

Non-Exclusive On-Airport Rental Car Concession Request for Proposal

Des Moines International Airport
5800 Fleur Drive
Des Moines, IA 50321

ADDENDUM 1

Distribution Date: October 20, 2023

Proposals Due: November 8, 2023 by 11:00 a.m. CT



Des Moines Airport Authority

**Non-Exclusive Rental Car Concession at the
Des Moines International Airport**

REQUEST FOR PROPOSALS

ADDENDUM 1 - Questions and Answers for above RFP

In the answers to these questions the Des Moines Airport Authority shall be noted as "Authority."

Dated October 20, 2023

The following changes are hereby made to the Request for Proposals – Attachments and Exhibits:

RFP:

1. Page 24. If 2 brands can share a \$500k MAG, why can't one brand have a \$250k MAG. In answering this question, I would note that airports such as DTW have over 37 million passengers annually and have set the MAG for newer entrants at \$360K annually. Similarly, Tampa with over ten million passengers annually has a MAG of just over \$200k annually.

Response: See Revised Section 4(B)(1) and the Revised Attachment 1 – Proposal Form included in the Revised Request for Proposals.

- a. If your answer to question 5 is no, why not just limit bidding to the 3 companies that dominate this market?

Response: See Response to Question #4.

- b. Similarly, in allowing one company to submit up to three separate bids, you are providing a bidding process in which the 5-concession competitive bidding can be met by awarding contracts to only 2 companies. Is that your intent?

Response: The Authority intends to award up to five concession agreements. The Authority will not limit how many proposals are submitted by a legal entity as long as different brands are submitted with each proposal.

- c. Have you received a legal opinion that your bidding process does not run afoul of the Iowa or federal anti-trust laws?

Response: No.

2. Please clarify on Proposal evaluation and award as it seems it is entirely subjective at the Authority's discretion? Is the intent to award based on total 5 year MAG amongst qualified proposers?

Response: Yes. Awards under this RFP are based solely on total MAG amount proposed, amongst qualified proposers. The Authority will evaluate proposals to determine that the proposer meets the minimum qualifications and all proposal requirements to be considered a qualified proposer. Then the proposals submitted from qualified proposers will be ranked based on total MAG amount proposed, from highest to lowest. The top five proposals will be awarded a concession agreement. See Revised Section 9 of the Revised Request for Proposals.

3. Please provide specificity with respect to the Airport's selection criteria, including the factors being evaluated and the criteria by which those factors will be considered and ranked.

Response: See Response to Question #2.

4. On page 3, #2, the Authority indicated that it is expecting a high level of service for its customers. Will the Authority be reviewing Google reviews for the Des Moines airport in scoring the RFP or will all responsible vendors solely be judged on the MAG? If not, how is the Authority insuring a high level of service?

Response: No, the Authority will not be reviewing Google reviews in scoring the RFP. See Response to Question #2 for description of evaluation and selection process.

5. Will Airport accept Proposer's own Surety performance bond form instead of the prescribed form in the RFP? Assuming our proposal is accepted, we can address this post-award provided you include language to the effect "or such other bond form as the Authority deems acceptable". If not, Proposer's surety company is concerned that the stipulated form in Exhibit E – 'Performance and Payment Bond' is for a five year term, non-cancelable, and does not contain aggregate language. If we cannot use our own standard form, can a cancellation clause be added to the bond form? Or, can the Airport make it a one-year term renewed annually by Continuation Certificates?

Response: See Revised Item 11 of Exhibit B of the Revised Request for Proposals.

Note: Additional exhibits related to the CSB and Associated Parking Facilities have been added to Exhibit A of Revised Request for Proposals.

Concession Agreement:

6. Last exclusion to Gross Revenue- please allow the administrative fee associated with same to be excluded. Also, there is a typo—"about" should be "above"

Response: No Change to the exclusion. The typographical error is corrected. See Revised Article 1 of the Revised Sample Agreement.

7. Section 4.1(B): Please modify to the 20th of the month.

Response: See Revised Article 4.1(B) of the Revised Sample Agreement.

8. The proposed MAG abatement language in sec 4.1 (C) is unreasonable in that it only triggers given a very high 25% plus reduction in deplanements even though our MAGs are not able to reset annually and must be bid not less than prior year. The concept of proportionate reduction of the MAG tied to decline in deplanements rather than a complete MAG waiver is generally reasonable, however, should be adjusted to a) consider a much lower trigger and b) that our MAGs are annual and as such the methodology of adjusting only our monthly 1/12th MAG instalments does not actually work. There is no reason why MAGs should not be proportionately reduced given any decline in deplanements from year to year but we suggest a 6.25% decline threshold that on an annual basis equates to 3 months at a 25% decline. Since we are not contemplating a complete MAG waiver but only a reduction, lowering the trigger based on passenger volume declines makes sense and would allow Proposers to have more confidence in proposing MAG amounts for 5 years. As such, we suggest the following simple language that both sets a more reasonable trigger and also contemplates the necessary annual adjustment of the MAG for any year where MAG abatement is triggered:

In any contract year where the total deplanements at the Airport decline by 6.25% or more as compared to the prior contract year (or contact year 1), the Concessionaire's MAG for such contract year shall be reduced proportionate to the decline in deplanements as part of the year end reconciliation process. Where the County reasonably determines during any contract year that a MAG reduction is likely, it may waive the Concessionaire's obligations to remit the monthly 1/12th MAG instalment payments for any period of time it deems appropriate, but Concessionaire shall continue to remit the Privilege Fee each month regardless.

Response: See Revised Article 4.1(C) of the Revised Sample Agreement.

9. While we appreciate the inclusion of abatement language in the proposed new Concession Agreement, given the lessons of the pandemic, the financial risk of the MAG should be mitigated by simple and nimble abatement language. Toward this end, please include language in the Agreement to the effect of the following:

"Should the number of passengers deplaning on scheduled airline flights at the Airport during any given calendar month decline by more than fifteen (15) percent from the same calendar month of the prior calendar year, the obligation of the Concessionaire to pay the MAG Payment for that calendar month will be abated in its entirety. Such abatement shall continue until such time as deplanement levels at the Airport increase such that there is no longer a decline of more than fifteen (15) percent compared to the same calendar month of the prior year."

Response: See Response to Question #8.

10. RFP Page 8, D., 2, a, ii. Rent - Please provide a proposed budget for the O&M costs for the CSB similar to the draft O&M budget for the service facilities now included in the draft concession agreement.

Response: See Revised Article 4.2 and new Exhibit D(1) of the Revised Sample Agreement.

11. Please advise the anticipated annual budget for the operating expenses at the new CSB (including shuttle costs). We need to reasonably understand the estimated costs in advance of making decisions with respect to this RFP.

Response: See Response to Question #10.

12. Please include within Section 4.4 a means by which Concessionaires are also able to make payments to the Airport electronically.

Response: See Revised Article 4.4(A) of the Revised Sample Agreement.

13. Section 4.5(A): Please modify to the 20th of the month.

Response: See Revised Article 4.5(A) of the Revised Sample Agreement.

14. Section 4.5: “Transaction Day(s)” is not a defined term in the agreement. Please add to definition list and define with a 2-hour grace period.

Response: The definition of a Contract Day is defined in the Authority Rules and Regulations. See Revised Article 4.5(A) of the Revised Sample Agreement to reflect the term “contract day.”

15. 5.2 – please restate here that there can be no add or change of brands during the Term.

Response: See Revised Article 5.2 of the Revised Sample Agreement.

16. To simplify bond renewals, please make the performance bond requirement equal to 25% of the average MAG proposed for all five years.

Response: See Revised Article 6.10 of the Revised Sample Agreement.

17. Sec 6.11 Operations Violations – we object to the intended imposition of liquidated damages for hours of operation violations and question how the associated Liquidated damages can be imposed immediately and without notice? We ask that this language be removed entirely or at minimum the potential imposition of such liquidated damages be at the reasonable discretion of the Authority rather than automatic.

Response: See Revised Article 6.11 of the Revised Sample Agreement.

18. Sec 9.1 As-is condition. It is entirely unreasonable to state that Concessionaire accepts the Premises as-is, especially for new facilities that have not even been constructed yet. Please change the language to instead confirm that the Authority will provide the Premises in suitable condition for Concessionaire's use while also confirming the level of base building development and fit-out to be provided by Authority.

Response: See Revised Article 9.1 of the Revised Sample Agreement.

19. Article 11 Environmental Matters:

- a. Please confirm that the Authority will provide an environmental baseline condition report for new premises prior to occupancy to clearly identify any pre-existing Environmental Conditions.

Response: See Revised Article 11.5 of the Revised Sample Agreement.

- b. Sec 11.2 B 2 – please delete this section as not applicable to rental car operators. Failing deletion and at minimum please add the following language at the start of the section: “*If applicable to Concessionaire's SIC code and operations,*”

Response: No Change. The SWPPP does apply to the rental car companies and they are currently co-permittees on the Airport's plan.

- c. Sec 11.3 B – please add the underlined language: “...the Authority reserves the right to require that Concessionaire conduct remedial activities for Environmental Conditions caused or contributed to Concessionaire's activities...”

Response: See Revised Article 11.3(B) of the Revised Sample Agreement.

- d. Sec 11.8 B – please add the underlined language: “For Environmental Conditions caused or contributed to by Concessionaire's activities...”.

Response: See Revised Article 11.8(B) of the Revised Sample Agreement.

20. Section 11.5 of the contract. This section requires the operators to indemnify the Authority against any environmental claims related to our use of the CSB, which we had no role in remediating or building. Can you carve out our indemnification for actions that we had no role increasing or causing?

Response: See Revised Article 11.5 of the Revised Sample Agreement.

21. Article 12 Insurance

- a. 12.1 – With respect to the underlined language below, please change the requirement to instead require that we provide insurance *certificates* as is

standard. Our insurance policies are voluminous and cover thousands of locations. “Concessionaire shall submit copies of all insurance policies to the Authority upon receipt of written request and at no cost to the Authority.”

Response: No Change. The policies will only be requested if needed, and will be accepted in the electronic format the policies are likely delivered to the Concessionaire in.

- b. 12.2 B. – Please delete number “(4) Independent Contractors Coverage” as we require our subcontractors maintain their own insurance. We do not cover/carry insurance for them.

Response: See Revised Article 12.2(B) and 12.2(F) of the Revised Sample Agreement.

- c. 12.2 I – Please delete ~~“Additional Insured, Government Immunities and Cancellation/Material Change endorsements have been included per attached. The Authority’s endorsement language shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required”~~ and add instead the underlined language “with all applicable blanket endorsements as attached.”

Response: No Change.

- d. Exhibit B Insurance Endorsements – We use blanket endorsements, please delete this Exhibit B in its entirety.

Response: No Change.

- 22. Sec 18.22 Liens - in the 2nd paragraph, please confirm that for the purposes of this section “personal property” does not include “Motor Vehicles” as defined. Our fleet financing arrangements stipulate that our motor vehicles cannot be made subject to any liens.

Response: See Revised Article 18.22 of the Revised Sample Agreement.

Note: Additional minor edits have been made to the Sample Agreement upon further review by the Authority. See additional minor red-lined edits in the Revised Sample Agreement.

Questions Received NOT Resulting in Changes to RFP documents:

RFP:

- 23. Please clarify what “one-way drop off availability or exchange anywhere within the continental United States” means on page 3, #2.

Response: If an operator has more than one location across the continental United States, the operator should allow a customer to rent a vehicle from one of the operator's locations and drop it off at any other one of the operator's locations.

- a. Is there a minimum number of locations needed?

Response: No. There is not a minimum number of locations needed.

- b. In answering (1)(a), I would note that several of your airlines only cover 3-4 destinations.

Response: Thank you for the comment. There is no question to be answered.

24. In reserving your right to reject any respondent that is in default or has been threatened with having a concession revoked by another airport (p.3, #2), is that threat associated with an entire company or just a brand within that company? If just a brand, why would it not apply to the entire company? If by company, would any company be left given that COVID was within the last 5 years and all companies likely failed to hit their MAG.

Response: The threat of revocation would be associated with the legal entity holding the concession agreement. Failure to attain a minimum annual guarantee does not mean a concessionaire is in default.

25. Please confirm that the Authority will advise if we have any arrears or outstanding account balances payable that may affect our eligibility for award under this RFP.

Response: As of October 17, 2023, Enterprise Rent-A-Car Company – Midwest, LLC is not in default or arrearage (or have a history of defaults or arrearage) under any previous or existing agreement with the Authority.

26. Please confirm which forms and what information incumbent proposers are **not** required to submit and/or provide.

Response: Section 4(B) of the RFP outlines the items required to be submitted in each proposal. The requirements are no different for incumbent operators versus new legal entities submitting a proposal in response to this RFP.

27. Please advise what will happen if after award and premises allocation there is any unallocated premises (ie. If no RAC wished to take on additional premises and the associated rents)?

Response: If after award and premises allocation there are any unallocated premises, the Authority will use such unallocated premises at its sole discretion.

28. What will happen to the parking blocks and new facility counters if less than five (5) concessions are awarded?

Response: Additional space will be offered to successful proposers during the space selection meeting following the same process as outlined for the Service Facility (Section 6(b)(3) of the RFP). If there continues to be additional space after the space selection meeting, the Authority will use such unallocated premises at its sole discretion.

29. With regard to the number of proposals received, please address what happens with block allocations in the event the airport awards less than 5 concessions.

Response: See Response to Questions #27 & #28.

30. Please clarify whether the five (5) parking blocks shown at the new facility are intended to represent the actual parking blocks so we know what we are bidding for? Having said, we have concerns with the layouts as proposed and request an opportunity to engage in further review of the parking blocks after the RFP and, as necessary, a subsequent parking block selection process based on final block designs.

Response: Yes, the five parking blocks shown at the new facility are intended to represent the actual parking blocks planned to be constructed. As the design is further developed, the successful proposers will have an opportunity to discuss with the Airport and their capital project team their concerns.

31. Please indicate if ready/return spaces in the new ready/return blocks will be reallocated during the term of the proposed agreement, and if so the criteria and frequency of reallocation.

Response: No. There will be no reallocation of ready/return spaces or parking blocks during the term of the Agreement.

32. Please confirm that the rent for the QTA premises at \$0.19 psfpm is applied only to the area of the allocated parking blocks?

Response: Yes, the rent for the QTA premises at \$0.19 psfpm is applied to the actual rented footprint of the proposer's allocated parking block depicted on Exhibit A Service Facility – Parking Blocks.

33. With respect generally to the fees and charges contemplated in this RFP and the ensuing concession agreement, we are extremely concerned about the aggregate impact of these costs on our operations while we are being forced to relocate to a remote facility that will offer a reduced level of service for our customers and risks loss of customers to alternate modes of transportation. Amongst our concerns are a) the significantly increased counter rental rates in existing terminal, b) the unknown costs associated with premises in the new CSB, c) the excessive increases in parking rates for existing lots near the terminal, d) the extremely high monthly costs for the proposed new parking blocks, e) the additional

and unknown cost to the RACs of the shuttle operation to transport our customers to and from the terminal and f) the costs of relocating to and fitting out new premises generally but also given limited time to amortize these costs. As such, we specifically request that the Authority review all of these cost items and reduce the proposed rates to more reasonable levels while placing caps on the unknown items to allow us to at least submit proposals with some certainty on our cost exposure.

Response: Based on our Airport financial consultant's recommendations, the Authority believes these rates are necessary in order to cover the costs of running Des Moines International Airport.

34. RFP Page 1 – Please change the time proposals are due on 11/8 to 3p CDT. This allows for a morning delivery of a proposal on that day if needed.

Response: No Change.

35. Please allow proposal submission via email or upload rather than hard copy delivery only.

Response: No Change.

36. RFP Page 1 - In the interest of being “green,” please allow submission via dedicated email or portal. If that is not acceptable, please reduce the requirement to one original, and one digital file saved on a USB device.

Response: No Change.

37. RFP Page 1 - Please consider a short timeframe following the airport response to questions on 10/20 to allow for follow up and clarification questions. As such, the final proposal due date would need to be extended by a similar time frame.

Response: No Change.

38. RFP Page 7, B, 3. Service Facility – In the event only incumbent operators propose, please confirm or allow to the extent possible grandfathering of existing service facilities if all operators agree.

Response: No Change.

39. Is there any guarantee from the Des Moines Airport regarding a minimum number of parking spaces available to a selected vendor (p.6(a)(2)). Obviously, availability of close parking is critical to the revenue assumptions of each vendor.

Response: No. There is no guarantee regarding a minimum number of parking spaces from the available parking spaces at the initial premises described in Section 6(a)(2) of the RFP.

- a. Are spaces assigned based on brand or based on concession? In other words, if two brands share the same concession and MAG, will they share the same allotment of parking spaces?

Response: Allocation of parking stalls at the terminal (the initial premises) and the parking blocks at the CSB (the replacement premises) are based on the individual proposal. If two brands are included in the same proposal, they are operated under one concession agreement and those two brands are required to operate from the premises included in that concession agreement.

40. RFP Page 7, C., 1. New CSB Parking Blocks – Considering new CSB will not come online until approximately 18 months after this RFP process is complete, please allow for selection of parking blocks and facility space at the new CSB based on previous year's concession revenue rather than total 5-year MAG.

Response: No Change.

41. Due to the uncertainty associated with having to select facilities prior them being designed and constructed, we request that the Airport have two separate selection meetings; the first for existing facilities and a second meeting after the new CSB is designed.

Response: No Change.

42. Please waive certain qualification and experience submission requirements for incumbents (specifically attachment 2, items #7-10).

Response: No Change.

43. We had previously requested that you waive certain qualification requirements (Attachment 2, items #7 – 10). In the event you do not waive these, then for item #9 Proposer is able to provide annual balance sheets and statements of comprehensive income prepared along with a certification letter from our Chief Financial Officer certifying our financial statements have been prepared in accordance with GAAP. Please confirm this is acceptable.

Response: Providing an annual balance sheets and statements of comprehensive income prepared along with a certification letter from a proposer's Chief Financial Officer certifying the proposers financial statements have been prepared in accordance with GAAP is acceptable for Attachment 2, Item 9.

44. Attachment 2, please waive questions 7 and 8 for incumbent concessionaires.

Response: No Change.

45. Attachment 2, question 9 – As a publicly traded company, all of our financial statements are publicly available via a URL link to our public Annual Reports to the SEC on Form 10-K, since our financial reports are voluminous (over 400 pages each).

Response: Attachment 2, Question 9 may be answered by providing a link to public Annual Reports.

46. Given the significant investment the Airport is making with respect to the new CSB and preparation of the ready/return area as well as the larger investment being made with respect the Terminal expansion project, the issue of funding and specifically source of funds is extremely important. Please provide the budget and funding sources for the proposed CSB and ready/return areas.

Response: DSM is currently at 30% design of the CSB and the anticipated budget for the parking lot and building are expected to be approximately \$13 million utilizing a variety of Airport funding sources. As discussed in previous meetings, the Authority will fund the cost of building the CSB and making the parking lots ready for RACs to operate.

47. Please indicate what costs, if any, the RAC's will be responsible for with respect to the construction and/or tenant improvements for the proposed CSB and ready/return areas.

Response: The tenant spaces in the CSB will be provided to the concessionaire in "white box" condition, anticipated to include finished concrete flooring, lighting, electrical and telecommunication conduits and drops to each counter location, and HVAC. The concessionaires are responsible for all costs and installation of tenant finishes including painting, signage, counters, furnishing, kiosks, and stanchions. Related to the parking facilities, the concessionaires are responsible for the costs and installation of exit gates, booths, tire teeth/spikes, signage, awnings, and pavement markings as desired.

48. How will the construction of the new CSB and ready/return area improvements be funded?

Response: See Response to Question #46.

49. How will the costs associated with a common transportation system to and from the terminal be funded?

Response: The costs associated with the common transportation system to and from the terminal will be included in the cost center for the CSB and be allocated across all operators in the CSB based on their proportionate share of transactions.

50. Do you have an estimate of the potential build-out costs of the CSB from its white-box delivery (p.6 #4)?

Response: Potential build-out costs of the CSB from its "white box" delivery to the successful proposers will vary based on each operator's plans for the buildout of their

allocated space to suite their needs. See response to Question #47.

- a. Would you consider, as other airports have done, in setting the concession expiration date based upon the move-in to the new CSB so that we have 5 years or more to amortize the cost of this build-out?

Response: No Change.

51. Will the successful rental car operators and Authority enter into any new or separate agreements outlining mutually agreed terms prior to relocation to the new facility?

Response: No.

52. Please clarify how the ACDBE percentages shall be calculated, including whether (a) ACDBE spend includes or excludes fleet purchases; (b) percentage of Total Revenue or Total Goods & Services Spent; and whether the spend is required to be with ACDBE certified suppliers in Iowa or from anywhere in the US.

Response:

(a) Yes, fleet purchases from ACDBE certified firms, or components of car purchases (parts, accessories, enhancements, insurance, etc.), can count towards the DSM ACDBE goal.

(b) ACDBE goal is based on the total gross receipts.

The procurement of goods and services must be from an Iowa DOT certified ACDBE firm, but the firm can live in other states, as long as they have Iowa certification. It is not uncommon to have a firm or a service provider that is based several states away but have intrastate certification.

53. Has the Airport Authority done any analysis of the necessary revenue per rental vehicle and volume of rentals needed in order to meet the Authority's revenue share requirements in this RFP (including MAG, rent, parking, etc.)?

Response: No.

- a. If so, has the Authority done any marketing surveys to determine if the Des Moines market will support that rental rate per vehicle instead of pursuing alternatives such as ride- sharing or peer-to-peer rentals?

Response: No.

54. Has the Authority benchmarked its fees against any other airports of similar size and deplanements? If so, which ones?

Response: No.

55. Given the Des Moines experience that two major brands left the market in the wake of COVID and were replaced by a newer entrant, has the Authority considered a carve out for newer entrants with reduced parking (i.e. 25 spots for pickup and return with additional backup spots) and a reduced MAG?

Response: No.

- a. This RFP appears to punish newer entrants by creating such a significant financial barrier to re-entry, instead of rewarding the loyalty for coming into the market when nobody else was interested. Is this the intent?

Response: No.

- b. Would the airport consider an offset against the MAG based on a business model that only purchases American cars and utilizes at least 50% of vehicle purchases being made through local businesses.

Response: No.

56. Does the Authority have a plan B in the event that none of the vendors are willing to pay a \$500k MAG for an airport that only has roughly 2 million annual passengers?

Response: In the event the Authority does not receive a single proposal in response to this RFP, the Authority will re-evaluate the concession opportunity.

Concession Agreement:

57. Section 2.3: Please state that Authority will make best efforts to reduce disruption to Concessionaire's business.

Response: The Authority plans to use reasonable efforts to minimize disruption to concessionaires' business.

58. We request the initial term of the proposed agreement be extended to seven (7) years rather than five (5) years to provide additional time for the RAC's to amortize any required improvements associated with the new CSB and ready/return areas after the new facilities are delivered.

Response: No Change.

59. Please advise the 2024 terminal rates that are intended to apply to our in-terminal counter premises?

Response: The 2024 terminal rental rate proposed for approval by the Authority Board in November 2023 is \$76.42 per square foot per year.

60. Please advise when the initial terminal rental rate for 2024 will be established.

Response: The 2024 terminal rental rate is anticipated to be approved on November 14, 2023.

61. Section 4.2, B.: Confirm O&M cost recovery will be used rather than a facility rent at the new CSB.

Response: Yes. The successful operators will pay the Authority for use of the CSB based on their proportionate share of the Authority's CSB costs.

62. 4.2 B – as generally requested above, please change the language on customer shuttle costs to allow for CFC funding of the costs, including bus fleet acquisition amortized over a reasonable period. The costs of busing otherwise are far too burdensome on the RACs all while we move to facilities that offer our customers a much lower level of service.

Response: No Change.

63. Sec 4.5 B – please change the language on annual certified statement requirements to allow Concessionaire to certify the report internally while allowing the Authority to request that such report be independently certified in any given contract year.

Response: No Change.

64. Please revise Section 4.5 (B) to allow for authorized representatives of the Concessionaire to prepare and certify true and correct statements from the preceding year rather than have such statements certified by an independent certified public accountant.

Response: No Change.

65. Section 6.11: If liquidated damages are to remain in the contract, please offer the same 3-day grace period for hour of operations violations as with Operations violations. This provides the operator time to cure the performance failure.

Response: No Change.

