



AUTOMOBILE PUBLIC PARKING CONCESSION AGREEMENT

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

CITY OF BILLINGS, MONTANA, hereinafter  
designated "City"

and

SP PLUS LLC, hereinafter  
designated "Concessionaire"

W I T N E S S E T H

WHEREAS, the City owns and operates an airport known as Billings Logan International Airport (BIL), located in the City of Billings, State of Montana, and

WHEREAS, the parties desire to enter into an agreement for the purpose of operating an Automobile Public Parking Concession and for the use of Premises and Facilities at the Airport for such concession, and

WHEREAS, the Concessionaire is a company engaged in operating public parking facilities and lots, and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and the benefits to be derived, the parties hereby agree as follows:

**ARTICLE I**

**DEFINITION OF TERMS**

1. "Agreement" shall refer to the terms and conditions of this Agreement for the operation of the public parking facilities of Billings Logan International Airport.
2. "Airport" shall refer to the Billings Logan International Airport.
3. "Automobile Public Parking Concession" shall mean the privilege of operating the public automobile parking facilities on the Airport, as described in attached Exhibit A, for which a charge is made.



4. "Billings Logan International Airport" refers to the Airport, owned and operated by the City and located in Billings, Montana.
5. "City" shall refer to the City of Billings, Montana.
6. "Concessionaire" shall refer to the firm selected to operate the Automobile Public Parking Concession at the Airport under the terms and conditions set forth in this Agreement.
7. "Contract Year" shall refer to each twelve (12) month period beginning on the start date of this Agreement and each successive annual anniversary date, for the term of this Agreement.
8. "Days" shall be understood to mean calendar days.
9. "Director" shall mean the Director of Aviation and Transit at the Airport, or his/her designee.
10. "Gross Receipts" shall include the aggregate amount of all receipts from the operation of the Automobile Public Parking Concession, whether for cash, credit, or otherwise, and regardless of when or whether payment is received, including, but not limited to, all parking charges and sales of any kind made from the Concession Premises and Facilities and excluding only shuttle costs, and any sales tax or other direct consumer tax that may specifically be paid by the purchaser or the customer at the time of purchase or payment. Gross Receipts do not include consumer-paid transaction fees , (specifically defined as: \$0.00 for grace/validated tickets; \$0.99 for transactions staying under 2 hours; and \$1.99 per transaction for stays of 2 hours or more; Airport validations, and exempt handicapped parking fees.
11. Minimum Annual Guarantee (MAG) shall mean the minimum amount of money that is due annually and payable monthly by the Concessionaire regardless of actual revenues.
12. "Premises and Facilities" shall refer to the public parking premises and facilities serving the current and proposed Airport passenger Terminal Building as described in attached Exhibit A or as may be amended.
13. "Parking Concession Manager" shall refer to the person appointed by the Concessionaire to be in complete charge of the Concessionaire's operation at the Airport.
14. "Parking Control Equipment" (Equipment) shall refer to the equipment used in the operation of the Automobile Public Parking Concession as described in the attached Exhibit B.
15. "Revenue Sharing" shall refer to the allocation of revenues pursuant to the annual percentage of Gross Receipts.



16. "Term" shall refer to the specific commencement and end dates of this Agreement between the Airport and the Concessionaire, and any extension thereof.

17. "Twenty-four (24) Hour Period" refers to the continuous twenty-four (24) hour time period that begins from the time a parking customer enters the parking lot facility and receives a date and time-stamped parking ticket, receipt, confirmation, or other form of acknowledgement indicating the exact time they entered the parking lot.

## **ARTICLE II**

### **TERM OF AGREEMENT**

1. Term. The term of this Agreement shall commence as of 12:01 a.m. local time, June 1, 2026, and shall end at 11:59 p.m. local time, May 31, 2031. This is known as the base term.

2. Option Term. Provided that the Concessionaire is in compliance with the terms and conditions of this Agreement and has performed satisfactorily, one (1) additional five (5) year option term may be exercised at sole discretion of the Airport. To exercise the option term, the parties shall agree in writing to the option term, a minimum of six (6) months prior to the base term termination date. Unless otherwise authorized by the City for an alternative later date, the agreement will terminate on the stated expiration date.

3. Holding Over. At the end of the base term, if the parties are actively engaged in negotiations to extend the term, but need time to complete negotiations, the parties agree that the agreement may continue past the base term on a month-to-month basis on a holding-over basis. This month-to-month continuation will be under the same terms and conditions in place at the termination of the base term. The holding over condition may be terminated with thirty (30) days prior written notice.

## **ARTICLE III**

### **PREMISES AND FACILITIES**

1. The City, in consideration of the compensation to be paid and the covenants and agreements set forth herein to be kept and performed by the Concessionaire, does hereby grant to the Concessionaire, upon the conditions hereinafter set forth, the use and occupancy of the Premises and Facilities for the Automobile Public Parking Concession as defined in Exhibit A, attached and made a part hereof. As the Airport prepares for the future construction of a parking garage, the Premises and Facilities available to the Concessionaire are subject to change; said



change will be made via an amendment to this Agreement following discussion with and notice to Concessionaire.

2. The City expressly reserves the right to grant utility rights-of-way over, under, through, across, or on any part of the Premises and Facilities, provided that such use will not unreasonably or materially interfere with the Concessionaire's use of the Premises and Facilities.

#### **ARTICLE IV** **FEES AND CHARGES**

1. For the privilege of operating the Automobile Public Parking Concession and the use of the Premises and Facilities, the Concessionaire shall pay to the City each year during the term of this Agreement the following net percentages of annual Gross Receipts:

Percentage of Gross Receipts

Contract Year One:  
85% of Gross Receipts

Contract Year Two:  
85% of Gross Receipts

Contract Year Three:  
85% of Gross Receipts

Contract Year Four:  
85% of Gross Receipts

Contract Year Five:  
85% of Gross Receipts

Notwithstanding the "Revenue Sharing" provided by the allocation of revenues pursuant to the above percentage of Gross Receipts formula, Concessionaire guarantees the City the greater of either:

- A. The above percentage Gross Receipts formula, or
- B. A minimum annual guarantee equal to \$3,210,000 for Contract Year One;  
A minimum annual guarantee equal to \$3,210,000 for Contract Year Two;  
A minimum annual guarantee equal to \$3,210,000 for Contract Year Three;  
A minimum annual guarantee equal to \$3,210,000 for Contract Year Four;  
A minimum annual guarantee equal to \$3,210,000 for Contract Year Five.



The minimum annual guarantee may be rescinded for any Contract Year in which the annual passenger enplanements (boardings) are less than 400,000. The annual Contract Year enplaned passenger number will be calculated by the City using the information provided by the air carriers for all enplaned passengers during each Contract Year.

