

AUTOMOBILE RENTAL CONCESSION AGREEMENT

THIS AUTOMOBILE RENTAL CONCESSION AGREEMENT (the Agreement)

made and entered into on \_\_\_\_\_ by and between the following:

CITY OF BILLINGS, MONTANA, hereinafter designated  
"City"

and

\_\_\_\_\_, hereinafter  
designated "Concessionaire"

WITNESSETH

WHEREAS, City owns and operates Billings Logan International Airport, (hereinafter called "Airport"), and the Airport Terminal Building situated in the City of Billings, State of Montana, and

WHEREAS, Concessionaire is engaged in the operation of an automobile rental business and is prepared, equipped, and qualified to supply an adequate number of current model automobiles in good mechanical and physical condition and appearance for the operation of an automobile rental business at the Airport Terminal Building, and

NOW THEREFORE, in consideration of the benefits to be derived, the parties hereto agree as follows:

ARTICLE 1

LEASED PREMISES, PRIVILEGES, AND USAGE RIGHTS

City leases to Concessionaire certain premises, together with improvements and certain attendant privileges, uses and rights, as hereinafter specifically set forth.

A. Leased Premises. The Leased Premises covered by this Agreement shall be as

follows:

1. Counter areas on the ground floor of the Airport Terminal Building of approximately \_\_\_\_\_ square feet, described as Car Rental Counter #\_\_\_\_, as set forth on Exhibit A, and by said reference made a part of this Agreement.

2. Assigned and allocated number of Ready/Return auto parking spaces in the designated parking areas west and south of the Airport Terminal Building as set forth on Exhibit B, and by said reference made a part of this Agreement, as long as City deems it feasible. The City may change these locations from time to time by written notice to the Concessionaire thirty (30) days prior to the change.

3. Assigned and allocated share of the remote Quick Turn Around (QTA) Operational Facilities, inclusive of the exclusive use preparation/detail bays, common use prewash/mud removal bays, preferential use automated wash bays, vehicle fueling system, and vehicle parking areas as set forth in Exhibit C, and by said reference made a part of this Agreement.

4. Assigned and allocated share of the QTA Satellite/Transfer Parking Lot, utilized for loading and unloading new, excess, replacement, and seasonal vehicles from automobile transport vehicles, as set forth in Exhibit F, and by said reference made a part of this Agreement.

B. Privileges, Uses, and Rights. City grants to Concessionaire the following privileges, uses, and rights, all of which shall be nonexclusive on the Airport.

1. The right, license, privilege, and obligation to operate an automobile rental service at the Airport Terminal Building for the purpose of renting automobiles to airline passengers and other persons who may request such service at the Airport.

2. The right of access over and across roadways serving the Airport, by Concessionaire, Concessionaire's agents, employees, patrons and invitees, suppliers of service, and furnishers of material.

3. The right to install and operate appropriate counter signs at the Airport Terminal Building, subject to prior written approval of the Director of Aviation and Transit, which approval shall not be unreasonably withheld.

C. The granting of the privileges and rights and its acceptance by Concessionaire is conditioned upon the following covenants:

1. The right to use said Airport facilities in common with others authorized to do so shall be exercised, subject to and in accordance with the laws of the United States of America, State of Montana, local ordinances, and all applicable rules and regulations of City now in force or hereafter prescribed or promulgated.

2. Concessionaire will not transact car rental business at or use any other location on the Airport that is not designated in this Agreement, unless written permission is first obtained from the Director of Aviation and Transit.

3. Depreciation and Investment Credit. Neither Concessionaire nor any successor of Concessionaire under this Agreement may claim depreciation or an investment credit with respect to the Leased Premises under the Internal Revenue Code of 1986, as amended. Concessionaire hereby makes an irrevocable election binding on it and its successors in interest under this Agreement, not to claim such depreciation or investment credit with respect to the Leased Premises.

4. Useful Life of the Facility. Concessionaire and City agree that the term of this Agreement does not exceed eighty percent (80%) of the reasonably expected

economic life of the property or facilities covered by this Agreement. Concessionaire represents and acknowledges that it has no option or right to purchase or acquire any interest in the personal or real property subject to this Agreement.

## ARTICLE 2

### INSTALLATIONS BY CITY AND CONCESSIONAIRE

In the Airport Terminal Building Car Rental Counter area, as shown on Exhibit A, the Airport Ready/Return parking area, as shown on Exhibit B, and the QTA Facilities, as shown on Exhibit C, Concessionaire shall provide all leasehold improvements not provided by City, including, but not limited to, office interior partitions, additional lighting fixtures, utility services and connections, decorations, and all other fixtures, fittings, equipment and supplies.

A. Any planned for improvements require the review and written approval of the Director of Aviation and Transit prior to commencing any such improvements.

B. Concessionaire shall make payment promptly to all persons supplying labor or materials for work and shall not permit any lien or claim to be filed against the City.

In the QTA Satellite/Transfer Parking Lot, as shown on Exhibit F, City shall provide and maintain any improvements as City's resources permit.

## ARTICLE 3

### TERM

A. Term. The term of this Agreement shall be for a period of five (5) years commencing on the 1st day of July 2022, and ending on the 30th day of June 2027. An Agreement Year means the twelve-month period beginning July 1 of each year.

B. Holdover. A holdover is permitted only with the written approval of the Director of Aviation and Transit, and then on a month-by-month basis, not to exceed ninety (90) days.

All terms and conditions equivalent to the final month of the Term, except for the MAG shall apply.

#### ARTICLE 4

#### FEES AND RENTALS

The Concessionaire shall pay concession fees, space rental, and use fees associated with its business activities and use of the Airport facilities as follows:

A. Concession Fees. For the concession privileges granted herein, Concessionaire shall pay City, during the term of this Agreement, a Concession Fee that is the greater of either a guaranteed Minimum Annual Guarantee (MAG) or the stated Monthly Percentage Fee, which is ten percent (10%) of the Gross Receipts on its annual operations at the Airport. Gross Receipts shall mean all monies paid or payable to Concessionaire, whether for cash, credit, or otherwise of any kind and nature, and regardless of when or whether paid to the Concessionaire, for all rentals and services authorized under this Agreement, excepting only those items specifically set forth in Section 2 below.

1. Gross Receipts. Gross Receipts shall include, but are not limited to, the following:

a) The aggregate amount of all monies paid or payable to Concessionaire for all sales and rentals made and services performed at the Airport, including fees, charges, and rentals, any ancillary, optional, or accessory items (for example, but not limited to, baby seats, ski racks, GPS, etc.); such ancillary, optional, or accessory items shall be included unless specifically excluded herein.

b) All monies paid or payable for charges made to collect, cover, or reimburse Concessionaire for fees, rent, or charges paid to City for the concession privileges granted herein.

c) All monies paid or payable for sales, rentals, and services for customers in connection with the rental of a vehicle contracted for, delivered to, or rented by a customer at the Airport, regardless of where the payment is made, where the vehicle is returned to, or where the rental order was received.

d) All monies paid or payable to Concessionaire for one-way rentals originating at Billings or drop fees.

e) Credits provided to customers for costs that would not normally be a customer's responsibility to pay for, but were incurred by the customer during the rental, for such items to include, but not limited to, emergency repairs, rental over charges or billing errors, will be reflected as an adjustment to reported Gross Receipts.

f) Coupons and other discounts will be identified and reflected as an adjustment to reported Gross Receipts.

g) Amounts received for acceptance of or sale by Concessionaire of any insurance type products that are retained by the Concessionaire in the form of a commission, sales fee, profit, etc.

h) All monies paid or payable for underage or additional driver charges.

i) Any corporate contract the Concessionaire has with Airport tenants for rental cars at the Airport.

j) Revenue loss claims paid to Concessionaire due to damaged vehicles and reimbursed for by third party fleet services for the period the vehicle is out of service.

k) Amounts received for any other product, service, or fee not specifically excluded in Section 2 below.