66. We have every intention of continuing to provide excellent customer service. However, in an effort to help us mitigate risks which are sometimes outside of our control, please revise the proposed liquidated damages schedule to reflect that incremental, i.e., larger fines, will only occur if the additional violation occurs within thirty 30 days of the initial violation.

Response: No Change.

67. As discussed at the October 4th meeting, we can only correct violations if we are aware of them. As such, it is unreasonable and counterproductive to include liquidated damages without notice of such violation. Please delete the paragraph in in Section 6.11 stating that “liquidated damages shall be incurred immediately and without notice upon violation”.

Response: See Response to Question #17.

68. Section 15.1 and 15.2: Please modify the term “consent” to “notice” in the event an assignment or transfer is made under a RAC’s parent company.

Response: No Change.

69. Section 16.1(A): In the event Concessionaire fails to pay, please require Authority to provide Concessionaire NOTICE of such failure as well as the opportunity to cure.

Response: No Change.

70. Please include Most Favored Nations language in the concession agreement to ensure that no other agreements are offered to other rental car operators on terms more favorable than what we are required to accept as per this RFP.

Response: No Change.

General:

71. Please confirm that after award, no additional on-airport RAC concessions will be granted during the Term even where there may be available counter, parking or QTA space available.

Response: No, the Authority will not confirm the above.

72. Please provide historical and forecast passenger statistics or at minimum projected annual growth rate through the Term of the agreement. To what extent do you anticipate increased passenger volumes as a result of the new terminal facilities opening?

Response: The most recent passenger forecast prepared for the Airport was prepared by the FAA and can be located in their Terminal Area Forecast at the following website: <https://taf.faa.gov> (Select “Facility” and enter “DSM” in the “Find” field).

73. Please include a five-year forecast for passenger growth at DSM, including any new or increased air service.

Response: See Response to Question #72.

74. Please advise whether there are currently any off airport RACs providing service at DSM and if so whether they are under an agreement with the Authority? This should include any 'P2P' or 'car share' operators. Please also advise what terms (fees, access) will apply to any off airport or P2P RACs at DSM?

Response: The Authority does not currently have any agreements or permits issued for any off-airport rental car company or peer-to-peer vehicle sharing operator. As the Authority has not yet approved or issued any such agreement or permit, the terms of such have not yet been defined.

75. Will any off airport rental car companies including any P2P or car share operators be required to a) double bus their customers via the shared shuttles from the terminal to new RAC facilities and then on to their off site facilities via a second shuttle and b) pay their share of costs for the shared shuttle service either directly or via a partial CFC/TFC charge. Please also confirm that the new facilities will be designed to accommodate off airport shuttle vehicle operations.

Response: As the Authority has not yet approved or issued any off-airport rental car or peer-to-peer vehicle sharing agreements or permits, the operating terms of such have not yet been defined.

76. What are the airport requirements if an off-airport rental car operator desires to serve the airport during the term of the agreement? Specifically, what are the fees for an off-airport operator, and will they be allowed to pick up and drop off customers at the airport terminal curb front?

Response: See Response to Questions #74 and #75.

77. We maintain our objection to the planned use of CFC funds for non-RAC facility projects and ask that the Authority confirm that a) CFC or Authority funds will be used to entirely pay for new RAC facilities and b) CFC funds will be *eligible* to cover both busing costs for RAC customers to and from the terminal and new facilities and also O&M costs associated with the new facilities. We can collectively discuss later whether to use CFC funds for shuttle costs and what CFC rate may be appropriate to fund these items provided that we initially confirm these uses are at least considered eligible.

Response: No, the Authority will not confirm the above.

78. Please confirm that CFC's and/or any analogous charge such as the "Supplemental Fee in Lieu of or in Addition to the CFC" will not be used for any purposes which are not directly related to rental car operations at the Airport, including but not limited to the cost of design and construction expenses related to the proposed new CSB, the preparation of the ready return area and ongoing OPEX costs at the existing rental car maintenance facility as well as busing costs to and from the CSB.

Response: No. The Authority will not confirm the above.

79. As we are expected to directly cover our costs to relocate to new facilities and make all necessary improvements then we should be provided more than the balance of a five (5) year term to amortize our costs. We request that CFC funds be made available to cover our reasonable costs to setup new facilities in the form of a Tenant Improvement Allowance. This of course would negate the concerns on amortization timing.

Response: No Change.

80. Please state amount of the CFC as of the start date of the Term.

Response: The CFC rate as of October 20, 2023 is \$4.75 per Transaction Day. The Authority will not make a commitment to the rate as of the start date of the Term of this new agreement.

81. How much money is in the CFC account today? What is your anticipated budget for the CSB? What is the plan in case there is a shortfall?

Response: As of September 30, 2023, the balance of the CFC account is \$20,126,837. See Response to Question #46 regarding the anticipated budget for the CSB. The Authority will determine the various funding sources for the construction of the CSB prior to award of the construction contract.

82. Please revise the definition of Contract Day as defined in the Airport Rules and Regulations, to twenty-six hours from twenty-four hours to afford the customary grace period.

Response: No Change.

Non-Exclusive On-Airport Rental Car Concession

Revised Request for Proposal

Des Moines International Airport
5800 Fleur Drive
Des Moines, IA 50321

All proposals are due on or before 11:00 am, CT, November 8, 2023, and shall be valid for 180 days from the Request for Proposals (“RFP”) due date.

One original and three (3) hard copies of the proposal shall be submitted to the address below. An electronic copy must also be included on a USB drive.

Des Moines Airport Authority
Attn: Contracts & Reporting Administrator
5800 Fleur Drive, Suite 207
Des Moines, IA 50321

Requests for clarification regarding this RFP must be made to the Contracts & Reporting Administrator at afredricks@dsmairport.com no later than 3:00 pm CT, October 6, 2023. Written answers to requests for clarification will be provided to all persons making a request no later than 5:00 pm CT, October 20, 2023.

Electronic copy of this RFP is available by contacting the Contracts & Reporting Administrator at afredricks@dsmairport.com.

NON-EXCLUSIVE ON-AIRPORT RENTAL CAR CONCESSION

DES MOINES INTERNATIONAL AIRPORT DES MOINES, IOWA 2023

PROPOSALS are being requested for the award of Non-Exclusive On-Airport Rental Car Concession Agreements to permit the operation of up to five (5) rental car concessions at the Des Moines International Airport. These proposals will be opened by the Contracts & Reporting Administrator on November 8, 2023 at 11:05 A.M. CT.

1. On October 4, 2023, at 1:00 P.M. CT, a non-mandatory pre-proposal meeting will be held in the Cloud Room of the Airport Terminal Building concerning this RFP. Interested parties may attend by video conference through the Zoom platform using the following link: <https://us02web.zoom.us/j/9843166544> or by telephone by calling (646) 931-3860 and using Meeting ID 984 316 6544. Participants are encouraged to submit questions in advance to the Contracts & Reporting Administrator at afredricks@dsmaairport.com.
2. A written response to all inquiries in the form of an addendum to the RFP will be forwarded to all participating proposers.
3. In all cases, no verbal communications will override written communications and only written communications are binding.

KEY DATES

1. Issuance of Request for Proposals		September 15, 2023
2. Pre-Proposal Meeting	1:00 – 3:00pm CT, Cloud Room	October 4, 2023
3. Request for Clarifications	3:00 PM CT	October 6, 2023
4. Response to Clarifications	5:00 PM CT	October 20, 2023
5. Qualifications Due	Before 11:00 AM CT	November 8, 2023
6. Space Selection Meeting	TBD	November 13, 2023
7. Contract Award by Airport Authority Board		December 12, 2023

**NON-EXCLUSIVE ON-AIRPORT RENTAL CAR CONCESSION
REQUEST FOR PROPOSALS SUMMARY**

**DES MOINES INTERNATIONAL AIRPORT
DES MOINES, IOWA
2023**

1. REQUEST FOR PROPOSALS

The Des Moines Airport Authority ("Authority"), as owner and operator of the Des Moines International Airport ("Airport"), hereby requests proposals from interested and qualified rental car concession operators ("Proposer") desiring to operate an on-airport rental car concession and provide related services at the Airport for a period of five years commencing on August 1, 2024. The on-airport rental car concession will be operated in accordance with the specific provisions of a concession agreement, a sample copy of which is attached ("Sample Agreement").

2. PROPOSER QUALIFICATIONS

In order to ensure a high level of service to the traveling public, the Authority will consider only proposals from organizations with experience in the rental car business. Therefore, each proposer must be able to demonstrate that (a) it has been engaged in the retail rental car business for at least the last three (3) years, (b) it can provide a fleet of no less than 50 rental cars per brand at the Airport, and (c) it has produced gross revenues of at least \$1,000,000 in each of the past two (2) years, (d) it has a national, on-line reservation system and (e) it has a national system of one-way drop off availability or exchange anywhere within the continental United States. Proposals from proposers who fail to meet these minimum qualifications shall not be considered. Franchise proposers must provide the required information on financial capabilities, franchise operations, and may include information on the operations of the franchisor. Franchise Concessionaires shall include a letter from franchisor granting approval to propose at the Airport or a copy of the franchise agreement showing the rights to the brand beyond the expiration date of the Sample Agreement.

The Authority reserves the right to disqualify any Proposer who, during the past five years, has had an agreement or contract canceled, or threatened to be canceled by a public agency for cause including either failure to perform or illegal activity.

3. BACKGROUND

The Airport is a commercial service airport serving central Iowa with facilities to accommodate all phases of air transportation including scheduled air service, general aviation, and air cargo operators. During calendar year 2022, the Airport accommodated approximately 2.8 million airline passengers, 73,200 take-offs and landings, and 47.4

U.S. tons of air freight and mail.

The Airport is situated on approximately 2,800 acres of land on the southwest side of Des Moines, Iowa. Major tenants of the Airport include the six commercial passenger airlines, three major air cargo airlines, seven car rental brands, restaurant, and gift shop concessions, three general aviation operators, U.S. Customs Office, FAA Air Traffic Control Tower, FAA Airways Facilities Office, and the Iowa Air National Guard Headquarters.

The Authority is in the design phase and pre-construction phases of replacing its nearly 70-year-old terminal building. The Authority expects to occupy the existing facility through 2026 when the new terminal processor is anticipated to open. At that time, DSM will continue to use the existing A and C Concourse, as well as six (6) new gates built with the new terminal.

The Authority is also in the design phase of a new Customer Service Building (“CSB”) for use by all on-airport rental car concessionaires. The CSB will be located in the current Storage Lot, west of the Service Facility.

4. COMPLETING AND SIGNING PROPOSALS

A. Each Proposer must complete and sign their proposal by an authorized official representing the company. The Proposer's full business address must be given. Proposals by partnerships must be signed with the partnership name by one of the general partners. Proposals by corporations must bear the proper corporate name, state of incorporation, and signature and designation of an officer authorized to bind it in the matter.

B. Each proposal must be ordered and submitted in the following format:

<u>TAB</u>	<u>SUBJECT</u>
1)	<u>Attachment 1 - Proposal Form.</u> Proposer shall submit its proposal as a Minimum Annual Guarantee for each of the five (5) years of the Concession Agreement. The minimum acceptable proposal is <u>Two Hundred Fifty Thousand (\$250,000) per year for one brand or Five Hundred Thousand Dollars (\$500,000) per year for two brand by one company.</u>
2)	<u>Attachment 2 - Qualifications Form</u>
3)	<u>Attachment 3 – Non-Collusion Affidavit.</u> See Exhibit B, Item 6.
4)	<u>Attachment 4 - Acknowledgement of Addenda</u>
5)	<u>Attachment 5 - Certification of Proposer's Insurance Agent Regarding Proposer's Ability to Obtain Required Insurance Coverage.</u> See Exhibit B,

Item 8.

- 6) Proposal Guaranty. Each proposal shall be accompanied by a proposal bond, certified cashier's check, or bank draft payable to Des Moines Airport Authority, in the amount of Ten Thousand Dollars (\$10,000). The check or draft will be held by the Authority, without interest, as the proposal guaranty for a reasonable period of time until the successful Proposers have been selected, after which the proposal guarantees of all but the successful Proposers will be returned. The proposal guarantees of the successful Proposers will be held pending their complete execution of the Agreement, along with evidence of insurance, as required by the Agreement. If a successful Proposer should fail to execute the Agreement or comply with other provisions of the contract documents by 4:00 pm on December 6, 2023, the proposal guaranty shall be forfeited to Authority as liquidated damages. Proposals submitted without proposal security will be rejected.

- C. By submission of the proposal, the Proposer agrees to the terms set forth in the Sample Agreement, as they may be modified to become the final Agreement between the parties.
- D. Late Proposals will not be considered by the Authority. Late proposals will not be opened by the Authority. They will either be recycled by the Authority or they will be returned unopened to the Proposer, if the Proposer wishes to pay shipping back.
- E. Proposals may be withdrawn at any time prior to due date and time. No Proposer will be permitted to withdraw its proposal after the due date and time, unless the award is delayed by action of the Authority for a period exceeding 180 days.

5 GENERAL PROVISIONS

- A. If there is any conflict between the wording in this Summary and the Sample Agreement; the Sample Agreement will prevail.
- B. If there is any conflict between the wording in this Summary and the STANDARD PROVISIONS AND REQUIREMENTS FOR REQUESTS FOR PROPOSALS (RFPs); the STANDARD PROVISIONS AND REQUIREMENTS FOR REQUESTS FOR PROPOSALS (RFPs) will prevail.

6. SCOPE OF CONCESSION OPPORTUNITY

Proposals for the award of non-exclusive Rental Car Concession Agreements to permit the operation of up to five (5) rental car concessions at Des Moines International Airport are solicited the Authority. The current rental car concessions expire on July 31, 2024.

A. PREMISES AVAILABLE

1. The existing ticket counter/office/queuing areas are outlined on Exhibit A1. There are six (6) counter locations with supporting offices.
2. The Authority currently has parking stalls across the following lots at the Airport available to successful proposers:
 - a. Parking Garage – 168 stalls
 - b. Lot 1 – 74 stalls
 - c. Lot 2 – 95 stalls
 - d. Green Lot – 17,618 square feet (approximately 55 stalls)

Additional Storage Parking – Number and availability of additional storage parking will be dependent on the construction of the CSB and other Airport parking demands.

3. The Service Facility provides five, fully automated car washes as well as fueling and vacuum lanes, shared in common by all rental car operators. There are six (6) offices with associated maintenance bays and parking blocks.
4. During the term of this Agreement, the Authority anticipates the construction of a new CSB to be located in the current Storage Lot, west of the Service Facility. Upon approval of a Certificate of Occupancy for the CSB facility, the ticket counter/office/queuing areas in the terminal building and all rental car parking in the parking garage, Lot 1, Lot 2 and the Green lot will no longer be available. At Concessionaire's own expense, Concessionaire will be required to relocate to the CSB facility upon the Authority's approval of a Certificate of Occupancy.

B. ASSIGNMENT OF EXISTING PREMISES TO SUCCESSFUL PROPOSERS

1. Existing Ticket counter/Office/Queuing areas. This RFP allows for grandfathering of existing ticket counter/office/queuing areas. Prior to space selections, all successful incumbent proposers must state whether they desire for their existing ticket counter/office/queuing areas to be grandfathered.

The six (6) Ticket counter/Office/Queuing areas will be allocated to the successful Proposers as follows:

Step 1: Determine the number of successful proposers.

Step 2: Determine the number of remaining Ticket counter/Office/Queuing areas after each successful proposer receives one (1) Ticket counter/Office/Queuing area.

Step 3: Ask each successful proposer in rank order (based on the total dollar amount of the five (5) year Minimum Annual Guarantees) whether they would like to request a second Ticket counter/Office/Queuing areas. The Authority will allocate an extra Ticket counter/Office/Queuing areas as requested until all remaining ticket counter/office/queuing areas have been

allocated.

Step 4: Have each successful Proposer select the location of their 1 or 2 Ticket counter/Office/Queuing areas in rank order.

2. **Parking Stalls.** The parking stalls in the Parking Garage, Lot 1, Lot 2 and the Green Lot will be allocated to successful proposers based on their proportionate share of the total amount of their five (5) year Minimum Annual Guarantees to the sum of all successful proposers proposed five (5) year Minimum Annual Guarantees. The location of allocated stalls will be at the discretion of the Authority. The Authority intends, to the fullest extent possible, to assign stalls allocated to incumbent operators in the same area as existing parking assignments. The Green Lot lanes will be assigned in whole lanes.

Additional storage parking in one or multiple parking areas will be at the discretion of the Authority. When additional storage parking is available, the Authority will assign such parking across Concessionaires based on their proportionate share of the total amount of their five (5) year Minimum Annual Guarantees to the sum of all successful proposers proposed five (5) year Minimum Annual Guarantees.

3. **Service Facility.** The six (6) offices, maintenance bays, and parking blocks at the Service Facility will be allocated to the successful Proposers as follows:
Step 1: Determine the number of successful proposers.
Step 2: Determine the number of remaining offices/bays/blocks in the Service Facility after each successful proposer receives one (1).
Step 3: Ask each successful proposer in rank order (based on the total dollar amount of the five (5) year Minimum Annual Guarantees) whether they would like to request a second office/bay/block. The Authority will allocate any extra office/bay/block as requested until all remaining office/bay/block have been allocated.
Step 4: Have each successful Proposer select the location of their 1 or 2 office/bay/block(s) in rank order.

C. ASSIGNMENT OF NEW CSB PREMISES TO SUCCESSFUL PROPOSERS

1. **New CSB and Parking Blocks.** The available ticket counter/office/queuing areas in the new CSB will be selected by the Concessionaires based on the total dollar amount of the five (5) year Minimum Annual Guarantees submitted by Concessionaire. The order of selection will be on ranking from highest to lowest dollar amount. The highest successful Proposers shall select first, the second highest successful Proposer shall select second from the locations remaining and so on until all locations have been selected.

The parking at the CSB will be offered in blocks, which will be selected on the same basis. These parking blocks will be occupied for the remaining term of the Agreement without reallocation.

D. CONCESSION FEE, RENTS AND FEES TO BE PAID BY PROPOSER

1. **Privilege Fee** - The Successful Proposer shall pay to the Authority annually as compensation for the Premises and all other rights, licenses and privileges granted to it pursuant to the Concession Agreement, a Privilege Fee equal to the greater of either:
 - a. ten percent (10%) of the Concessionaire's annual Gross Revenues ("Percentage Privilege Fee"); or
 - b. the respective annual amount proposed as the Concessionaire's Minimum Annual Guarantee Fee ("MAG").
2. **Rent** - All Rents set forth in this Article shall be paid in advance on the first (1st) of each month:
 - a. **Counter/Office/Queuing Space Rent**
 - i. **Existing Counter/Office/Queuing Space Rent** – Counter/Office/Queuing space rent per rent shall be the Terminal Rental Rate as adopted in the annual Rates and Charges by the Authority and updated annually, until such time as the Concessionaires relocate to the new CSB. The 2023 Terminal Rental Rate is \$67.69 per square foot.
 - ii. **CSB Counter/Office/Queuing Space Rent** - Upon approval of a Certificate of Occupancy for the CSB, Concessionaire shall pay the Authority monthly for its estimated proportionate share of the CSB Operations and Maintenance Costs as described in the Sample Agreement. Successful Proposer's proportionate allocation (share) will be based on Successful Proposer's total number of rental car transactions at the Airport to the total number of transactions by all on-airport rental car companies.
 - b. **Parking Rent**
 - i. **Existing Ready/Return Parking Rent** – Ready/Return Parking Rent shall be charged as reflected below until such time as the Concessionaires relocate to the new CSB.

Parking Garage – \$150 per stall per month

Lots 1 and 2 - \$120 per stall per month

Green Lot – \$0.19 per square foot per month

Additional Storage Parking – \$0.19 per square foot per month
 - ii. **CSB Parking Block Rent** - Upon occupancy of the CSB, the new Parking Blocks will be charged at the rate of \$0.38 per square foot per month.
 - c. **Service Facility** –

- i. **Storage Parking Block Rent** – Upon the commencement of this Agreement, as rent for the Storage Parking Blocks at the Service Facility, Successful Proposer shall pay to the Authority, a rate of \$0.19 per square foot per month.
 - ii. **Operation and Maintenance (O&M) Costs** - Upon the commencement of this Agreement, Successful Proposer shall, on a monthly basis, pay its proportionate share of the monthly operation and maintenance expenses as described in the Sample Agreement. Successful Proposer's proportionate allocation (share) will be based on Successful Proposer's total number of rental car transactions at the Airport to the total number of transactions by all on-airport rental car companies. If a proposer which does not currently operate on-site at DSM is a successful proposer, the Airport will divide the O&M budget evenly across all successful proposers. During the year-end reconciliation process, the Airport will reconcile actual costs and allocate those costs based on actual transactions for that period.
3. **Fuel Use Charges** - Successful Proposer shall pay to Authority, monthly upon receipt of invoice from Authority, charges for fuel gallons purchased at the fuel-dispensing unit at the Service Facility during previous month.
 4. **Customer Facility Charges (CFCs)** – The Concessionaire shall collect the CFCs on behalf of the Authority and remit to the Authority, in accordance with the Authority's CFC regulations.
 5. **Additional Fees** – The Concessionaire shall pay to the Authority additional fees as may be incurred by the Concessionaire including, but not limited to, security fees, employee parking, badging, overflow parking, access media, and any fine levied to Concessionaire or its employees.

E. DUAL BRANDING

Each Proposer shall be required to designate in its Proposal Form – Attachment #1 and its Qualification Form – Attachment #2, the brand or brands under which it will operate its concession at the Airport. Any successful Proposer shall be prohibited from operating at the Airport under any brand other than the brand(s) it designates on its attachments. Approval of any requests for any changes from this arrangement will not be accepted. Those brands designed in the attachments must be One Hundred Percent (100%) owned by the Proposer or the Proposer must be authorized to operate any such brand.

A single proposal is limited to one or two brands. A proposer may submit more than one proposal as long as they designate different brands.

7. SPACE SELECTION MEETING. A Selection Meeting to determine the actual location of space for each successful proposer shall be held on November 13, 2023. The proposers selected will be notified no later than end of day November 9, 2023 to attend this Selection Meeting. A virtual meeting invitation will be provided to the successful proposers.

8. STATISTICAL INFORMATION

Provided as Exhibit D is certain statistical information representing the rental car gross revenues reported to the Authority beginning August 2020 through July 2023. The Airport's passenger deplanements for the same period is also included for review. These figures are provided for information purposes only, and in no way relieve the Proposers from determining themselves the future business potential in the performance of the agreement.

9. SELECTION CRITERIA

It will be within the sole discretion of the Authority to determine the viability and soundness of each Proposal, and to accept or reject a Proposal.

Proposals which contain any additions, deletions, conditions or limitations of any kind may be considered non-responsive and may be rejected at the option of the Authority. The Authority reserves the right to waive any minor irregularities, technicalities or informalities in any proposal, and to reject any or all proposals.

The Authority reserves the right to reject the proposal of any Proposer in arrears or default upon any debt or contract to the Authority other than fees currently being contested or who has failed to perform faithfully on any previous contracts with the Authority.

In the event any tie proposals are received, the means of breaking the tie or ties shall be at the Authority's sole discretion. The Authority will break a tie by drawing straws. The Authority's ruling shall be final.

Awards under this RFP are based solely on total MAG amount proposed, amongst qualified proposers. The Authority will evaluate proposals to determine that the proposer meets the minimum qualifications and all proposal requirements to be considered a qualified proposer. Then the proposals submitted from qualified proposers will be ranked based on total MAG amount proposed, from highest to lowest. The top five proposals will be awarded a concession agreement.