2. If a cashier undercharges a customer, the Concessionaire shall pay the City based on the full amount of the actual charge. If a cashier makes an overcharge, the amount of the overcharge will be included in the Gross Receipts and shall not be used as an offset for any undercharge. If it is shown to the satisfaction of the City that the overcharge was refunded to the customer, the amount of the overcharge will not be included in the Gross Receipts.

3. To effect certain provisions of MCA Title 49, Chapter 4, Part 3 (section 49-4-301 et seq.), the Concessionaire shall not make a charge to handicapped persons prominently displaying either a valid, State-issued special handicapped permit in the windshield, a special one hundred (100) percent disabled veteran license plate issued under MCA 61-3-332(9), or 61-3-458(4)(b) or (4)(i) or a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction. Per City ordinance, handicapped persons prominently displaying a special parking permit in the windshield or special license plates are exempt from all parking charges and fees imposed for parking on public streets or in designated handicapped places in public parking lots or public parking garages and are exempt from any time limitation imposed upon parking in such area except in areas where: (a) stopping, standing or parking of all vehicles is prohibited; (b) only special vehicles may be parked; (c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic; or (d) time limitations are placed on handicapped parking because of security and operational reasons such as handicapped parking spaces at Billings Logan International Airport. Concessionaire shall complete a handicapped parking form for this parking and submit copies of the handicapped parking forms it has collected each month along with its monthly Gross Receipts report.

4. The Concessionaire shall furnish to the City by the fifteenth (15<sup>th</sup>) day of each month a report signed by the Parking Concession Manager or corporate officer showing total Gross Receipts, as defined herein, for the preceding calendar month. The City retains the right to direct the Concessionaire to alter its reports as deemed appropriate. With said monthly statement, the Concessionaire shall remit to the City the percentage of Gross Receipts for the preceding calendar month, to be computed as described in this Article IV, Paragraph 1. If Concessionaire makes an error in computing the percentage of Gross Receipts, upon notification by the City, Concessionaire



shall immediately pay any underpayment to the City with interest, as set forth herein below. If Concessionaire shall have paid to City a percentage of the Gross Receipts in excess of the amount due for such month, the overpayment shall be adjusted against the percentage of Gross Receipts for the next month and reflected on the monthly statement for said month.

5. No later than thirty (30) days following the end of each Contract Year, Concessionaire shall deliver to City, an annual summary statement signed and certified by a corporate officer to be true and correct, setting forth the details and total amount of Concessionaire's annual Gross Receipts made during the immediately preceding Contract Year. This statement shall be for the purposes of reconciling the monthly statements of Gross Receipts and payments made by the Concessionaire during each Contract Year.

6. Notwithstanding the provision herein contained for the payment by the Concessionaire to the City a Concession Fee based upon a percentage of Gross Receipts as above provided, it is expressly understood and agreed that the City shall not be construed or held to be a partner, associate, or joint venturer of the Concessionaire in the conduct of its business, but the Concessionaire shall at all times have the status of an independent contractor, without the right or authority to impose tort, contractual, or any other type of liability upon the City.

7. The City is entitled to collect and the Concessionaire agrees to pay all Concession Fees due under this Agreement to the City without notice to the Concessionaire. Concession Fees more than thirty (30) days past due will be subject to an interest penalty of one and one-quarter percent (1 1/4%) per month, based on an annual rate of fifteen percent (15%).

8. Without prejudice to any other remedy which otherwise might be used to resolve any payments in arrears or other breaches of this Agreement, if the City is required or it elects to pay any sum or sums, or incurs any obligations or expense by reason of failure, neglect, or refusal of the Concessionaire to perform any one or more of the terms, conditions, or covenants of this Agreement, or as a result of any act or omission of the Concessionaire contrary to said terms, conditions, or covenants, the sum or sums so paid or the expense so incurred, including all interest, costs, damages, and penalties may be added to any installment of the Concession Fees thereafter due and each and every part of the same shall become additional charges recoverable by the City in the same manner and with like remedies as if it were originally a part of the Concession Fees as set forth herein above.

9. No acceptance by the City of Concession Fees, charges, or other payments in whole or in part for any period or periods after a default or breach of any of the terms, covenants, and



conditions to be performed, kept, or observed by Concessionaire shall be deemed a waiver of any right on the part of the City to terminate this Agreement or to collect unpaid Concession Fees or other charges.

## **ARTICLE V**

### **USES, PRIVILEGES, AND OBLIGATIONS OF THE CONCESSIONAIRE**

1. The Automobile Public Parking Concession is defined as Concessionaire's privilege of operating the public automobile parking facilities on the Airport for which a charge is made. The Concessionaire agrees, however, that other Airport tenants and persons may lease property from the City in places other than those described in the attached Exhibit A for purposes of providing auto parking for the other tenants' employees, customers, guests, and invitees.

2. During the term of this Agreement, the Concessionaire agrees to use the Premises and Facilities for the purposes or activities stated herein, subject to the conditions generally or primarily set forth herein. Concessionaire shall not use or permit the use of the Premises or Facilities or any part thereof for any purpose or activities other than those specifically stated herein without first obtaining the express, written approval of the Director.

3. The Concessionaire agrees that the City and the Airport have the right to adopt and enforce reasonable rules and regulations and that the Concessionaire and all employees, representatives, agents, and invitees will faithfully observe and comply with all rules and regulations as may from time to time be promulgated by the City or the Airport.

4. Concessionaire, its employees, representatives, agents, or invitees shall at all times comply with the laws, codes, and regulations of the United States of America and the State of Montana; all applicable ordinances, codes, regulations and policies of the City of Billings, including Montana Prevailing Wage Rates, non-discrimination requirements, etc., and the rules governing operation of the Airport. Violations thereof by the Concessionaire, its agents or employees, or revocation of permits or licenses required in the performance of this Agreement shall be cause for termination of this Agreement at the option of the City if not corrected immediately.

5. The Concessionaire shall, at its own expense, pay and be solely responsible for any and all taxes or assessments properly levied by the City, County, State, Federal, or other governmental units, and any and all costs or charges for utility services furnished to or required by the Concessionaire, which are not already specifically provided for by the City as set out in this Agreement. The City will provide electricity, water and sewer services, and the parking lot lighting.



6. At the time of execution of this Agreement, and annually thereafter for the term of this Agreement, Concessionaire shall obtain a City of Billings business license and furnish a copy of said license to the Director, showing that the required license is in effect and current at all times.