2. Exclusions from Gross Receipts. Gross receipts shall exclude the following:

a) Federal, State, and county or municipal taxes, now in effect, or hereafter levied, which are separately stated and collected from Concessionaire's customers.

b) Amounts received by Concessionaire as insurance payments for damage claims for autos and other property of the Concessionaire.

c) Sums received from the loss or abandonment of Concessionaire's automobiles.

d) Sums received from customers for damages and third party charges such as traffic fines, parking tickets, towing, impoundment, and tolls.

e) Amounts collected from the customer as service call charges for items such as lost key replacement, flat tire repair, charges for vehicle repair, or extensive cleaning to return vehicle back to service.

f) Amounts collected from the Customer Facility Charge (CFC), which are separately stated and collected from Concessionaire's customers.

g) Amounts collected pursuant to a rental agreement for fueling options, prepaid fuel (fuel service option) or reimbursement fuel (fuel reimbursement option).

h) Off-Airport vehicle sales.

i) Amounts collected from customers for any carbon offset

programs offered by Concessionaire.

3. Said Concession Fee shall be paid within twenty (20) days after the beginning of each calendar month based on the 10% Monthly Percentage Fee of the Gross Receipts from the previous month. A report, Concessionaire's Monthly Report of Gross Receipts and CFCs, as set forth in Exhibit D, and by said reference made a part of this Agreement, shall accompany the payment that summarizes Gross Receipts from all rental agreements into a monthly total. Total monthly Gross Receipts should be reconciled to the Concessionaire's general ledger on a monthly basis. Concessionaire is not required to pay the MAG in monthly installments during the Agreement Year. Any MAG payment that may be due will only be required to be paid after the end of each Agreement Year.

4. At the end of each Agreement Year, in the event the total of the 10% Monthly Percentage Fee of the annual Gross Receipts calculation for a given Agreement Year is less than the MAG for that Agreement Year, Concessionaire shall pay to City the difference required to equal the amount of its MAG for that Agreement Year. The following are the Concessionaire's annual MAG amounts:

First Year      \$ \_\_\_\_\_  
Second Year    \$ \_\_\_\_\_  
Third Year      \$ \_\_\_\_\_  
Fourth Year     \$ \_\_\_\_\_  
Fifth Year      \$ \_\_\_\_\_

5. In the event that the MAG for any Agreement Year is greater than the 10% Monthly Percentage Fee of Gross Receipts paid to City during any Agreement

Year, the Concessionaire shall, within thirty (30) days after the end of the Agreement Year, remit a payment for the balance of the MAG that exceeds the total of the 10% Monthly Percentage Fee of the total annual Gross Receipts remitted to the City for that Agreement Year.

6. In the event of a reduction of twenty percent (20%) or more in monthly Gross Receipts of the combined car rental agencies located in the Airport Terminal Building, when compared with the five-year average of Gross Receipts of the combined car rentals for the same month over the previous five-year period, excluding months impacted by the COVID pandemic (as established in Exhibit G, and by said reference made a part of this Agreement), then the MAG shall be temporarily suspended. However, during such a temporary suspension, the 10% Monthly Percentage Fee on all Gross Receipts shall remain in full force and effect. The MAG will resume immediately once the monthly Gross Receipts of the combined car rental agencies is no longer 20% less than the monthly Gross Receipts when again compared to the five-year monthly average of the previous five-year period, not including the COVID impacted months (see Exhibit G). For the monthly periods the MAG is suspended, Concessionaire's annual MAG will be prorated based on the five-year average percentage of the monthly revenues, for that month, as set forth in Exhibit G. Exhibit G will be updated annually at the end of each Agreement Year to reflect the most current five-year period of Gross Receipts of the combined car rental agencies located in the Airport Terminal Building.

7. In the event that Concessionaire chooses to directly charge Concessionaire's customers, clientele, and other third parties, a fee, specifically to

collect, cover, or reimburse Concessionaire for the percentage of Gross Receipts paid or due to City, as required in this Article 4, Paragraph A., said fee shall not exceed eleven and one-tenth percent (11.10%) of the eligible charges. The reimbursement fee shall be individually identified on Concessionaire's Rental Contract Form and in any form of advertising, including phone quotes, as a "Concession Recovery Fee." Concessionaire shall not in any form or means, indicate or refer to the percentage of Gross Receipts charge as a form of tax.

B. Terminal Building Space Rentals. During the term hereof, Concessionaire shall pay the following space rentals for the use of the Car Rental Counter area in the Airport Terminal Building designated on Exhibit A:

<u>YEAR</u>	<u>PERIOD</u>	<u>SQUARE FEET</u>	<u>ANNUAL RATE</u>	<u>TOTAL MONTHLY RENTAL</u>
1	7/1/22 thru 6/30/23		\$30.00	\$
2	7/1/23 thru 6/30/24		*	\$
3	7/1/24 thru 6/30/25			\$
4	7/1/25 thru 6/30/26			\$
5	7/1/26 thru 6/30/27			\$

\* Rate to be the same as that charged for air carrier counter space in the Airport Terminal Building. To be determined annually beginning with Year 2 of the Agreement and changed effective on July 1 of each year.

Terminal Building space rentals shall be payable in equal monthly installments in advance and without demand, on the first day of each month of this Agreement commencing with the term thereof. City shall notify Concessionaire in writing each year of the annual Terminal Building space rental rate.

C. Terminal Area Ready/Return Parking Space Rentals. For the use of the Terminal area Ready/Return spaces, the beginning rate is \$38.51 per space per month for \_\_\_\_\_

spaces, or \$ \_\_\_\_\_ per month. These rental rates will be adjusted annually at the beginning of Agreement Year Two and each subsequent year for the term of this Agreement, equivalent to the average of the monthly percentage increases of the previous calendar year, as determined by the Department of Labor Consumer Price Index for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics. In no case will the rate per Ready/Return parking space per month be less than \$38.51.

The Terminal Ready/Return parking spaces for the term of this Agreement are identified on Exhibit B, and by said reference made part of this Agreement. The relative location of each Concessionaire's Ready/Return area and number of assigned and allocated spaces will remain unchanged during the term of this Agreement.

1. For the entire term of the Agreement, the allocation of the Ready/Return Stall spaces will be established based on the percentage distribution of the total five-year MAG proposal. The highest ranked Proposer will be allocated the stalls closest to the Terminal Building, and the lower ranked Proposers will receive stalls farthest from the Terminal Building based on the order of the percentage ranking.

2. Terminal area Ready/Return space rentals shall be payable in equal monthly installments in advance and without demand, on the first day of each month of this Agreement commencing with the term thereof.

3. Four (4) VIP parking spots will be reserved for each On-Airport Rental Car Concessionaire in the south Rental Car Parking Lot located directly across from the Terminal Building. Said four (4) VIP spots shall be included in the count of the total number of Terminal Ready/Return parking spaces allocated to each Concessionaire. The location and allocation will not change during the term of this

Agreement, and is as set forth in Exhibit B.

