance limits, coverages and endorsements required herein. Neither the requirements contained in this Article 10 nor City's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under this Agreement.

10.01 Commercial General Liability. Concessionaire, at its expense, shall maintain fire and extended coverage insurance written on a per occurrence basis on its improvements, appurtenances, alterations, trade fixtures, equipment, personal property and inventory within the Designated Premises from loss or damage to

the extent of their full replacement value. Concessionaire shall have the right to self-insure the items specified in this Section 10.01 and Sections 10.02, 10.03, and 10.04, so long as Concessionaire maintains a net worth satisfactory to the City's Risk Manager. The City's Risk Manager may require net worth documentation up to and including an audited financial statement.

- 10.02 Comprehensive General Liability. During the entire term of this Agreement, the Concessionaire shall, at the Concessionaire's sole cost and expenses, but for the mutual benefit of City and Concessionaire, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Designated Premises and on any areas directly adjacent to the Designated Premises written on a per occurrence basis in an amount not less than either (i) a combined single limit of THREE MILLION DOLLARS (\$3,000,000.00) for bodily injury, death, and property damage or (ii) bodily injury limits of \$500,000.00 per person, \$1,000,000.00 per occurrence and \$1,000,000.00 products and completed operations and property damage limits of \$200,000.00 per occurrence and \$500,000.00 in the aggregate.
- 10.03 Worker's Compensation. Concessionaire shall, at the Concessionaire's sole cost and expense, maintain a policy of worker's compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Concessionaire and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Concessionaire in the course of conducting Concessionaire's business in the Designated Premises.
- 10.04 Automobile Liability. Concessionaire shall, at Concessionaire's sole cost and expense, maintain a policy of automobile liability insurance written on a per occurrence basis in an amount of not less than THREE MILLION DOLLARS (\$3,000,000.00) combined single limit covering all owned, non-owned, leased and hired cars.
- 10.05 General Provisions. All of the policies of insurance required to be procured by Concessionaire pursuant to this Article shall be primary insurance and shall name the City, its officers, employees and agents as additional insureds. The insurers shall waive all rights of contribution they may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing 30 days prior written notice by registered mail to the City. Prior to the effective date of the Agreement and at least 30 days prior to the expiration of any insurance policy, Concessionaire shall provide City with certificates of insurance or appropriate insurance binders evidencing the above insurance coverages written by insurance companies acceptable to City, authorized and



licensed to do business in the State of California and rated A: VII or better by Best's Insurance Guide. In the event the Risk Manager of City (Risk Manager) determines that (i) the Concessionaire's activities in the Designated Premises create an increased or decreased risk of loss to the City, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverages be obtained, Concessionaire agrees that the minimum limits of any insurance policy required to be obtained by Concessionaire may be changed accordingly upon receipt of written notice from the Risk Manager; provided that Concessionaire shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within ten (10) days of receipt of notice from the Risk Manager. City and Concessionaire hereby waive any rights each may have against the other on account of any loss or damage occasioned by property damage to the Designated Premises, its contents, or Concessionaire's trade fixtures, equipment, personal property or inventory arising from any risk generally covered by insurance against the perils of fire, extended coverage, vandalism, malicious mischief, theft, sprinkler damage, and earthquake sprinkler leakage. Each of the parties, on behalf of their respective insurance companies insuring such property of either City or Concessionaire against such loss, waives any right of subrogation that it may have against the other. The foregoing waivers of subrogation shall be operative only so long as available in California and provided further that no policy is invalidated thereby.

#### **ARTICLE 11** **RELATIONSHIP OF THE PARTIES**

Nothing contained herein shall be deemed or construed to the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of fees nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of the City and Concessionaire.

#### **ARTICLE 12** **INDEMNIFICATION**

Concessionaire, as a material part of the consideration to be rendered to City under this Agreement, hereby waives all claims against City for damage to equipment or other personal property, trade fixtures, or improvements in, upon or about the Designated Premises and for injuries to persons in or about the Designated Premises, from any cause arising at any time. Concessionaire agrees to indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless

from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein claims or liabilities) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of Concessionaire, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the use of the Designated Premises by Concessionaire or its employees and customers, or arising from the failure of Concessionaire to keep the designated premises in good condition and repair, as herein provided, or arising from the negligent acts or omissions of Concessionaire hereunder, or arising from Concessionaire's negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement (including, but not limited to, the failure to perform the remediation obligations specified in Section 16.02), or arising from the presence or threatened presence of any hazardous material on or about the Designated Premises caused or exacerbated by Concessionaire, and excepting any presence of any pre-existing hazardous material on or about the Designated Premises directly caused by a party other than Concessionaire, whether or not there is concurrent passive or active negligence on the part of the City, its officers, agents or employees, but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents or employees, who are directly responsible to the City, and in connection therewith:

- (a) Concessionaire will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorney's fees incurred in connection therewith;
- (b) Concessionaire will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Concessionaire hereunder; and Concessionaire agrees to save and hold the City, its officers, agents, and employees harmless therefrom;
- (c) In the event the City, its officers, agents, or employees are made a party to any action or proceeding filed or prosecuted against Concessionaire for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Concessionaire hereunder, Concessionaire agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorney's fees.

**ARTICLE 13**  
**DAMAGE OR DESTRUCTION OF PREMISES/IMPROVEMENTS**

13.01 Concessionaire's Obligations. Concessionaire hereby assumes full responsibility for the condition of the assigned Designated Premises and character, acts and conduct of all persons admitted to the assigned Designated Premises by or with the actual or constructive consent of Concessionaire or by or with the consent of any person acting for or on behalf of Concessionaire. If the assigned Designated Premises, improvements, or any part thereof, are damaged in any way whatsoever, whether by act of God, by the act, default or negligence of Concessionaire, or of Concessionaire's members, agents, employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the assigned Designated Premises by Concessionaire or otherwise, Concessionaire shall, at its sole cost and expense, restore the assigned Designated Premises to the condition existing prior to such damage. Concessionaire shall commence such restoration within thirty (30) days and shall diligently pursue such restoration to completion. Concessionaire shall make such repairs, replacements or rebuilding in accordance with the construction requirements contained herein and as established by the City. If Concessionaire fails to restore the assigned Designated Premises as required above, City shall have the right to enter the assigned Designated Premises and perform the necessary restoration, and Concessionaire hereby expressly agrees that it shall fully assume and be liable to City for payment of the costs therefore, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within thirty (30) days from date of written notice therefore.

13.02 Right to Cancel. If any of the improvements on the assigned Designated Premises are damaged or destroyed in whole or in part by fire or other casualty, Concessionaire may, subject to approval of City, be relieved of the obligation to repair, replace or rebuild the same and have the right to cancel this Agreement. In such event, Concessionaire shall provide City written notice within thirty (30) days after the date of any such damage or destruction and, upon approval by City, this Agreement shall terminate and the insurance proceeds received or receivable under any policy of insurance shall be paid to and retained by City. All fees and other sums due hereunder payable under this Agreement shall be prorated and paid to the date of such termination. The receipt and acceptance of insurance proceeds by City under this Article 13 will, except as provided in Article 13.03, relieve Concessionaire from any responsibility to restore the assigned Designated Premises to its former condition; provided, however, that Concessionaire expressly agrees, covenants and warrants that nothing herein shall serve to relieve Concessionaire of its liability for penalties or expenses associated with, arising out of, or in any way resulting from any impairment of or damage to the environment of the assigned Designated Premises, and Concessionaire further waives any claim against City for damages or compensation, should this Agreement be so terminated.