7. The Concessionaire will not affix or permit to be maintained upon the Premises or upon the exterior of the Facilities or any improvement or appurtenances thereto, any billboards, signs, or any other advertising media, except those which have the prior written approval of the Director and a permit, if required, from the City. The Concessionaire also will not affix or permit to be maintained within any structure situated upon or within the Premises any signs or other advertising media which concern goods or services other than those furnished or offered for sale by the Concessionaire, except those which have prior written approval of the Director. Additionally, in accordance with City ordinance, no handbills, printed circular, leaflet, pamphlet, card, or other printed matter or literature may be distributed, deposited, or scattered in any of the public automobile parking lots.

8. The Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage, and other refuse on the Premises and Facilities caused as a result of the operation of its business. Piling of boxes, cartons, pallets, barrels, or similar items in an unsightly or unsafe manner on or about the Premises is forbidden. The City will provide suitable receptacles for all garbage, trash and other refuse at various locations around the parking lot Premises. The Concessionaire will be responsible for the daily emptying of the provided garbage receptacles and replacing new garbage liners in each receptacle. All collected garbage will be disposed of in the Airport Terminal Building trash compactor/dumpster located directly west of the Terminal Building or other location as may be specified by the Director.

9. The Concessionaire shall bear, at its own expense, all normal and customary costs of operating the Automobile Public Parking Concession, and shall provide and pay in addition to the Concession Fees, all other costs connected with its use of the Premises and Facilities, rights and privileges granted, including but not limited to the following:

A. Plowing and removal of snow from the parking lot Premises to a location on the Airport as designated by the Director.

B. Plowing and removal of snow from the sidewalks in the parking lots, including the sidewalk on the west side of the Parking Concession building through the parking lot to a location on the Airport as designated by the Director. Piling of snow in crosswalks or



windrowing snow to impede pedestrian traffic on and across sidewalks and the parking areas is prohibited.

C. The control of icy and slippery conditions through the use of sand, snow melt, liquid deicing fluids, or other acceptable methods.

D. The backup and storage of supporting records, documents, books, and accounts, and any subsequent costs associated with the need to store the identified documents, including transportation to a storage site.

E. The backup of any systems and data relating to the operation of the parking concession.

F. Annual license fees for any systems or software utilized in the operation of the parking concession.

G. Janitorial services and associated cleaning supplies and restroom paper products.

H. Wi-Fi or cellular service utilized by onsite personnel or any of the PARCS equipment.

I. Parking rate signage.

J Insurance, performance bonds, and all licenses, permits, or other similar authorizations as required under Federal, State, or Local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the rights and privileges extended hereunder.

K. Costs to procure, install, operate and maintain a new Parking Access and Revenue Control System (PARCS) and removal of the replaced PARCS system, including any necessary civil work related to the new equipment.

The Concessionaire shall also pay for all repairs or replacements to City property, facilities, or equipment, resulting from damage caused by the Concessionaire, its representatives, agents, invitees, employees, contractors, suppliers, and customers, arising out of, directly or indirectly, the Concessionaire's use or occupancy of the Premises and Facilities.

10. The Concessionaire shall conduct a parking rate survey semi-annually of the five (5) large Montana airports parking rates and submit a report to the Director. No more than one rate increase per year will be permitted. Any rate changes will be reflected in an amendment to this Agreement.



11. The Concessionaire shall provide a shuttle operation to and from the Terminal Building. Initially the shuttle service will be a seasonal shuttle service from the Economy and Remote Overflow Lots to/from the Terminal Building. Once construction of the future parking garage facility begins, daily shuttle service will be required. The Concessionaire will provide the shuttle vehicles to be used for the onsite shuttle service. A shuttle service operation/cost proposal will be prepared by the Concessionaire for each Contract Year of this Agreement and presented to the Director.

12. The Concessionaire shall not do anything, or permit anything to be done, within the Premises and Facilities which may interfere with the effectiveness or accessibility of the storm drainage, electrical, water, and sewage systems, the fire protection system, the alarm system, and the facilities for the protection of the Airport and the public.

13. The Concessionaire shall not engage in any business or activity on the Airport other than as authorized herein.

14. At the termination or expiration of this Agreement, the Concessionaire shall surrender the Premises and Facilities to the City in the same condition as when the Concessionaire received the Premises and Facilities from the City or as thereafter modified or improved; reasonable use and wear are excepted.

15. If a new operator is selected upon the expiration of this Agreement, the Concessionaire agrees to turn over all access to all of the Parking Control Equipment, and in all other ways cooperate in the transition steps. The Concessionaire agrees to remove all of its personal property in a timely manner. Revenue generated by the vehicles parked on the Premises at the time this Agreement expires shall be considered as part of the Gross Receipts of the new operator. Annual PARCS licenses are subject to a 3% annual escalator. The following schedule illustrates the "year 6" cost structure that would apply to either a successor operator or the airport should they elect to continue utilizing the technology following the expiration of the base term and no option term is exercised by the Airport. In the event this Agreement is terminated prior to the end of the base term, or if a successor operator or the City elects to utilize the Metropolis Vision SaaS and/or AeroParker Platform at any time when Concessionaire is not the active operator, the City or successor operator shall be strictly liable for the then-current annual licensing, platform, and SaaS fees (including the 3% annual escalator calculated from Year 1). The 'Year 1 Base Value (Waived)' applies strictly and exclusively while Concessionaire is the active operator under this Agreement..



<b>Platform Component</b>	<b>Year 1 Base Value (Waived)</b>	<b>Year 6 Successor Fee (3% Annual Escalator)</b>
Metropolis Vision SaaS	\$68,000.00	\$78,830.40
AeroParker Platform Fee	\$18,000.00	\$20,866.87
Total Annual Licensing	\$86,000.00	\$99,697.27

16. No charges, fees, tolls, etc., other than those expressly provided for in this Agreement (including the consumer-paid transaction fees expressly permitted in Article I, Section 10), shall be charged or collected by the Concessionaire, unless it receives the prior, written approval of the City.

17. The Concessionaire shall accept all reasonable means of payment, including, but not limited to, cash, local personal checks (optional), debit cards, all major credit cards, and major online or mobile payment options. Concessionaire will bear all costs associated with the operation of current Payment Card Industry Data Security standards for its credit card system and online and mobile payment systems. The Concessionaire shall be responsible for all losses incurred on personal checks, credit card charges, and insufficient funds transactions. The Concessionaire shall also be responsible for all employee theft of revenues and losses due to holdup of personnel or robbery of the Premises. None of these losses will be deducted from Gross Receipts for the purpose of computing Concession Fees due.

18. If the Concessionaire becomes aware of an allegation of theft or other improper action by one of its employees, the Concessionaire shall report the facts regarding the allegation to the Director within forty-eight (48) hours of Concessionaire's knowledge of such. The Concessionaire shall provide the Director with a follow up report informing him/her of the actions taken by the Concessionaire.