D. QTA Facility Ground Space Rentals. For the use of the QTA Facility, all Concessionaires will be allocated ground space at the joint use QTA Facility, and a ground space rental will be charged. The beginning rate is \$0.32 per square foot per annum for \_\_\_\_\_ square feet of the facility ground area, \$\_\_\_\_\_ annually, or \$\_\_\_\_\_ per month. The total QTA Facility ground area included in the calculation of the ground rental for the term of this Agreement is identified in Exhibit C, and by said reference made a part of this Agreement.

1. This rental rate will be adjusted annually at the beginning of Agreement Year Two and each subsequent year for the term of this Agreement, equivalent to the average of the monthly percentage increases of the previous calendar year, as determined by the Department of Labor Consumer Price Index for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics. In no case will the rate per square foot per annum be less than \$0.32.

2. Following the receipt of proposals, the Successful Proposers will be assigned their relative location within the QTA area and their established square footage, based on the ranking of their submitted five-year total MAG proposal. The Successful Proposer providing the highest proposal will get the first choice of relative location, the second highest Proposer the second choice, and so forth. Any disputes, discrepancies, etc., will be evaluated by the Director of Aviation and Transit, whose decision to resolve said dispute, discrepancy, etc., will be considered final. The QTA Facility ground space will not be reallocated during the entire term of the Agreement.

3. Ground rentals shall be payable in equal monthly installments in advance and without demand, on the first day of each month of this Agreement

commencing with the term thereof.

E. QTA Satellite/Transfer Parking Lot Rentals. For the use of the QTA Satellite/Transfer Parking Lot, a ground rental will be charged. The beginning rate is \$0.32 per square foot per annum for \_\_\_\_\_ square feet of the Satellite/Transfer Parking Lot ground area, \$ \_\_\_\_\_ annually, or \$ \_\_\_\_\_ per month. The total QTA Satellite/Transfer Parking Lot ground area included in the calculation of the ground rental for the term of this Agreement is identified in Exhibit F, and by said reference made a part of this Agreement.

1. This rental rate will be adjusted annually at the beginning of Agreement Year Two and each subsequent year for the term of this Agreement, equivalent to the average of the monthly percentage increases of the previous calendar year, as determined by the Department of Labor Consumer Price Index for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics. In no case will the rate per square foot per annum be less than \$0.32.

2. Following the receipt of proposals, the Successful Proposers will be assigned their relative location within the QTA area and their established square footage, based on the ranking of their submitted five-year total MAG proposal. The Successful Proposer providing the highest proposal will get the first choice of relative location, the second highest Proposer the second choice, and so forth. Any disputes, discrepancies, etc., will be evaluated by the Director of Aviation and Transit, whose decision to resolve said dispute, discrepancy, etc., will be considered final. The QTA Facility ground space will not be reallocated during the entire term of the Agreement.

3. Ground rentals shall be payable in equal monthly installments in advance and without demand, on the first day of each month of this Agreement

commencing with the term thereof.

F. QTA Exclusive Use Preparation and Detail Space Usage. Concessionaire's designated QTA exclusive use preparation/detail space is identified on Exhibit C, and by said reference made a part of this Agreement. This space will remain the Concessionaire's for use during the term of this Agreement. The rental for this space is included in the QTA Facility ground rental. This exclusive use space is the Concessionaire's operating space, and all costs associated with that operation will be the responsibility of the Concessionaire. Utility billings for the preparation/detail space will be billed to the Concessionaire based on actual usage and are due upon receipt of the invoice. Utilities include the electricity, natural gas, water, sewer, and trash collection.

G. QTA Joint Use Space Usage.

1. Prewash/Mud Removal Facility. The three-bay prewash/mud removal facility is a first-come, first-serve facility to be used for removing heavier dirt/mud. Concessionaire will be billed for the use of this facility through an allocation based on a "Common Use Formula." The formula will prorate twenty percent (20%) of the monthly cost of the facility equally among all car rental Concessionaires, and eighty percent (80%) of the cost will be allocated based on the percentage of the Concessionaire's monthly use in relation to the total monthly use by all Concessionaires. That percentage will be applied against the identified operation and maintenance costs incurred for that month, allocated accordingly to Concessionaire, billed to Concessionaire monthly, and is due upon receipt of the invoice.

2. Automated Wash Facility. The three-bay automated wash facility is a preferential use facility. This means that while Concessionaire is assigned to use a specific automatic wash bay as identified on Exhibit C, however, there will be times

when the automatic wash equipment in that bay or one of the other bays will be out of operation for repair. During those times, all Concessionaires will need to utilize the remaining wash bays until all wash bays are operational. Use charges for the automated wash facility will be billed through an allocation using the percentage of Concessionaire's monthly uses versus total monthly uses of all users. That percentage will be applied against the identified operation and maintenance costs incurred for that month, allocated accordingly to Concessionaire, billed to Concessionaire monthly, and is due upon receipt of the invoice.

3. Fueling Facility. The QTA fueling facility will be a first-come, first-serve operation. Usage data will be captured during the month and used to calculate the total fuel purchased. The City will purchase fuel and bill Concessionaire based on the fuel price at the time of use. City will utilize a markup from the purchase price to provide for operational and maintenance costs to operate the fueling facility. Those costs include, but are not limited to, licensing, inspections, repairs, and updates. The markup on the fuel will not exceed an average of \$.10 per gallon. Fuel usage will be billed every two weeks and payment is due upon receipt of the invoice.

4. Vehicle Storage Space. The rental for the vehicle storage space within the QTA Facility is included in the QTA Facility ground rental. Usage assignments shall be made as set forth in Exhibit C. However, in the event of a dispute, an equitable solution will be determined by the Director of Aviation and Transit, and the Director's decision shall be final.

5. Satellite/Transfer Parking Lot. The rental for the Satellite/Transfer Parking Lot is separate from the vehicle storage space. Usage assignments shall be

made as set forth in Exhibit F. However, in the event of a dispute, an equitable solution will be determined by the Director of Aviation and Transit, and the Director's decision shall be final.

H. Default of Payment, Records, Reporting Requirements, and Audit.

1. Default of Payment. Without waiving any other right or action available to the City, in the event of default in payment of rentals, charges, or fees herein for a period of fifteen (15) days or more, Concessionaire shall pay to City interest thereon at the rate of one and one-half percent (1.5%) per month from the date such item was due and payable until paid in full. Said interest shall not apply with respect to items being contested in good faith by Concessionaire and which are resolved in Concessionaire's favor.