13.03 Insurance Proceeds. Upon receipt by Concessionaire of the proceeds of the insurance policy or policies, the proceeds shall be deposited in an escrow account approved by the City so as to be available to pay for the cost of such repair, replacement or rebuilding. Such proceeds shall be disbursed during construction to pay the cost of such work. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Concessionaire shall pay any additional sums required into the escrow account. If the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be remitted to Concessionaire.

13.04 Termination Upon Destruction or Other Casualty. In the event the assigned Designated Premises, or any part thereof, shall be destroyed or damaged in whole or in part by fire, water or any other cause, or if unforeseen occurrence shall likewise render the fulfillment of this Agreement by City impossible, then City, at its sole option, may terminate this Agreement. Concessionaire shall pay all fees, rental, and costs and satisfy all of its obligations hereunder arising prior to the time of such termination, whereupon this Agreement shall terminate and the parties shall be relieved of all further obligations hereunder other than those, which expressly survive expiration or termination of this Agreement. Concessionaire hereby waives any claim for damages or compensation should this Agreement be so terminated.

#### **ARTICLE 14** **TERMINATION OF AGREEMENT, DEFAULT, AND REMEDIES**

14.01 Termination. This Agreement shall automatically terminate and expire at the end of the Term.

14.02 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Concessionaire:

- A. The vacating or abandonment of the assigned Designated Premises by Concessionaire.
- B. The failure by Concessionaire to make payment of Concession Fees, Facility Rental or any other payment required to be made by Concessionaire hereunder, as and when due, where such failure continues for a period of three (3) days after written notice thereof from City to Concessionaire.
- C. The failure by Concessionaire to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Concessionaire, other than those described in paragraph B above, where such failure shall continue for a period of thirty (30) days after written

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notice from City to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than thirty (30) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.

- D. To the extent permitted by law, (i) the making by Concessionaire or any guarantor hereof of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy [unless, in the case of a petition filed against Concessionaire, the same is dismissed within sixty (60) days]; (iii) the appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located at the assigned Designated Premises or of Concessionaire's interest in this Agreement, where possession is not restored to Concessionaire within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Concessionaire's assets located at the assigned Designated Premises or of Concessionaire's interest in this Agreement, where such seizure is not discharged within thirty (30) days.
- E. The discovery by City that any information given to City by Concessionaire relating to this Agreement was materially false.

14.03 Remedies. In the event of any such material default or breach by Concessionaire, City may, with or without notice or demand, pursue any available right or remedy at law or equity including the right, at its option, to immediately terminate this Agreement, by giving written notice to that effect. Upon such termination, Concessionaire shall immediately surrender the assigned Designated Premises to City and shall cease its operations at the Airport. Such termination shall be without prejudice to City to any remedy for arrearages or payments due hereunder or breach of covenant or damages for the balance of the Concession Fees and other sums due hereunder, payable through the full Term of this Agreement, or any other damages or remedies whatsoever. Upon termination of this Agreement, City shall have the right to engage another Concessionaire to provide the services required hereunder for such period or periods at such fees and upon other terms and conditions as City may, in good faith, deem advisable.

14.04 Termination by Concessionaire. Concessionaire may terminate this Agreement, if Concessionaire is not in default of this Agreement (including, but not limited to, its payments to City hereunder), by giving City sixty (60) days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

- A. Issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Airport for Airport purposes and the remaining in force of such injunction for a period of at least ninety consecutive (90) days.
- B. The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of sixty (60) consecutive days after receipt from Concessionaire of written notice to remedy same provided, however, that if the nature of City's obligations is such that more than sixty (60) days are required for performance then City shall not be in default if City commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, a notice of cancellation shall not be of any force or affect if City has remedied the default prior to receipt of Concessionaire's notice of cancellation.
- C. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Concessionaire, for a period of at least ninety (90) consecutive days.

14.05 Termination by City. City may terminate this Agreement without cause by giving Concessionaire sixty (60) days advance written notice. If termination is without cause, City will reimburse Concessionaire the amortized cost of Improvements (as defined in Article 7.01) made by Concessionaire, if any, to the Designated Premises. The amortized cost of the improvements shall be determined in accordance with Generally Accepted Accounting Principles with a useful life not to exceed the term of the this Agreement. Concessionaire shall pay all fees, rental, and costs and satisfy all of its obligations hereunder arising prior to the time of such termination, whereupon this Agreement shall terminate and the parties shall be relieved of all further obligations hereunder other than those, which expressly survive expiration or termination of this Agreement.

14.06 Surrender of Assigned Designated Premises. Notwithstanding the obligations of Concessionaire and rights of City provided for herein, Concessionaire expressly agrees that upon termination or cancellation of this Agreement it shall immediately surrender the assigned Designated Premises to City free and clear of all personal property of Concessionaire. All repairs and obligations for which Concessionaire is responsible shall be completed by the earliest practical date prior to surrender. Any personal property of Concessionaire not removed in accordance with this provision may be removed and placed in storage by the City at the sole cost of Concessionaire. Failure on the part of Concessionaire to

reclaim same, as provided by law, shall constitute a gratuitous transfer of title to City for whatever disposition is deemed to be in the best interest of City.

**ARTICLE 15**  
**ASSIGNMENT AND TRANSFER**

Concessionaire shall not, in any manner, assign, transfer or otherwise convey an interest in this Agreement, or sublet the Designated Premises or any portion thereof (Assignment), without the prior written consent of the City, which consent may be granted or withheld by the City in its sole discretion. Any such attempted Assignment without City approval shall be null and void. In the event the City consents in writing to an Assignment, Concessionaire shall have the right to assign this Agreement, to the extent permitted by the City's consent to such Assignment, provided that the use of the Designated Premises shall be limited to the same uses as are permitted under this Agreement. Any permitted Assignment shall be subject to the same conditions, obligations and terms as set forth herein and Concessionaire shall be fully responsible for the observance by its assignees of the terms and covenants contained in this Agreement. Notwithstanding any provision of this Agreement to the contrary, in the event of an approved Assignment, Concessionaire shall remain primarily liable to City for fulfilling all obligations, terms, and conditions of this Agreement, throughout the Term of this Agreement. City may freely assign this Agreement at any time without the consent of Concessionaire, and upon assumption by such assignee of City's obligations hereunder, City shall be released from all liability and obligation arising hereunder after such assignment.

**ARTICLE 16**  
**LAWS, REGULATIONS, PERMITS AND TAXES**

16.01 Compliance with Laws.

Concessionaire shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Designated Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the City's General Plan and zoning ordinances, state and federal statutes or other governmental regulations now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Concessionaire in any action or proceeding against Concessionaire, whether City is a party thereto or not, that Concessionaire has violated any such order or statute in said use, shall be conclusive of that fact as between the City and Concessionaire, subject to any appeal rights Concessionaire may have.