19. In the event the Concessionaire does not perform some task, which should have been performed, the City shall give the Concessionaire fifteen (15) days notice to perform the task. If the Concessionaire has not performed the task within those fifteen (15) days, the City may accomplish the task by any appropriate means and charge the Concessionaire for such costs



including interest. Upon being billed for such costs, Concessionaire shall immediately remit full payment to the City.

20. In the event of a strike by the Concessionaire's employees, the City retains the right to take over the operation of the paid parking facilities so that the public may be served without interruption. During such time period, if the City takes over the operation of the paid parking facilities, then all parking fee collections shall be the City's sole property.

21. In the event of an automobile accident, injury to a customer, damage to property, or other similar incident occurring on the parking lot Premises, or if a claim is made by a customer, the Concessionaire shall provide the Director with a copy of the accident report or incident report within twenty-four (24) hours of the occurrence. Concessionaire shall contact Airport Police to report an automobile accident or damage to property; Concessionaire shall contact Airport Operations to report injuries to customers or others.

22. Concessionaire shall report to the Director monthly, the make, model and license number of any vehicle(s) parked in the parking areas for forty-five (45) days or more.

23. On an annual basis, the City will generate and distribute approximately forty-five (45) courtesy no-charge VIP parking cards and either provide a list of authorized VIP card users or a list of approximately forty-five (45) authorized license plates for the VIP card recipients to the Concessionaire. The use of the courtesy VIP parking cards shall be tracked by Concessionaire and included in the monthly report under the transaction type "non-revenue" as specified in Article XI, Paragraph 5, herein. The Concessionaire will either create subscription accounts for these authorized license plates at no charge, or utilize other validation access options subject to Director approval

24. 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.

25. Useful Life of the Facility. Concessionaire and the 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.



26. Customer and Member Data. The City and the Concessionaire acknowledge and agree that the customer and member data collected and maintained by the Concessionaire through its Parking Access and Revenue Control System is not considered Personally Identifiable Information or information maintained by the City. The City acknowledges and agrees to Concessionaire's standard data retention policy regarding such information. Furthermore, customers are not required to create an account to utilize the parking facilities, and any customer who elects to create an account retains the right to delete their account at any time. Accordingly, the parties agree that this specific customer and member data is exempt from the data disposal and deletion requirements established in the City of Billings Information Technology Cybersecurity and Policy Manual. For the purposes of this Agreement, member data shall include, but is not limited to, license plate numbers, parking ticket records, and credit card receipts.

**ARTICLE VI**  
**RIGHTS AND COVENANTS OF THE CITY**

1. The City covenants that the Concessionaire shall have peaceful possession and quiet enjoyment of the Premises and Facilities during the term hereof so long as the Concessionaire performs and observes all of the covenants, agreements, terms, and conditions of this Agreement.

2. The City reserves the right to inspect facilities and maintain and keep in repair all publicly owned facilities of the Airport, together with the right to direct and control all activities of the Concessionaire to effect the right to maintain and repair all publicly owned facilities.

3. During time of war or national emergency, the City shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities and/or other areas or facilities of the Airport. If such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

4. It is understood and agreed that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, or development of the Airport.

5. There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises and Facilities herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter



used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or above the Airport.

6. The City and its duly authorized representatives shall have at any and all times the full and unrestricted right to enter the Premises and Facilities for the purpose of inspecting and of doing any and all things with reference thereto which the City is obligated to do as set forth herein, or which may be deemed necessary for the proper general conduct and operation of the Airport or in the exercise of the City's police power, or for observing the performance by Concessionaire of its obligations hereunder, provided said entry shall not unreasonably interfere with the operation of the Concessionaire.

7. The City reserves the right to temporarily remove up to ten percent (10%) of the combined total of paid parking spaces for a period ranging up to ninety (90) days for maintenance or other essential Airport purposes. In such an instance, the Concessionaire's rent shall remain as contained in this Agreement. If more spaces are taken out of use, or if the period is longer than ninety (90) days, the rent shall be adjusted as mutually agreed upon by both parties, to reflect the reduction of spaces.

8. The City reserves the right to modify the Premises and Facilities as necessary to accommodate the demand for paid parking and to facilitate construction. The modification will be discussed with the Concessionaire prior to its modification or construction and planned to minimize the disruption to the Concessionaire. In the event a modification or construction requires a change to the terms and conditions of this Agreement, the change shall be made by a written amendment that is agreed to and signed by both parties.

9. The City reserves the right to validate tickets or other validation forms for its consultants, officials, and other invitees, in which case there will be no charge. To qualify for the City validation, each ticket or validation form must be stamped with the City's Aviation and Transit Department parking validation stamp.

## **ARTICLE VII**

### **CONCESSION OPERATIONS**

1. It is the City's objective to provide the highest quality of service to the public. To accomplish this objective, the Concessionaire shall manage and operate the Automobile Public Parking Concession with energy, fidelity, diligence, excellence, integrity, dedication, and in full compliance with all of the provisions of this Agreement.



2. The Concessionaire shall operate the Automobile Public Parking Concession twenty-four (24) hours per day, each and every day during the entire term of this Agreement or any extension thereof.

3. The Concessionaire shall select and appoint an active, full-time Parking Concession Manager (Manager) who shall be in complete charge of the Concessionaire's operation at the Airport. Such person shall be a qualified, competent, and experienced manager vested with full power and authority in respect to the conduct of the Concessionaire's operations hereunder. The Manager shall be assigned to a duty station office at the Airport and shall ordinarily be available during regular business hours on Mondays through Fridays. At all times when the Manager is absent, a designated alternative representative shall be in charge and available at such duty station. The Manager shall have no other duties except as required at the Premises and Facilities.

4. The Concessionaire's employees shall at all times be distinctively and appropriately uniformed and be courteous, helpful, efficient, and clean and neat in appearance. Concessionaire's employees shall be required to greet customers in a friendly manner and say "Thank You" for each transaction. The Concessionaire shall not employ any person(s) in or about the Premises or Facilities who shall use improper language or act in a loud, boisterous, rude, or otherwise improper manner. The Concessionaire shall maintain a close check over its attendants and employees to ensure the maintenance of high standard of customer service to the public, the performance of such obligations to be determined at the sole discretion of the Director. The Concessionaire must apply for and obtain background checks and security clearance for all Concessionaire's employees as a prerequisite of employment at the Airport. The Concessionaire is not permitted to hire any persons who have been convicted of theft, misappropriation of funds, or any other fiscal impropriety.

5. The Concessionaire shall provide an adequate number of trained employees qualified to operate the Automobile Public Parking Concession in an efficient and professional manner. The Concessionaire shall prepare and submit staffing schedules for approval by the Director. Except in an emergency, the schedules may not be changed without approval of the Director. The Concessionaire shall establish a program of pre-assignment and in-service training, including preparation of operating procedure manuals. The procedures shall be approved by the Director. In-service training activities will be limited to off-peak periods.