2. Records and Reporting Requirements. Concessionaire shall keep and maintain the following records and make the following reports:

a) Within twenty (20) calendar days after the close of each calendar month during the term of this Agreement, Concessionaire shall submit to the Director of Aviation and Transit, in a form and with detail satisfactory to the Director of Aviation and Transit, a statement, by brand if Concessionaire has multiple brands, of its Gross Receipts during the preceding month from its operation at the Airport upon which the percentage payments to City are computed and shown; the form of said statement is set forth in Exhibit D, and by said reference made a part of this Agreement. Said statement shall include supporting documentation detailing the per contract breakdown and itemization of Gross Receipts collected and reported for said month, and shall be signed by

an authorized representative of Concessionaire. Concessionaire shall keep full and accurate books and records showing all of its Gross Receipts pertaining to all operations at the Airport, and City shall have the right, through its representatives, at all reasonable times, to inspect said books and records. All of said records and instruments shall be made available to City at the Concessionaire's Airport premises for at least a three (3) year period.

b) All rental agreement forms used by Concessionaire in its operations at the Airport under this Agreement shall be pre-numbered or electronically assigned. Concessionaire shall maintain records and controls pertaining to the rental agreement forms used at the Airport and summarize them in a monthly report. Missing numbers must be satisfactorily accounted for. The rental agreement forms used at the Airport shall be available for inspection and examination at all times by City or a duly authorized representative.

c) If Concessionaire utilizes corporate rental contracts in its operations at the Airport that are separate from the pre-numbered rental agreement forms, Concessionaire shall provide copies of said contracts to the City, provide a separate monthly report, and include receipts from said contracts in the Gross Receipts calculations.

d) Concessionaire, at Concessionaire's sole cost and expense, shall furnish to City, within ninety (90) calendar days after the close of each Agreement Year during the entire term of this Agreement, a written statement prepared by a financial officer of Concessionaire, or an independent certified

public accountant employed by Concessionaire, stating to the City that Concessionaire's reports during the preceding Agreement Year were pursuant to this Agreement and made in accordance with the terms of this Agreement. Such statement shall also contain a list by month, of the Gross Receipts as shown on the books and records of Concessionaire, which were used to compute the fees paid to City during the period covered by the statement. Along with the written statement, Concessionaire shall also submit supporting documentation and calculations for City's review and records. Payment of any additional amount due as reflected in the annual statement shall be made to the City at the time the annual statement is provided to the City.

e) Annual DBE Report. Within thirty (30) days after the end of each Calendar Year during the term of the Agreement, and within the thirty (30) day period succeeding the expiration or earlier termination of the Agreement, Concessionaire shall deliver to the City a written DBE report. The DBE report shall be signed and certified by an officer of Concessionaire, identifying the names, addresses, types, and dollar values of goods and services the Concessionaire procured from certified DBE businesses. Upon receipt of the certified report of DBE use for the Agreement Year, the City will include this information in the annual ACDBE report the City is required to file with FAA Civil Rights.

3. Audit. The City has the right to audit the Concessionaire at any time during the term of this Agreement and for two (2) years following the expiration of the term. The audit will not necessarily be limited to the rental and privilege fee portion of

this Agreement, but can be directed at an assessment of any aspect of this Agreement as it pertains to the operation at Billings Logan International Airport, at the discretion of the City. Audits by City shall be undertaken by a reputable firm of independent certified public accountants. The cost of said audits shall be borne by City, unless the results reveal a discrepancy of more than five percent (5%) between the Gross Receipts reported in accordance with this Article 4, Paragraph A. hereinabove, and the Gross Receipts as determined by audit for any Agreement Year. In case of such discrepancy, the full cost of the audit shall be borne by Concessionaire and any additional percentage fee due shall be paid by Concessionaire to City, with interest thereon at one and one-half percent (1.5%) per month from the date such additional percentage fee became due until paid.

#### ARTICLE 5

#### CUSTOMER FACILITY CHARGE

In accordance with City Ordinance No. 10-5515, attached as Exhibit E, and the imposition and use of Customer Facility Charges at the Airport, the following attendant uses and rights shall apply:

A. Customer Facility Charge (CFC) means the amount charged by the City and required to be collected by the Concessionaire from its customers for each Contract Day, for a maximum of fourteen (14) Contract Days, for each automobile rented under an Automobile Rental Contract or corporate rental contract entered into on the Airport, or other locations with car pickup occurring at the Airport, regardless of the ownership, area fleet, or location assignment of the vehicle, and without regard to the manner in which, or place at which, the vehicles are furnished to the customer, and without regard to whether the vehicles are returned to the Airport or some other

location. The CFC is at all times the property of the City, and collected by the Concessionaire as an agent in trust for the City as set forth herein.

B. The CFC revenues collected and remitted to the City shall be used to pay eligible costs for designing, constructing, furnishing and equipping the Airport's car rental facilities, annual debt service on any bonds issued to finance the costs of designing, constructing, furnishing, and equipping car rental facilities at the Airport and to establish reserves therefore, and to pay issuance costs of said bonds, as determined by the City. CFC Revenues may also be utilized to pay costs of operating, repairing, and maintaining the Airport's car rental facilities as determined solely by the City.

C. The Concessionaire shall collect and remit the CFC revenues on behalf of the City based on the following:

1. A CFC rate of three dollars (\$3.00) for each Contract Day for a maximum of fourteen (14) Contract Days shall be levied for each automobile rental entered into by the Concessionaire through its operations at the Airport. Contract Day shall mean a continuous twenty-four (24) hour period or fraction thereof during which an individual car rental customer rents an automobile. In the event the same automobile is rented to more than one customer within such continuous twenty-four (24) hour period, then each such rental shall be reflected as a Contract Day. Following the final twenty-four (24) hour rental period, a grace period not to exceed two (2) hours shall not be considered a new Contract Day. The CFC imposed by the Concessionaire shall be the amount established by the City for all On-Airport Concessionaires. The CFC shall be collected from all customers, including customers receiving complementary or discounted car rentals from the Concessionaire. A copy of the "CFC Ordinance No. 10-5515" is attached as Exhibit E, and by said reference made a

part of this Agreement.

2. Concessionaire must collect the appropriate CFC at the time of collection of all other fees and charges associated with the rental of an automobile. Each Concessionaire shall include the CFC rate in all forms of reservations for automobile rentals and automobile rental advertisements. Reservations made thirty (30) days prior to a CFC rate change effective date, shall be exempt from the CFC rate change stated in the City's CFC rate effective notice to Concessionaire. Contracts entered into prior to the CFC rate change effective date shall also be exempt from the CFC rate change stated in the City's CFC rate effective notice to Concessionaire, and will continue the use of the in-place CFC rate.

3. The CFC rate is subject to adjustment by the Director of Aviation and Transit. Upon a determination by the Director of Aviation and Transit and the City's Financial Services Manager that the revenues being collected from the CFC are either more or less than the amount needed to pay the annual costs of debt service and other approved eligible costs, the Director of Aviation and Transit, in consultation with the City's Financial Services Manager, may adjust the CFC rate. The City shall provide written notice to each Concessionaire of any increase or decrease in the CFC rate, and shall specify in such notice the date on which the specific CFC rate becomes effective (the "rate effective date"), which date will not be less than sixty (60) days after notice is provided.

4. The CFC shall be identified on a separate line of each Automobile Rental Contract entered into on the Airport or elsewhere with car pickup at the Airport, and described as Customer Facility Charge or CFC with a footnote approved by the

City explaining the abbreviation. All of the CFC revenues collected and held by the Concessionaire shall be considered the property of the City.

5. The Concessionaire shall hold said CFC revenues collected by the Concessionaire in trust and in a fiduciary capacity for the City and shall not hold or have either an ownership or equitable interest in said CFC revenues collected.

6. The Concessionaire shall maintain full and accurate books, records, and controls that are sufficient to meet the requirements herein, to demonstrate the correctness of the CFC revenues collected by the Concessionaire, and the amount of CFC revenue collections remitted, and City shall have the right, through its representatives, at all reasonable times, to inspect said books and records. All of said records and instruments shall be made available to City at the Concessionaire's Airport premises for at least a three (3) year period.