10. NON-EXCLUSIVE AGREEMENT

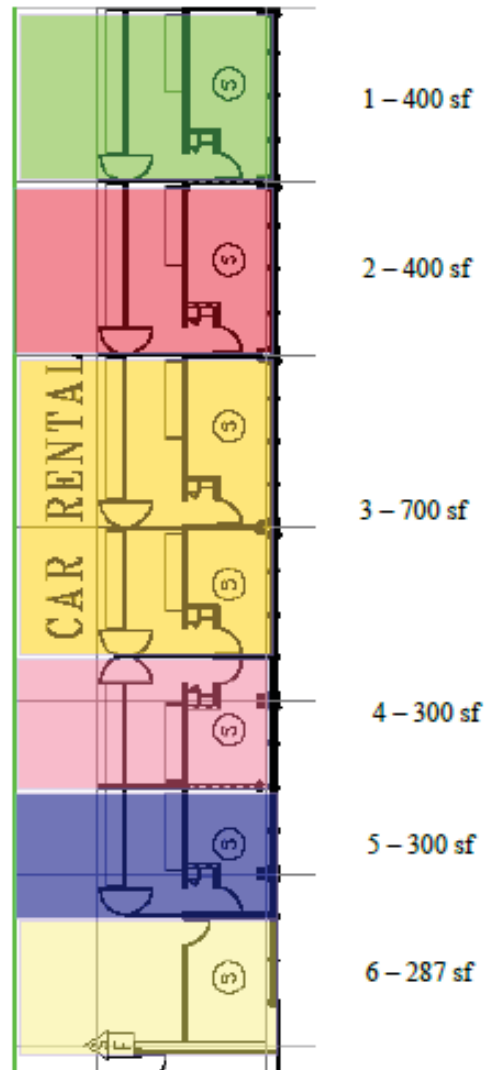
The Agreement that results from this RFP constitutes the non-exclusive Agreement between the parties and incorporates the provisions of these terms and conditions, and

supersedes any previous agreements or contracts, either written or oral. The terms and conditions may not be altered without prior written consent of both parties.

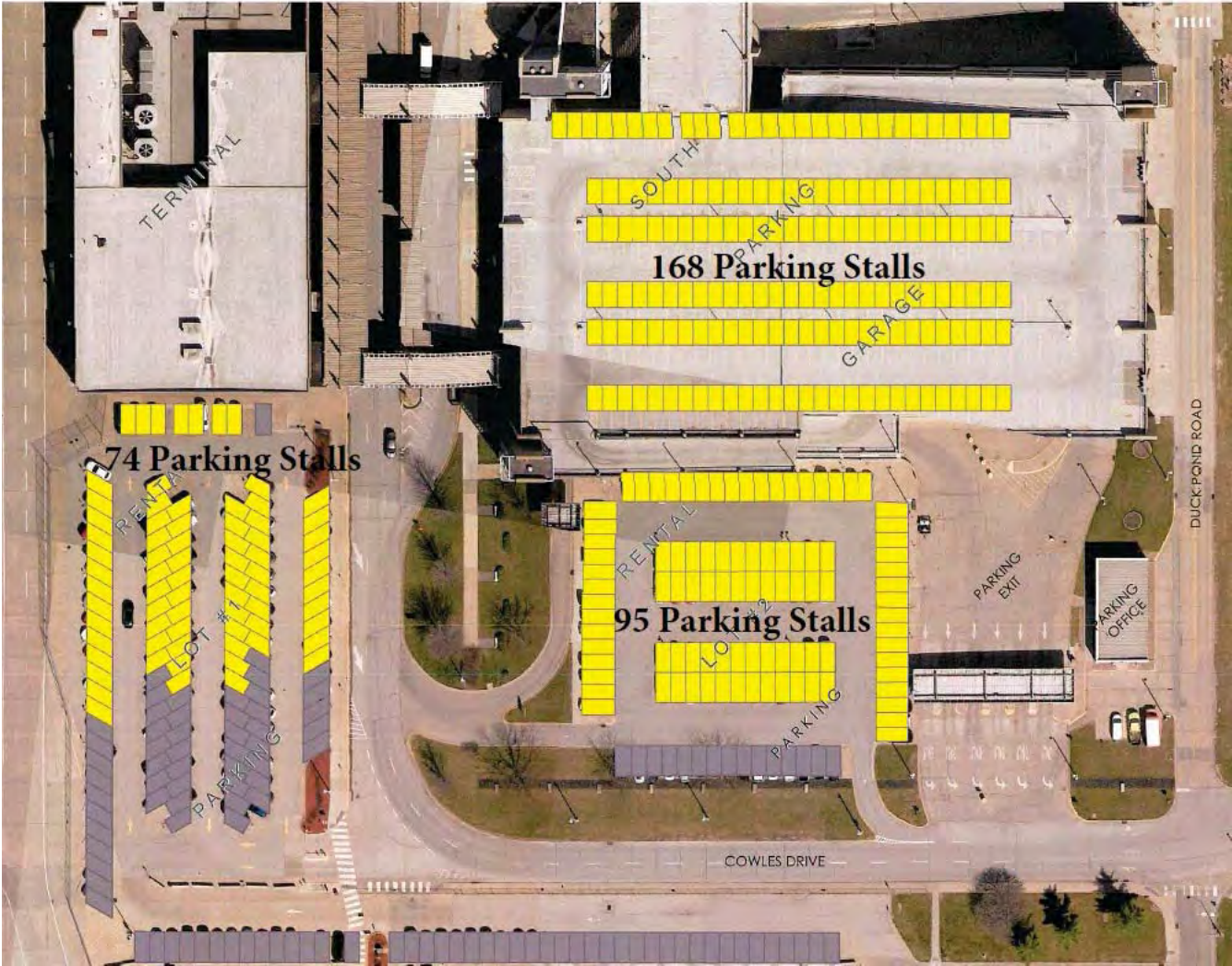
THIS SUMMARY IS INTENDED TO BE A BRIEF OVERVIEW OF THE PROPOSAL PROCEDURES FOR THE NON-EXCLUSIVE CAR RENTAL CONCESSION AT THE DES MOINES INTERNATIONAL AIRPORT, DES MOINES, IOWA. ALL PROPOSERS SHOULD REVIEW THE SAMPLE AGREEMENT FOR THE ACTUAL REQUIRED PROVISIONS.

**EXHIBIT A
LEASED PREMISES**

Rental Car Counter Spaces—Baggage Claim Area



Parking Garage, Lot 1 and Lot 2



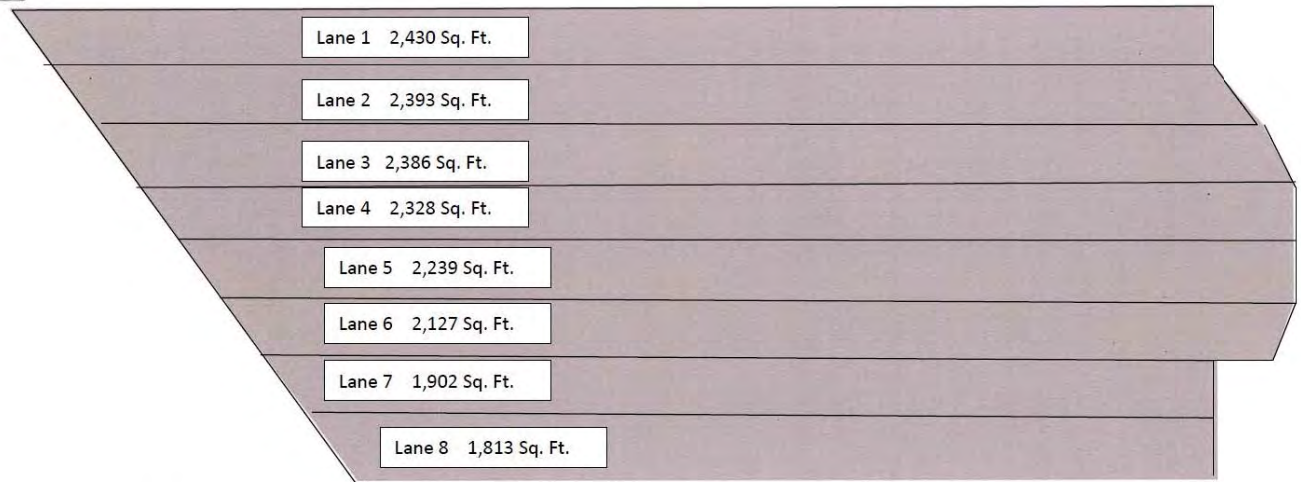
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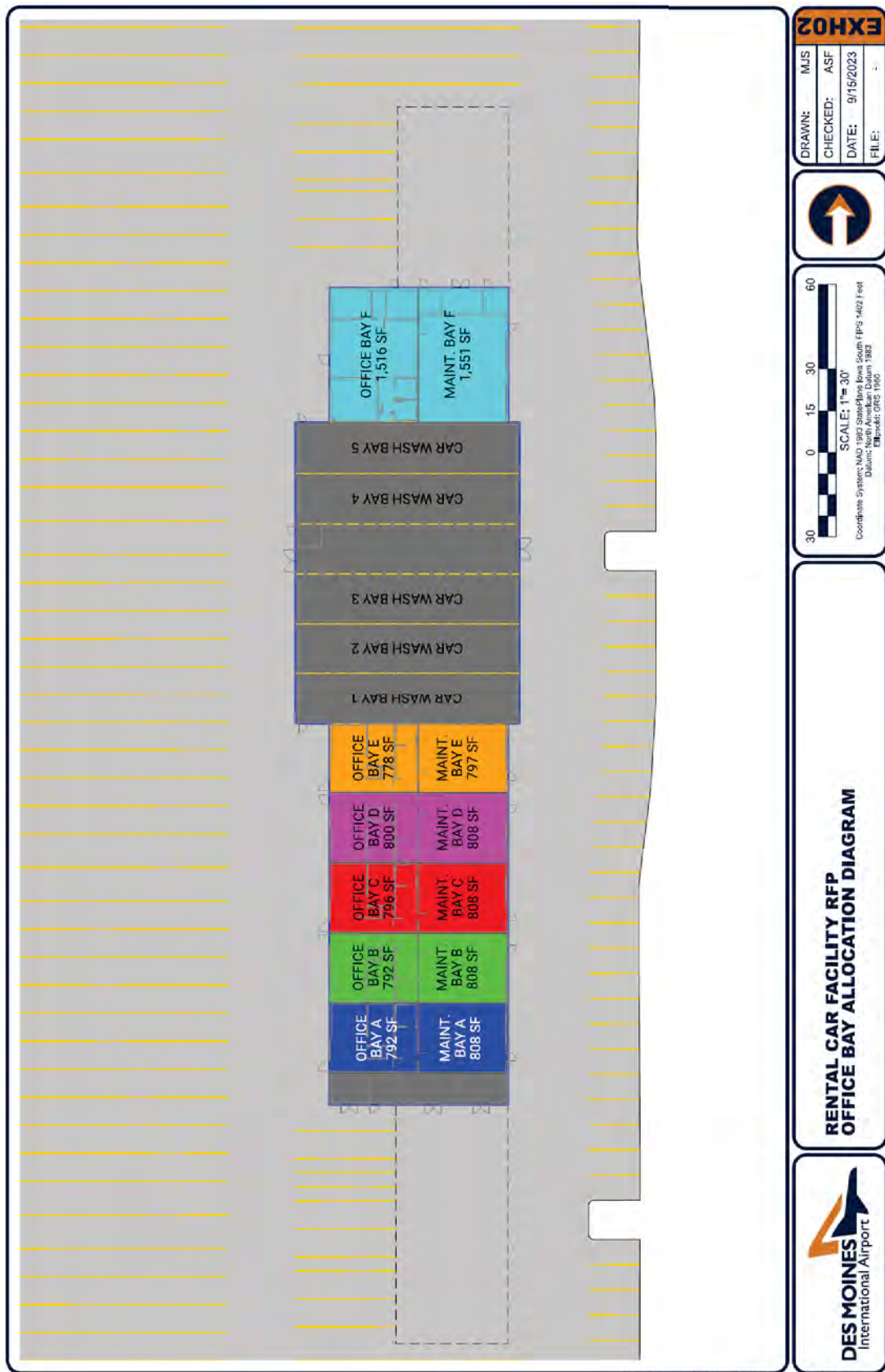
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Green Lot



17,618 Total Square Ft.

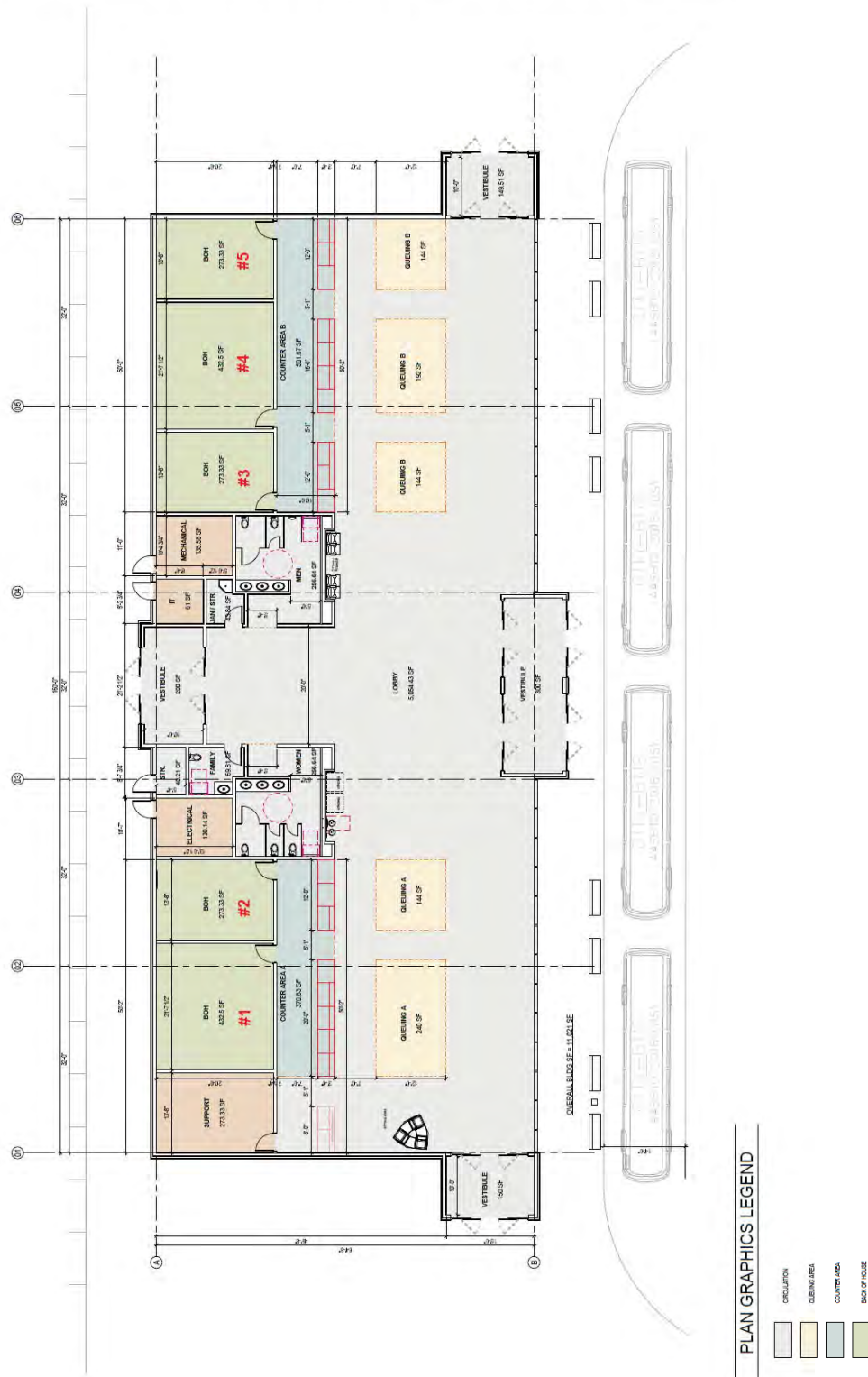
Service Facility – Offices and Maintenance Bays



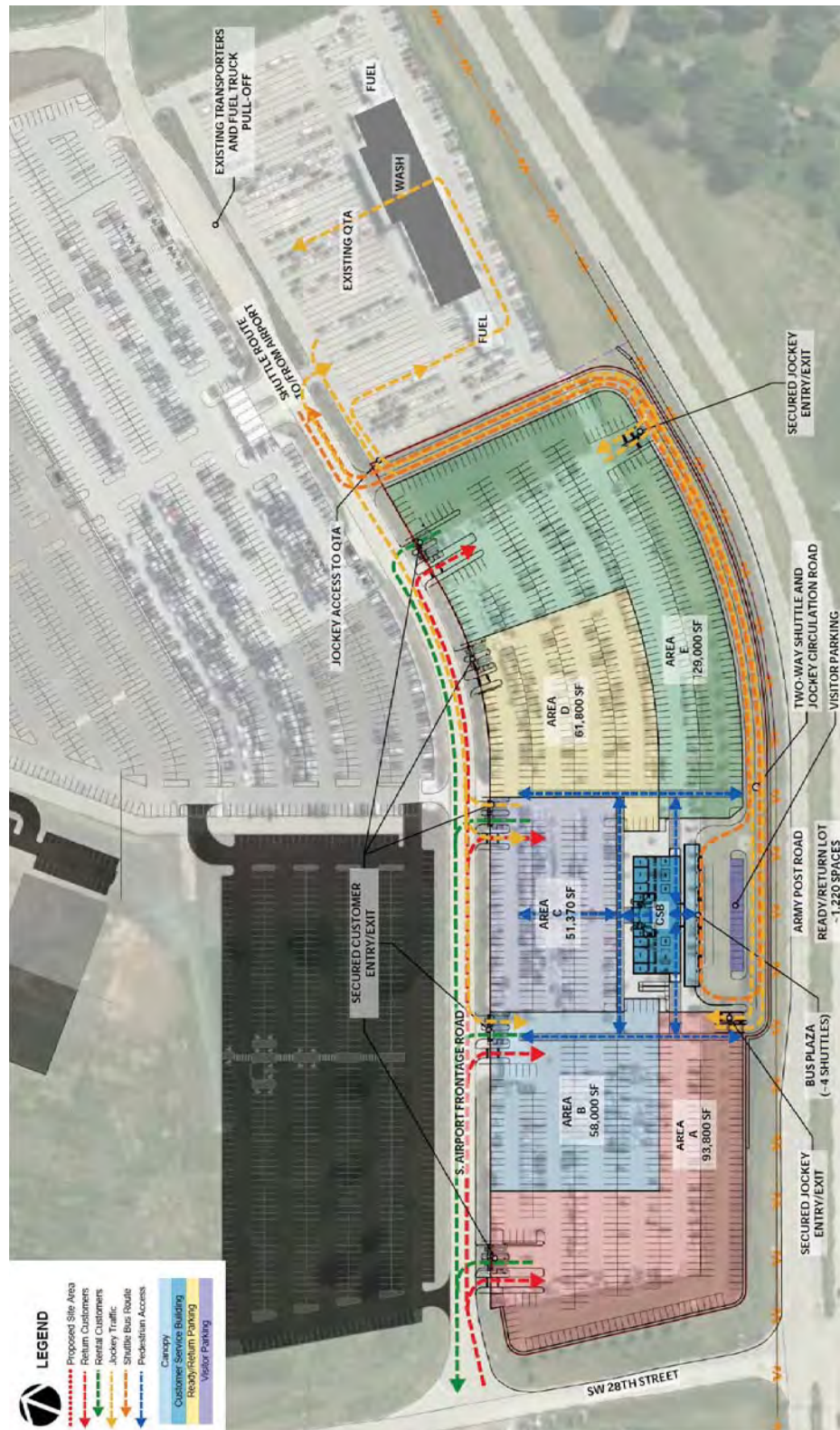
Service Facility –Parking Blocks



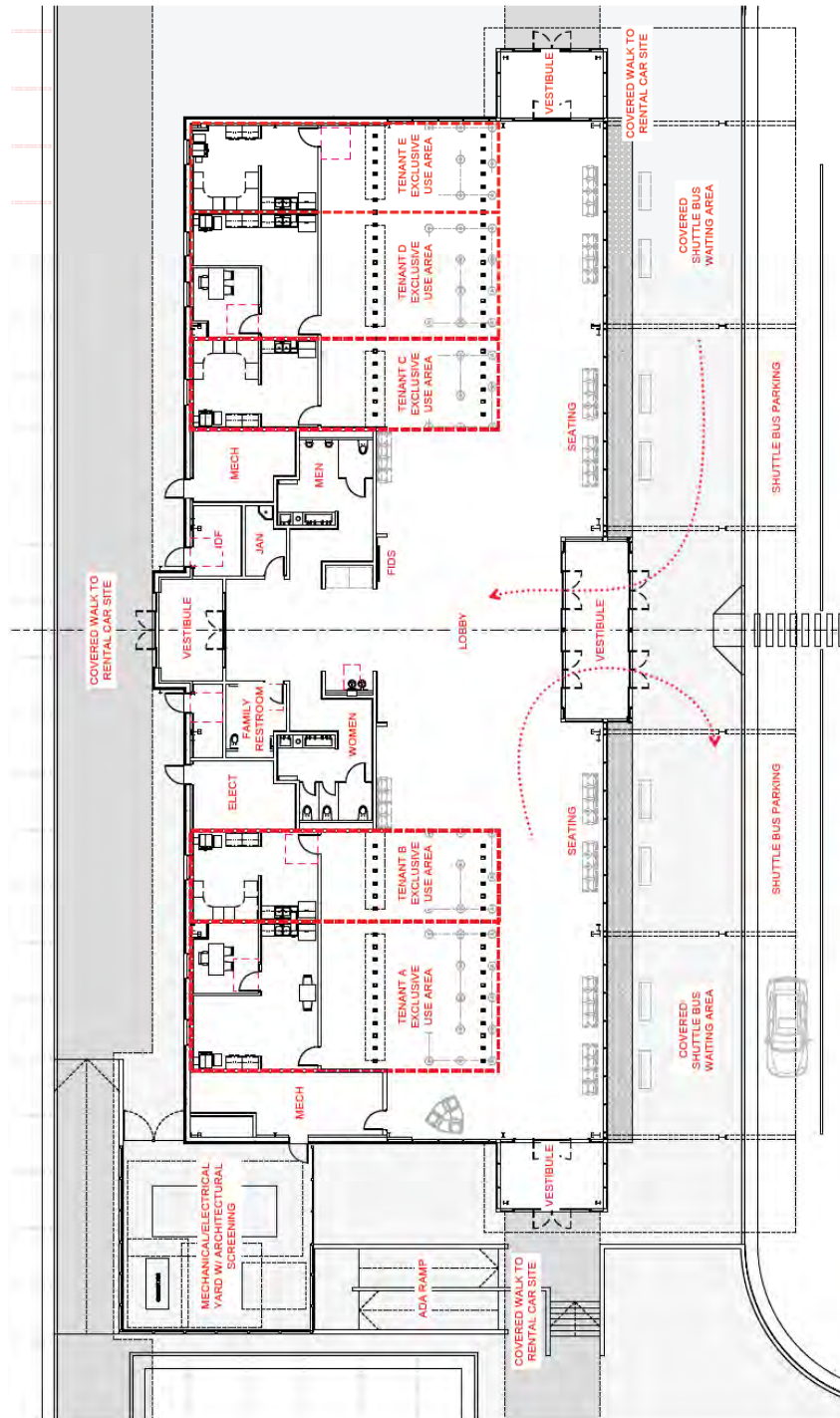
Customer Service Building - Ticket Counter/Office/Queuing Areas (Planning Level Only – Under Design, Subject to Change)



Customer Service Building - Parking Blocks (Planning Level Only – Under Design, Subject to Change)



Customer Service Building - Ticket Counter/Office/Queuing Areas
(30% Design Only – Under Design, Subject to Change)



10/18/2023

DSM CONSOLIDATED RENTAL CAR FACILITY (CONRAC)

30% DESIGN - CUSTOMER SERVICE BUILDING PLAN (CSB)