Concessionaire shall not engage in any activity on or about the Designated Premises that violates any Environmental Law, and shall promptly, at Concessionaire's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly by Concessionaire subject to any appeal rights Concessionaire may have under the terms of this Agreement. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or environmental condition on, under or about the Designated Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. SECTIONS 9601 et seq.; (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA") 42 U.S.C. SECTIONS 6901 et seq.; (iii) California Health and Safety Code SECTIONS 25100 et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code SECTION 25249.5 et seq.; (v) California Health and Safety Code SECTION 25359.7; (vi) California Health and Safety Code SECTION 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. SECTIONS 1317 et seq.; (viii) California Water Code SECTION 1300 et seq.; (ix) California Civil Code SECTION 3479 et seq.; (x) the Solid Waste Disposal Act 42 U.S.C. SECTION 6901 et seq.; and (xi) California Health and Safety Code SECTION 25280 et seq. regulating the use of underground storage tanks, as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste," "extremely hazardous waste," "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Concessionaire shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code SECTION 25249 et seq. Concessionaire shall provide prompt written notice to City of all notices of violation of the Environmental Laws received by Concessionaire relating to the Designated Premises.

16.02 Use of Underground Storage Tanks. The parties acknowledge that Concessionaire or Concessionaire's predecessor-in-interest installed one or more underground storage tanks at the Maintenance and Service Facility Space, along with related pipelines, pumps, pump islands and dispensers, and other appurtenant structures (collectively hereafter referred to as the Underground Storage Tank System) which Concessionaire uses or will use in its car rental concession hereunder. Concessionaire understands and acknowledges that



Concessionaire is the owner and operator of the Underground Storage Tank System as more particularly set forth in Article 7.0.3. To the best knowledge of Concessionaire, there has been no release of Hazardous Materials on, under or around the Maintenance and Service Facilities Space, the groundwater underlying the Maintenance and Service Facilities Space, or otherwise. Concessionaire hereby agrees to comply with all federal, state and local laws, ordinances, regulations and orders applicable to the installation, maintenance, use, operation and removal of said Underground Storage Tank System during the term of this Agreement, including, but not limited to, the provisions of Health and Safety Code Section 25280 et seq. All references contained in this Article to the "Code" shall be deemed to refer to the Health and Safety Code. Except to the extent any materials (as hereinafter defined) are protected by attorney-client privilege or attorney work product, Concessionaire covenants and agrees to provide City promptly with any and all correspondence, reports, studies, notices, permits, approvals, orders and similar matters received by Concessionaire or given by Concessionaire with respect to the Underground Storage Tank System (Materials), including, but not limited to, copies of any permits relating to the Underground Storage Tank System issued, renewed or transferred pursuant to Code Section 25284 or 25285, copies of any notices revoking or modifying said permits pursuant to Code Section 25285.1, copies of all compliance or inspection reports prepared pursuant to Code Section 25288, and copies of any notices of releases of substances from the Underground Storage Tank System pursuant to Code Section 25295. As used in this Agreement, the term "release" does not include the passive allowance of migration or movement of pre-existing contamination or Hazardous Materials on, under, or migrating to or from the Designated Premises. In addition, Concessionaire shall notify City of any unauthorized release in excess of five (5) gallons from the Underground Storage Tank System even if notice is not required to be provided to the applicable local agency. Not more than three (3) months prior to expiration of the term of this Agreement and not less than one (1) month prior to the expiration of the term of this Agreement, Concessionaire shall have a tank integrity test (as such term is defined in Code Section 25281(v)) conducted by a tank tester licensed by the State Water Resources Control Board pursuant to Code Section 25284.4 and shall deliver to City a copy of the report prepared by the tank tester setting forth the findings, recommendations and conclusions of the tank integrity test.

Remediation Obligations. If any inspection of the Underground Storage Tank System determines that a release from the Underground Storage Tank System has occurred or if the presence or threatened presence of any Hazardous Material is hereafter detected on or about the Designated Premises, including, but not limited to, the Maintenance and Service Facility Space, and the Hazardous Material is one which may have been introduced to the Designated Premises by Concessionaire or its agents, contractors, employees or licensees from the Underground Storage Tank System or otherwise during the term of this

Agreement or any previous agreement between City and Concessionaire, then until such time as it is finally determined by a court of competent jurisdiction that such Hazardous Material (hereinafter Covered Hazardous Material) was released or discharged on or about the Designated Premises by a person other than Concessionaire or its agents, contractors, employees or licensees, Concessionaire shall, at its sole expense, promptly commence the remedial clean-up measures to assess, remove or remediate the Covered Hazardous Material from the Designated Premises, monitor, mitigate and/or dispose of the effects of such Hazardous Material, to the extent such may be required under Environmental Law, and shall diligently pursue such assessment, removal, remedial clean-up, monitoring, disposal and mitigation measures to completion and closure from the appropriate regulatory agencies, all in compliance with applicable Environmental Laws. Such activities shall be conducted in a diligent, expeditious and safe manner so as not allow any dangerous or hazardous conditions to occur on the Designated Premises during or after such activities. In addition, Concessionaire shall promptly repair all material damage to the Designated Premises and the improvements thereof caused by any such removal, remedial clean-up, monitoring, disposal or mitigation measures undertaken by or at the direction of Concessionaire and return the Designated Premises substantially to the condition it existed immediately prior to such remediation activities.

16.03 Permits and Licenses Generally. Concessionaire agrees that it shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time throughout the Term of this Agreement by any Federal, State or local governmental entity or any court of law having jurisdiction over Concessionaire or Concessionaire's operations and activities, for any activity of Concessionaire's conducted on the assigned Designated Premises and for any and all operations conducted by Concessionaire including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from Concessionaire's operations and activities on the assigned Designated Premises have been obtained and are in full legal compliance.

16.04 Air and Safety Regulation. Concessionaire agrees that it shall conduct its operations and activities under this Agreement in a safe manner, shall comply with all safety regulations of the Airport and with safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all employees, contractors, business invitees and all other persons transacting business with or for Concessionaire resulting from, or in any way related to, the conduct of Concessionaire's business on the Designated Premises. Concessionaire hereby agrees that neither Concessionaire, nor employee or contractor or any person working for or on behalf of Concessionaire,

shall require any personnel engaged in the performance of Concessionaire's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

16.05 Payment of Taxes. Concessionaire shall pay any and all taxes and other costs lawfully assessed against its interest in the Designated Premises, its improvements and its operations under this Agreement. Concessionaire shall have the right to contest the amount or validity of any tax or assessment payable by it by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Concessionaire's covenants to pay any such tax or assessment, unless the legal proceedings shall operate to prevent the collection of the tax or assessment. Upon termination of such legal proceedings, the Concessionaire shall pay the amount of any such tax or assessment, or part thereof, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution thereof, together with any costs, fees, interest, penalties, or other liabilities in connection therewith.