7. The City has the right to audit the Concessionaire at any time during the entire term of this Agreement and for two (2) years following the expiration of the term. The audit will not necessarily be limited to the CFC collections and payments portion of this Agreement, but can be directed at an assessment of any aspect of this Agreement as it pertains to the operation at Billings Logan International Airport, at the discretion of the City. The cost of said audits shall be borne by City, unless the results reveal a discrepancy of more than five percent (5%) between the actual collections and the reported collections in accordance with this Article 5, and the CFC collections as determined by audit for any Agreement Year. In case of such discrepancy, the full cost of the audit shall be borne by Concessionaire and any additional CFC revenues due shall be paid by Concessionaire to City, with interest thereon at one and one-half

percent (1.5%) per month from the date such additional CFC revenues became due until paid.

8. Each year, the Director of Aviation and Transit shall estimate the CFC to be effective for such Agreement Year. The Director of Aviation and Transit will advise the Concessionaire in writing of the amount of the CFC for the upcoming Agreement Year at such time. Additionally, the Director of Aviation and Transit reserves the right to adjust the amount of the CFC, at such other times as deemed necessary, upon sixty (60) days prior written notice to the Concessionaire.

9. The Concessionaire agrees that it will not be entitled to any rights of offset or other reduction in the requirements herein and shall remit all CFC revenues collected, to the City, regardless of any amounts that may be owed or due to the Concessionaire by the City.

10. It is understood and agreed that all CFC revenues required to be collected by the Concessionaire under this Agreement and the CFC Ordinance as set forth in Exhibit E, are pledged for costs of the car rental facilities, including the payment of annual debt service on the Bonds and other obligations pursuant to the Bond documents, and such other costs as agreed to by the City and the Concessionaire with regard to such pledge.

11. In the event of a legal challenge to the CFC, the City will defend any such challenge. If all or any part of the CFC fails to survive challenge in a court of competent jurisdiction, then the stricken portion of the CFC will be replaced by either higher rents and fees, or a new pass-through fee, as determined by the City by making adjustments to the rents and fees pursuant to Article 4.

D. The Concessionaire shall furnish to the City, within twenty (20) calendar days after the close of each calendar month during the entire term of this Agreement, in a form and with detail satisfactory to the City, a statement of the CFC revenues collected, the number of Automobile Rental Contracts, and Contract Days that occurred during the previous calendar month. The form of said report is set forth in Exhibit D; said report shall be accompanied by supporting documentation detailing the per contract breakdown of total rental days and number of rental days on which the CFC was collected and reported for said month, and shall be signed by an authorized representative of Concessionaire. The CFC revenues collected shall be remitted by the Concessionaire to the City in U.S. dollars without exchange for foreign currency to the address specified in Article 19, Notices, no later than the twentieth (20th) day of each month for the preceding calendar month of operations during the entire term of this Agreement.

E. Within ninety (90) calendar days after the end of each Agreement Year during the entire term of this Agreement, Concessionaire, at Concessionaire's sole cost and expense, shall provide a statement prepared by a financial officer of Concessionaire, or an independent certified public accountant employed by Concessionaire, stating to the City that the CFC revenues collected by the Concessionaire, and the number of Automobile Rental Contracts and Contract Days reported during the preceding Agreement Year pursuant to this Agreement, were remitted and provided to the City in accordance with the terms of this Agreement. Such statement shall contain a list by month, showing the CFC revenues collected, the number of Automobile Rental Contracts, and number of Contract Days as shown on the books and records of the Concessionaire that were used to determine the payments made to the City during the period covered by the statement. Along with the written statement, Concessionaire shall also submit supporting documentation and calculations for City's review and records. Payment of any additional amount due as reflected in the annual statement shall

be made to the City at the time the annual statement is provided to the City.

## ARTICLE 6

### OBLIGATIONS OF CONCESSIONAIRE

As a minimum, the Concessionaire shall have the following obligations:

A. Concessionaire shall maintain and make available a sufficient number of automobiles at the Airport for adequate public service each day of the year, at a fair and reasonable basis to all users of the Airport. Service shall be prompt, courteous, and efficient, and shall be adequate to meet the demand for said service. Concessionaire shall maintain and operate the concession in a first class manner and shall keep the Leased Premises in a safe, clean, orderly and inviting condition at all times, satisfactory to City. Upon written notice to Concessionaire from City, Concessionaire shall correct any and all maintenance or operational problems. If Concessionaire fails to comply within ten (10) days from written notice, City may remedy the problem and charge the cost therefore to Concessionaire.

B. Concessionaire shall furnish its services on a fair, equal, and nondiscriminatory basis to all users thereof, and it shall charge fair, reasonable, and nondiscriminatory prices for each unit or service.

C. Concessionaire shall at all times retain an active, qualified, competent, and experienced manager to supervise the concession operations at the Airport and be authorized to represent and act for Concessionaire. Concessionaire shall be required to properly identify, uniform, or dress its attendants and employees; they shall be clean and neat in appearance at all times. Concessionaire shall not employ any person(s) in or about the concession premises who shall use improper language or act in a loud, boisterous, or otherwise improper manner. Concessionaire shall maintain a close check over its attendants and employees to ensure the maintenance of high standard

of service to the public, the performance of such obligations to be determined at the sole discretion of City.

D. At all times, Concessionaire shall maintain, at its own cost and expense, all of its rental automobiles in good operating order and free from known mechanical defects; said automobiles shall be kept in a clean, neat and attractive condition, inside and out. Concessionaire shall at no time use automobiles whose year model is more than three (3) years older than the current model year.

E. City shall provide trash and garbage disposal facilities. Concessionaire shall provide and use suitable covered metal receptacles for all garbage, trash, and other refuse. Piling of boxes, cartons, barrels, pallets, tires, batteries, vehicle parts, or other similar items in an unsightly or unsafe manner on or about the Concessionaire's leased area, or elsewhere on the Airport by the Concessionaire is prohibited.

F. At the time of execution of this Agreement, and annually thereafter for the term of this Agreement, Concessionaire shall furnish a copy of its City of Billings business license to Director of Aviation and Transit, showing that the required license is in effect and current.

G. Concessionaire shall bear, at its own expense, all costs of operating the concession, and shall pay in addition to rental, all other costs, assessments, insurance, permits and licenses connected with the use of the leased area and facilities.

H. All proprietary improvements, equipment, fixtures, and fittings installed by the Concessionaire shall be maintained in first class condition by the Concessionaire.

I. Concessionaire shall be responsible for its utility connections and payment for services used in connection with its proprietary improvements to its exclusive use leased areas.

J. Concessionaire shall neither sell gasoline on the Airport, nor permit employees

to fill personal vehicles at the QTA fueling facility. Upon execution of this Agreement, Concessionaire may service (including gasoline, oil, and other non-major repair services) and store only those vehicles owned or controlled by Concessionaire used in conjunction with the rental concession granted hereunder.

K. Concessionaire assumes full responsibility for the proper and legal use, handling, storage, and disposal of any hazardous substances used or consumed by Concessionaire in its occupancy and the conduct of its business. "Hazardous substance" shall be interpreted broadly to mean any substance or toxic material, hazardous or toxic or radioactive substance, or other similar term by any Federal, State or Local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Concessionaire will hold City harmless from and indemnify City against and from any damage, loss, expenses, or liability resulting from any breach of these representations and warranty including all attorneys' fees and costs incurred as a result thereof. Notwithstanding the preceding, Concessionaire shall not be responsible for hazardous substances that were in existence prior to commencement of this Agreement, or for hazardous substances caused by other parties, including City, outside of the Leased Premises.

L. Concessionaire shall not use facilities located at the Airport to support any of its off-Airport rental car operations or rental car operations at other airports, specifically including the use of the vehicle wash facilities.