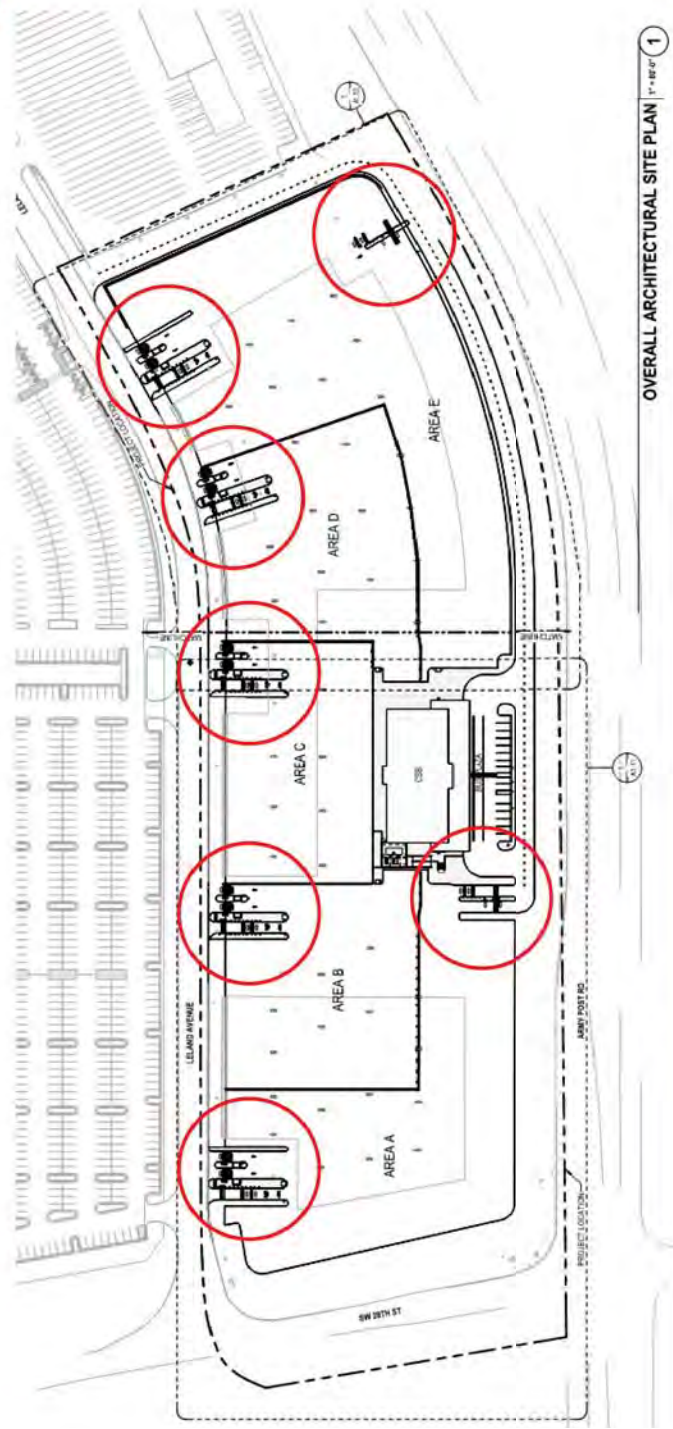
Customer Service Building – Exterior Rendering
(30% Design Only – Under Design, Subject to Change)



Customer Service Building – Site Plan
(30% Design Only – Under Design, Subject to Change)



SITE PLAN



Customer Service Building – Enlarged Site Plan
(30% Design Only – Under Design, Subject to Change)

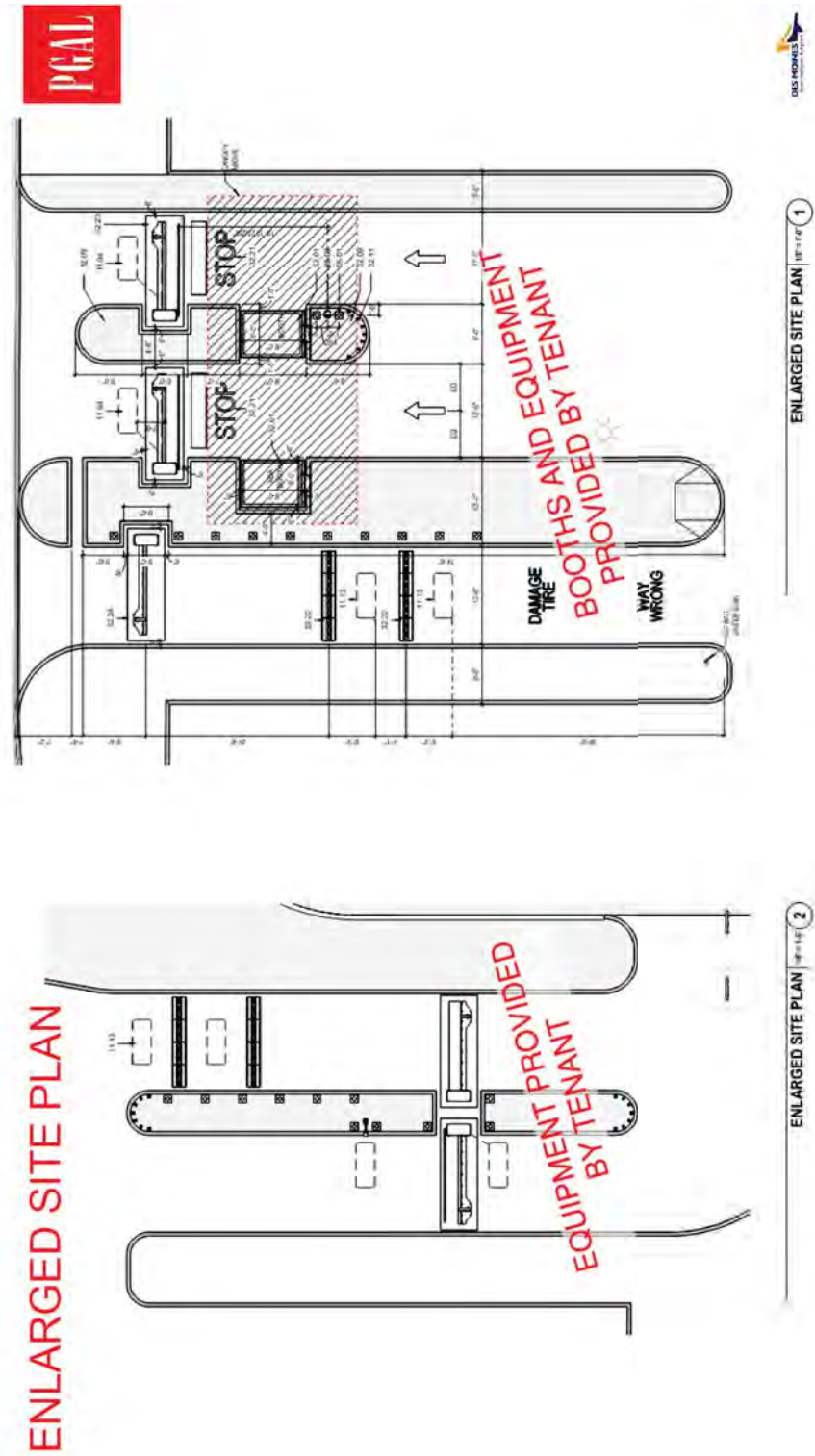


EXHIBIT B

STANDARD PROVISIONS AND REQUIREMENTS FOR REQUESTS FOR PROPOSALS (RFPs)

1. Proposal Must Be Signed by Proposer or Its Officer or Designated Agent

A proposal submitted in response to the Authority's RFP shall be signed by the Proposer if an individual, or by an officer of the proposing firm, or by a designated agent empowered to bind the firm in a contract.

2. Partnership and Joint Venture Proposals; Use of Corporate Name or Fictitious Corporate Name

- A. If a proposal is submitted by two or more persons acting as a partnership, the names of the persons appearing on the proposal must be followed by the notation -- "a partnership", or words of similar import.
- B. If a proposal is submitted by two or more persons or corporate entities as a joint venture, the names of the persons or entities appearing on the proposal must be followed by the notation -- "a joint venture". In that instance, the proposal must also be signed by all such persons and/or the authorized agents of all such entities. Joint venture proposals shall identify which person or firm will act as lead person of firm. Any proposal from a joint venture that fails to meet the above requirements will be subject to rejection.
- C. In submitting a proposal and in entering into a contract in response to an RFP, a corporate entity may use its fictitious corporate name in addition to its legal corporate name, if the fictitious name is appropriately registered with the Iowa Secretary of State. Proposers are advised to exercise care in the use of any fictitious name for their firms.

3. Communication with Authority During RFP Process

Upon issuance of this RFP, Proposers shall not communicate in any way with any Authority employee other than the Contracts Manager regarding the terms or provisions of this RFP. Questions about this RFP are to be in writing and directed to the Contracts Manager and will be addressed in a written addendum to the RFP to be issued after the meeting.

The Proposer shall not lobby, either on an individual or collective basis, the Authority (its associated employees, or outside advisors) or any federal, state, or local elected or public officials or staff regarding this RFP or its' written proposal. Proposers, the Proposer's acquaintances, friends, family, outside advisors, agents, or other representatives shall not contact the Authority (its associated employees, or outside advisors) or any federal, state, or local elected or public officials or Authority staff to arrange meetings, visits, or

presentations to influence the outcome of the selection process. Violation of this provision, by or on behalf of a Proposer, intentionally or unintentionally, will result in disqualification of the Proposer and/or rejection of a written proposal.

4. Pre-Proposal Meeting

A non-mandatory pre-proposal meeting will be held at the time and place listed in the RFP summary (page 2). All persons or entities interested in or intending to respond to the RFP are encouraged to attend the pre-proposal meeting. Remarks made during discussions at the meeting by any Authority official or employee will not be binding upon the Authority or be deemed to be the Authority's official response or position regarding any inquiries discussed at said meeting.

5. Authority's Response to Proposer Questions, Objections, and Requests for Clarification or Interpretation

The Authority's Contracts Manager will respond in writing to all inquiries presented to the Authority as provided in section 3, above, presented in writing. Only the Authority's written responses in the form of an addendum will be considered the Authority's official response binding upon the Authority.

6. Collusion Affidavit Required

Any agreement or collusion among Proposers or prospective Proposers, in restraint of freedom of competition by agreement to propose a fixed price or otherwise will render the proposals of such Proposers void. Proposers will be required to execute and submit with their proposals a Non-Collusion Affidavit in the form appended hereto as Attachment 3. Any disclosure by one Proposer to another Proposer of the content of a proposal in advance of the submission of proposals will render the proposals of both such Proposers void and may at the discretion of the Contracts Manager render the RFP proceedings void.

7. Proposals Not Confidential; Proposer Requests for Confidentiality under Iowa Open Records Law, Chapter 22 of Iowa Code; Disclosure of Proposal Content

Under Iowa Code chapter 22, "Examination of Public Records", all records of a governmental body are presumed to be public records, open to inspection by members of the public. Section 22.7 of the Iowa Code sets forth a number of exceptions to that general rule, establishing several categories of "confidential records". Under this provision, confidential records are to be kept confidential, "unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information". Among the public records which are considered confidential under this Iowa Code provision are the following:

- 3. Trade secrets which are recognized and protected as such by law.*
- 6. Reports to governmental agencies which, if released, would give advantage to*

competitors, and serve no public purpose.

The Authority, as custodian of the proposal submitted in response to a RFP, may, but is not required, to keep portions of such proposals confidential under exceptions 3 and 6 noted above. If a responding individual or company determines that a portion or portions of its proposal constitute a trade secret or should otherwise be kept confidential to avoid giving advantage to competitors, **a confidentiality request may be submitted with the proposal** identifying which portion or portions of the proposal or bid should be kept confidential and why. The burden will be on each individual Proposer to make a confidentiality request and to justify application of a confidentiality exception to its proposal. The Authority will not under any circumstance consider the entire proposal to be a confidential record.

If a request is made by a member of the public to examine a proposal including the portion or portions for which a confidentiality request has been made, the Authority will notify the Proposer and will keep confidential that portion of the proposal covered by the confidentiality request, pending action by the Proposer requesting confidentiality to defend its request. In that notification, the Proposer requesting confidentiality will be given not more than five calendar days within which to file suit in Polk County District Court seeking the entry of a declaratory order and/or injunction to protect and keep confidential that portion of its proposal. Absent such action by a Proposer requesting confidentiality the entry of a court order declaring such portion or portions of the proposal confidential, the entire proposal will be released for public examination. The Proposer shall indemnify the Authority for any attorneys' fees and court costs the Authority may incur or that be awarded against it as a result of complying with the Proposer's request for confidentiality.

8. Proposers to Provide Evidence of Ability to Obtain Insurance

Each Proposer shall provide evidence satisfactory to the Authority that it can obtain the required insurance coverages. For this purpose, each Proposer shall submit with its proposal the certification form appended to this RFP as Attachment 5 in which the Proposer's insurance agent certifies that the Proposer can obtain the required insurance coverages. Failure to submit the required certification form will be grounds for rejection of the proposal.

9. Authority Board Consideration of Authority Staff Recommendation

When the Authority staff's recommendation comes before the Authority Board for consideration, the Board may request that the recommended Proposer appear before the Board to give a presentation or to answer questions regarding its proposal. Competing Proposers will not be allowed to speak at that time unless a prior request has been made by such a Proposer and permission to speak granted, or unless an Authority Board member requests that the competing Proposer be allowed to speak and the Board consents to such request.

10. Rejection of Proposals

The Authority reserves the right to reject any or all proposals received in response to the RFP. The Authority will not pay for any information requested in the RFP, nor is it liable for any cost incurred by a Proposer in responding to the RFP.

11. Formation of Contract

A. The successful Proposer shall enter into a contract with the Authority in substantially the form of the attached Sample Agreement.

A.B. Successful proposers may request the use of their standard Performance Bond form by providing such form to the Authority for review and approval at least seven (7) days prior to the due date of the executed Agreement.

B.C. Upon the Authority's approval of the evidence of insurance submitted by the successful Proposer (if required by the RFP), and upon the Authority's legal representative's review of the form of contract executed by the Proposer, and of the performance bond submitted by the Proposer (if required by the RFP), the Authority Board Chairperson will execute the contract as directed by the Authority Board.

12. Airport Concession Disadvantaged Business Enterprise (ACDBE) Requirements

It is the policy of the Authority to promote the objectives of the United States Department of Transportation with respect to the participation of Disadvantaged Business Enterprise (DBE)s and ACDBEs in DOT assisted contracts and airport concessions. This policy has been formulated to comply with 49 CFR Parts 23 and 26. The requirements of 49 CFR Part 23 apply to this contract. It is the policy of the Authority to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Authority encourages participation by all firms qualifying under this solicitation. ACDBE Requirements are outlined in Article 10 of the Sample Agreement.

13. Disposition of Proposals

All proposals submitted in response to the RFP become the property of the Authority and will not be returned.

14. Assignment of Contract Prohibited Unless Approved in Writing by the Authority

No contract awarded pursuant to RFP is assignable without the written consent of the Authority.

15. Title VI Solicitation Notice

The Des Moines Airport Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the

Regulations, hereby notifies all proposers that it will affirmatively ensure that any contract entered into pursuant to this advertisement, airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

16. Attachments.

- A. Attachment 1: Proposal Form
- B. Attachment 2: Qualification Form
- C. Attachment 3: Non-Collusion Affidavit
- D. Attachment 4: Acknowledgement of Addenda
- E. Attachment 5: Certification of Proposer's Insurance Agent Regarding Proposer's Ability to Obtain Required Insurance Coverages.

EXHIBIT D STATISTICAL INFORMATION

	Avis	Budget/Payless	Dollar/Thrifty	Enterprise	Hertz	National/Alamo	2020-2021 Total	Deplanements
20-Aug	\$ 167,839.18	\$ 248,913.54	\$ 147,134.12	\$ 503,054.65	\$ 258,173.07	\$ 535,353.88	\$ 1,860,468.44	48,494
20-Sep	141,147.01	202,410.93	151,086.92	436,101.02	213,995.81	519,943.19	1,664,684.88	44,068
20-Oct	182,222.48	168,158.08	142,011.27	471,668.18	296,821.41	629,222.62	1,890,104.04	52,477
20-Nov	152,859.01	134,894.47	154,596.36	403,192.67	247,920.18	492,528.73	1,585,991.42	47,199
20-Dec	165,182.78	108,998.05	13,007.95	345,467.50	220,905.66	400,009.40	1,253,571.34	49,824
21-Jan	114,155.40	110,075.41	-	328,034.44	198,376.94	366,647.93	1,117,290.12	46,306
21-Feb	130,989.73	135,710.77	-	307,486.79	214,479.44	360,521.55	1,149,188.28	48,044
21-Mar	210,169.02	255,026.60	-	392,323.20	261,017.38	511,969.99	1,630,506.19	76,406
21-Apr	271,202.71	271,118.04	-	508,549.41	400,246.30	591,460.12	2,042,576.58	71,113
21-May	466,899.28	513,048.92	-	668,927.91	549,174.73	681,411.19	2,879,462.03	92,668
21-Jun	475,576.39	658,747.72	-	701,378.83	784,205.38	701,682.44	3,321,590.76	107,728
21-Jul	683,430.65	687,702.67	-	775,996.86	831,753.75	879,650.23	3,858,534.16	120,411
Total	\$ 3,161,673.64	\$ 3,494,805.20	\$ 607,836.62	\$ 5,842,181.46	\$ 4,477,070.05	\$ 6,670,401.27	\$24,253,968.24	804,738
	Avis	Budget/Payless	American Rent-A-Car	Enterprise	Hertz	National/Alamo	2021-2022 Total	Deplanements
21-Aug	\$ 599,297.87	\$ 661,244.30	\$ -	\$ 860,987.63	\$ 838,823.94	\$ 1,010,447.49	\$ 3,970,801.23	112,960
21-Sep	458,382.84	453,538.31	-	775,444.07	611,496.77	751,054.42	3,049,916.41	97,504
21-Oct	567,176.03	426,432.30	-	850,181.26	621,760.46	865,656.50	3,331,206.55	95,193
21-Nov	455,579.04	398,880.60	10,982.10	801,540.86	441,384.13	694,052.74	2,802,419.47	107,121
21-Dec	409,612.84	359,749.27	-	616,718.76	342,751.93	629,230.03	2,358,062.83	103,760
22-Jan	255,051.18	266,771.45	4,244.21	422,560.02	295,682.76	498,846.89	1,743,156.51	88,467
22-Feb	268,309.86	302,843.29	32,501.77	423,126.04	336,814.37	522,391.67	1,885,987.00	90,506
22-Mar	433,611.32	473,163.68	55,891.41	539,111.07	408,775.55	654,267.46	2,564,820.49	121,740
22-Apr	486,107.52	564,432.21	30,655.50	641,112.00	522,615.38	744,634.49	2,989,557.10	112,161
22-May	573,490.80	677,548.13	29,890.35	893,343.32	683,593.09	869,764.37	3,727,630.06	125,081
22-Jun	703,562.76	864,425.73	94,615.49	852,767.02	646,921.65	941,465.61	4,103,758.26	134,099
22-Jul	806,292.27	874,575.30	62,736.97	892,157.10	614,407.31	1,074,958.02	4,325,126.97	134,350
Total	\$ 6,016,474.33	\$ 6,323,604.57	\$ 321,517.80	\$ 8,569,049.15	\$ 6,365,027.34	\$ 9,256,769.69	\$36,852,442.88	1,322,942
	Avis	Budget/Payless	American Rent-A-Car	Enterprise	Hertz	National/Alamo	2022-2023 Total	Deplanements
22-Aug	\$ 855,684.68	\$ 875,515.26	\$ 45,064.34	\$ 976,429.19	\$ 669,575.98	\$ 1,110,508.37	\$ 4,532,777.82	129,396
22-Sep	658,483.39	707,725.33	101,075.72	855,605.04	485,937.07	1,019,033.53	3,827,860.08	121,618
22-Oct	640,117.27	650,900.64	32,768.60	836,888.30	570,349.96	942,293.18	3,673,317.95	123,483
22-Nov	498,008.57	507,689.86	15,368.02	774,287.12	455,800.33	811,934.36	3,063,088.26	116,872
22-Dec	467,226.95	450,281.84	7,881.74	666,061.01	373,160.80	755,629.45	2,720,241.79	106,572
23-Jan	324,256.05	310,661.38	17,982.56	572,964.25	358,902.17	648,238.41	2,233,004.82	111,594
23-Feb	350,997.95	341,321.42	33,200.51	503,474.28	358,902.17	695,136.62	2,283,032.95	109,473
23-Mar	525,593.49	429,158.99	24,640.52	626,294.40	468,526.43	795,354.47	2,869,568.30	133,756
23-Apr	506,418.32	493,965.48	24,349.09	603,765.06	505,027.48	814,965.01	2,948,490.44	119,666
23-May	653,119.28	718,118.97	40,474.73	692,494.72	672,384.32	924,628.99	3,701,221.01	133,762
23-Jun	861,709.40	919,512.85	61,147.05	787,189.95	581,162.86	1,034,537.29	4,245,259.40	142,396
23-Jul	793,899.46	910,007.74	44,416.83	924,151.42	620,298.49	1,196,949.23	4,489,723.17	146,306
Total	\$ 7,135,514.81	\$ 7,314,859.76	\$ 448,369.71	\$ 8,819,604.74	\$ 6,120,028.06	\$10,749,208.91	\$40,587,585.99	1,494,894

ATTACHMENT 1 - PROPOSAL FORM

Proposer Name

Date

Address

Brand(s) Proposer intends to operate

The Proposer hereby proposes to enter into an agreement with the Des Moines Airport Authority (hereinafter referred to as "Authority") for the operation of a non-exclusive rental car concession at the Des Moines International Airport under the terms and conditions as set forth in Request for Proposals, including Exhibits (not to scale), Attachments, Addendum and the Sample Agreement. In furtherance of this proposal, the Proposer agrees to pay to the Authority the greater of the following during the Contract Years August 1- July 31, 2025, 2026, 2027, 2028 and 2029: Minimum Annual Guarantees or ten percent (10%) of the annual gross revenues and all rents and fees stipulated in the Concession Agreement with payments to be made in the manner specifically set forth in said Agreement. The minimum annual acceptable proposal guarantee is Two Hundred Fifty Thousand (\$250,000) per year for one brand or Five Hundred Thousand Dollars (\$500,000) per year for two brands by one company. A subsequent year's Minimum Annual Guarantee proposed below may not be less than the previously year's proposed Minimum Annual Guarantee.

Minimum Annual Guarantee Proposal
(Per Contract Year Beginning August 1, 2024)

Contract Year 1 – August 1, 2024 to July 31, 2025	\$	<hr/>
Contract Year 2 – August 1, 2025 to July 31, 2026	\$	<hr/>
Contract Year 3 – August 1, 2026 to July 31, 2027	\$	<hr/>
Contract Year 4 – August 1, 2027 to July 31, 2028	\$	<hr/>
Contract Year 5 – August 1, 2028 to July 31, 2029	\$	<hr/>
FIVE YEAR TOTAL	\$	<hr/>

The Proposer hereby agrees to pay the above minimum annual guarantees to the Airport in accordance with and for the term of the Concession Agreement.

2. The Authority shall allocate available facilities as outlined in the RFP.

3. Accompanying the proposal shall be one Bid Bond, Cashiers, Certified or Treasurer's Check or bank draft of any State or National Bank in the amount of Ten Thousand Dollars (\$10,000) payable to Des Moines Airport Authority as liquidated damages in the event the undersigned is a successful Proposer who fails to comply with the requirements as set forth in the RFP and contract documents by 4:00 p.m. on December 6, 2023.

Proposer is bound by this offer for a period of one hundred eighty (180) days following the date of proposal opening and may not withdraw its offer during this period. It is understood by the Proposer that the Authority reserves the right to reject any and all proposals.

Proposer:

Signed _____

Printed Name _____

Title _____

ATTACHMENT 2 - QUALIFICATION FORM

All information requested in this Qualification Form must be furnished by the Proposer and it must be submitted with the Proposal Documents. Statements must be complete and accurate and in the form requested and must be sworn and attested to. Omission, inaccuracy or misstatement may be cause for the rejection of the Proposal.

1. Name and address of Proposer exactly as it is to appear on the Agreement.

2. Email: _____ Phone #: _____

3. Proposer, if selected, intends to carry on the business as:

Individual () LLC () Partnership () Corporation ()

4. Proposer, if selected, intends to operate under the brand name listed below. Said operations will be limited to no more than the brand name(s) listed.

5. If operating as a partnership, please answer the following:

- A. Name, address and share of each partner:

_____	_____	_____
_____	_____	_____
_____	_____	_____

- B. Date of organization: _____

6. If operating as a corporation or LLC, please answer the following:

- A. When incorporated _____

- B. In what state _____

- C. Are you authorized to do business in Iowa? _____

If so, as of what year _____

- F. Please list the names and address of the following officers:

President _____

Vice President _____

Secretary _____

Treasurer _____

Other _____

7. Please provide, as an attachment, your experience in the rental car business including the following:
 - A. Number of years Proposer has operated a consumer retail car rental service. (If car rental service is to be operated by a joint venture or partner, indicate the experience of each party.)
 - B. Describe the nature of your experience in the operation of facilities and state the number of persons you currently employ in such operations.
 - C. Submit a list of the three (3) largest airport locations where you have operated consumer retail car rental facilities within the last five (5) consecutive years, giving the dates of operation for each location and the gross revenues for each operation for the last three (3) years.
 - D. Provide names, addresses, and telephone numbers for landlords, if any, for all operations listed in item C above.
 - E. Provide name, location, and date of all car rental operating contracts, if any, that have been terminated within the past five (5) years, for any reason, either voluntarily or involuntarily, prior to the expiration of their term; also list any judgments terminating car rental operating agreements operated by proposer within the past five (5) years. If none, indicate so.
8. List the Airports in United States with which you, a parent company, or a franchisee currently have operating agreements. (Attach)
9. Provide copies of balance sheets, profit and loss statements, and annual reports for the past three (3) years of operation for the organization.
10. List bank references for the past three (3) years:

11. Surety Information. Provide information, including name of bonding company or reference that indicates your ability to qualify for, obtain, and submit the Performance Bond or Letter of Credit that must be submitted to the Authority if you are awarded a concession.