6. To ensure prompt and efficient customer service to the public, the Concessionaire shall provide a sufficient number of cashiers on duty at all times to manage the exit queues to



prevent them from consistently exceeding five (5) vehicles in any one lane. If more than five (5) vehicles are in a lane, the Concessionaire shall open an additional lane, if such an additional lane is available. Scheduling shall also provide for adequate coverage during all break times, shift changes, and holiday or seasonal peaks. Strict adherence to the approved staffing schedule is required.

7. The Concessionaire shall provide and maintain continuous backup for its PARCS devices and data systems.

8. The Concessionaire shall take all reasonable measures in every proper manner to maintain, develop, and increase the business conducted by it hereunder, and the Concessionaire shall not divert any business from the Airport by referral or any other method.

### **ARTICLE VIII**

#### **STRUCTURES, OTHER IMPROVEMENTS, AND MAINTENANCE**

1. The City shall be responsible for structural maintenance of the parking lot structures and surface facilities, which it provides. The City shall, at its expense, provide and keep in good repair the lot structures, all paved parking surfaces in the parking lots, the concrete curbing and sidewalks, general area lighting (including re-lamping), fencing, landscaping, and directional signage. Concessionaire shall be responsible for the maintenance and repairs to the electrical, plumbing, phone and data lines, Wi-Fi or cell service, broken glass, door locks, and other items not identified as a responsibility of the City.

2. The City shall provide appropriate onsite storage space for the shuttle buses provided by the Concessionaire.

2. The Concessionaire shall provide, install, and maintain suitable informational signs, including signs showing current rates at each parking lot entrance and each cashier booth, subject to the approval of the Director.

3. Storage areas shall be kept in a safe, neat, clean, and uncluttered condition. Trash receptacles shall be provided by the City and placed at convenient locations throughout the parking areas and shall be emptied frequently by Concessionaire so as to avoid becoming overfilled and causing litter. Concessionaire will closely monitor the parking areas for debris and litter, and pick up and properly dispose of such.



4. The Concessionaire will develop and maintain a contingency plan to ensure that all Facilities are operational during periods of electrical failure, inclement weather, and for periods of equipment failure.

5. Concessionaire shall make no alterations, changes, or additions in or to the Facilities and Premises, unless and until the prior written consent of the Director has been obtained. All plans and specifications for such alterations, changes, or additions shall be approved by the Director in advance of any construction or implementation. All alterations, improvements, and changes to the Premises and Facilities shall become the property of the City.

## **ARTICLE IX**

### **PARKING CONTROL EQUIPMENT**

1. The parking control equipment in place at the inception of this Agreement is owned by the City and described in Exhibit B, attached and made a part hereof. The Concessionaire shall replace any outdated and end-of-life equipment with new equipment as outlined in the Concessionaire's RFP response included as Exhibit C, attached and made a part hereof, and properly dispose of the equipment being replaced.

2. The Concessionaire shall maintain the parking control equipment at full operating efficiency during the term hereof. The Concessionaire specifically agrees to provide the capability, either with its own personnel or a maintenance contractor, to respond to, and commence repairs of an equipment outage within four (4) hours. If for any reason it becomes necessary to repair or replace any parking control equipment, the Concessionaire will pay the full cost of the repair or replacement.

3. Concessionaire agrees to replace/update the existing parking control equipment with new equipment as specified during the first quarter of the Contract Year and to provide a complete list of the installed systems and equipment upon completion of replacement and installation. The physical replacement parking control equipment hardware in place at the end of the term of this Agreement or any extension thereof, shall remain in place and either become the property of the City or be transferred to a new operator. However, all proprietary software, platforms, SaaS solutions, and intellectual property owned by Concessionaire remain the sole property of Concessionaire and shall not transfer to the City or a new operator. Continued use of such technology by the City or a successor operator shall be strictly subject to the execution of a



separate licensing agreement and the payment of the then-prevailing Platform, SaaS, and Transaction Fees.

4. Prior written approval by the Director shall be required for any and all modifications to the Premises and Facilities, including modifications to parking lot layout, numerical extent of parking, and location of any structures and equipment. All construction costs shall be at the sole expense of the Concessionaire. All structures and related equipment shall become the property of the City at the time of installation.

**ARTICLE X**

**SCHEDULE OF PARKING RATES**

1. The Concessionaire shall place in effect the following schedule of parking rates upon commencement of this Agreement.

<b><u>Short Term Parking Lot</u></b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>	<b><u>Year 4</u></b>	<b><u>Year 5</u></b>
0-30 minutes	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Each Additional 30 minutes	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
Maximum Each 24 Hours	\$18.00	\$18.00	\$20.00	\$20.00	\$20.00
<b><u>Long Term Premium Parking Lot</u></b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>	<b><u>Year 4</u></b>	<b><u>Year 5</u></b>
0 - 30 minutes	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
Each Additional 30 minutes	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Maximum Each 24 Hours	\$15.00	\$16.00	\$18.00	\$18.00	\$18.00
<b><u>Long Term Parking Lot</u></b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>	<b><u>Year 4</u></b>	<b><u>Year 5</u></b>
0 - 60 minutes	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00
Each Additional 60 minutes	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
Maximum Each 24 Hours	\$12.00	\$12.00	\$14.00	\$14.00	\$14.00
<b><u>Economy Parking Lots</u></b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>	<b><u>Year 4</u></b>	<b><u>Year 5</u></b>
0 – 60 minutes	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Each Additional 60 minutes	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Maximum Each 24 Hours	\$10.00	\$10.00	\$12.00	\$12.00	\$12.00
<b><u>Remote Overflow Lots</u></b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>	<b><u>Year 4</u></b>	<b><u>Year 5</u></b>
0 - 60 minutes	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Each Additional 60 minutes	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Maximum Each 24 Hours	\$10.00	\$10.00	\$12.00	\$12.00	\$12.00



During the term of the Agreement the rental rates may be adjusted with written approval of the City, and shall immediately be implemented by the Concessionaire at those times. No rate decreases shall occur during the term of this Agreement.