M. Concessionaire shall utilize designated employee parking areas for the parking needs of its employees. The aforementioned Terminal area Rental and Return spaces shall be used only for Concessionaire's rental vehicles.

N. Concessionaire shall not use any facilities located at the Airport other than those specifically identified in this Agreement without first obtaining the written approval of the Director of Aviation and Transit; said approval may be subject to additional fees and a separate agreement.

O. Concessionaire shall be responsible for snow removal in front of its designated QTA exclusive use preparation/detail space.

P. Concessionaire shall be responsible for maintaining a current list of employees with fueling codes assigned for use at the QTA fueling facility.

#### ARTICLE 7

#### NONDISCRIMINATION

A. General. In the use and occupation of the Airport, Concessionaire shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or disability. Additionally, for the services provided during the use and occupation of the Airport, Concessionaire shall furnish said services on a reasonable and not unjustly discriminatory basis to all users thereof and charge reasonable and not unjustly discriminatory prices for each unit of service, provided that the Concessionaire may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

B. Civil/Human Rights Laws. In the operation and use of the Airport, Concessionaire shall not, on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of Title 49, Code of Federal Regulations, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and such other Federal, State, or Local laws as may be applicable.

Without limiting the generality of the foregoing, Concessionaire agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or disability. Concessionaire agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin or ancestry, age, or disability. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Concessionaire agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

C. Nondiscrimination in Federally Assisted Programs. Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assignees, as part of the consideration of this Agreement, does hereby covenant and agree as a covenant running with the land that, in the event improvements are constructed, maintained, or otherwise operated on the Airport for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such improvements and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended.

D. Nondiscrimination Requirements. Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assignees, as a part of the consideration of this Agreement, does hereby covenant and agree as a covenant running with the land that:

1. No person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said improvements.

2. No person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the construction of any improvements on, over, or under such land and the furnishing of services thereon.

3. Concessionaire shall use the facilities in compliance with all other requirements imposed by, or pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended.

Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, or such employment activities covered in any applicable State or Local law. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Article 7.

E. Federal Civil Rights Laws. During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

2. 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of The Civil Rights Act of 1964);

3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal aid programs and projects);

4. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);

6. Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, § 47123) as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and § 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);

8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain

testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;

9. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low income populations;

11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Federal Regulations at 74087 – 74100);

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

F. U.S. Transportation Regulations. This Agreement is subject to the requirements of the U.S. Department of Transportation's Regulations, 49 CFR Part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of 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 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## ARTICLE 8

### OBLIGATIONS OF CITY

The City shall maintain the structures, facilities and grounds used and leased by the Concessionaire as follows:

A. Airport Terminal Building. The City shall maintain the structure, roof, and outer walls of the Airport Terminal Building and shall furnish heat, air conditioning, lights, and janitorial service.

B. Terminal Area Ready/Return Spaces. City shall maintain the Ready/Return parking area located within the public parking area included under the provisions of Article 1, Paragraph A., 2. City will be responsible for installing and maintaining any individual parking stall signs. The City's responsibility to install these signs shall be limited to the initial installation. All signs are to be approved by the Director of Aviation and Transit prior to installation.

C. QTA Facilities. The City will maintain and repair the QTA grounds, facilities, and equipment except for the Concessionaire's personal equipment and fixtures installed in Concessionaire's exclusive use preparation/detail space. City will maintain, repair, and provide the following:

1. Structural deficiencies in the buildings, facilities, and grounds not caused by the Concessionaire, to include the building roof, exterior portions of the building, personnel doors and locks, overhead doors and openers, exterior lighting, main utility services, heating systems, the sand/oil separator system, and the fueling

system at the fueling facility.

2. All roads, and paved and graveled surfaces.
3. Snow removal as the City's resources permit.

## ARTICLE 9

### QTA OPERATIONAL PROCEDURES AND RESPONSIBILITIES

The Concessionaire and its employees, agents or contractors shall abide by the following operational procedures for use of the QTA facilities. Occasionally, the operational procedures may need to be altered or updated due to operational changes, equipment modifications, usage requirements, or changed environmental or security conditions. Should operational procedure changes be necessary, updated written procedures will be provided by the City.

A. All vehicles shall be washed in the prewash or the automated wash facilities. Heavy soil/mud shall first be removed in the prewash facility only, prior to entering the automated wash facilities. No vehicle washing that includes the spraying of water or use of buckets filled with water used with the intent to clean an automobile's exterior, shall occur on the outside of any of the facilities or in the exclusive use preparation/detail bays. The preparation/detail bay floors may be cleaned with water and a mild detergent, but must only be drained to the building's floor drain, so that all water is contained within this facility.

B. The prewash bays shall be used on a first-come, first-serve basis. The automated wash bays will be assigned on a preferential use basis to each Concessionaire in accordance with Exhibit C.

C. Proper Use of Facilities and Equipment. As necessary, specific operational procedures will be posted in the fueling, prewash, and automated wash areas, and distributed to the Concessionaire. The Concessionaire is responsible for training and monitoring its employee's

adherence to these procedures.

D. Concessionaire shall immediately report all site, facility and equipment damage, malfunctioning equipment, fuel and fluid spills, and vehicle collisions to the Director of Aviation and Transit. Normal business and after hours contact information will be provided to the Concessionaire and updated as necessary.

E. The Concessionaire's employees shall follow posted site and access road speed limits. No speeding, squealing of tires, excessive or high speed turns, or other careless or reckless driving is permitted; tickets will be issued for violations. All vehicles must remain on the designated paved and graveled surfaces.

F. The QTA site, facilities, and equipment shall be used by the Concessionaire for only the vehicles in its On-Airport rental fleet. Company vehicles not part of the On-Airport rental fleet, personal vehicles, boats, trailers, trucks, recreational vehicles, and equipment shall not be washed, cleaned, fueled, serviced, repaired, or stored at the QTA site.

G. All trash, garbage and other refuse occurring as a result of the Concessionaire's vehicle wash and detail operation, shall be disposed of in the approved receptacles provided by the City. Piling of boxes, cartons, barrels, pallets, junked equipment, vehicle parts, tires, or similar items in an unsightly or unsafe manner on or about the premises is prohibited. Items and equipment not associated with the Concessionaire's On-Airport car rental operation shall not be discarded in the City supplied trash/garbage receptacles.

H. No oils, fuels, paints, or chemicals shall be washed or poured into the drains at the prewash, preparation/detail and automated wash facilities, into sinks or water closets, on the site's paved and graveled surfaces, or into any storm drainage systems. All oils, fuels, paints, or chemicals used onsite shall be properly stored and disposed of.

I. Vehicles shall not proceed into or out of the prewash or automated wash facilities until the overhead doors are fully open.

J. Marking, identifying or painting of any interior or exterior space or paved surface is prohibited without the prior written permission of the Director of Aviation and Transit. Concessionaire identification signs will be permitted in certain locations on the site. The location, size, material, and mounting method of the sign(s) must be approved in writing by the Director of Aviation and Transit prior to installation.

K. Wrecked, damaged, or inoperable vehicles shall be parked in a location designated for such and removed from the QTA site within twenty (20) business days. In the event such a vehicle is subject to an ongoing insurance claim process and additional time is required before removing said vehicle from the QTA site, Concessionaire shall make a written request to the Director of Aviation and Transit for an extension of time. An extension may be granted at the sole discretion of the Director of Aviation and Transit.

L. Concessionaire shall follow the established after-hours security procedures and report any suspicious, security and safety violations to the Director of Aviation and Transit.