Have you ever had a bond or surety canceled or forfeited?

Yes ()

No ()

If yes, identify name of bonding company, date, amount of bond, and reason for such cancellation for forfeiture. (Attach answer, if any, as Written Attachment 11)

12. Bankruptcy Information

Have you or the principal owners of your consumer retail car rental organization ever declared bankruptcy?

Yes ()

No ()

If yes, give details including date, court jurisdiction, amount of liabilities, and amount of assets. (Attach answer, if any, as Written Attachment 12)

13. Name and experience of key personnel of Proposer assigned or to be assigned to the Des Moines International Airport operation:

TITLE

NAME

EXPERIENCE

(If additional space is needed, attach answer at Written Attachment 13)

14. Do you have a nationwide reservation system?

Yes ()

No ()

15. Do you have a national system of one-way drop off availability or exchange anywhere within the continental United States?

Yes ()

No ()

16. State the number and make of cars that your organization proposes to use at DSM.

17. State the names of your credit card affiliations

18. Will you provide affiliation with a preferred marketing program for frequent users?

Yes ()

No ()

If yes, provide name of program?

19. State the number and locations of your operating outlets and facilities in Iowa, if any:

The Authority reserves the right to confirm and request clarification of all information provided. Incomplete disclosure may result in a proposal being deemed to be non-responsive.

The Proposer hereby certifies the truth and correctness of all statements and of all answers to questions made herein. Omission, inaccuracy or misstatement may be cause for rejection of a proposal. The Authority shall maintain to the fullest possible extent the confidentiality of all financial documents specified as confidential by the Proposer.

Proposer:

Signed _____

Printed Name _____

Title _____

ATTACHMENT 3 - NON-COLLUSION AFFIDAVIT

The Proposer hereby certifies:

1. That this proposal is not affected by, contingent on, or dependent on any other proposal submitted for any improvement at the Des Moines Airport Authority; and
2. That no individual employed by the Proposer was paid or will be paid by any person, corporation, firm, association, or other organization for soliciting the bid, other than the payment of their normal compensation to persons regularly employed by the Proposer whose services in connection with the making of this proposal were in the regular course of their duties for the Proposer; and
3. That no part of the compensation to be received by the Proposer was paid or will be paid to any person, corporation, firm, association, or other organization for soliciting the bid, other than the payment of their normal compensation to persons regularly employed by the Proposer whose services in connection with the making of this proposal were in the regular course of their duties for the Proposer; and
4. That this proposal is genuine and not collusive or sham; that the Proposer has not colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer or person, to put in a sham proposal or to refrain from making a proposal, and has not in any manner, directly or indirectly, sought, by agreement or collusion, or communication or conference, with any person, to fix the proposal price of Proposer or of any other Proposer, or to otherwise restrain freedom of competition, and that all statements in this proposal are true; and
5. That the individual(s) executing this proposal have the authority to execute this proposal on behalf of the Proposer.

Proposer

Signature

By _____
Name (Print/Type)

Title

Street Address

City, State, Zip Code

ATTACHMENT 4 - ACKNOWLEDGEMENT OF ADDENDUM(S)

If an addendum(s) is issued, reference the number and date below.

Addendum # _____ Date Issued _____

Addendum # _____ Date Issued _____

Acknowledgment is hereby made;

Signature: _____

Name: _____

Title: _____

Name of Business: _____

Date: _____

**ATTACHMENT 5 - CERTIFICATION OF PROPOSER'S INSURANCE AGENT
REGARDING PROPOSER'S ABILITY TO OBTAIN REQUIRED INSURANCE
COVERAGE**

I hereby certify that my client, as identified below, will be able to meet all of the insurance requirements of Article 12 of the Sample Agreement, has been advised of any additional costs associated with doing so, and has agreed to obtain such coverages if selected as the successful proposer of the RFP to which my client has responded:

Legal Name of Proposer:

Name/Address/Phone/FAX # of Insurance Agency:

Phone _____ FAX _____

Name of Agent/Broker (Print):

Signature of Agent/Broker:

Date of Signature: _____

Signature and stamp of Notary Republic

CONCESSIONAIRE

ON-AIRPORT RENTAL CAR CONCESSION AGREEMENT

REVISED

DES MOINES INTERNATIONAL AIRPORT

DES MOINES AIRPORT AUTHORITY
DES MOINES INTERNATIONAL AIRPORT
5800 FLEUR DRIVE, ROOM 207
DES MOINES, IOWA 50321-2854

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ON-AIRPORT RENTAL CAR CONCESSION AGREEMENT

DES MOINES INTERNATIONAL AIRPORT

DES MOINES, IOWA

THIS CONCESSION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2023, by and between the Des Moines Airport Authority ("Authority") and _____, a corporation organized and existing under the laws of the State of _____, ("Concessionaire") having its principal offices in _____.

WITNESETH:

The Authority operates an airport known as the Des Moines International Airport (the "Airport"), located in Des Moines, Polk County, Iowa.

The Authority distributed a Request for Proposals seeking qualified parties to operate on-airport rental car concessions at the Airport.

In response to the Authority's Request for Proposals, Concessionaire submitted a Proposal dated _____, 2023 ("Proposal").

The Authority assessed all proposals received and determined Concessionaire's to be a successful proposal.

Concessionaire is desirous of leasing space from the Authority for an on-airport rental car concession at the Airport.

The Authority deems it advantageous to itself and to its operation of the Airport to lease to Concessionaire certain premises for Concessionaire's operations at the Airport.

The Authority has the right to permit use of the applicable area and facilities on the Airport under the terms and conditions set forth in this Agreement and each party has full power and authority to enter into this Agreement, and

Therefore, the parties agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 Definitions. The following words and phrases, wherever used in this Agreement, have the following meanings:

"Airport" means the Des Moines International Airport as it now exists or as it may change from time to time.

"Authority Board" means the Des Moines Airport Authority Board.

"Contract Year" means the period from August 1st through July 31st.

"Customer" means the actual individual listed on the signed Rental Agreement as the lessee of the vehicle delivered at, rented at, or picked up at the Airport regardless of who pays a portion or all of the rental charges.

"Customer Facility Charge" or "CFC" means the charge imposed on each rental vehicle transaction, which shall be a fixed uniform amount applied to each contract day (as defined in Authority Rates and Charges), or fraction thereof, to each rental car contract by each rental car company having a concession agreement with the Authority.

"Customer Service Building" or "CSB" means the new facility currently being designed and constructed where rental car offices and counters will be located, where rental car transactions with Customers will take place, and where Customers will pickup and drop-off Rental Cars.

"Executive Director" means the Executive Director of the Des Moines Airport Authority or his or her representative who is duly authorized to exercise functions with respect to the rights and obligations of the Authority under this Agreement.

"Gross Revenues" means, as determined in the reasonable discretion of the Authority, all amounts charged to its customers by Concessionaire for or in connection with agreements it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Concessionaire. Gross Revenues shall include all monies or other consideration of whatsoever nature paid or payable to Concessionaire by customers for all sales made and services performed for cash, credit or consideration in connection with automobile and vehicle rentals or other products or services provided to persons through Concessionaire's operations at the Airport, without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Concessionaire's customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location.

Gross Revenues may not be reduced by promotional or other discounts not given directly to the customer at the time of rental. The retroactive adjustment by Concessionaire of Gross Revenues designated as volume discounts or rebates, corporate discounts or rebates, or any other designation of any nature, or for any other purpose, is prohibited.

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions set forth below:

- Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Concessionaire's operations which are separately stated on customers' rental contracts and collected from customers of Concessionaire;
- Those fees referred to in this Agreement as Customer Facility Charges, "CFC's" which for the purpose of this Agreement shall include all customer facility charges, authorized pursuant to Authority regulations, as may be amended;
- Amounts received from unrelated third parties specifically for the actual loss of or damages of vehicles or other property of Concessionaire;
- Amounts received from the sale of vehicles off-Airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Concessionaire's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and
- Reimbursements for amounts actually paid for windshield replacement, towing, tolls, parking tickets, impound fees, tolls and toll violations and other governmental fines and fees from its customers to pass through without markup to an independent third party with no amount being retained by Concessionaire. However, any amounts collected ~~above~~about the pass through amount shall be included as Gross Revenue under this Agreement.

"Leased Premises" means the space at the Airport leased to Concessionaire under this Agreement as described in Exhibit A to this Agreement or as otherwise designated from time to time by the Executive Director.

"Rental Car" or "Motor Vehicles" shall mean motor vehicles designed primarily for the carriage of passengers and commonly classified as sedans, coupes, convertibles, four-wheel drive vehicles, passenger vans, sport utility vehicles, and pick-up trucks rated one-ton or less. Concessionaire shall not park, store or rent from the Leased Premises any vehicles except Motor Vehicles as defined herein that it owns or rents and are properly available for rental as provided herein.

"Rules and Regulations" means those policies, rules and regulations promulgated from time to time by Authority and implemented by the Executive Director for the orderly use of Airport by air transportation companies, tenants and users of Airport.

"Service Facility" means the consolidated service facility, shared by the on-airport concessionaires, where rental cars are cleaned, fueled and stored.

"Terminal Building" means the building commonly referred to as the passenger terminal building used primarily for enplaning and deplaning passengers and their associated services.

1.2 Cross-References and Paragraph Headings. References in the text of this Agreement to articles, sections, or exhibits of this Agreement, unless otherwise specified, are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

ARTICLE 2 LEASED PREMISES

2.1 Initial Premises. From August 1, 2024 until approval of a Certificate of Occupancy for the new Customer Service Building and associated parking facilities, the Leased Premises will include:

- A. Terminal Space and Parking. Authority hereby leases to Concessionaire and Concessionaire hereby agrees to lease from Authority the exclusive use of the following Terminal Space and Parking: _____ (XXX) square feet of counter/office/queuing area ____ in the Terminal Building, XXX vehicle parking spaces located in the parking garage, Lot 1, and Lot 2 and X,XXX square feet of parking in the Green Lot. Said Terminal Space and Parking is more particularly shown on Exhibits A1 and A2. Upon approval of a Certificate of Occupancy for the new Customer Service Building and associated parking facilities, Terminal Space and Parking defined herein will no longer be available and Concessionaires will be required to relocate to the new Customer Service Building and associated parking facilities at Concessionaire's own expense.
- B. Service Facility. Authority hereby leases to Concessionaire and Concessionaire hereby agrees to lease from Authority the following:
- Exclusive use of _____ (XXX) square feet of office space and maintenance bay space in the Service Facility as depicted on Exhibit A3.
 - Exclusive use of Block ____ of vehicle parking at the Service Facility as depicted on Exhibit A4.
 - Common use, with other concessionaires, of the wash bays, vacuum and vehicle fueling areas of the Service Facility.

2.2 Replacement Premises. Upon approval of a Certificate of Occupancy for the new Customer Service Building and associated parking facilities, the Leased Premises will include:

- A. Customer Service Building and Associated Parking Facilities. Authority hereby leases to Concessionaire and Concessionaire hereby agrees to lease from Authority the exclusive use of the following CSB Space and Associated Parking Facilities: approximately _____ (XXX) square feet of counter/office/queuing area ____ in the CSB and approximately _____ (XX,XXX) square feet located of Block ____ in the associated parking facilities. Said CSB Space and Parking is more particularly shown on Exhibits A5 and A6. Actual square footage will be determined from final as-built drawings of the facilities.
- B. Service Facility. Authority hereby leases to Concessionaire and Concessionaire hereby agrees to lease from Authority the following:
- Exclusive use of _____ (XXX) square feet of office space and maintenance bay space in the Service Facility as depicted on Exhibit A3.

- Exclusive use of Block ____ of vehicle parking at the Service Facility as depicted on Exhibit A4.
- Common use, with other concessionaires, of the wash bays, vacuum and vehicle fueling areas of the Service Facility.

2.3 Relocation of Leased Premises Due to Construction Other Than the CSB.

Concessionaire acknowledges that during the term of this Agreement, due to construction other than the CSB, the Authority may reallocate rental car spaces, reduce or expand the total number of spaces, relocate, or change the usage of all or part of the Parking Facilities. These changes may be made at the discretion of the Executive Director upon prior written notice to Concessionaire. Authority will bear only those expenses directly related to the surfacing, fencing, lighting, and access road construction, and maintenance, not including snow and ice removal, of any newly created temporary or permanent Rental Car Ready/Return Lots. Concessionaire shall be solely responsible for all other expenses associated with the relocation.

Concessionaire acknowledges that during the term of this Agreement, construction related inconvenience might occur due to construction of Airport facilities.

Concessionaire agrees it will not make or file any claim, lawsuit, or action against the Authority for any disruption and damages the construction or related activities may cause Concessionaire or Concessionaire's business.

- 2.4 Additional Storage Parking. Additional storage parking may be made available to Concessionaire, jointly with other concessionaires. The availability and location of additional storage parking will be determined by the Authority. When additional storage parking is available, the Authority will assign such parking across concessionaires based on their proportionate share of the total amount of their five (5) year Minimum Annual Guarantees to the sum of all successful proposers proposed five (5) year Minimum Annual Guarantees. The availability of additional storage parking is not guaranteed. Such parking may be leased on a month-to-month basis as outlined in Article 4.2(E).

ARTICLE 3 TERM OF AGREEMENT

- 3.1 Term. The term of this Agreement is for a period of five (5) years beginning August 1, 2024.
- 3.2 Termination. This Agreement shall terminate at the end of the full term and Concessionaire shall have no further right or interest in any of the Leased Premises or any rights, privileges or uses set forth in this Agreement. Upon the termination of this Agreement, Concessionaire shall surrender the Leased Premises in good condition, reasonable wear and tear excepted.

ARTICLE 4 RENTS, FEES AND CHARGES

4.1 Privilege Fee. As consideration for the privilege of operating the concession hereunder, Concessionaire shall pay to Authority each Contract Year, for the full term of this Agreement, a Privilege Fee. Said Privilege Fee shall be the greater of either the guaranteed Minimum Annual Guarantee or the Percentage Privilege Fee applicable to Gross Revenues, hereinafter defined, as follows:

A. Privilege Fee – the greater of either:

1. ten percent (10%) of the Concessionaire’s annual Gross Revenues (“Percentage Privilege Fee”); or
2. the respective yearly amount shown below as the Concessionaire’s Minimum Annual Guarantee fee (“MAG”):

August 1, 2024 to July 31, 2025	\$
August 1, 2025 to July 31, 2026	\$
August 1, 2026 to July 31, 2027	\$
August 1, 2027 to July 31, 2028	\$
August 1, 2028 to July 31, 2029	\$

B. Monthly payment shall be the greater of 1/12th of the respective year’s MAG or 10% of reported gross revenues for the previous month. The MAG payment shall be paid in advance on the first (1st) day of each month during each Contract Year, until such time as the Concessionaire has paid to the Airport an amount equal to the respective annual MAG identified in Article 4.1(A)(2) above. On or before the ~~20th~~ ~~15th~~ of each month the Concessionaire shall provide the Airport with: i) a signed and certified Report of Gross Revenues for the preceding month and ii) payment of any percentage Privilege Fee shown to be due for the preceding month, as designated on Exhibit C, attached hereto and made a part hereof. If Concessionaire is operating more than one brand under this Agreement, it shall report Gross Revenues by each individual brand.

Once the sum of Privilege Fee payments remitted has reached the MAG in any given Contract Year, the Concessionaire may cease remittance of the 1/12th of the respective year’s MAG on the first (1st) day of each month for the remainder of that Contract Year. The Concessionaire shall continue to report and remit each and every month after the annual MAG has been reached the full 10% of reported gross revenues for the previous month.

C. Concessionaire’s Right of Abatement. In any Contract Year where the total deplanements at the Airport decline by 15% or more as compared to the prior Contract Year, the Concessionaire’s MAG for such Contract Year shall be reduced proportionate to the decline in deplanements as part of the year-end reconciliation process. Where the Authority reasonably determines during any Contract Year that a MAG reduction is likely, the Authority may waive the Concessionaire’s obligations to remit the monthly 1/12th MAG installment payments for any period

~~of time the Authority deems appropriate in its sole discretion, but Concessionaire shall continue to remit the Percentage Privilege Fee each month regardless. In the event that the following condition exists during the term of this Agreement, the MAG hereinabove provided for in Article 4.1(A)(2) shall be abated for the period of time the condition exists:~~

- ~~1. A major traffic reduction at the Airport. A major traffic reduction shall be defined as a not less than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.~~
- ~~2. The abatement amount for those months that are abated as defined in Article 4.1 (C)(1) will be the prorated reduction of that month's 1/12th payment of the MAG. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12th MAG payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.~~
- ~~3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the twenty five percent (25%) threshold, at which time the full MAG payment shall be made for such month.~~
- ~~4. This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than twenty five percent (25%) reduction in passenger deplanements. Overpayments of the MAG will be credited to the Concessionaire during the year-end reconciliation process described in Article 4.4(C).~~

- D. Concessionaire acknowledges that Privilege Fee payments by Concessionaire to Authority under this Agreement are for Concessionaire's privilege to use the Airport facilities and access to the Airport market and are not fees imposed by Authority upon Concessionaire's customers. Authority does not require, but will not prohibit, a separate statement of and charge for the Privilege Fee on customer invoices or rental agreements ("Recovery Fee"), provided that such Recovery Fee meets all of the following conditions: (a) such Recovery Fee must be titled "Concession Recovery Fee," "Concession Recoupment Fee" or such other name first approved by the Executive Director in writing; (b) the Recovery Fee must be shown on the customer rental car agreement and invoiced with other Concessionaire charges (i.e. "above the line"); (c) the Recovery Fee as stated on the invoice and charged to the customer shall be no more than 11.11% of Gross Revenues and shall be specifically included in the Definition of Gross Revenues for purposes of remittance to Authority; (d) Concessionaire shall neither identify,

treat, or refer to the Recovery Fee as a tax, nor imply that Authority is requiring the pass through of such fee; (e) Concessionaire shall comply with all applicable laws, including Federal Trade Commission requirements, and any commitment to or contractual obligation by Concessionaire with any governmental agency or officer with authority over Concessionaire's activities.

- E. Limitation on Pass-Through of Concession Fee. Other than the Concession Recovery Fee, the Customer Facility Charge, and the Supplemental Fee described in this Article 4, Concessionaire shall not pass-through or list any fees payable to the Authority as a separate item on the Customer Rental Agreement.

4.2 Rents. Concessionaire shall pay to Authority, in advance without demand, the rental fees set forth below.

- A. From August 1, 2024 until ~~upon~~ approval of a Certificate of Occupancy for the new Customer Service Building and associated parking facilities, the Counter/Office/Queuing Space Rent and Ready/Return Parking rent will include:

1. Counter/Office/Queuing Space Rent – For the period commencing August 1, 2024 until such time as the Concessionaires relocate to the new CSB, Concessionaire shall pay the Terminal Rental Rate adopted by Authority in its Rates and Charges and updated annually.
2. Ready/Return Parking - For the period commencing August 1, 2024 until such time as the Concessionaires relocate to the new CSB, Concessionaire shall pay the Authority \$X,XXX.XX per month in Ready/Return Parking Rent based on the rates reflected below.

Parking Garage – \$150 per stall per month
Lots 1 and 2– \$120 per stall per month
Green Lot – \$0.19 per square foot per month

- B. Upon approval of a Certificate of Occupancy for the new Customer Service Building and associated parking facilities, the Customer Service Building and associated parking facilities rent will include:

1. CSB Counter/Office/Queuing Space Rent - Upon occupancy of the CSB, Concessionaire shall pay the Authority monthly for its estimated proportionate share of the CSB Operations and Maintenance ("O&M") ~~exepnses~~expenses. The proportionate share is based on transactions. The funds shall be deposited into an account administered by the Executive Director for payment of actual O&M expenses incurred by Authority for operation of the CSB. If at any time during the term of this Agreement the balance in such O&M account falls short of the funds required to operate and maintain the facility, the Authority may invoice Concessionaire for its proportional share of the additional funds reasonably required to operate and maintain the facility, and Concessionaire shall remit funds to

Authority within thirty (30) days of invoice. Prior to the commencement of each Contract Year, the Authority shall provide a budget of estimated expenses to each on-airport rental car concessionaire. Based upon such budget, Concessionaire shall, on a monthly basis, pay its projected annual share of the projected expenses of operation and maintenance for the following Contract Year according to its proportionate allocation. Concessionaire's current proportionate allocation (share) is ____% based on _____.

Concessionaire agrees to provide the Authority with rental car transaction information monthly as part of its monthly report to the Authority commencing on August 1, 2024.

CSB operation and maintenance expenses will include all costs incurred by the Authority to operate and maintain the CSB in good, clean and sanitary condition as it determines in its sole discretion. O&M expenses include, but are not limited to, utilities, supplies, maintenance and repairs, permits, assessments, security, insurance, land rent, professional services, landscaping, snow pile removal, depreciation and indirect costs. CSB operation and maintenance expenses will also include all costs incurred by the Authority to operate the shuttling operations between the Terminal Building and the CSB. The preliminary estimated annual O&M budget is provided as an example as Exhibit D(1).

At the end of each Contract Year, the Authority shall provide a statement of expenses to each concessionaire reconciling total CSB O&M costs incurred, allocation of such costs to each concessionaire based on concessionaire's actual transactions information for the period covered, and calculation of any over or under payments made by each concessionaire. In the event the amount of payments made by Concessionaire exceeds the total of payments due based on the reconciliation, the excess payment shall be credited against payments for the next Contract Year, except that any excess payment during the final Contract Year of this Agreement will be returned to the Concessionaire within thirty (30) days of the calculation of the reconciliation. In the event the amount of payments made by Concessionaire is below the total of payments due based on the reconciliation, the Concessionaire will remit such underpayment to the Authority within thirty (30) days of the calculation of the reconciliation and upon receipt of the invoice for the underpayment.

2. CSB Parking Block Rent - Upon occupancy of the CSB, the Parking Blocks will be charged at the rate of \$0.38 per square foot per month.

- C. Service Facility – Storage Parking Block Rent – For the period commencing August 1, 2024 until July 31, 2029, Concessionaire shall pay the Authority

\$X,XXX.XX per month for XX,XXX square feet of the Service Facility - Storage Parking Block rent based on the rate of \$0.19 per square foot per month.

- D. Service Facility – Operations and Maintenance (“O&M”) Costs – For the period commencing August 1, 2024 until July 31, 2025, Concessionaire shall pay the Authority \$X,XXX.XX per month for its estimated proportionate share of the Service Facility O&M expenses. The proportionate share is based on XXXXXX. The funds shall be deposited into an account administered by the Executive Director for payment of actual O&M expenses incurred by Authority for operation of the Service Facility. If at any time during the term of this Agreement the balance in such O&M account falls short of the funds required to operate and maintain the facility, the Authority may invoice Concessionaire for its proportional share of the additional funds reasonably required to operate and maintain the facility, and Concessionaire shall remit funds to Authority within thirty (30) days of invoice. Prior to the commencement of each Contract Year, the Authority shall provide a budget of estimated expenses to each on-airport rental car concessionaire. Based upon such budget, Concessionaire shall, on a monthly basis, pay its projected annual share of the projected expenses of operation and maintenance for the following Contract Year according to its proportionate allocation. Concessionaire’s current proportionate allocation (share) is ____% based ____.
- Concessionaire agrees to provide the Authority with rental car transaction information monthly as part of its monthly report to the Authority commencing on August 1, 2024.

Monthly Service Facility maintenance expenses will include all costs incurred by the Authority to operate and maintain the Service Facility in good, clean and sanitary condition as it determines in its sole discretion. The estimated August 2024 through July 2025 O&M budget is provided as an example as Exhibit D(2).