2. In the event of an approved parking rate increase, the consumer-paid transaction fees referenced in Article I, Section 10 shall adjust proportionate to the parking rate change. This adjustment works as a direct percentage correlation. The specific percentage of the parking rate increase shall be determined by calculating the simple average of the maximum 24-hour daily rates across all parking product types (Short Term, Long Term Premium, Long Term, Economy, and Remote Overflow) prior to the increase, and comparing it to the simple average of the newly approved maximum 24-hour daily rates. The transaction fees will increase by that same percentage, rounded to the nearest cent, ensuring the ratio between the service fee and the parking cost remains constant throughout the term of the Agreement. By way of example, if the current transaction fee is \$1.99 and there is a 5.0% parking rate increase (as determined by the simple average calculation), the new transaction fee shall be calculated as \$2.09 (\$1.99 plus 5.0%, rounded to the nearest cent). Prior to the proposed consumer-paid transaction fee rate increases, Concessionaire shall meet with the Airport to schedule implementation of the increases and preparation and timing of public notices of such.

3. The Concessionaire is authorized to enter into agreements with other Airport tenants for validated parking at reduced rates on its Premises and Facilities, subject to the prior written consent of the Director.

4. The Concessionaire is authorized to provide emergency auto service for its customers and to collect a reasonable charge for the service therefore commensurate with charges made for similar services by others in the local area. Collections for emergency services shall be exempted from the Gross Receipts calculation but should be reported as non-revenue each month. Vehicles providing emergency or towing services for a customer shall not incur a parking charge.

## **ARTICLE XI**

### **ACCOUNTING RECORDS AND REPORTS**

1. The Concessionaire shall keep full and accurate books and records showing all of the Gross Receipts from the Automobile Public Parking Concession. Such records shall be open to inspection and audit by authorized representatives of the City at all reasonable times. All supporting records, documents, books, and accounts shall be kept and retained by the



Concessionaire for a period of three (3) years. Arrangement and costs for the storage and backup of said supporting records, documents, books, and accounts shall be the responsibility of the Concessionaire as set forth in Article V, Paragraph 9. The City's representative shall have the right to examine all used tickets, journal tapes, cashier shift reports, daily revenue and activity reports, and all other revenue control files and records for purposes of passing its own judgment regarding compliance with this Agreement. Failure to comply with the City representative's reasonable request to examine these records shall be cause for termination of this Agreement.

Further, within ninety (90) days after the close of each Contract Year of the term of this Agreement, the Concessionaire shall have an audit performed by a Certified Public Accountant, of its annual Gross Receipts from the operation of the Automobile Public Parking Concession at the Premises and Facilities, and of the concession fee payments Concessionaire made to the City in relation thereto, and such other details as the City may require consistent with this Agreement. Concessionaire shall submit to the City a copy of such audit together with a statement from the Certified Public Accountant stating that in its opinion the concession fees paid to the City were in full compliance with this Agreement. Should such audit disclose a discrepancy between the amount paid to the City and the amount due as indicated by such audit, then an appropriate adjustment including an interest charge calculated as set forth in Article IV, Paragraph 7, herein, shall be made between the parties.

2. The Concessionaire shall conduct a secondary audit of the parking operations at least twice per year. This secondary audit is to be done by personnel from the Concessionaire's headquarters office or regional office. The audit shall, among other things, include an audit of cashier tickets, tapes, shift reports, daily reports, bank deposits, electronic records, and other revenue related documents and activities. The results of each audit will immediately be forwarded to the Director in written form. Upon request by the Director, Concessionaire shall promptly allow the Director or his/her designee to review all of the revenue related documents and activities.

3. 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 or any extension thereof. The audit will not necessarily be limited to the concession 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 the 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 the City, unless the results reveal a discrepancy of more than five percent (5%) between the Gross Receipts



reported in accordance with this Article XI, Paragraph 1 hereinabove, and the Gross Receipts as determined by audit for any Contract 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-quarter percent (1.25%) per month from the date such additional percentage fee became due until paid.

4. The Concessionaire shall compile a daily inventory of all automobiles in the parking facilities. The inventory shall include the license plate number and show the location of the automobile and will be used by cashiers to control lost ticket claims or no-pays. The number of vehicles in the inventory by lot shall be reported monthly by totals, average, maximums, and minimums. A nightly inventory of vehicles shall be taken after traffic from the last flight of the evening has cleared from the parking premises. Inventory shall summarize the total vehicles still on the Premises by each Montana County, and for each state other than Montana. This inventory shall also be reported monthly to the Director.

5. The Concessionaire shall provide and utilize consecutively numbered tickets with separate coding and serial numbers for each ticket dispenser, and provide monthly reports of tickets used, tickets lost, no-charge (less than ten (10) minutes elapsed time) or within another no-charge time period), non-revenue, voided, malfunction, test, and unaccounted for tickets. The Concessionaire agrees that unaccounted for tickets will equal or be less than 2/10 of 1% of total tickets. If unaccounted for tickets exceed this percentage, the Concessionaire agrees to pay \$5.00 per ticket to the City for the next 1/10 of 1% of total tickets, \$10.00 per ticket for the next 1/10 of 1% of total tickets, \$15.00 per ticket for the next 1/10 of 1% total tickets, and \$20.00 per ticket for all tickets in excess of 5/10 of 1% of total tickets. Upon transitioning to a ticketless system, Concessionaire shall provide and utilize unique transaction ID numbers for each entry reader and provide monthly reports of all transactions by ID number. all transactions The Concessionaire agrees that unaccounted for transactions will equal or be less than 2/10 of 1% of total transactions. If unaccounted for transactions. exceed this percentage, the Concessionaire agrees to pay \$5.00 per transactions. to the City for the next 1/10 of 1% of total transactions., \$10.00 per transactions. for the next 1/10 of 1% of total transactions., \$15.00 per transactions. for the next 1/10 of 1% total transactions., and \$20.00 per transactions. for all transactions. in excess of 5/10 of 1% of total transactions..

6. In addition to the monthly reports of Gross Receipts required by Article IV hereof, the Concessionaire shall provide certain reports and analysis as may be requested by the City to



assist in the development and maintenance of adequate and efficient parking services for the public. Basic data for such reports shall be generated by the Concessionaire through utilization of both regular clerical recording and automated equipment. Initially, the City requires a monthly report showing the total number of vehicles which entered the parking facility by entry gate and which exit facility (garage or surface) by exit lane. The report should also include the numbers and amounts for each of the following types of transactions; no charge, non-revenue, lost ticket, insufficient funds, manually processed tickets (if applicable), malfunction/void/test tickets, no-pays, and online/mobile transactions. The City reserves the right to modify the reporting requirements as needed to establish and maintain good revenue control and to receive adequate reports.