M. The Concessionaire shall operate and maintain its exclusive use preparation/detail space, as identified in Exhibit C, and by said reference made a part of this Agreement, excluding maintaining and repairing overhead doors and openers. Should an overhead door need to be replaced or repaired, the Concessionaire must notify the City of this need.

1. Within the Concessionaire's exclusive use preparation/detail space, it shall be Concessionaire's responsibility to install any additional utility connections not provided by the City, to clean and maintain all interior surfaces and flooring, and to replace, as needed, all interior lighting.

2. The Concessionaire may install additional equipment for the purposes of carrying out any of the activities provided for herein, provided that the Concessionaire first obtains the written approval of the Director of Aviation and Transit for any such activities.

3. All vehicle operations into the exclusive use preparation/detail space shall enter said space from the east facing overhead doors and exit from the west facing overhead doors to prevent vehicle backing movements into the QTA Facility area. This is a safety issue and must be adhered to.

N. Damage to the Leased Premises caused by the Concessionaire, its employees, agents, or contractors will be the sole responsibility of the Concessionaire. Said damage will be repaired by the City and billed to the Concessionaire who shall pay the invoiced damage costs. If damage is found in the joint use space, and the responsible party for the damage to the joint use space cannot be determined, the City will make the repairs and equally invoice all Concessionaires for the cost and charges associated with the repairs. All billing for repairs made by the City shall be paid within fifteen (15) days of receipt of invoice.

## ARTICLE 10

### INDEMNIFICATION AND INSURANCE

A. Indemnification. City and City's officers, directors, agents, representatives, and employees shall stand indemnified by Concessionaire as herein provided. It is expressly understood and agreed that Concessionaire is and shall be deemed an independent contractor and operator responsible to all parties for its respective acts or omissions and that City shall in no way be responsible therefore. It is further agreed that in the use of the Airport, in the construction, alteration, or maintenance of any improvements thereon, and in the exercise or enjoyment of the privileges herein

granted, Concessionaire shall indemnify, save harmless, and defend the City and City's officers, directors, agents, representatives, and employees from any and all losses that may result to the City and City's officers, directors, agents, representatives, and employees because of any negligence, act, or omission on the part of the Concessionaire or Concessionaire's agents, representatives, and employees and shall indemnify City against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the premises.

Concessionaire expressly agrees that City shall not be liable to Concessionaire, for personal injury, bodily injury, or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil disobedience or commotion, aircraft, smoke, vandalism, malicious mischief, or acts of civil authority, unless caused by the fault or negligence of City, its officers, directors, agents, representatives, or employees.

B. Insurance. Concessionaire shall provide and keep in force for the entire term of this Agreement the insurance coverages identified below. Insurance coverage shall be maintained with insurance underwriters authorized to do business in the State of Montana, and that are satisfactory to the City. At the time of execution of this Agreement, and annually thereafter, Concessionaire shall furnish a Certificate of Insurance along with all associated and required policy endorsements showing that required insurance is current and in force. Required evidence of insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days prior to expiration or termination of the existing policy. Concessionaire shall provide notice to City of any changes to insurance or cancellation of any or all insurance at least thirty (30) calendar days in advance of such change or cancellation. The Certificate of Insurance must include the following reference: City of Billings Logan International Airport, 1901 Terminal Circle, Room 216, Billings, MT 59105. If, in the City's opinion, the minimum limits of the insurance coverage herein required become inadequate

during the term of this Agreement, Concessionaire agrees that it will increase such minimum limits by reasonable amounts upon request of the City.

1. Breach of Agreement. The continuous maintenance by Concessionaire of all types of required insurance under this Agreement is mandatory. Failure of the Concessionaire to maintain such insurance is a material breach of this Agreement, and does not amend this Agreement, nor release the Concessionaire from any other obligations in this Agreement.

2. Commercial General Liability Insurance. Commercial general liability insurance on a standard occurrence form, providing coverage for personal injury, bodily injury, death, and property damage, in amounts not less than \$1,500,000 per occurrence; \$3,000,000 general aggregate; the general aggregate shall apply separately to each location. The required limits may be provided by a combination of commercial general liability insurance and excess or commercial umbrella liability insurance. The commercial general liability policy shall be endorsed to name the City of Billings, and City's officers, directors, agents, representatives, and employees as a **PRIMARY ADDITIONAL INSURED**. The City of Billings' general liability policy will be excess and noncontributory. The policy shall be endorsed to include a written waiver of insurer's right to subrogate against the City.

3. Workers Compensation and Employers Liability Insurance. Workers Compensation and Employers Liability Insurance is required if Concessionaire has employees. Workers Compensation insurance limits in accordance with the State of Montana and administered by the Montana Department of Labor and Industry. Required Limits are \$1,000,000 each accident, \$1,000,000 each employee, and

\$1,000,000 for bodily injury by disease.

4. Property Insurance for Business Personal Property and Concessionaire's Improvements. The property insurance shall be on a special form or all risks basis. The minimum limit shall be the full current combined replacement cost of the Concessionaire's business personal property and improvements. The insurance shall apply on a replacement cost basis, without deduction for depreciation.

5. Automobile Liability. Automobile liability insurance will be required for any vehicles in an amount not less than \$1,000,000 combined single limit. If Concessionaire is providing the coverage amount with an automobile policy that provides full coverage for all of the Concessionaire's vehicle uses, the policy shall be endorsed to include a written waiver of insurer's right to subrogate against the City.

C. Waiver of Subrogation. Anything in this Agreement to the contrary notwithstanding, to the extent of insurance proceeds recoverable by a party, City and Concessionaire each hereby waive any and all rights of recovery, claims, actions, or causes of action against the other and their respective agents, officers, managers, directors, members, and employees for any loss or damage that may occur to the Premises, or any improvements thereto, to the Airport, or any improvements thereto, or any personal property of such party therein by reason of fire, the elements, or any other cause which could be insured against under the terms of standard fire and extended coverage insurance policies, regardless of cause or origin, and covenants that no insurer will hold any right of subrogation against such other party.

## ARTICLE 11

### PERFORMANCE BOND

The Concessionaire shall furnish to City a Performance Bond in the amount of seventy

percent (70%) of the First Year MAG at least ten (10) days prior to the commencement date of this Agreement. Not less than ten (10) days prior to each Agreement Year anniversary, a Performance Bond will be furnished for the succeeding Agreement Year in an amount equal to Seventy Percent (70%) of the MAG for that Agreement Year. Said bond is to be provided by a surety company qualified to do business in the State of Montana, acceptable and satisfactory to City, and shall be conditioned to ensure faithful and full observance and performance by the Concessionaire of all the terms, conditions, covenants, and agreements set forth in this Agreement, including timely payment of all monthly and annual fees, rentals, CFCs, and guarantees.

In lieu of a Performance Bond, the Concessionaire, at Concessionaire's option may deposit with the City, a cash amount, or an irrevocable letter of credit equal to the amount of the required bond. In the event Concessionaire chooses to provide a letter of credit as security, the letter of credit shall be irrevocable for the period of performance, and shall be payable on demand by City. Said deposit will be held as security and refunded in full at the end of the term of this Agreement unless used to satisfy the Concessionaire's financial obligations herein.

In the event that Concessionaire fails to provide said security for the first Agreement Year as provided herein, Concessionaire will have no rights hereunder. In the event said security is not provided ten (10) days prior to the beginning of each Agreement Year, Concessionaire shall be in default and Concessionaire's interest may be terminated.