At the end of each Contract Year, the Authority shall provide a statement of expenses to each concessionaire reconciling total Service Facility O&M costs incurred, allocation of such costs to each concessionaire based on concessionaire’s actual transactions information for the period covered, and calculation of any over or under payments made by each concessionaire. In the event the amount of payments made by Concessionaire exceeds the total of payments due based on the reconciliation, the excess payment shall be credited against payments for the next Contract Year, except that any excess payment during the final Contract Year of this Agreement will be returned to the Concessionaire within thirty (30) days of the calculation of the reconciliation. In the event the amount of payments made by Concessionaire is below the total of payments due based on the reconciliation, the Concessionaire will remit such underpayment to the Authority within thirty (30) days of the calculation of the reconciliation and upon receipt of the invoice for the underpayment.

- E. Additional Storage Parking – On a month-to-month basis, Concessionaire shall pay the Authority \$0.19 per square foot per month for any additional storage parking areas assigned to Concessionaire.

4.3 Additional Fees.

- A. Fuel Charges - Concessionaire shall pay to Authority, monthly upon receipt of invoice from Authority, charges for fuel gallons purchased by Concessionaire at the fuel-dispensing unit at the Service Facility during the previous month. Payment shall be due within thirty (30) days of invoice date.
- B. Customer Facility Charges (“CFC”) - Concessionaire shall collect the CFC on behalf of the Authority and remit to the Authority, in accordance with the Authority’s CFC regulations.

Supplemental Fee in Lieu of or in Addition to the CFC. Although the Airport does not anticipate any legal challenge to the CFC, the Airport will vigorously defend any such challenge. If all or any part of the CFC fails to survive a challenge in a court of competent jurisdiction, then the stricken or invalidated portion(s) of the CFC will be replaced as appropriate with a supplemental Airport rental car fee. Effective upon the date the CFC is held invalid, modified, replaced or in any way supplemented, Concessionaire shall pay the Airport the supplemental Airport rental car fee in an amount based on Concessionaire's Market Share sufficient to replace the CFC collections.

- C. Additional Fees - Additional fees may include charges for special items or activities including, but not limited to, security fees, employee parking, badging and access control card fees, overflow parking, access media, and for any fine levied to Concessionaire or its employees. The Authority may assess reasonable, non-discriminatory charges for these special items or activities. Such additional fees payable by Concessionaire, shall be paid to Authority no later than thirty (30) days following receipt by Concessionaire of billing therefor.

4.4 Payment Provisions.

- A. Payment Address. Concessionaire shall send all payments and reports required to the following address:

Des Moines Airport Authority
5800 Fleur Drive, Suite 207
Des Moines, IA 50321

Concessionaire may coordinate with the Authority for the remittance of payments due via an electronic method acceptable to the Authority. A detailed report must be provided, at the time of payment, indicating the invoice(s) to which the payment is applied.

- B. Any payment not received by the due date will accrue interest at the rate of one and one-half percent (1.5%) per month from the due date until paid in full.
- C. Year End Adjustments to Privilege Fees, Rents and Fees. In the event the amount of payments made during the preceding Contract Year exceeds the total of any payments due for such Contract Year, the excess payment shall be credited against the payments for the next Contract Year, except that any excess payment during the final Contract Year of this Agreement will be returned to the Concessionaire within thirty (30) days after the Authority's acceptance of the final Certified Statement described in this Article. Concessionaire shall submit separate system generated reports for each brand name operated.

4.5 Statements, Books and Records, Audit.

- A. Monthly Statements; Books and Records. Within ~~twenty (20)~~~~fifteen (15)~~ days after the close of each calendar month of the term of this Agreement, Concessionaire shall submit to Authority, in such detail and on the statement form designated as Exhibit C or as may reasonably be specified by Authority, certain information, including but not limited to, the number of Transactions executed during the preceding month, the number of ~~contract~~~~Transaction~~ ~~d~~Days Motor Vehicles were rented during the preceding month, and the statement of its Gross Revenues during the preceding month upon which the percentage payments to Authority set forth in Article 4.1(A)(1) are to be computed, and said Exhibit C statement to be signed by a responsible accounting officer of Concessionaire. Authority reserves the right to change the form of the monthly statement and to require the submission by Concessionaire of other information pertaining to the Gross Revenues hereunder, and Concessionaire agrees to change the form of its statements to that requested by Authority and to provide any such additional information Authority may reasonably request. Concessionaire shall keep full and accurate books and records showing all of its Gross Revenues hereunder, and Authority shall have the right, through its representatives and at reasonable times, at its own expense, to inspect, examine, copy and audit such books and records. Concessionaire hereby agrees that all such books and records will be made available to Authority for at least three (3) years after the at termination of this Agreement.
- B. Annual Certified Statements. Each year during the term of this Agreement, Concessionaire shall provide to Authority a written statement, certified by an independent Certified Public Accountant, to Authority stating that the Privilege Fees paid by Concessionaire to Authority during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. Said statement shall be submitted by Concessionaire, to be received by Authority within ninety (90) days of the end of each Contract Year. Such statement shall also contain a list of the Gross Revenues, by month, as shown on the books and

records of Concessionaire and which were used to compute the Privilege Fee payments made to Authority during the period covered by said statement.

- C. Audit. Authority reserves the right to audit Concessionaire's books and records pertaining to the Leased Premises, at its own expense, at any time for the purpose of verifying the Gross Revenues and Privilege Fee calculation hereunder, as well as CFC collections, for any period during the term of the Agreement. If, however, as a result of such audit, it is established that Concessionaire has understated the Gross Revenues received from all operations at the Leased Premises by two percent (2%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Concessionaire. Any additional Privilege Fee due shall forthwith be paid by Concessionaire to Authority with interest thereon at one and one-half percent (1.5%) per month from the date such additional Privilege Fee became due.
- D. Concessionaire shall pay the Authority \$10 every calendar day for any report specified in this Agreement for which Concessionaire is delinquent. The charge will continue until specific performance is accomplished.

ARTICLE 5 CONCESSIONAIRE'S RIGHTS PRIVILEGES, USES AND RESTRICTIONS

- 5.1 Common Usage. Concessionaire has the right of use, in common with others authorized to do so, of the common areas in the Terminal Building, Service Facility and CSB.
- 5.2 Operations. ~~Concessionaire has t~~The non-exclusive right, privilege, and obligation to conduct and operate a rental car, van or truck rental concession at the Airport including all necessary and ancillary services customarily associated with car rental concessions at public airports within the United States of America or airport of similar size and capacity. Concessionaire shall furnish good, prompt and efficient service and shall at all times have available a sufficient number of Vehicles (a fleet of no fewer than fifty (50)) per brand to meet all reasonably foreseeable demands of the traveling public. Co-branding by parent Concessionaire is limited to two brands per concession space specifically those listed in their submitted proposal. Concessionaire shall be prohibited from operating at the Airport under any brand(s) other than the brand(s) it designated on its Qualifications Form. Any requests for changes to this arrangement will not be approved. It being understood that no more than two brands under rental car agencies who are owned by the same parent Concessionaire may operate from any one concession space during the term of this Agreement.
- 5.3 Offerings. ~~Concessionaire has t~~The right, privilege, and obligation to rent and check-in rental vehicles, including the right to offer for sale related collision damage waiver protection, personal injury and accident insurance, personal effects insurance, and such other travel or vehicle related coverage offered in connection with and incidental to the rental of a vehicle and occupy operations office, service facility, and vehicle parking and

storage spaces. No trucks larger than one-ton pickup type/style will be allowed in the parking lots unless approved in writing in advance by the Executive Director.

- 5.4 Right of Ingress and Egress. Concessionaire shall have the right of ingress and egress to and from the Leased Premises, over Airport roadways, subject to such reasonable rules and regulations as may be established by the Authority as respecting such use and subject to law.
- 5.5 Quiet Enjoyment. Concessionaire, upon payment of fees and charges as described in Article 4, and upon observing and keeping the conditions and covenants of this Agreement on its part to be observed and kept, shall lawfully and quietly hold, use and enjoy the Leased Premises during the term of this Agreement.
- 5.6 Dispute on Services or Products. In the event of a dispute between Concessionaire and the Authority or any other Airport tenant as to the services to be offered or products to be sold, Concessionaire shall meet and confer with the Executive Director and shall be bound by the Executive Director's decision.
- 5.7 No Other Uses. Concessionaire shall not use nor permit the Leased Premises to be used for any purpose other than as set forth in this Agreement except with the prior written consent of the Executive Director.
- 5.8 Interference. Concessionaire shall not exercise the rights granted by this Agreement in such a way as to interfere with or adversely affect the use, operation, maintenance, or development of the Airport.
- 5.9 Parking Facilities. Concessionaire's employees shall have the right to utilize parking facilities in common with other tenant employees. Such facilities shall be located in an area designated by the Authority. The Authority reserves the right to assess a reasonable charge to Concessionaire's employees for such employee parking facilities at a rate not more than that being charged to other tenant employees for use of the same facilities.
- 5.10 Agreements with Others. Concessionaire understands and agrees that Authority has the right to grant additional privileges under separate agreements for on-airport and off-airport rental car operations to other companies.

ARTICLE 6 OPERATING STANDARDS

- 6.1 Type of Operation. Concessionaire shall maintain and operate the concession privileges granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of Executive Director, does not unduly annoy, disturb, or offend others at the Airport.

6.2 Services to the General Public. Concessionaire understands and agrees that its operation at the Airport necessitates the rendering of public services such as giving directions, and generally assisting the public.

6.3 Concession Personnel. Concessionaire shall select honest, competent, and courteous personnel, and shall train, supervise, and maintain proper surveillance over all its employees to ensure both their integrity and the maintenance of an honest and high standard of service to the public, which standard will be determined at the sole discretion of the Authority.

All personnel, while on or about the Airport premises, shall be clean, neat in appearance, and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification, in such instances as are appropriate. Personnel, while on or about the Airport premises, shall not use improper language, act in a loud, boisterous, or otherwise improper way, or be permitted to solicit business in an inappropriate manner.

6.4 Concession Manager. The management, maintenance, and operation of the Leased Premises and the concession conducted thereon shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Concessionaire. Concessionaire shall cause such manager to be available during normal business hours, and Concessionaire will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. Concessionaire shall provide the Authority with emergency telephone numbers at which Concessionaire's manager may be reached on a 24-hour basis.

6.5 Hours of Operation. Concessionaire shall actively operate in the Leased Premises and shall ~~conduct~~^{use} a business-like operation therein. The Concessionaire shall be open to serve the public seven (7) days per week and hours of operation shall be such that passengers of flights arriving or departing from the terminal will be accommodated. Minimum counter operations hours are from 8:00 a.m. or one-half hour prior to the first scheduled arrival whichever is earlier, until one-half hour after the actual arrival time of the last flight. Concessionaire shall adjust their online reservation system to reflect the hours of any published change in airline flight schedules at the Airport, as they are made known to Concessionaire, in order to allow for rentals through those new airline flight arrival and departure times.

Concessionaire shall staff the vehicle return parking areas to ensure returned vehicles do not accumulate so as to interfere with the operators of others, circulation areas or roadways.

In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Concessionaire may advise the Executive Director of

Concessionaire's analysis of the optimum arrangements, but the final determination regarding operating hours shall be made by the Executive Director based on his analysis of necessary service to the public.

- 6.6 Delivery of Vehicles and Goods. Concessionaire shall arrange for the timely delivery of all Motor Vehicles and supplies, at such times, in such locations(s), and by such routes as determined by Executive Director.
- 6.7 Signage. Concessionaire shall install no signs on or about the Leased Premises without the prior written approval of the Executive Director, said approval being solely discretionary with the Executive Director. For purposes of this Article, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising or promotions, photographs, art displays, and the like. Such signs shall be substantially uniform in size, types and location with those of other concessionaries, and subject to Executive Director's approval, Rules and Regulations, and in compliance with all applicable laws and resolutions. No temporary signs or displays shall be permitted on the backwall or the counter surfaces without the prior written approval of the Executive Director. Handwritten, or hand lettered signs are prohibited. Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Executive Director.
- 6.8 Prohibited Acts. Concessionaire, its employees, agents, or representatives, shall not do or permit to be done any of the following:
- A. Interfere with Access. Anything that may (1) interfere with free access and passage in the Leased Premises or the adjacent areas, or in the elevators, escalators, streets or sidewalks of the Airport, (2) hinder police, fire fighting or other emergency personnel in the discharge of their duties, or (3) hinder access to utility, heating, ventilating or air-conditioning systems, or portions thereof, on or adjoining the Leased Premises.
 - B. Interfere with Systems. Anything that may interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the Leased Premises (including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto) or interfere with the effectiveness of elevators or escalators in or adjoining the Leased Premises;
 - C. Increase Liability. Anything that could invalidate, suspend, or increase the rate of any fire insurance policy required under this Agreement, or carried by the Authority, covering the Leased Premises or the building in which it is located, or which, in the opinion of the Executive Director, may constitute a hazardous condition that will increase the risks normally attendant upon the operations covered under this Agreement.

- D. Vehicle Operations. Concessionaire shall not permit its agents, servants, employees, or visitors to operate any motor vehicle in excess of the posted speed limit or in a reckless manner and shall require them to observe and obey all Rules and Regulations.

Concessionaire shall conduct its operations in a manner that will ensure that its customers and employees will not block public traffic lanes in the area of the Terminal Building, in the shared or common circulation aisles within the rental car parking facilities, and shall not interfere with the operations of others.

- E. Vehicle Maintenance. All vehicle maintenance must be performed at the Service Facility and no maintenance of any kind may be performed in any rental car parking facilities.
- F. Revenue Diversion. Concessionaire shall not divert, through direct or indirect means, any of Concessionaire's rental car or related business with Airport passengers to off-Airport locations of Concessionaire or affiliates of Concessionaire without including the Gross Revenues of such transactions in Concessionaire's reported Gross Revenues. Any such diversion of Gross Revenues will constitute a breach of this Agreement.

- 6.9 Removal of Garbage and Refuse. Concessionaire shall strictly comply with the Rules and Regulations regarding the disposal of garbage and shall regularly remove from the Leased Premises all rubbish, refuse, and garbage and take it to the Airport's designated disposal area. Concessionaire shall not allow the accumulation of trash, boxes, carton, barrels, or other refuse in the Leased Premises or in the public areas of the Airport. Concessionaire shall not remove garbage and refuse by carrying it through any public or common areas.

- 6.10 Security. During the term of this Agreement, the Authority shall require the Concessionaire to deliver (and thereafter maintain current for the entire term of this Agreement) an instrument of security in a form satisfactory to the Authority, in its sole discretion, in the amount of twenty-five percent (25%) of the average of the Concessionaire's Minimum Annual Guarantees for each year hereunder, in order to secure the performance of all of Concessionaire's obligations under this Agreement, including without limitation, the payment of all the percentages, minimums, fees, charges and costs set out herein. Said security may be in the form of a bond, as provided as Exhibit E.

- 6.11 Operations Violations. Concessionaire's failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to Authority. Additionally, Authority resources will be expended in dealing with violations of this Agreement by Concessionaire. The parties hereby agree that total damages sustained by to Authority for violations of the provisions of this Agreement addressing this subject matter could be significant, but would be

difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts, set forth below for violation of Agreement terms addressing the referenced subject matter are reasonable estimates of the loss anticipated to be suffered or incurred by Authority. Concessionaire, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Concessionaire agrees to pay immediately upon demand by to Authority the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to operation violations:

- \$100 per occurrence - first occurrence
- \$200 per occurrence – second occurrence
- \$300 per occurrence - third occurrence
- \$1,000 per occurrence thereafter

Liquidated damage amounts ~~mayshall~~ not be imposed unless the violation continues for more than three (3) calendar days after Authority has given Concessionaire written notice (and this written notice may be in the form of an email) of the violation; provided, however, after Authority has given Concessionaire notice of the same violation more than twice, the liquidated damage amount shall be immediately imposed with no opportunity to cure in order to avoid the sanction. If the violation relates to vehicles or vehicle parking, an occurrence will be based on each vehicle.

For hours of operations violations, liquidated damages shall be as follows:

- \$100 per hour or portion thereof, during which location is not open - first occurrence
- \$200 per hour or portion thereof, during which location is not open - second occurrence
- \$300 per hour or portion thereof, during which location is not open - third occurrence
- \$1,000 per occurrence thereafter

For violations regarding the minimum hours of operation, the liquidated damages ~~mayshall~~ be incurred immediately and without notice upon violation.

The application of the liquidated damages will be at the reasonable discretion of the Authority. Authority's failure to impose liquidated damages for any violation of the requirements set forth above shall not waive any right or prohibit Authority from doing so for subsequent violations. After two (2) violations of the same type, Authority reserves the right, at its sole option, not to impose the liquidated damage and instead seek any other remedies available to it for an event of Default, including termination of this Agreement.

ARTICLE 7 MAINTENANCE, REPAIR, ALTERATIONS, AND MODIFICATIONS

7.1 Authority Maintenance and Repair Obligations

- A. General Maintenance and Operations. Authority agrees that it will with reasonable diligence, maintain, operate, and keep in good repair the Airport, including the common use areas and all appurtenances, facilities, and services now or hereafter connected therewith.
- B. Terminal Building and CSB. Authority shall maintain the exterior walls, roof, Authority installed canopies, foundation, heating and cooling systems, and all of the public areas of the Terminal Building and CSB.
- C. Service Facility. The Authority will be responsible for the overall maintenance of the fueling system, wash bays, wash bay equipment, building exterior (including roofs and exterior walls), parking areas and internal roadways (i.e. paving, repair, markings, etc.), interior common areas, equipment storage rooms, phone system, central IT room and cabling, perimeter fence, access gates and access system, exterior lighting, lawn, and landscaping at the Service Facility.
- D. Snow Removal. The Authority will be responsible for loading and hauling snow from areas designated as snow storage areas, in accordance with the Airport Snow and Ice Control Plan.
- E. Responsibilities for maintenance and daily cleaning of the facilities are listed in Exhibit F of the Agreement.

7.2 Concessionaire Maintenance and Repair Obligations.

- A. Concessionaire, at its sole cost and expense, shall keep the Leased Premises clean, neat, and in good condition and make all repairs required in and about the Leased Premises other than maintenance of the items maintained by Authority as provided under Article 7.1.
- B. Concessionaire shall repair any and all damage to the Leased Premises and improvements, caused by Concessionaire, its employees, agents, independent contractors, patrons, servants, or invitees. Repairs must be of a quality and class equal to or better than the original work to preserve the same in good order and condition.
- C. Concessionaire shall provide its own janitorial service for its exclusive use Leased Premises and shall remove or otherwise dispose of in a manner approved by Executive Director all garbage, debris, and other waste materials (whether solid or liquid) arising out of its occupancy of the Premises or out of its operations. Any debris or waste that is temporarily stored in the open must be kept in suitable garbage and waste receptacles designed to safely and properly contain whatever material may be placed there.

- D. Concessionaire shall maintain and repair all Leasehold Improvements on the Leased Premises and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or furnishings. All such maintenance and repairs shall be at least of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of Executive Director.
- E. Authority reserves the right to enter and inspect the Leased Premises at any time in the execution of its governmental and proprietary functions. If, as a result of such inspection, Authority determines that the Leased Premises are not kept clean or in good condition, and Concessionaire is so advised by Authority, then, after reasonable written notice, Authority may cause it to be cleaned or repaired, and the cost plus twenty percent (20%) for administrative costs will be added to the rent and payable as additional rent.
- F. Snow removal in all areas leased, occupied or operated by Concessionaire will be the responsibility of the Concessionaire. These areas include the ready and return parking areas and all areas of the Service Facility, including, but not limited to, vehicle ingress and egress lanes, parking lanes, and interior roads.
- All snow in the Parking Facilities must be moved to those areas designated as snow storage areas, in accordance with the Airport Snow and Ice Control Plan. Those parking spaces identified for snow storage will generally be available for vehicle parking from November 1 through March 31 of each year, but shall be vacated during active snow events so that snow can be piled and removed once the event is over.
- G. Responsibilities for maintenance and daily cleaning of the facilities are listed in Exhibit F of the Agreement.

7.3 Authority May Repair. In the event Concessionaire fails to accomplish such nonstructural repairs, replacements, rebuilding, redecorating or painting required hereunder within a period of ten (10) days after written notice from the Authority so to do, or fails to diligently repair, replace, rebuild, redecorate, or paint all the premises required to be repaired, replaced, rebuilt, redecorated, or painted by Concessionaire pursuant to said schedule, the Authority may, at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate, or paint any such premises included in said notice, the cost thereof, plus twenty percent (20%) for administrative overhead, to be paid by Concessionaire to the Authority on demand.

7.4 Right to Enter Leased Premises. The Authority shall have the right to enter upon the Leased Premises at all reasonable times to make such repairs, alterations, and replacements as may, in the opinion of the Executive Director, be deemed necessary or advisable and, from time to time, to construct or install over, in, under or through the Leased Premises new lines, pipes, mains, wires, conduits and equipment; provided,

however, that such repair, alteration, replacement or construction shall not unreasonably interfere with the use of the Leased Premises by Concessionaire and provided further, that nothing herein shall be so construed as relieving Concessionaire of any obligation imposed upon it herein to maintain the Leased Premises and the improvement and utility facilities therein. The Authority shall have the right to enter the Leased Premises at any time to maintain or repair emergency systems when loss of life or damage to property may result.

ARTICLE 8 ADDITIONAL OBLIGATIONS OF THE PARTIES

8.1 Authority Obligations. During the term of this Agreement, Authority agrees to meet the following obligations and provide the following services:

- A. Authority shall provide automobile parking space and toilet facilities for employees of Concessionaire in common use with others.
- B. Authority shall provide for Concessionaire the full and free right of reasonable ingress and egress to and from the Leased Premises. Authority shall keep routes of ingress and egress in reasonable repair. Authority has the right to alter or change the routes of ingress and egress upon giving reasonable notice to Concessionaire and upon providing other means of ingress and egress.
- C. Authority shall promptly notify Concessionaire of construction projects and other incidents that could impact Concessionaire operations.
- D. Authority intends to provide standard unleaded fuel at the Service Facility. No special accommodation will be made for premium fuel, diesel, or bio-fuel.

8.2 Concessionaire Obligations. During the term of this Agreement, Concessionaire (including its employees, contractors, and invitees) agrees to meet and fulfill the following duties and obligations:

- A. Concessionaire shall conduct its operation in an orderly and proper manner, considering the nature of its operation so as not to unreasonably annoy, disturb, endanger or be offensive to others at or near the Leased Premises and to keep the sound level of its operation as low as possible.
- B. Concessionaire shall not commit any nuisance, waste, or injury on the Leased Premises and shall not do or permit to be done anything that may result in the creation, commission or maintenance of any nuisance, waste, or injury on the Leased Premises.
- C. Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to Authority of any hazardous or potentially hazardous conditions in the Leased Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Leased Premises shall be corrected immediately upon

receipt of oral notice by the Executive Director. At the direction of said Executive Director, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.

- D. Concessionaire shall park and store merchandise, containers, dollies, or other material or equipment only on the Leased Premises or areas designated for this use by Authority.
- E. Concessionaire shall not overload any floor or paved area on the Leased Premises and shall repair any floor, including supporting members, and any paved area damaged by overloading.
- F. Concessionaire agrees its employees will conduct themselves in a proper manner at all times and Concessionaire agrees to promptly reassign or discharge any employee whose conduct Authority believes is detrimental to the best interests of Authority.

ARTICLE 9 IMPROVEMENTS

9.1 Condition of Premises.

A. The Authority shall deliver the Terminal Space and Parking and Service Facilities Leased Premises to the Concessionaire "AS IS", except for furniture, furnishings, equipment, removable fixtures, and supplies owned by the incumbent Concessionaire. Concessionaire agrees that it has inspected the Terminal Space and Parking and Service Facilities Leased Premises, which are leased in "AS IS" condition without representation or warranty by Authority. The improvements owned by the Authority include interior walls, ceilings, floor covering, carpeting, finished flooring, electrical wiring, air-conditioning and heating ducts and equipment. The improvements owned by the Authority may also include specific concession furniture, equipment, interior decoration, furnishings, or connections for electrical power or telephone/data which cannot be removed without structural damage to the premises.

A.B. The Authority shall deliver the Customer Service Building and Associated Parking Facilities to the Concessionaire in a condition suitable for Concessionaire's use.

9.2 Improvements Required of Concessionaire. Concessionaire shall provide any and all improvements which are necessary to operate said concession to the satisfaction of the Authority.

9.3 No Liens. All construction work done, equipment supplied and installed, and interior design and decor furnished by Concessionaire pursuant to this Agreement shall be at its sole cost and expense, free and clear of liens for labor and material and Concessionaire shall hold the Authority harmless from any liability in respect thereto. Concessionaire

shall ensure that no liens are placed on the improvements, premises, or Authority property.