#### **ARTICLE 17 DISCLAIMER OF LIABILITY**

City hereby disclaims, and Concessionaire hereby releases City, from any and all liability, whether in contract or tort (including strict liability, negligence and nuisance), for any loss, damage, or injury of any nature whatsoever sustained by Concessionaire, its employees, agents, or invitees during the term of this agreement including, but not limited to, loss, damage, or injury to the improvements or personal property of Concessionaire or Concessionaire's business invitees that might be located or stored on the Designated Premises, unless such loss, damage, or injury is caused solely by City's sole negligence. The parties expressly agree that under no circumstances shall City be liable for indirect, consequential, special, or exemplary damages whether in contract or tort (including strict liability, negligence, and nuisance), such as, but not limited to, loss of revenue or anticipated profits or any other damage related to the assignment of the Designated Premises to Concessionaire pursuant to this agreement. Concessionaire acknowledges and agrees that City shall have no liability whatsoever and Concessionaire covenants and agrees to hold harmless City from any and all liability relating to any information provided by city relating to this agreement. Furthermore, Concessionaire acknowledges and agrees that its use of any such information, whether prepared or provided by City or otherwise, in determining whether to enter into this agreement, was at its sole risk.

**ARTICLE 18**  
**NOTICES**

All notices and elections (collectively, notices) to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

City:                   Executive Director of Aviation  
                          Palm Springs International Airport  
                          3400 E. Tahquitz Canyon Way, Suite OFC  
                          Palm Springs, CA 92262

Concessionaire: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party may change the address to which notices under this Agreement shall be given, upon three (3) days prior written notice to the other party.

**ARTICLE 19**  
**GOVERNMENTAL RESTRICTIONS**

19.01 Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes for a period in excess of ninety (90) days, either party may terminate this Agreement by providing written notice of such termination to the other party and the parties shall thereupon be released and fully discharged from any and all liability hereunder arising after such termination or as a result thereof. This Section 19.01 shall not act or be construed as a waiver of any rights Concessionaire may have against the United States as a result of such taking.

19.02 Federal Review. Concessionaire acknowledges this Agreement may be subject to review or inspection by the FAA to determine satisfactory compliance with

Federal law or grant assurances and agrees that this Agreement shall be in full force and effect and binding upon both parties pending such review or inspection by the FAA, if applicable; provided, however, that upon such review or inspection all parties hereto agree to modify any of the terms of this Agreement which shall be determined by the FAA to be in violation of existing laws, regulations, grant assurances or other requirements.

- 19.03 City Tax Assessment Right. None of the terms, covenants and conditions of this Agreement shall in any way be construed as a release or waiver on the part of City, as a political subdivision of the State of California, or any of the public officials of the City of Palm Springs of the right to assess, levy, and collect any ad valorem, non ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Designated Premises, the business or property of Concessionaire.
- 19.04 Right of Flight. City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Designated Premises together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of or flight in the said airspace for landing on, taking off from, or operating on the Airport.
- 19.05 Operation of Airport. Concessionaire expressly agrees for itself, its subleases, successors and assigns, to prevent any use of the Designated Premises which would interfere with or adversely affect the operation, maintenance or development of the Airport, or otherwise constitute an Airport hazard.
- 19.06 Release. Concessionaire acknowledges that noise, airborne particulate matter, and vibration are inherent to the operation of Airport and hereby releases City from any and all liability relating to the same.
- 19.07 Develop/Improve Landing Area. City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desire or view of Concessionaire and without interference or hindrance.
- 19.08 Reserved Rights. City reserve the right, but shall not be obligated to Concessionaire, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of the Concessionaire in this regard.

This Agreement shall be subordinate to the provisions and requirement of any existing or future agreement between the City and the United States, relative to the development, operation or maintenance of the airport.

- 19.09 Notification and Review Requirements. Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises.
- 19.10 Height Restriction. Concessionaire, by accepting this Agreement, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder above the mean sea level elevation of 500 feet. In the event the aforesaid covenants are breached, City reserves the right to enter upon the Designated Premises hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Concessionaire.
- 19.11 Non-Interference. Concessionaire, by accepting this Agreement expressly agrees for itself, its successors and assigns that it will not make use of the premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the premises and cause the abatement of such interference at the expense of Concessionaire.
- 19.12 Non-Exclusive. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section in 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349z).
- 19.13 War / National Emergency. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

## **ARTICLE 20 NON-DISCRIMINATION**

- 20.01 Non-Discrimination. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23 and Part 26. The Concessionaire agrees that it will not discriminate against anyone because of race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part. 23.

The Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFRR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

Concessionaire shall furnish its accommodation and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. Concessionaire may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

- 20.02 Airport Concession Disadvantaged Business Enterprise Program (ACDBE). This is an Airport Concession Disadvantaged Business Enterprise (ACDBE) Race Neutral Agreement. The Concessionaire will make a Good Faith Effort defined in Appendix A, 49 CFR Part 26 attached as Exhibit "F" to achieve ACDBE participation in the performance of this concession.

Concessionaire will be required to submit the following information on an annual basis (October – September) during the term of the agreement: (1) the names and addresses of ACDBE firms and suppliers that have participated in the Concession and proof of ACDBE certification; (2) a description of the services or goods that each ACDBE contractor/vendor provided; and (3) the dollar amount of the participation of each ACDBE.

- 20.03 Non-compliance. Non-Compliance with Sections 20.01 and 20.02 shall constitute a material breach thereof and in the event of such non-compliance, the City shall have the right to terminate this Agreement and the estate hereby created without liability therefore or at the electing of the City or the United States either or both said Governments shall have the right to judicially enforce provisions.
- 20.04 Affirmative Action. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activity covered by this subpart. Concessionaire assured that it will require that its covered sub-organizations provide assurances to the Concessionaire that they similarly will undertake affirmative action programs and that they will require assurance from their sub-organizations, as required by 14 CFR 152, Subpart E, to the same effort.

## **ARTICLE 21 MISCELLANEOUS**

- 21.01 City Not Liable. City shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from (a) cessation for any reason of air carrier operations at the Airport Terminal or (b) diversion of passenger traffic to any other facility. City shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury whatsoever sustained by Concessionaire including, but not limited to, those resulting from failure of any water supply, heat, air conditioning or electrical current or from an act of God, state of war, terrorism, civilian commotion or riot or any cause beyond the control of City. All personal property placed on or moved on to the Designated Premises shall be at the sole risk of Concessionaire. City shall not be liable for any damage or loss of any personal property placed or moved on to the Designated Premises.
- 21.02 Authorized Uses Only. Notwithstanding anything to the contrary herein, Concessionaire shall not use or permit the use of the Designated Premises or the Airport for any illegal or improper purpose or for any purpose which would invalidate any policies of insurance, now existing or hereafter written on the Airport for City or Concessionaire.
- 21.03 Waivers. The failure of City to insist on a strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that City may have for any subsequent breach, default, or non-performance, and City's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.
- 21.04 Subordination to Federal Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument and documents under which City acquired the land or improvements thereon and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Concessionaire understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between City and the United States of America, or any of its agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.
- 21.05 City's Governmental Authority. Nothing in this Agreement shall be construed to waive or limit City's governmental authority as a political subdivision of the State of California to regulate Concessionaire or its operations.
- 21.06 Rights Reserved to City. All rights not specifically granted Concessionaire by this Agreement are reserved to City.