At least thirty (30) days prior to the expiration of its performance bond, the City shall be notified in writing of the implementation of the replacement bond. Failure to provide the City with a performance bond or other satisfactory instrument prior to the expiration of a current bond shall result in a \$100 per day penalty for each day the bond is not current, shall be an event of default under the terms of this Agreement, and Concessionaire's interest may be terminated.

## ARTICLE 12

### PARTIAL DAMAGE

If all or a portion of the Airport Terminal Building premises or the QTA Facilities are partially damaged, but not rendered untenable, the same will be repaired with due diligence by City, provided, that if the damage is caused by the negligent act or omission of Concessionaire, its agents, employees or successors, and said damage or destruction is not covered by Concessionaire's insurance coverages, Concessionaire shall reimburse City for the cost and expense incurred in said repair.

## ARTICLE 13

### EXTENSIVE DAMAGE

If the damages referred to in Article 12 above, shall be so extensive as to render the Airport Terminal Building premises or QTA Facilities untenable, but capable of being repaired, the same shall be repaired with due diligence by City, and the charges payable herein for the Car Rental Counter and/or QTA Facilities, and associated areas, and the Concessionaire's MAG shall abate pro-rata from the time of said damage or destruction until such time as temporary facilities are provided or said premises are fully restored and certified by City's engineers as ready for occupancy; provided however, that if said damage is caused by the negligent act or omission of Concessionaire, its agents, employees, or successors, said fees and charges will not abate and to the extent that said damage or destruction is not covered by Concessionaire's insurance coverages, Concessionaire shall reimburse City for the cost and expenses incurred in said repair. If within twelve (12) months after the time of said damage or destruction said premises are not repaired or reconstructed, Concessionaire may cancel this Agreement in its entirety by giving City thirty (30) days notice in writing.

ARTICLE 14

LIMITATION ON CITY'S OBLIGATIONS TO REPAIR

As applied in the foregoing Articles 12 and 13, City's obligations shall be limited to repair or reconstruction to the same extent and of equal quality as existed at the time of the damage or destruction. Redecoration and replacement of furniture, equipment, and supplies shall be the responsibility of Concessionaire, unless damage or destruction was caused by City, and any redecoration, refurbishing and re-equipping shall be of equivalent quality to that originally installed hereunder.

ARTICLE 15

TERMINATION

This Agreement shall terminate at the end of the full term hereof without any notice by either party. A holding over by the Concessionaire, its assigns or sublessees beyond the expiration of the term shall not be permitted without the written consent of the Director of Aviation and Transit in accordance with Article 3 of this Agreement.

Concessionaire shall have the right to remove all of its movable furniture, fixtures, machinery, and equipment, and all other personal property installed by it on the Leased Premises, and all expenses connected with such removal shall be borne by the Concessionaire. Said property shall be promptly removed within thirty (30) days upon the termination of this Agreement. Concessionaire shall leave the Leased Premises in a clean and orderly condition, acceptable to City. Removal of Concessionaire's personal property by City because of failure of Concessionaire to do so shall be at Concessionaire's sole expense.

ARTICLE 16

CANCELLATION BY CONCESSIONAIRE

This Agreement shall be subject to cancellation by Concessionaire upon one or more of the following events:

- A. The permanent abandonment of the Airport as an air terminal.
- B. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial parts thereof, in such a manner as substantially to restrict Concessionaire for a period of at least ninety (90) days from operating thereon.
- C. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport and the remaining in force of such injunction for a period of at least ninety (90) days.
- D. 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) days after receipt from Concessionaire of written notice to remedy the same.
- E. The complete destruction of the Leased Premises.

ARTICLE 17

CANCELLATION BY CITY

This Agreement shall be subject to cancellation by City in the event Concessionaire shall:

- A. Be in arrears in the payment of the whole or any part of the amount agreed upon hereunder for a period of fifteen (15) days after the time said payments become due.
- B. File a voluntary petition in bankruptcy.

C. Abandon the demised area.

D. Other than being in arrears on payments due the City as described hereinabove, default in the performance of any of the covenants required herein to be kept and performed by Concessionaire and such default continues for a period of thirty (30) days after written notice from City of said default. Any default shall be deemed a material breach of this Agreement.

#### ARTICLE 18

##### MAKING MINIMUM ANNUAL FEES

In the event Concessionaire is unable to make the MAG as provided in Article 4, Paragraph A., by reason of war, or take over by public authority, the MAG shall be adjusted for the period of incapacity provided, however, the ten percent (10%) of all Gross Receipts provision shall remain in full force and effect. The MAG will resume after removal of the incapacity.

#### ARTICLE 19

##### GENERAL PROVISIONS

A. Inspection. City, by its officers, employees, agents, and representatives, shall have the right at a reasonable time to enter upon the demised area for the purpose of inspecting same, for observing the performance by Concessionaire of its obligations hereunder, and for the doing of any act which City may be obligated or have the right to do under this Agreement.

B. Attorney's Fees. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, the nonprevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

C. Governing Law. This Agreement and all disputes arising hereunder shall be construed and enforced by the laws of the State of Montana. Venue in any proceedings held hereunder shall be in the State of Montana Thirteenth Judicial District Court, Yellowstone County, Montana.

D. Notices. Notices to City provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Director of Aviation and Transit  
Billings Logan International Airport  
1901 Terminal Circle, Room 216  
Billings, MT 59105

and notices to Concessionaire, if sent by certified mail, postage prepaid, addressed to:

or to such other addresses as the parties may designate to each other in writing from time to time.

E. Successors and Assigns. All of the terms, covenants, and agreements herein contained shall be binding upon and shall inure to the benefit of successors in interest and assigns of the respective parties hereto.

F. Assignment and Transfer. Concessionaire shall not assign, transfer, or sublease its rights and premises hereunder without the prior written consent of City. The City may condition approval upon such things as the City deems appropriate or deny the transfer for proper cause.

G. Modification and Amendments. Changes or modifications to this Agreement shall be done in the form of a written amendment, to be agreed upon and signed by both Concessionaire and City.

H. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement or the particular paragraphs.

I. Effect of Invalid Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

J. Quiet Enjoyment. Concessionaire, upon payment of rent and all other fees and charges, and upon observation of the terms of this Agreement, shall lawfully and quietly hold, occupy, and enjoy the demised premises during the full term of this Agreement, without hindrance or disturbance from City or anyone claiming by, through, or under City. Except, that City shall specifically have the right to inspect, expand, renovate, or improve the Airport Terminal Building and other car rental facilities, without being liable to Concessionaire for disturbance.

K. Exhibits. The following exhibits are attached and by reference made a part of this Agreement.

Exhibit A – Rental Car Counters

Exhibit B – Ready/Return Parking Spaces

Exhibit C – Rental Car Quick Turn Around Facility

Exhibit D – Concessionaire's Monthly Report of Gross Receipts and Customer Facility Charges

Exhibit E – CFC Ordinance No. 10-5515

Exhibit F – Rental Car QTA/Satellite Transfer Parking Lot

Exhibit G – Five-Year Revenue Summary for MAG Suspension

IN WITNESS WHEREOF, this document has been duly executed by or on behalf of the parties hereto as of the date indicated below.

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

ATTEST:

CITY OF BILLINGS

BY \_\_\_\_\_  
CITY CLERK

BY \_\_\_\_\_  
MAYOR

APPROVED AS TO FORM

CONCESSIONAIRE

BY \_\_\_\_\_  
CITY ATTORNEY

BY \_\_\_\_\_

DRAFT