- 9.4 Concessionaire Improvements. Improvements by Concessionaire shall be completed through the Authority's Private Construction Agreement. Concessionaire shall cause said work to be commenced and completed with reasonable dispatch. No substantial change, addition, or alteration shall be made in the scope of the work so approved without first obtaining the Authority's written permission. No structural changes, decor, or improvements other than as contemplated herein shall be made in or upon the concession areas without a Private Construction Agreement between Concessionaire and Authority.
- 9.5 Building Codes. All structural or other improvements, equipment, and interior design and decor constructed or installed by Concessionaire in the concession areas, including the plans and specifications, therefore, shall in all respects conform to and comply with the applicable statutes, ordinances, building codes, rules and regulations of the Authority and such other authorities as may have jurisdiction over the concession areas or Concessionaire's operations therein. The approval by the Authority provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain with Concessionaire. Concessionaire shall be responsible for the scheduling and completion of all required inspections for the project.
- 9.6 Other Permits. Concessionaire, at its sole cost and expense, shall also procure all building, fire, safety, and other permits necessary for the construction of the structural and other improvements, installation of the equipment, and the interior design and decor.
- 9.7 Contractor's Insurance. Concessionaire shall ensure that the contractor hired to construct the improvements secures the insurance required by the Authority prior to the commencement of construction. Concessionaire shall further ensure that its contractor maintains the required insurance throughout construction.
- 9.8 Construction Surety Bond. Concessionaire shall not allow any liens or encumbrances to be attached to the Leased Premises. Prior to the commencement of any construction or alteration hereunder which exceeds \$10,000 in cost, Concessionaire or its contractor shall furnish to Authority, and without expense to Authority, a surety bond, issued by a surety company licensed to transact business in the State of Iowa and satisfactory to and approved by Authority with Concessionaire's contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction or alteration of the improvements and facilities mentioned herein. Said bond shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by said contractor, subcontractor(s), and suppliers in the prosecution of the work provided for in said construction contract and shall protect Authority from any liability, losses, or damages arising there from.

- 9.9 Regulatory Requirements. Concessionaire shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and decor, that the contractor doing, performing or furnishing the same shall comply with all applicable statutes, ordinances, codes, rules and regulations, submit to the Authority evidence of required insurance coverage and comply with all applicable provisions of the Code of the State of Iowa.
- 9.10 Cut Sheets. Within thirty (30) days of completion of the concession improvements, Concessionaire shall furnish the Authority, at no charge and in AutoCAD format (or other format satisfactory to the Authority) the cut sheets and all other detailed specifications of the improvements.
- 9.11 Ownership of Improvements. At the completion of the term of the Agreement, the Authority shall take ownership of all non-inventory and fixed improvements associated with the development and buildout of the referenced concession delivery area. Concessionaire shall have the rights to the ownership of all other improvements, installed as part of this Agreement, subject to the conditions provided below:
- A. Installation Costs. All of the foregoing improvements, decor and equipment shall be furnished, supplied, installed and constructed by Concessionaire at its sole cost and expense.
 - B. Ownership During Term. Ownership of improvements paid for by Concessionaire shall remain with the Concessionaire over the full term of this Agreement (subject to early termination) with any/all federal investment tax credits applicable to concession improvements accruing to Concessionaire.

ARTICLE 10 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES ("ACDBE")

- 10.1 Policy. It is the policy of the Authority to promote the objectives of the United States Department of Transportation ("DOT") with respect to the participation of DBEs and ACDBEs in DOT assisted contracts and airport concessions. This policy has been formulated to comply with 49 CFR Parts 23 and 26. The requirements of 49 CFR Part 23 apply to this contract. It is the policy of the Authority to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Authority encourages participation by all firms qualifying under this solicitation.
- 10.2 ACDBE Goal. In accordance with Regulations of the DOT, 49 CFR Part 23, the Des Moines Airport Authority has adopted an Airport Concession Disadvantaged Business Enterprise ("ACDBE") Plan, under which qualified firms may have the opportunity to operate an airport business. An ACDBE car rental goal has not been set for this Agreement, however Concessionaire is encouraged to seek ACDBE participants for opportunities available in conjunction with the performance of this Agreement (i.e., the purchase of goods and services).

10.3 Assurance. This agreement is subject to the requirements of the DOT'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 shall carry out applicable requirements of 49 CFR Part 23 in the award and administration of DOT assisted contracts. Failure by Concessionaire to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

10.4 Inclusion of DBE Discrimination Provision in Sub-Agreements. Concessionaire agrees to include the statements in Article 10.3 in any subsequent agreements that it enters into and cause those businesses to similarly include the statements in further agreements.

10.5 Compliance with DBE Requirements. In the event that an ACDBE goal, applicable to this Agreement, is set by the Federal Aviation Administration ("FAA") or the DOT during the term of the Agreement, Concessionaire shall make good faith efforts as defined by the applicable regulation, to meet the goal. Such efforts shall be documented and submitted to the Authority as required by the FAA or DOT regulations. Concessionaire shall submit, in the format prescribed by the Authority, a quarterly report of ACDBE participation, including the ACDBE participant's name, address, contact information, type and dollar amount of participation and percentage of participation.

Non-compliance with this requirement may result in termination of this Agreement in accordance with Article 16.

10.6 Maximum Opportunity to Participate. It is the requirement of the DOT that Airport Concession Disadvantaged Business Enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of concession agreements at the Airport. Consequently, the ACDBE requirements of 49 CFR Part 23 are hereby included in this Agreement. Concessionaire agrees to comply with the requirements of any such regulations as applicable to this Agreement. Furthermore, Concessionaire agrees to submit information at the request of the Airport concerning the ACDBE(s) that may participate in this Agreement. This information will include the name and address of each ACDBE, a description of the work to be performed by each named ACDBE and the dollar value of the ACDBE's contracted participation. The Concessionaire will also provide information as requested by the Airport describing the purchase or lease of goods or services from ACDBE(s) including, but not limited to, the purchase or lease of automobiles, fuel, tires, maintenance and janitorial services and other services.

10.7 Prompt Payment. The Prime Concessionaire agrees to pay each ACDBE & non-ACDBE under this contract for satisfactory performance of its contract/services within forty-five (45) days of the

invoice date. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from the Authority.

ARTICLE 11 ENVIRONMENTAL MATTERS

11.1 Definitions. In this Article 11, the following terms have the following meanings:

- A. “Environmental Condition” means any condition that exists or has existed with respect to soil, storm waters, surface or ground waters, stream sediments, or air, and every other environmental media, which condition requires investigation, clean up, remediation or response action pursuant to applicable Environmental Laws or which condition could result in claims, demands, orders, penalties, fines or liabilities under applicable Environmental Laws by or to third parties, including without limitation all applicable governmental entities.
- B. “Environmental Laws” means all applicable federal, state, and local laws, statutes, ordinances, regulations, decrees, orders, permits and rules currently in effect or which may come into effect during the Term, and as they may be amended from time to time, and all implementing regulations, orders, and applicable federal or applicable state court decisions interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health and safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Substances, including without limitation, all applicable federal or state superlien or environmental clean-up statutes.
- C. “Hazardous Substance” means any material regulated by any Environmental Law, and includes a hazardous substance as defined under Iowa Code sections 455B.381(5) and 455B.411(2) and a hazardous waste as defined in Iowa Code section 455B.411(3).
- D. “Nuisance” means a nuisance as defined in Iowa Code section 657.1(1).

11.2 Compliance with Environmental Laws

- A. For purposes of this Article 11, Concessionaire shall be responsible for not only its activities on Airport property but also the activities of its officers, employees, contractors, subcontractors, Affiliates, those it brings onto the Airport, and any person subject to the Concessionaire’s control.
- B. Concessionaire shall at all times during its use of the Airport comply with all Environmental Laws. In furtherance of this provision, at a minimum, and without limitation, Concessionaire shall at all times relevant to this Agreement and during Concessionaire's activities on the Airport:

1. Apply for, obtain and maintain any and all necessary permits, licenses, identification numbers and notices as required by applicable Environmental Law, making timely and full payment of any fees.
 2. Maintain, implement and update a Storm Water Pollution Prevention Plan ("SWPPP") compatible with the Airport's SWPPP and sufficient to comply as a co-permittee with the Iowa Department of Natural Resources National Pollutant Discharge Elimination System Permit for "Storm Water Discharge Associated with Industrial Activity from Airport or Aircraft Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas located at Des Moines International Airport," as it may be amended or reissued. Concessionaire shall fully cooperate with the Authority in co-permittee inspections. Concessionaire shall ensure compliance with the terms and conditions of the NPDES permit and the terms of the storm water pollution prevention plan(s) developed under the NPDES permit.
 3. Undertake responsibility for all of its actions or operations occurring on the Airport that result in environmental contamination, whether on or off the Airport.
- C. Concessionaire shall not cause or permit any Hazardous Substance to be generated, manufactured, refined, treated, disposed of, produced or released on the Airport except in the ordinary course of Concessionaire's business and in compliance with applicable law. This restriction does not preclude the use or storage of a Hazardous Substance by Concessionaire on Concessionaire's Exclusive Use Space in the ordinary course of Concessionaire's business provided such activities are done in accordance with the appropriate Environmental Laws, and provided any Hazardous Substance that is used, disposed of or stored is done so in accordance with the applicable Environmental Laws. If requested by the Authority, Concessionaire shall provide a written list of Hazardous Substances used or stored, or intended to be used or stored, at the Exclusive Use Space, and the approximate quantities used or stored; provided that the list need not include cargo stored temporarily while in transit. The Authority may require Concessionaire to discontinue the use of certain Hazardous Substances to the extent that Authority determines after consultation with Concessionaire that suitable replacement substances can be utilized.
- D. Concessionaire shall not cause or allow any person subject to the Concessionaire's control to cause, any use of any part of the Airport that would create or constitute a Nuisance.
- E. If Concessionaire makes any written disclosure, or provides any report, to any governmental agency concerning a release of Hazardous Substances at the Airport, Concessionaire shall concurrently also provide a copy of such disclosure or report to the Authority.

- F. Concessionaire shall promptly deliver a copy to the Authority of all notices that Concessionaire receives from any governmental agency or third party concerning a claim or a notice of violation regarding Hazardous Substances at the Airport.
- 11.3 Environmental Responsibility. Without waiving any rights of the Authority or Concessionaire either expressed or implied with respect to third parties:
- A. Concessionaire shall be responsible for any Environmental Condition on the Airport caused or contributed to by Concessionaire's activities on or use of the Airport.
- B. In the event that Concessionaire's activities cause or contribute to an Environmental Condition, Concessionaire shall immediately notify the Authority, other parties required to be notified, and the governmental agency having jurisdiction over the Environmental Condition. All parties causing or contributing to an Environmental Condition shall take immediate action to report, as required by law, investigate, cleanup and remediate the Environmental Condition. Notwithstanding the previous sentence, the Authority reserves the right to require that Concessionaire conduct remedial activities for Environmental Conditions caused or contributed to by Concessionaire's activities that place the property in the condition required for the Authority's anticipated future commercial use of the Airport property.
- C. In the event the Authority must undertake investigation or remediation of an Environmental Condition, Concessionaire hereby grants the Authority and its employees, consultants, contractors, and representatives access to Concessionaire's assigned space for those purposes.
- 11.4 Obligation to Investigate and Remediate. Concessionaire, at Concessionaire's sole cost and expense, shall promptly investigate and remediate, in accordance with the requirements of all applicable Environmental Laws, any release or discharge, or threat of release or discharge, of Hazardous Substances on the Exclusive Use Space or elsewhere on the Airport caused or contributed to by Concessionaire's activities. If Concessionaire does not promptly commence investigation of any release or discharge or threat of release or discharge or does not diligently pursue appropriate remedial activities as required by applicable Environmental Laws, the Authority, in its discretion, may pay to have the release or discharge or threat of release or discharge investigated and remediated as required by applicable Environmental Laws, and Concessionaire shall reimburse the Authority for the documented costs plus twenty percent (20%) administrative fee within 15 days of the Authority's demand for payment.
- 11.5 Indemnity for Environmental Conditions. The Authority shall conduct a baseline environmental report of the CSB site prior to occupancy by the Concessionaire. Concessionaire shall indemnify, defend (with counsel acceptable to the Authority) and hold the Authority harmless against and with respect to any and all damages (including all consequential damages), claims, losses, liabilities, fines and penalties, and expenses,

including without limitation, legal and consulting expenses (including attorney fees, litigation and expert witness costs, and the costs of any cleanup and remediation of Hazardous Substances as required by applicable Environmental Laws or which may be necessary to redevelop the Airport property for the Authority's anticipated future commercial use), incurred by the Authority or which are asserted against or imposed upon the Authority by any other party (including without limitation any governmental entity) for any Environmental Condition caused or contributed to by Concessionaire's activities or use of the Airport. Concessionaire's obligation contained in this Article 11.5 will not apply if the applicable claims, losses, liabilities, fines, penalties, expenses and costs are caused solely by the negligence or the willful misconduct of the Authority. Except for personal injury and property damage covered by Article 12.3, this article is the sole and exclusive indemnity provided by the Concessionaire in this Agreement related to claims, losses, liabilities, fines, penalties, expenses and costs involving Environmental Conditions.

- 11.6 Release of Hazardous Substances Claims Against the Authority. Concessionaire releases, acquits, and forever discharges the Authority from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Concessionaire may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Substance on the Airport.
- 11.7 Vacation of Leased Premises. In addition to its other obligations under this Article 11, prior to the end of the Term or earlier termination of this Agreement, Concessionaire shall remove, all Concessionaire's Hazardous Substances stored at the Airport. Unless instructed otherwise by the Authority, Concessionaire shall also prior to vacating the Airport remove all tanks, piping, and other equipment that stored Hazardous Substances, or that are contaminated by Hazardous Substances. Concessionaire shall give the Authority at least ten (10) days written notice prior to removing tanks, piping, or other equipment. Should Concessionaire fail to comply with this subdivision, in addition to all other damages and remedies which may be available to the Authority, Concessionaire shall be liable to the Authority for the fair rental value of the Leased Premises as if uncontaminated (which shall not be less than the rent set forth in this Agreement), or to the extent the Leased Premises can be partially occupied by others, the reduction in the fair rental value, until the required removal or remediation has occurred. Nothing in this subdivision shall operate to extend the Term or give Concessionaire a right of occupancy beyond the Term, or earlier termination of this Agreement, without the express written consent of the Authority.
- 11.8 Survival of Provisions.
- A. Concessionaire's liability under this Article for any violation of its provisions will survive the termination of this Agreement.

- B. For Environmental Conditions caused or contributed to by Concessionaire's activities that become known after the expiration or termination of this Agreement, Concessionaire's liability will be based on whatever federal, state or local laws apply at the time of any required investigation, response action, clean up or remediation.

ARTICLE 12 INSURANCE AND INDEMNIFICATION

12.1 General. Concessionaire shall purchase and maintain insurance to protect Concessionaire and Authority throughout the duration of this Agreement. Said insurance companies, "admitted" and "non-admitted" to do business in the State of Iowa shall provide insurance, that have no less than an A.M. Best rating of "A-, VII". All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to Authority. Certificates of Insurance confirming adequate insurance coverage shall be submitted to Authority prior to agreement execution or commencement of work or services. Concessionaire shall submit copies of all insurance policies to the Authority upon receipt of written request and at no cost to the Authority.

12.2 Insurance Requirements.

- A. Worker's Compensation Insurance. Concessionaire shall procure and maintain during the life of this contract, Worker's Compensation Insurance, including Employer's Liability Coverage, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$1,000,000 each accident for Bodily Injury by Accident, \$1,000,000 each accident for Bodily Injury by Disease, and \$1,000,000 policy limit for Bodily Injury by Disease. With regard to activities conducted within the Leased Premises, Concessionaire shall provide Authority a Waiver of Subrogation favoring the Des Moines Airport Authority.
- B. Commercial General Liability Insurance. Concessionaire shall procure and maintain during the term of this Agreement, Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than \$5,000,000 per occurrence and \$5,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following: (1) Contractual Liability; (2) Premises and Operations; (3) Products and Completed Operations; ~~(4) Independent Contractors Coverage;~~ ~~(45)~~ Personal and Advertising Injury; and ~~(56)~~ Explosion, Collapse and Underground (XCU), where applicable. Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001) with standard exclusions or an equivalent acceptable to Authority. Any additional exclusions shall be submitted with the Certificate of Insurance and shall be subject to the review and written approval of the Authority. The policy shall be endorsed to provide an Aggregate per Location Endorsement. This coverage shall be primary to that of the Authority and not contributing with any other insurance or similar protection available to the

Authority, whether other available coverage is primary, contributing, or excess and shall cover the liability of Concessionaire anywhere on the Airport.

- C. Automobile Liability Insurance: Concessionaire shall procure and maintain during the life of this Agreement, Automobile Liability Insurance with limits of liability of not less than \$5,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. If Concessionaire does not own any vehicles, coverage is required on non-owned and hired vehicles.
- D. Umbrella/Excess Insurance. The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsements as required of the primary policy(-ies).
- E. Property Insurance. Concessionaire shall procure and maintain during the life of the Agreement, Property Insurance in a form at least as broad as the standard Insurance Services Office special cause of loss form, covering all structural or other improvements installed by Concessionaire on the Leased Premises, and all fixtures, furnishings, equipment, and decoration kept, furnished or installed by Concessionaire. The insurance policy shall provide coverage on a replacement cost basis.
- F. Subcontractors. Concessionaire shall require that any of its agents, ~~and~~ subcontractors, and independent contractors who perform work or services pursuant to the provisions of this Agreement meet the same insurance requirements as are required of Concessionaire.
- G. Additional Insured and Governmental Immunity. Except for Workers Compensation, the insurance policies providing the coverage specified in Paragraphs B, C, D and E above shall include Authority's Additional Insured and Governmental Immunities Endorsements attached as part of Exhibit B. Authority shall have no liability for any premiums charged for such coverage, and the inclusion of Authority as an Additional Insured is not intended to, and shall not make, Authority a partner or joint venturer with Concessionaire in its operations at the Airport.
- H. Cancellation or Material Change Notice. The insurance policies providing the coverages specified in Paragraphs A through F above shall include Authority's Cancellation Notice Endorsement. A copy of the required endorsement is attached as part of Exhibit B.
- I. Proof of Insurance. Concessionaire shall provide to Authority a Certificate or Certificates of Insurance evidencing all required insurance coverage as provided in Paragraphs (a) through (e) and (g) and (h) above, utilizing the latest version of

the ACORD form or other such form that is acceptable to Authority. The Certificate(s) of Insurance shall specify under "Description of Operations/ Locations/ Vehicle/Special Items" the title of the Lease and that "Additional Insured", "Government Immunities" and "Cancellation/Material Change endorsements have been included per attached." The Authority's endorsement language shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required. Concessionaire may not operate under the terms of the Lease until all required certificates and endorsements have been submitted and approved by Authority. All certificates and endorsements shall be submitted to: Executive Director, Des Moines International Airport, 5800 Fleur Drive, Suite 207, Des Moines, Iowa, 50321, at least fourteen (14) days prior to the effective date of the Lease and annually as renewed.

- J. Changes in Coverage Limits: If during the term of this Lease, the Authority determines that the limits of coverage are insufficient; the Authority shall provide Concessionaire with sixty (60) days written notice of any required changes. Concessionaire shall submit to the Authority new Certificate(s) of Insurance indicating that the required changes have been effected. Said certificates shall be submitted to the Authority prior to the expiration of the sixty (60) day notification period.

12.3 Indemnification (Hold Harmless) Provision.

- A. Concessionaire agrees to the fullest extent permitted by law, to indemnify, defend, pay on behalf of, and hold harmless the Authority, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of the Authority from and against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from Authority, its elected and appointed officials, employees, volunteers or others working on behalf of Authority, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of or is in any way connected or associated with this Agreement or Concessionaire's operations on or use of the Leased Premises. It is the intention of the parties that the Authority, its elected and appointed officials, agents, employees, volunteers or other working on behalf of the Authority shall not be liable or in any way responsible for injury, damage, liability, loss or expense resulting to Concessionaire, its officers, employees, subcontractors, others working on behalf of Concessionaire, and those it brings onto the Airport, due to accidents, mishaps, misconduct, negligence or injuries either in person or property on the Leased Premises except for and to the extent caused by the sole negligence or willful misconduct of the Authority.
- B. Concessionaire expressly assumes full responsibility for any and all damage or injuries which may result to any person or property by reason of or in connection with the use of Leased Premises resulting from the activities of Concessionaire,

its officers, employees, subcontractors, others working on behalf of Concessionaire, and those it brings on to the Leased Premises.

- C. Concessionaire represents that adequately trained personnel will supervise its activities pursuant to this Lease, and Concessionaire will observe, and cause its officers, employees, subcontractors, and those it brings on to the Leased Premises to observe all safety rules for the facility and activity. Concessionaire acknowledges that Authority has no duty to and will not provide supervision of such activity.

- 12.4 Waiver of Subrogation Provision. To the extent permitted by law, Concessionaire hereby releases Authority, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of Authority, from and against any and all liability or responsibility to Concessionaire or anyone claiming through or under Concessionaire by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty or loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of Concessionaire's occupancy or use of the Leased Premises, and Concessionaire's policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of Concessionaire to recover thereunder.

ARTICLE 13 DAMAGE OR DESTRUCTION OF PREMISES

- 13.1 Decision to Terminate or Rebuild. If during the term of this Agreement the Leased Premises or a portion thereof is rendered untenable by fire or other casualty ("Casualty"), Authority shall have the option of terminating this Agreement or rebuilding the Leased Premises. Written notice of the election by Authority shall be given to Concessionaire within thirty (30) days after the occurrence of a Casualty. In the event Authority elects to rebuild the Leased Premises, the Agreement will not terminate, and Authority will restore the Leased Premises to its former condition within a reasonable time. Nothing in this Article shall impose upon Authority the obligation to rebuild the improvements or alterations made by Concessionaire to the Leased Premises. Concessionaire is responsible for rebuilding its improvements and alterations within a reasonable time after damage by fire or other casualty unless Authority has terminated the Agreement. If Authority elects to terminate, then this Agreement shall be of no further force and effect and Authority shall be entitled to sole possession of the Leased Premises.
- 13.2 Destruction due to Negligence. Notwithstanding the foregoing, if the said premises, or a substantial portion thereof, are completely destroyed as a result of the negligence or omission to act of Concessionaire, its subcontractors, agents or employees, said fees and charges shall not abate and the Authority may, in its discretion, require Concessionaire to repair and reconstruct said premises within twelve (12) months of such destruction and may pay the cost therefore, or the Authority may repair and reconstruct the same within

twelve (12) months of such destruction and Concessionaire shall be responsible for reimbursing the Authority for the cost and expenses incurred in such repair.

- 13.3 Lease Payments after Casualty Not Caused by Concessionaire. If the Casualty is not caused by Concessionaire, lease payments shall abate during the period that the Leased Premises are rendered untenable. In the event that partial use of the Leased Premises is available to Concessionaire after a Casualty, lease payments allocable to the particular portion of the Leased Premises rendered untenable will be abated until the completion of the repairs or to the termination of the Agreement by Authority as set forth in Article 13.1 above. If Authority elects to terminate the Agreement without rebuilding, all lease payments, and fees payable under this Agreement will be adjusted and paid to the date of the Casualty.
- 13.4 Temporary Space. If Authority elects to rebuild the Leased Premises, Authority will make efforts to provide Concessionaire with temporary substitute space, if available, at such lease rates as deemed necessary and reasonable by Authority, until such time as the repairs are completed.
- 13.5 Casualty Interference with Concessionaire's Use. If the loss of use of the Leased Premises resulting from a Casualty not caused by Concessionaire materially interferes with Concessionaire's use of the Leased Premises, Concessionaire has the option to terminate the entire Agreement by giving written notice to Authority within thirty (30) days of the Casualty.

ARTICLE 14 SAFETY/SECURITY

- 14.1 Concessionaire's Responsibility for its Equipment. Concessionaire is fully responsible for the security and protection of all contents, inventory, equipment, and facilities within its Leased Premises and for reasonable efforts to prevent unauthorized access to its facilities and their contents.
- 14.2 Airport Safety and Security. Concessionaire acknowledges Authority's responsibility to maintain the integrity of the airfield security perimeter and agrees to comply with all Airport Rules and Regulations, security procedures, and Federal Aviation Administration and Transportation Security Administration programs pertaining to security and safety of the Airport.