- 21.07 Invalidity of Clauses. The invalidity of any portion, article, paragraph, provision clause, or any portion thereof of this Agreement shall have no effect upon the validity of any other part or portion hereof.
- 21.08 Venue. To the extent allowed by law, the venue for any action arising from this Agreement shall be in Riverside County, California.
- 21.09 Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of California.
- 21.10 Inspections. The authorized employees and representatives of City and any applicable federal, state, and local governmental entity having jurisdiction hereof shall have the right of access to the Designated Premises at all reasonable times for the purposes of inspection for compliance with the provisions of this Agreement and/or applicable laws.
- 21.11 Remedies Cumulative. The rights and remedies of the parties with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive and shall be in addition to all other rights and remedies of the parties.
- 21.12 Paragraph Headings. The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 21.13 Binding Effect. The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions against assignment or subletting.
- 21.14 Performance. The parties expressly agree that time is of the essence in this Agreement and the failure by Concessionaire to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of City without liability, in addition to any other rights or remedies, relieve City of any obligation to accept such performance.
- 21.15 Conflict. In the event of any conflict, and for purposes of resolving any disputes which may arise regarding this Agreement, the Invitation for Bid or Concessionaire's response to the Bid, as referenced above, the order-of-precedence shall be (i) this Agreement; (ii) the Invitation for Bid; (iii) Concessionaire's response to the Bid.
- 21.16 Excusable Delay. Any party performing under this Agreement shall use reasonable efforts to remedy the cause or causes of an excusable delay.

Excusable delays are those delays due to force majeure, acts of God, fire, flood, earthquake, explosion, riot, sabotage, windstorm, or labor dispute, and shall toll the time to perform under this Agreement.

- 21.17 Incorporation by References. All terms, conditions, specifications of Invitation For Bid #11-06, all exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
- 21.18 Entirety of Agreement. The parties agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.
- 21.19 Construction. Neither party shall be considered the author of this Agreement. The terms of this Agreement shall not be strictly construed against one party as opposed to the other based upon who drafted it.
- 21.20 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in California. Additional information regarding radon and radon testing may be obtained from City's public health unit.

SIGNATURES ON NEXT PAGE

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

ATTEST:

CITY OF PALM SPRING

a municipal corporation

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

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

City Clerk

City Manager

APPROVED AS TO FORM:

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

City Attorney

CONTRACTOR: Check one:  Individual  Partnership  Corporation

Corporations require two notarized signatures: One from each of the following: A. Chairman of Board, President, or any Vice President; AND B. Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.

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

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

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

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

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

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

State of: \_\_\_\_\_

State of: \_\_\_\_\_

County of: \_\_\_\_\_

County of: \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_

Personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

Personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

WITNESS my hand and official seal.

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

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

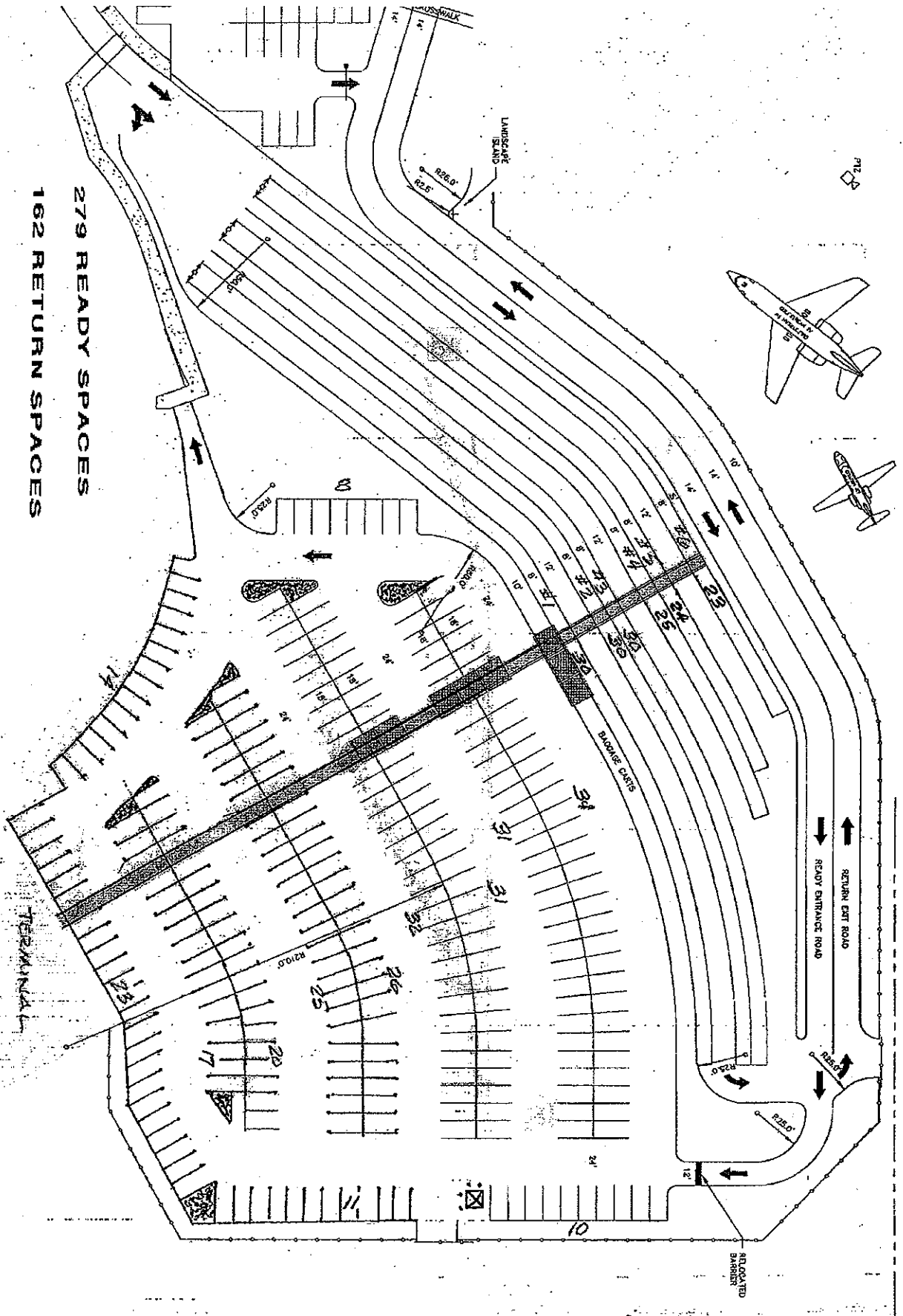
Notary Seal:

Notary Seal:

**EXHIBIT A  
READY RETURN SPACES/LANES**

**See attached**

EXHIBIT A - PSP READY RETURN LOT



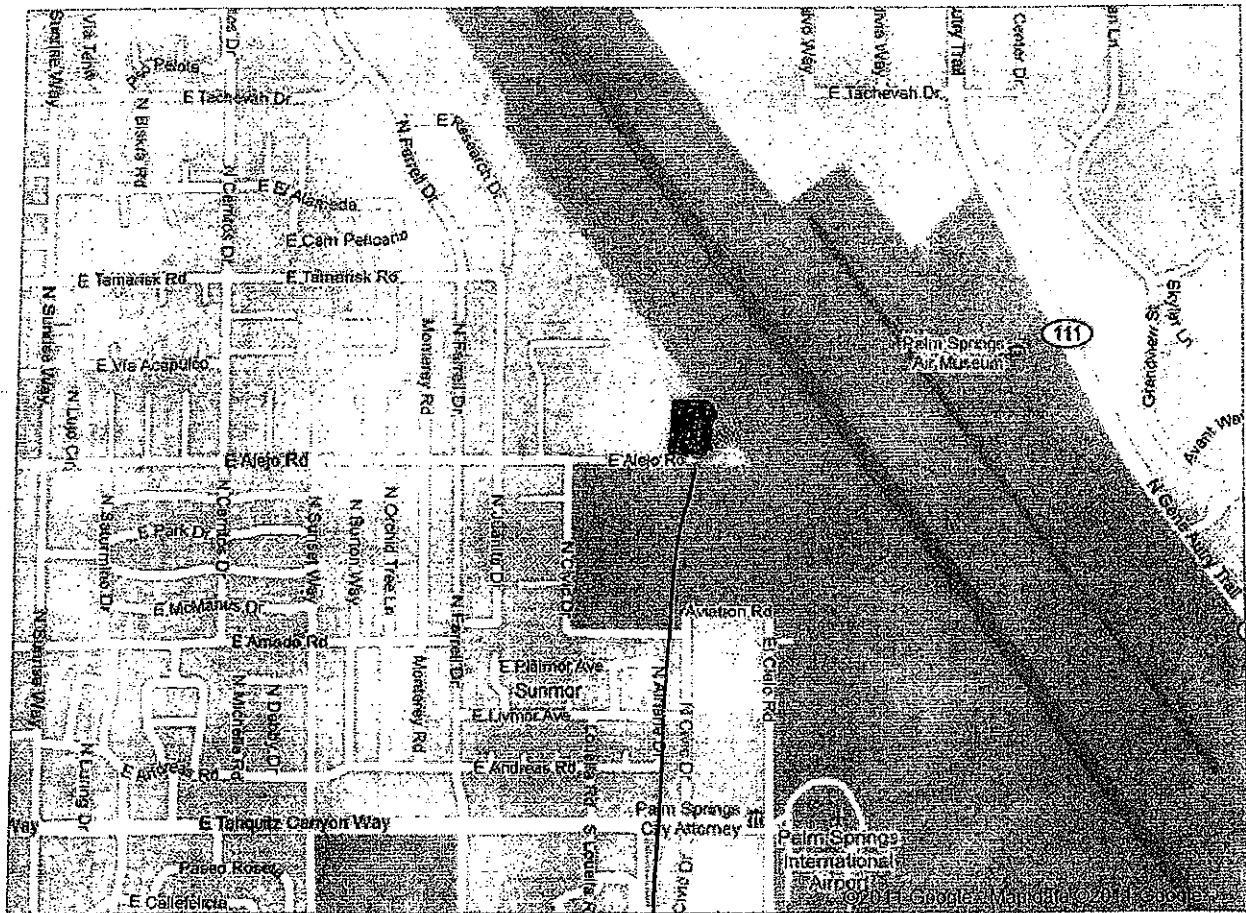
RETURN LANES 5 AND 6 COUNT AS ONE LANE

**EXHIBIT B  
OVERFLOW PARKING LOT**

**See attached**

# EXHIBIT B

## PSP OVERFLOW PARKING LOT



**OVERFLOW PARKING LOT  
EAST END OF ALEJO ROAD**

**EXHIBIT C  
CUSTOMER SERVICE COUNTER SPACE**

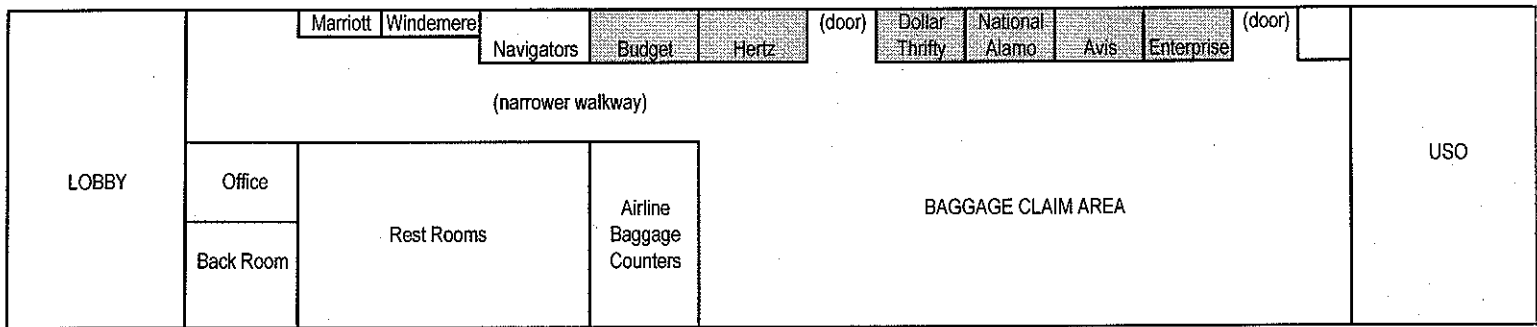
**See attached**



EXHIBIT C

## Reconfiguration Options

### EXISTING LAYOUT



### COUNTER LAYOUT 2 - One South counter to north end in front of door by USO

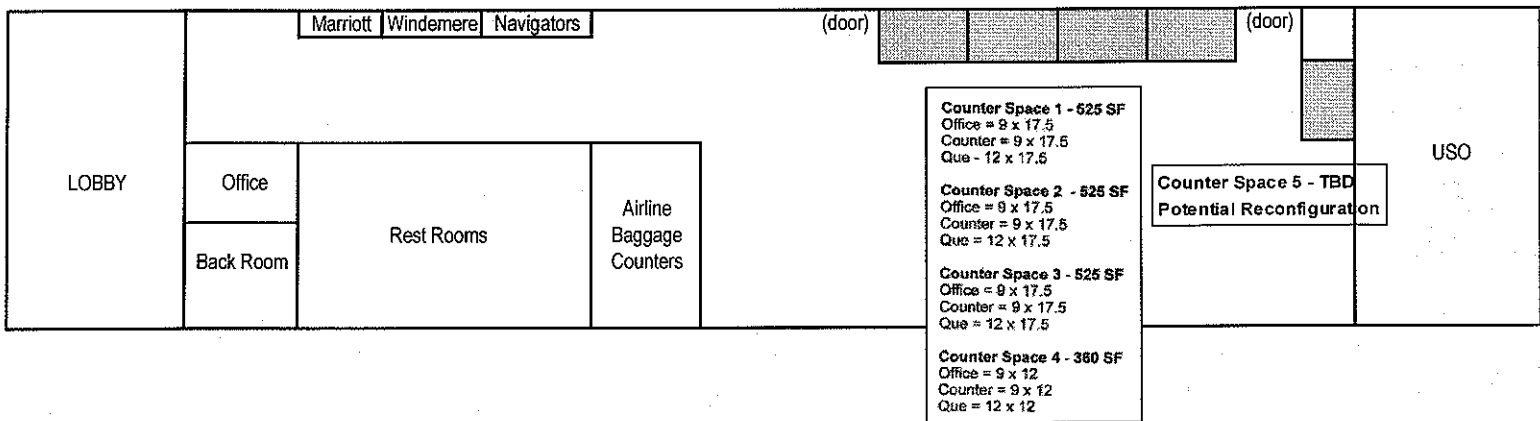
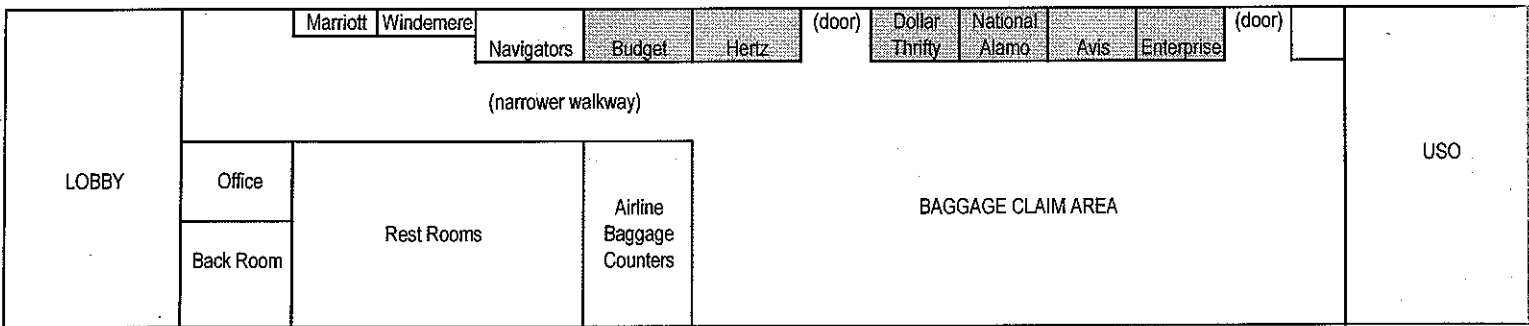