## **ARTICLE XII**

### **INDEMNIFICATION AND INSURANCE**

1. It is expressly understood and agreed that Concessionaire is and shall be deemed to be an independent contractor and operator, responsible to all parties for its respective acts or omissions and that the 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, the Concessionaire covenants and agrees to indemnify and save harmless the Airport, its members, agents, officers and employees, their successors and assigns, and the City of Billings, its officers, agents and employees, their successors and assigns, individually or collectively, from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature for personal injury, bodily injury, or death, or property damage in any way arising out of or resulting from any activity or operation of the Concessionaire on the Premises or in connection with its use of the Premises or Facilities. The Concessionaire further agrees to pay all expenses in defending against any claims made against the City to the extent such claims are directly caused by Concessionaire's negligence or willful misconduct ; provided however, that the Concessionaire shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of the City, its agents or employees. Concessionaire also expressly agrees that the City shall not be liable to Concessionaire 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 the City, its officers, agents, or employees. The Concessionaire and the City shall



give prompt and timely notice of any claim made or suit instituted, which in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.

2. Concessionaire shall provide and keep in force for the term of this Agreement the following insurance coverage. The required limits can be met by either providing a primary policy or in combination with an umbrella/excess liability policy(ies).

(A) A commercial general liability policy (occurrence form only), providing coverage for personal injury, bodily injury, death, and property damage, in amounts not less than \$2,000,000 per occurrence. The commercial general liability policy shall be endorsed to name the City of Billings as a **PRIMARY ADDITIONAL INSURED**. The City of Billings' general liability policy will be excess and noncontributory. Copies of the endorsements must be provided along with the Certificate of Insurance. The policy(ies) shall also contain a waiver of subrogation against the City.

(B) In addition, Concessionaire shall procure and maintain in force during the term of this Agreement, automobile liability insurance applicable to the ownership, maintenance, use, or operation of any business automobile, mobile equipment, or other ground vehicle at the Airport (including owned, non-owned, or hired) in an amount not less than \$1,000,000 per occurrence and naming the City of Billings as a **PRIMARY ADDITIONAL INSURED**. The policy(ies) shall also contain a waiver of subrogation against the City.

(C) Concessionaire shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Concessionaire shall maintain statutory Worker's Compensation and Employer's Liability insurance coverages for all members and employees of Concessionaire's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA, with limits not less than \$1,500,000 for each sub-category of coverage, and

(D) Cyber/Data Information Security Insurance. The Concessionaire shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. If the Concessionaire maintains higher limits than the minimums shown above, the City requires and shall be entitled to



coverage for the higher limits maintained by the Concessionaire. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgements as may be caused by any act, omission, or negligence of the Concessionaire's officers, agents, representatives, assigns or subcontractors.

All policies shall be endorsed to provide no less than thirty (30) days advance written notification to the City of any reductions in the policy coverage, cancellations for any reason (except non-payment of premium), or other adverse amendments to the policy or policies impacting the risks covered; notice of non-payment of premium shall be ten (10) days.

At the time of execution of this Agreement and annually thereafter, Concessionaire shall furnish a certificate of insurance and copies of all endorsements showing that the required insurance is in force. 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. Insurance coverage shall be maintained with insurance underwriters authorized to do business in the State of Montana and that are satisfactory to the City.

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 on request of the City.

3. Performance Bond. The Concessionaire agrees to post with the City, upon execution of this Agreement, and maintain throughout the term hereof, a performance bond in the amount of \$400,000. The performance bond shall insure the full and faithful performance by the Concessionaire of all covenants, terms, and conditions of this Agreement and stand as security for the payment by the Concessionaire of all the valid claims by the City.

4. In lieu of a performance bond, the Concessionaire, at Concessionaire's option may deposit with the City, 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 the City. Said deposit will be held as security and returned 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 Contract Year as provided herein, Concessionaire will have no rights hereunder. In the event said security is not provided within ten (10) days prior to each Contract Year anniversary date, 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/day penalty for each day there is no bond in place, shall be an event of default under the terms of this Agreement, and Concessionaire's interest may be terminated.

### **ARTICLE XIII** **HEADINGS**

1. The headings of the Articles of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

### **ARTICLE XIV** **THE AGREEMENT**

1. This Agreement and any attachments constitutes the entire Agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

2. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing and signed by both parties or an authorized representative of each party.

### **ARTICLE XV** **FORCE MAJEURE**

1. The Force Majeure exceptions apply for both parties. Neither City nor Concessionaire shall be deemed to be in breach of this Agreement if either is prevented from performing any of its obligations hereunder by reason of strike, boycott, labor dispute, embargo, shortage of energy or materials, act of God, act of a public enemy, act of a superior governmental



authority, weather conditions, riot, rebellion, sabotage, or any other circumstance for which it is not responsible or which is not within its control. Any claim made by either party for impact resulting from an above listed reason, will require substantive and reasonable documentation as proof of the impact.

**ARTICLE XVI**  
**TERMINATION**

1. 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 and then only on a month-to-month basis in accordance with Article II, Paragraph 3.

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; all expenses connected with such removal shall be borne by the Concessionaire. Said property shall be promptly removed upon the termination of this Agreement. Removal of Concessionaire's personal property by City because of failure of Concessionaire to do so shall be at Concessionaire's expense.

2. In the event the Concessionaire shall hold over and remain in possession of the Premises or Facilities herein leased after expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a temporary tenancy from month to month, which may be terminated at any time by the City.

**ARTICLE XVII**  
**CANCELLATION BY CONCESSIONAIRE**

1. In addition to all other remedies available to the Concessionaire, this Agreement shall be subject to cancellation by the Concessionaire should any one or more of the following events occur:

- A. The permanent abandonment of the Airport as an air terminal.
- B. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport in such a manner as to substantially



restrict the Concessionaire from conducting its Automobile Public Parking Concession, and the remaining in force of such injunction for at least ninety (90) days.

C. The default by the City in the performance of any of the terms, covenants, or conditions of this Agreement to be kept, performed, and observed by the City, and the failure of the City to remedy such default for a period of sixty (60) days after receipt from Concessionaire of written notice to City to remedy the same.

D. 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 to substantially restrict the Concessionaire from conducting its Automobile Public Parking Concession thereon for a period of at least ninety (90) days.

E. The complete destruction of the Premises and Facilities, by catastrophe or other cause, or to the extent that Concessionaire is substantially restricted from conducting its Automobile Public Parking Concession, and the failure or inability of the City to restore the Premises and Facilities within sixty (60) days.

## **ARTICLE XVIII**

### **CANCELLATION BY THE CITY**

1. In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City should any one or more of the following events occur:

A. If the Concessionaire shall file a petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated as bankrupt pursuant to proceedings; or if a court shall take jurisdiction of the Concessionaire and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act; or if a Receiver for the Concessionaire's assets is appointed; or if the Concessionaire shall be divested of its rights, powers and privileges under this Agreement by other operation of law.

B. If the Concessionaire shall 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.

C. If the City determines that the Concessionaire has abandoned the Premises and Facilities and discontinued the conduct of its Automobile Public Parking Concession.