EXHIBIT C

## Reconfiguration Options

### EXISTING LAYOUT



### COUNTER LAYOUT 4 - Counters extended to north end, north doorway removed

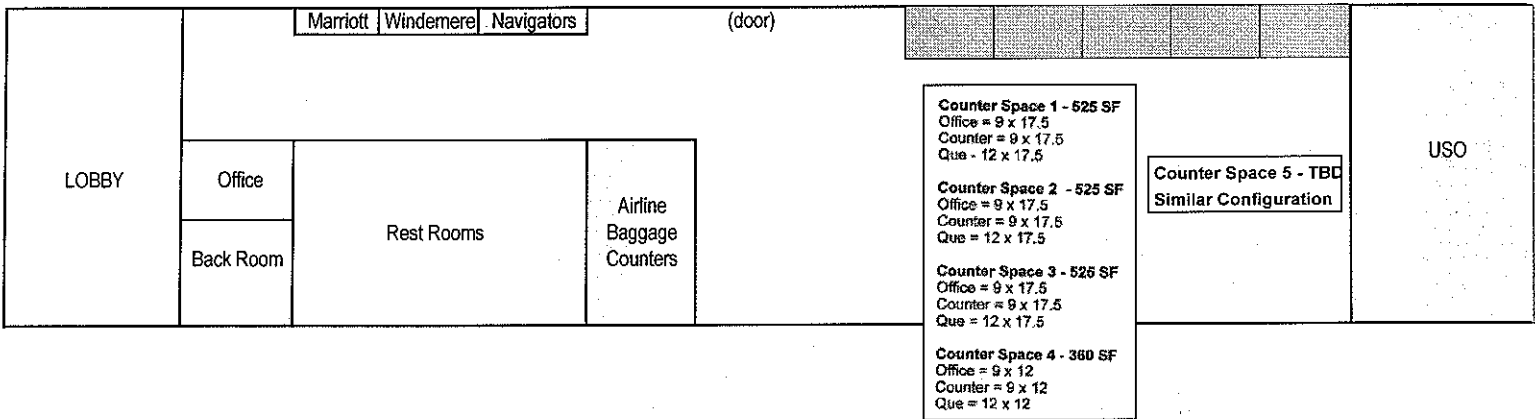
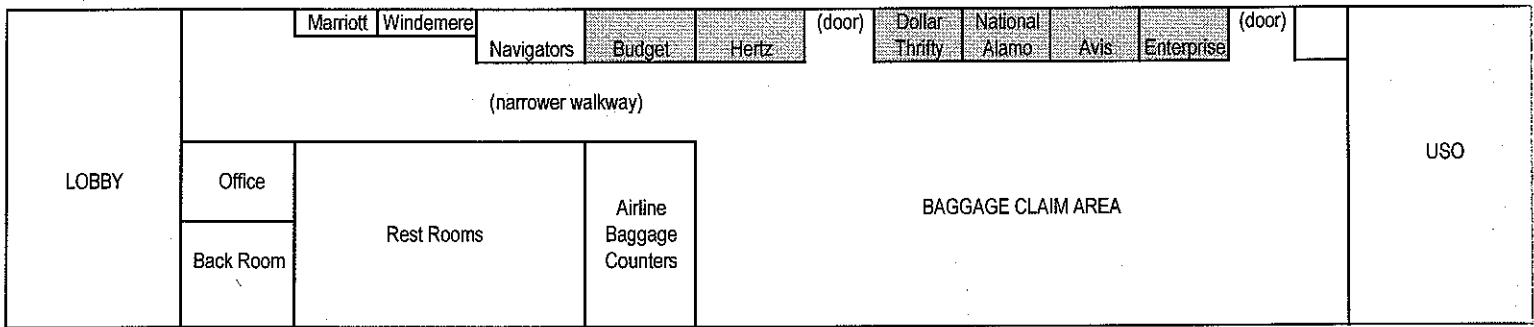


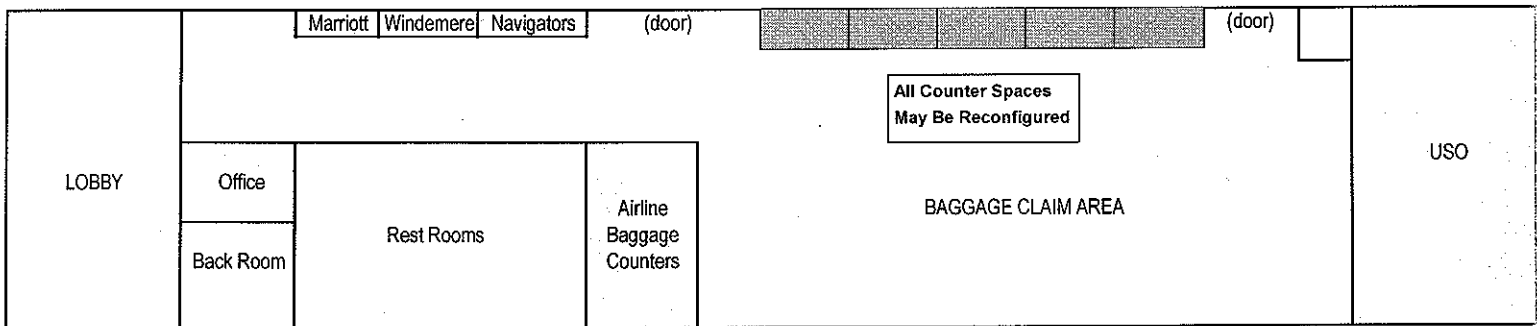
EXHIBIT C

## Reconfiguration Options

### EXISTING LAYOUT



### COUNTER LAYOUT 5 - South counters gone, both south and north doors extended to create room for 5 positions



**EXHIBIT D  
MAINTENANCE SERVICE FACILITY SPACES**

**See attached**

# EXHIBIT D

## MAINTENANCE/SERVICE FACILITIES

View Parcel Maps

SPACE SQ. FT.

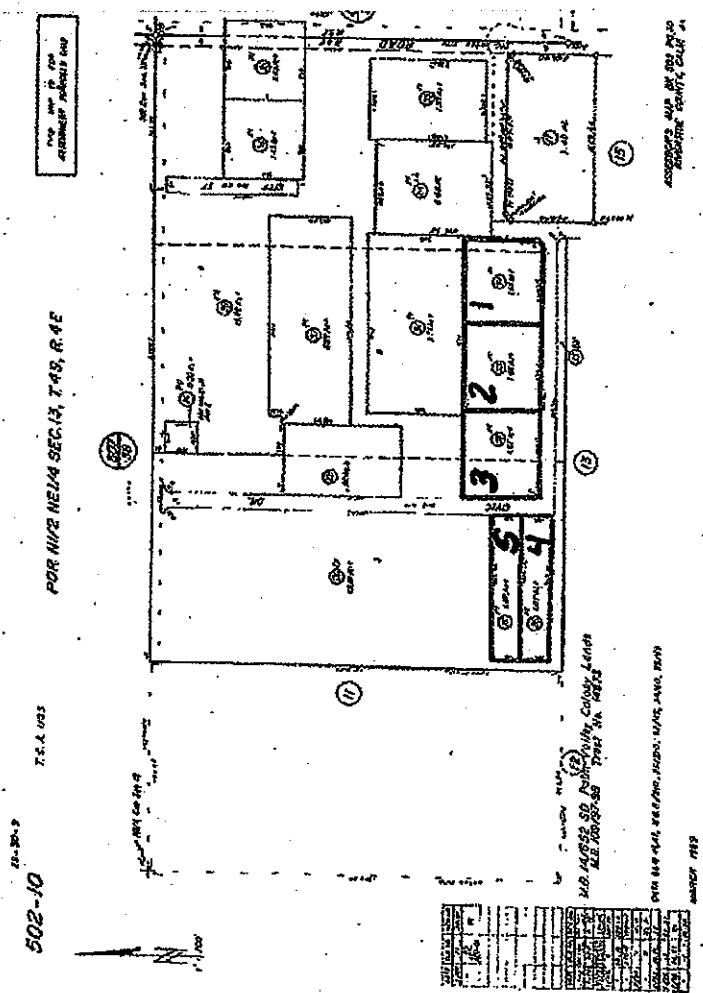
#1 = 73,231 SF.

#2 = 72,326 SF.

#3 = 72,921 SF.

#4 = 46,434 SF.

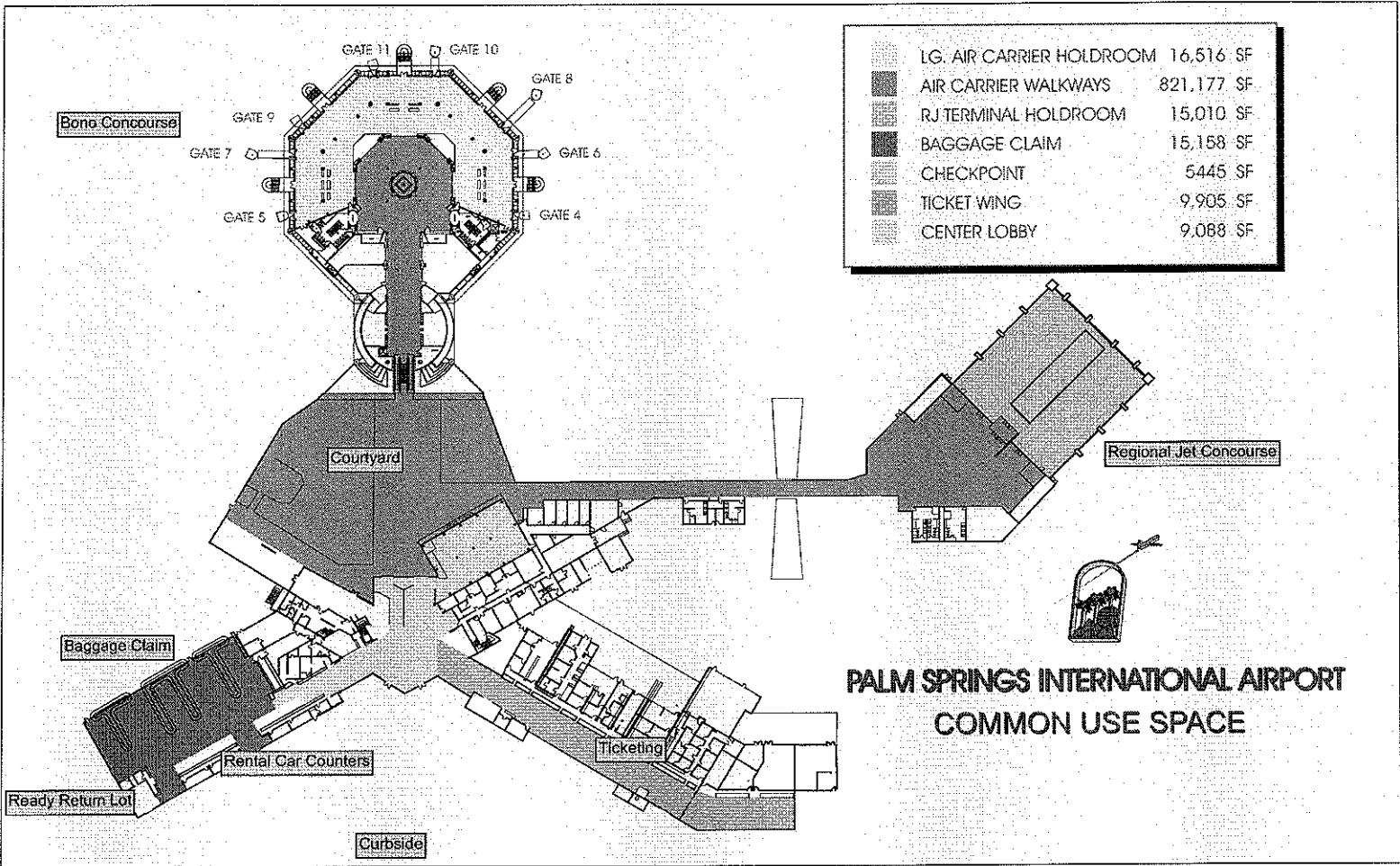
#5 = 46,434 SF.



**EXHIBIT E  
TERMINAL COMMON USE SPACE**

**See attached**

EXHIBIT E



PALM SPRINGS INTERNATIONAL AIRPORT  
COMMON USE SPACE

**EXHIBIT F  
ACDBE GOOD FAITH EFFORTS**

**See attached**



reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

#### Appendix A to Part 26 -- Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of

efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

#### **Appendix B to Part 26 -- Uniform Report of DBE Awards or Commitments and Payments Form**