D. If the Concessionaire shall fail to perform, keep and observe any of the covenants and conditions contained in this Agreement to be performed, kept and observed by it.

E. If the Concessionaire shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States, State of Montana, or City of Billings.

Provided that upon the happening of any of the contingencies recited in Subsections B, C, D, or E above, the City shall give written notice to the Concessionaire to correct or cure such default, failure to perform, or breach. If, within fifteen (15) days from the date of such notice, the default, failure to perform, or breach complained of shall not have been corrected in a manner satisfactory to the City, then, and in such event, the City shall have the right at once and without further notice to the Concessionaire to declare this Agreement terminated and to enter upon and take full possession of the Premises and Facilities. Provided further that upon the happening of any one of the contingencies enumerated in Subsection A hereof, this Agreement shall be deemed to be breached by the Concessionaire and thereupon ipso facto and without entry or any other action by the City the Agreement shall terminate, subject to reinstatement only if such involuntary bankruptcy or insolvency proceedings, petitions for reorganization, trusteeship, receivership, or other legal act divesting the Concessionaire of its rights under this Agreement shall be denied, set aside, vacated or terminated in the Concessionaire's favor within forty-five (45) days from the happening of the contingency. Upon the happening of said latter event, the Concessionaire shall, within ten (10) days, discharge any and all sums of money, which may have become due under this Agreement in the interim and shall then remain unpaid and shall likewise fully perform and discharge all other obligations which may have accrued and become payable in the interim. The acceptance of concession fees and other payments by the City for any period or periods after a default of any of the terms or covenants of this Agreement shall not be deemed a waiver of any rights on the part of the City to cancel this Agreement for failure by the Concessionaire to so perform, keep, or observe any of the terms of this Agreement to be kept, performed, and observed by the Concessionaire.

2. The City shall have the right to cancel this Agreement, upon ninety (90) days written notice to the Concessionaire, if, in its sole judgment, the Premises or Facilities herein are required for other uses of the Airport. In the event of the happening of such cancellation, the City shall offer to the Concessionaire a new Agreement covering premises suitable and appropriate to the Concessionaire's use as contemplated hereunder, and containing terms and provisions no less



favorable to the Concessionaire as are contained in the Agreement; and, upon execution of such new Agreement, the City shall provide for, and pay all costs in connection with the moving of or replacement of the Concessionaire's facilities and improvements to or on the new Premises. It is understood, however, that nothing stated or contained herein shall in any way be construed to be a waiver of or limitation upon the City's powers to invoke its rights of eminent domain.

#### **ARTICLE XIX**

##### **ASSIGNMENT AND SUBLETTING**

1. The activities, uses, privileges, and obligations authorized herein are personal and the Concessionaire agrees that it will not assign, transfer, or sublet the same or any portion thereof, or assign or sublet the Premises and Facilities or any portion thereof without the expressed written consent of the City. Any purported assignment in violation hereof shall be void. In no case, however, may the activities, uses, privileges, and obligations authorized herein or the Premises and Facilities, or any portion thereof, be assigned or sublet by the Concessionaire for any use other than herein specified. All provisions of this Agreement's application to the Concessionaire shall be equally binding upon any party to which the activities, uses, privileges, and obligations authorized herein or Premises and Facilities may be assigned or sublet.

#### **ARTICLE XX**

##### **SUCCESSOR AND ASSIGNS BOUND BY COVENANTS**

1. All covenants, stipulations, and agreements to this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

#### **ARTICLE XXI**

##### **ATTORNEY'S FEES**

1. 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 non-prevailing 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.



**ARTICLE XXII**  
**SUBORDINATION PROVISION**

1. It is understood and agreed that this Agreement shall be subordinate to the provision of any existing or future agreements between the City and the United States, 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 transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the development of the Airport.

**ARTICLE XXIII**  
**COMPLIANCE WITH LAW AND NONDISCRIMINATION**

1. Concessionaire shall comply with all applicable laws of the United States and of the State of Montana, and with all applicable rules, regulations, ordinances, and resolutions of any of the foregoing or of any department thereof, or of City, including not only laws, rules, regulations, ordinances, and resolutions now in effect, but also all of the foregoing hereafter prescribed or promulgated by authority or by law during the term of this Agreement. Concessionaire shall comply with all applicable information technology policies of the City of Billings, including without limitation the City's Information Technology Cybersecurity & Policy Handbook (<https://www.billingsmt.gov/485/Information-Technology>) and any directives or standards governing the use of artificial intelligence ("AI") systems, including and not limited to AI Security Policy (IT 1A.110), as such policies may be updated from time to time (collectively, the "City IT Policies"), provided, however, that any new directives, policies, or standards specifically governing the use of artificial intelligence (AI) systems, or updates thereto, shall require the mutual written agreement of both parties, which shall not be unreasonably withheld, conditioned, or delayed.

2. The Concessionaire for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities 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, or as said Regulations may be amended.



3. The Concessionaire for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

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. Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assignees, as part of the consideration of this Lease, 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. Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assignees, as a part of the consideration of this Lease, 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 VIII.

E. During the performance of this Lease, 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 addresses 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.*)

**ARTICLE XXIV**  
**HAZARDOUS SUBSTANCES**

1. Concessionaire assumes full responsibility for the proper and legal use, handling, storage, and disposal of any hazardous substances used or consumed by Concessionaire in the conduct of its business on the Premises. "Hazardous substance" shall be interpreted broadly to mean any substance or toxic material, fuel or petroleum-based products, 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 either were in existence prior to commencement of this Agreement, or for hazardous substances caused by other parties, including City, outside of the Premises and Facilities utilized by Concessionaire under this Agreement.

**ARTICLE XXV**  
**GOVERNING LAW**

1. This Agreement and all disputes arising hereunder shall be construed and enforced in accordance with 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.



**ARTICLE XXVI**

**EFFECT OF INVALID PROVISION**

1. In the event that any covenant, condition, or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way effect any other covenant, condition or provision herein contained; provided that the validity of any such covenant, condition or provision does not materially prejudice either the City or the Concessionaire in its respective rights and obligations contained in the valid covenants or provisions of this Agreement.

**ARTICLE XXVII**

**NOTICES**

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

ATTN: Jason Finch, President – West Airports  
SP PLUS LLC  
16200 Brookpark Rd., 2<sup>nd</sup> Flr  
Cleveland, OH 44135

Additional contact information:  
(786) 367-2130  
jfinch@metropolis.io

**and a copy to:**

ATTN: Legal Department  
SP Plus LLC  
501 Commerce Street, Suite 1210  
Nashville, TN 37203

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



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: SP PLUS LLC

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

BY \_\_\_\_\_  
JASON FINCH  
PRESIDENT – WEST AIRPORTS