ARTICLE 15 ASSIGNMENT OR SUBLEASE

- 15.1 Authority Consent. Concessionaire shall not, at any time, assign this Agreement or any part hereof, without the prior written consent of Authority. Failure to obtain approval will be cause for immediate termination of this Agreement.

- 15.2 Transfer of Stock. A transfer of 10% or more of Concessionaire's corporate stock, or a transfer of 10% of the control of Concessionaire to another individual or entity, is considered an assignment of this Agreement and Authority's prior written approval of such transfer is required. This provision will not apply when Concessionaire's corporate stock is traded on the New York Stock Exchange or the NASDAQ Exchange.
- 15.3 Change in Corporate Name. Concessionaire shall notify Authority in advance of any change in corporate name or adoption of any trade name.
- 15.4 Subcontracting. Concessionaire shall not subcontract for the provision of any management or operation services under this Agreement without the prior written consent of Authority.

ARTICLE 16 DEFAULT AND TERMINATION

- 16.1 Termination By Authority. In any of the following events, Authority, at any time hereafter, shall have the right, at Authority's election, immediately to terminate this Agreement:
- A. Failure to Pay Rents Fees and Charges. In the event Concessionaire shall fail to pay any Privilege Fee, Rents or Additional Charges in the amounts and at the time and in the manner provided in Article 4 herein and such failure shall continue for thirty (30) days.
 - B. Violation of Covenants. In the event Concessionaire shall fail to keep and perform or shall violate the terms, covenants, conditions and obligations of this Agreement, and Concessionaire shall not have cured or corrected such failure or violation within thirty (30) days after written notice thereof shall have been given to Concessionaire.
 - C. Insolvency. If Concessionaire shall make an assignment for the benefit of creditors, or shall file a petition in bankruptcy or shall be adjudged a bankrupt, or the interest of Concessionaire under this Agreement shall be levied upon and sold upon execution or shall, by operation of law, become vested in another person, firm or corporation because of the insolvency of Concessionaire; or in the event that a receiver or trustee shall be appointed for Concessionaire or the interest of Concessionaire under this Agreement.
 - D. Abandonment by Concessionaire. In the event Concessionaire shall vacate or abandon said Leased Premises.

If the Authority terminates this Agreement, Concessionaire shall remain responsible for the payment of all rental, fees, MAGs and other charges, until the end of the term set forth in Article 3. In addition to terminating this Agreement, Authority may sue for all damages and Rents, Fees and Charges accrued or accruing under this Agreement or arising out of any breach thereof.

The acceptance of Rents Fees and Charges by Authority, whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach hereof by Concessionaire or the giving or making of any notice or demand, or any act or series of acts, except an express waiver in writing, shall not be construed as a waiver of Authority's right to act or of any other right herein given Authority or as an election not to proceed under the provisions of this Agreement.

16.2 Termination By Concessionaire. This Agreement shall be subject to cancellation by Concessionaire in the event of any one or more of the following events:

- A. The permanent abandonment of the Airport.
- B. The lawful assumption by the federal government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities in such a manner and to such an extent as to materially interfere with Concessionaire's operation thereon for a period of at least ninety (90) days.
- C. The default by Authority in the performance of any terms, covenants, conditions and obligations herein required to be performed by Authority and the failure of Authority to remedy such default for a period of thirty (30) days after receipt from Concessionaire of written notice to remedy the same.
- D. Inability of Concessionaire to use, for a period in excess of ninety (90) days, the Leased Premises.

16.3 Surrender of Possession. Authority is not required to give notice to quit possession at the termination of this Agreement and upon the termination, by expiration or otherwise, or upon re-letting of the premises, Concessionaire will peaceably surrender possession of the Leased Premises in good condition, required maintenance that is the responsibility of the Authority excepted.

ARTICLE 17 FEDERAL AVIATION ADMINISTRATION PROVISIONS

17.1 General Civil Rights Provisions.

In all its activities within the scope of its airport program, the Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that require by Title VI of the Civil Rights Act of 1964. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

The above provision obligates the Concessionaire for the period during which the property is owned, used or possessed by the Concessionaire and the Airport remains obligated to the Federal Aviation Administration.

17.2 Compliance with Nondiscrimination Requirements.

During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest (Hereinafter referred to as the "Concessionaire") agrees as follows:

- A. Compliance with Regulations: The Concessionaire (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- B. Non-discrimination: The Concessionaire, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. Information and Reports: The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of the Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Concessionaire's noncompliance with the Non-discrimination provisions of this Agreement, the Authority will

impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1. Withholding payments to the Concessionaire under the Agreement until the Concessionaire complies; and/or
 2. Cancelling, terminating, or suspending the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

17.3 Clauses for Transfer of Real Property Acquired or Improved under the Activity, Facility or Program.

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

- A. The Concessionaire for itself, its heirs, 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:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the Des Moines Airport Authority will have

the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Des Moines Airport Authority will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the Des Moines Airport Authority and its assigns.

17.4 Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

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

- A. The Concessionaire for itself, its heirs, 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
 - 1. no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,
 - 2. that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination,
 - 3. that the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the Des Moines Airport Authority will have the right to terminate the license, permit, etc., as appropriate and to enter or reenter and repossess said land and the facilities thereon, and hold the same as if said license, permit, etc., as appropriate had never been made or issued.
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the deeds will there upon revert to and vest in and become the absolute property of the Des Moines Airport Authority and its assigns.

17.5 List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); 30
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and Concessionaires, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- 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.

17.6 Federal Fair Labor Standards Act (Federal Minimum Wage). All contracts and subcontracts that result from this Agreement incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and

effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. The Concessionaire must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor - Wage and Hour Division.

- 17.7 Occupational Safety and Health Act of 1970. All contracts and subcontracts that result from this Agreement incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Concessionaire retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor - Occupational Safety and Health Administration.
- 17.8 Subordination to Agreements. This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between the Authority and the United States of America or the State of Iowa relative to the operation, maintenance, development, or administration of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to Authority for Airport purposes, or to the expenditure of federal or State of Iowa funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, and as said act may be amended from time to time.
- 17.9 Inclusion of Discrimination Provisions in Concessionaire Agreements. Concessionaire agrees to include the above Articles 17.1 through 17.8 in any subsequent agreements, relating to its operations at the Airport, that it enters into and cause those businesses to similarly include the statements in further agreements.
- 17.10 Exclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, and as said act may be amended from time to time.
- 17.11 Right of Development. The Authority reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the Concessionaire, and without interference or hindrance.
- 17.12 Right to Maintain. The Authority reserves the right, but shall not be obligated to the Concessionaire, to maintain and keep in repair the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the Concessionaire in this regard.

- 17.13 Right of Flight. There is hereby reserved to the Authority, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

ARTICLE 18 GENERAL PROVISIONS

- 18.1 Rules, Regulations, and Policies. Concessionaire shall observe and obey all rules, regulations, and policies that the Authority may adopt, from time to time, with respect to the use of the Airport. Concessionaire shall not violate and shall not knowingly permit its agents, contractors, invitees, or employees acting on Concessionaire's behalf to violate any such rules, regulations, or policies.
- 18.2 Compliance with Law. Concessionaire shall comply, at all times, at its own cost and expense, with all applicable ordinances and laws of city, county, and state government and of the United States Government, and of any political division, subdivision, agency, authority or commission that has jurisdiction to pass laws or ordinances with respect to the Leased Premises or to the uses permitted in this Agreement, and Authority Rules and Regulations. Concessionaire shall not allow any illegal activity to be conducted or operated on any Airport area. Concessionaire shall comply with the provisions of the Iowa Smokefree Air Act, Iowa Code chapter 142D, and the administrative rules promulgated to implement the Act.
- 18.3 Reservation of Rights. Any and all rights and privileges not expressly granted to Concessionaire by this Agreement are hereby reserved for and to Authority.
- 18.4 Successors and Assigns Bound by Covenant. All the terms, covenants, and agreements herein contained will be binding upon and shall inure to the benefit of successors, permitted assigns, and legal representatives of the respective parties hereto.
- 18.5 Governing Law, Forum and Disputes. This Agreement and all claims or disputes arising out of or relating to this Agreement, or its subject matter are governed by the laws of the State of Iowa, without regard to its conflict of laws provisions, and any action, claim or proceeding arising out of or relating to this Agreement must be brought only in the Iowa District Court for Polk County, Iowa or the United States District Court for the Southern District of Iowa, Central Division. Each party hereby waives any objection, including any objection based upon improper venue or *forum non conveniens*, that it may have, now or in the future, to the bringing of any action, claim or proceeding in the Iowa District Court for Polk County, Iowa or the United States District Court for the Southern District of Iowa, Central Division.
- 18.6 Nonwaiver of Rights. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party will be

construed as, or operate as, a waiver of the terms, covenants, or conditions unless expressly agreed to by the party in writing, and any such waiver shall not operate as a waiver of any other terms, covenants, and conditions herein contained or any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

- 18.7 Severability. If one or more clauses, sections, or provisions of this Agreement, or the application thereof, shall be held to be unlawful, invalid, or unenforceable, then such clauses, sections, and provisions shall be construed in a manner to best effectuate the intent of the parties and be lawful, valid, and enforceable, and the remainder of this Agreement and the application of its remaining provisions will not be affected thereby.
- 18.8 Force Majeure. Neither Concessionaire nor Authority will be liable for delays in performance caused by acts of God or government regulatory authority, war, riot, sabotage, storm, flood, inclement weather, strike or work stoppage, or other cause beyond the control of Concessionaire or Authority. However, unless excused in accordance with Article 13, this provision does not excuse Concessionaire from paying all items as specified in Article 4 and those fees set forth in the Authority rules and regulations, nor does it excuse compliance with Article 18.12, Taxes and Assessments.
- 18.9 Entire Agreement. This Agreement, together with all exhibits and attachments, constitutes the entire agreement between the parties, and all prior representations, promises or statements, verbal or written, are merged in this Agreement. This Agreement supersedes and cancels any and all previous agreements and understandings on its subject matter between Concessionaire and Authority.
- 18.10 Amendments. Any and all changes or amendments to this Agreement must be in writing and duly executed by all parties.
- 18.11 Licenses and Permits. Concessionaire shall obtain and/or maintain all applicable licenses and permits required by federal, state, or local law.
- 18.12 Taxes and Assessments. Concessionaire shall be fully responsible for payment of any and all taxes, assessments, and charges levied against any taxable interest of Concessionaire acquired in this Agreement from and after the date of this Agreement. Concessionaire shall also be responsible for payment of any and all personal property taxes levied against any personal property placed upon the Leased Premises by Concessionaire. Concessionaire shall pay all such taxes, assessments, and charges as the same become due and payable. Upon request, Concessionaire shall deliver to Authority duplicate receipted tax statements showing such taxes, assessments and charges as having been paid prior to delinquency. Taxes for the fiscal year in which this Agreement is terminated shall be paid upon such termination in a prorated amount equal to one-twelfth of the taxes due and payable for the preceding fiscal year multiplied by the number of months in the fiscal year of such termination which elapsed prior to and including the month of such termination.

- 18.13 Compliance with Federal Aviation and Transportation Security Regulations. Concessionaire agrees to comply at all times with Federal Aviation Regulations (FAR) Part 139, and Transportation Security Regulations (“TSR”) Parts 1500, 1520 1540 and 1542, Authority's policies, regulations and ordinances, Authority's Transportation Security Administration approved Airport Security Program, and any other applicable laws, regulations, and rules as such currently exist and are amended from time to time. Concessionaire further agrees that any fines levied upon Authority, its officers, employees, agents, and members of Authority's boards and commissions and employees, agents or officers of Authority's boards and commissions pursuant to enforcement of FAR Part 139 and TSR Parts 1500, 1520, 1540, and 1542 due to acts or omissions by Concessionaire, Concessionaire's agents, servants, officers, employees, independent contractors, or patrons shall be borne by Concessionaire. Concessionaire further agrees to indemnify and hold harmless Authority, its officers, employees, agents, and members of Authority's boards and commissions, and employees, agents, or officers of Authority's boards and commissions from any and all fines so levied and from any and all claims, demands, liabilities, or expenses of every kind or nature related to such levy or defense to such levy (including, but not limited to, salary of attorneys employed by Authority) which Authority or any of its officers, employees, or other persons set out above shall or may at any time sustain or incur by reason of or in consequence of such acts or omissions by Concessionaire. Concessionaire further agrees to indemnify and hold harmless Authority, its officers, employees, agents, and members of Authority's boards and commissions, and employees, agents, or officers of Authority's boards and commissions from any and all claims, demands and or lawsuits arising out of Concessionaire's or Concessionaire's employees' failure to comply with FAR Part 139 and TSR Parts 1500, 1520, 1540 and 1542, the Airport Security Program or any other applicable law, regulation, or rule.
- 18.14 Right to Amend. In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of Airport, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements or deletions or any of the terms, conditions, or requirements of this Agreement as may be required to obtain such funds; provided, however, that in no event will Concessionaire be required, pursuant to this paragraph, to agree to an increase in the fees and charges provided for herein or to a change in the use, provided it is an authorized use, to which Concessionaire has put the Leased Premises.
- 18.15 War or National Emergency. During the time of war or national emergency, Authority shall have the right to lease the landing area of the Airport or any part thereof to the United States Government for military or naval use, and, if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended.
- 18.16 Subordination to Bond Ordinance.

- A. This Agreement is made subject and subordinate to any Airport Bond Resolution enacted by Authority, whether enacted prior to or as of the time of execution of this Agreement or thereafter.
 - B. In the event of conflicts between this Agreement and the Bond Resolution, the Bond Resolution shall govern.
 - C. It is mutually understood and agreed that, so long as any bonds secured by a Bond Resolution are outstanding, the deposit and application of Airport revenues shall be governed by the Bond Resolution.
- 18.17 Americans with Disabilities Act. Concessionaire shall comply with the Americans with Disabilities Act and the Rehabilitation Act, and any administrative rules promulgated to implement the Acts, with regard to Concessionaire's operations in the Leased Premises.
- 18.18 Agreement Construction. Words and phrases used in this Agreement are to be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, and as disjunctive or conjunctive, according to the context. Any rule to the effect that ambiguities are to be resolved against the drafting party will not apply to the interpretation of this Agreement or any amendments or exhibits.
- 18.19 Representations of Parties. Authority and Concessionaire represent that each has the full power and proper authority to make and execute this Agreement, to exercise its rights, powers and privileges as described herein, and to perform the agreements and covenants set forth herein. Concessionaire further warrants that it has the authority to enter into and be bound by the terms of this Agreement and no order of any bankruptcy or other court, and no agreement with others, prohibits or limits such authority.
- 18.20 No Third-Party Beneficiaries. This Agreement is for the benefit of Concessionaire and the Authority only. This Agreement shall not create any rights in any person not a party to this Agreement.
- 18.21 Notices.
- A. Notices required herein must be given by registered or certified mail, return receipt requested, by depositing the same in the United States mail in the United States, postage prepaid, or by certified overnight delivery via a commercial carrier. Either party has the right, by giving written notice to the other in accordance with this Article 18.21, to change the address at which its notices are to be received. Until any change is made, notices are to be delivered as follows:

Authority:

Executive Director
Des Moines Airport Authority
5800 Fleur Drive, Room 207
Des Moines, Iowa 50321-2854
Telephone: (515) 256-5100

Concessionaire:

- B. Any notice given by registered or certified mail, return receipt requested, or by overnight delivery will be effective upon receipt by the addressee as shown on the mail or delivery receipt. If notice is given in any other manner or at any other place, it must also be given at the place and in the manner specified above.

- 18.22 Liens. Neither the Concessionaire nor anyone claiming by, through, or under the Concessionaire shall have the right to file or place any lien of any kind or character whatsoever, upon the Leased Premises or upon any improvement thereon, or upon the leasehold interest of the Concessionaire, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for any improvements, alterations, repairs or any part thereof shall at any time be or become entitled to any lien on the Leased Premises, and for the further security of the Authority, the Concessionaire covenants and agrees to give actual notice thereof in advance to any and all contractors, subcontractors, and anyone else who may furnish or agree to furnish any such material, service or labor.

~~Authority shall have, in addition to any lien given by law, a security interest as provided by the Uniform Commercial Code of Iowa upon all of Concessionaire's personal property whether now owned or hereafter acquired, kept, and used on the Leased Premises by Concessionaire.~~

- 18.23 Certification. Concessionaire certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Concessionaire hereby agrees to defend, indemnify and hold harmless Authority from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.
- 18.24 Survival. The representations, warranties, and indemnities contained in this Agreement shall survive the termination or expiration of this Agreement. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.
- 18.25 Waiver of Jury Trial. **EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY**

**ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR
RELATING TO THIS AGREEMENT.**

- 18.26 Legal Fees. In the event the Authority should prevail in any legal action arising out of the performance or non-performance of this Contract, the Concessionaire shall pay, in addition to any damages, all expenses of such action including attorney's fees, all expert witness fees, costs, and litigation expenses incurred by the Authority, including those incurred on appeal. The terms "costs and expenses" are not limited to the costs and expenses traditionally taxed as court costs. The term "legal proceedings" shall include any arbitration, administrative proceedings, actions at law or in equity, and all appeals from any and all of the foregoing.

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

DES MOINES AIRPORT AUTHORITY

CONCESSIONAIRE

Jacob Christensen, Board Chairperson

ATTEST:

Mary Benson
Board Secretary

Exhibit A1 - Leased Premises – Terminal Counter/Office/Queuing Space

Exhibit A2 - Leased Premises – Terminal Ready/Return Parking

Exhibit A3 - Leased Premises – Service Facility Office Space and Maintenance Bay

Exhibit A4 - Leased Premises – Service Facility Parking Blocks

Exhibit A5 - Leased Premises – CSB Counter/Office/Queuing Space

Exhibit A6 - Leased Premises – CSB Parking Blocks

Exhibit B - Insurance Endorsements

DES MOINES AIRPORT AUTHORITY CANCELLATION AND MATERIAL CHANGES ENDORSEMENT

Thirty days Advance Written Notice of Cancellation, Non-Renewal, Reduction in insurance coverage and/or limits and ten days written notice of non-payment of premium shall be sent to: Contracts Manager, Des Moines Airport Authority, 5800 Fleur Drive, Suite 207, Des Moines, Iowa 50321. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.

DES MOINES AIRPORT AUTHORITY ADDITIONAL INSURED ENDORSEMENT

The Des Moines Airport Authority, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees, and volunteers, are included as Additional Insureds with respect to liability arising out of Concessionaire's operations on or use of the Airport. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

DES MOINES AIRPORT AUTHORITY GOVERNMENTAL IMMUNITIES ENDORSEMENT

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the Des Moines Airport Authority as an Additional Insured does not waive any of the defenses of governmental immunity available to the Des Moines Airport Authority under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
3. Assertion of Government Immunity. The Des Moines Airport Authority shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the Des Moines Airport Authority.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the Des Moines Airport Authority under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity

asserted by the Des Moines Airport Authority.

5. No Other Change in Policy. The insurance carrier and the Des Moines Airport Authority agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

SAMPLE

Exhibit C - Example Monthly Reporting Form

DES MOINES INTERNATIONAL AIRPORT		
RENTAL CAR MONTHLY REPORT OF GROSS REVENUES		
FOR THE MONTH OF _____		
CONCESSIONAIRE _____		
Gross Revenue:		
Time and Mileage	\$	
Fuel	\$	
Waivers and Insurance	\$	
Ancillary Charges (GPS, Car Seats, Equipment, Etc)	\$	
Concession Recovery Fee	\$	
Miscellaneous (Battery/Tire/License Fees, Etc.)	\$	
Less: Refunds, Discounts, Coupons, Other credits	\$	
Total Concessionable Gross Revenue	\$	0
Privilege Fee Due - 10%	\$	0
Less: 1/12th Minimum Annual Guarantee paid 1st of month:	\$	
Privilege Fee Balance Due (1)	\$	0
Total Number of Transactions		
Total Number of Transaction Days		
Custoemr Facility Charges Due (2)	\$	
Amount Due with this Report (1) + (2)	\$	0
Excluded Items:		
Sales Tax	\$	
Iowa Rental/Excise Tax	\$	
CFCs	\$	
Other (Identify):	\$	
Total Charges Excluded from Gross Revenues	\$	0
Concessionaire Official Signing and Certifying accuracy of information on this report:		
Signature		
Typed Name & Title		
Date Signed		
Phone Number:		
Email Address:		
REMIT THIS FORM AND PAYMENT TO:		
Des Moines Airport Authority		
5800 Fleur Drive, Suite 207		
Des Moines, IA 50321		

Exhibit D(1) – CSB Budget

Des Moines Airport Authority			
Customer Service Building			
Preliminary Annual Operations & Maintenance Budget - Subject to Change			
Personnel			Total
	Accounting	12,000	
	Operations	18,000	\$ 30,000
Repair and Maintenance			
	Building Systems	5,000	
	Snow Removal	15,000	
	Landscaping	8,000	\$ 28,000
Utilities			
	Gas / Electric	12,000	
	Water / Sewer	12,000	
	Stormwater	6,000	\$ 30,000
Contracted Services			
	Janitorial	120,000	
	Shuttle Bus	700,000	
	Insurance	12,000	\$ 832,000
Supplies			
	Shuttle Bus Fuel		\$ 60,000
	ESTIMATED TOTAL ANNUAL CSB EXPENSES:	\$ 980,000	

Exhibit D(2) - Service Facility Budget – August 2024 – July 2025

Des Moines Airport Authority			
Rental Car Service Facility Estimated Operations & Maintenance Expense Budget			
PERSONNEL			TOTAL
Field Maint labor	GROUNDSKEEPING	75,000	
Field Maint labor	FUEL SYSTEM	1,872	
Field Maint labor	SNOW REMOVAL	18,304	
	ACCOUNTING - ALLOCATION	16,127	
	OPERATIONS - ALLOCATION	2,056	\$ 113,359
REPAIR & MAINTENANCE			
	BUILDINGS	107,625	
	FUEL SYSTEM (Underground Tank Permit)	6,829	
	ELECTRICAL	1,500	\$ 115,954
UTILITIES			
	GAS/ELECTRIC	39,774	
	WATER/SEWER	37,816	
	STORMWATER	195	\$ 77,785
CONTRACTED SERVICES			
	LICENSES/PERMITS (DSM Fire Dept)	565	\$ 565
SUPPLIES			
	CAR WASH	16,710	\$ 16,710
ESTIMATED TOTAL ANNUAL SERVICE FACILITY EXPENSES:			\$ 324,373

Exhibit E - Performance & Payment Bond

PERFORMANCE & PAYMENT BOND

Bond Number

PRINCIPAL (Legal Name and Business Address)

STATE OF INCORPORATION

SURETY (Legal Name and Business Address)

CONTRACT NO.

CONTRACT DATE

August 1, 2024

PENAL SUM OF BOND (Expressed in words and numerals)

KNOW ALL BY THESE PRESENTS:

That we, _____, as Principal (hereinafter the "CONCESSIONAIRE" or "PRINCIPAL" and _____, as SURETY are held and firmly bound unto ***the Des Moines Airport Authority, 5800 Fleur Drive, Des Moines, Iowa 50321***, as OBLIGEE (hereinafter referred to as "the OWNER"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of _____ (\$0.00), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said CONCESSIONAIRE entered into a contract with the OWNER, bearing date the 1st day of August, 2024, wherein said CONCESSIONAIRE undertakes and agrees to be responsible for the below obligation:

Obligation Name: **Rental Car Concession Agreement, Effective 8/1/24 through 7/31/29**

Location: **Des Moines International Airport, Des Moines, Iowa**

The Concession Agreement generally consists of:

Concession Agreement confers the right to conduct rental car operations at the Des Moines International Airport for the period of 8/1/24 through 7/31/29. This agreement includes operations in the Des Moines International Airport terminal building, various parking lots, Service Facility, and future Customer Service Building.

which said Concession Agreement and associated contract documents, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the "Contract."

and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner.

It is expressly understood and agreed by the CONCESSIONAIRE and SURETY in this bond that the following provisions are a part of this Bond and are binding upon said CONCESSIONAIRE and SURETY, to-wit:

1. PERFORMANCE: The CONCESSIONAIRE shall well and faithfully observe, perform, fulfill, and abide by each and every covenant, condition, and part of said Contract, by reference made a part hereof, for the above referenced period of performance, and shall indemnify and save harmless the OWNER from all outlay and expense incurred by the OWNER by reason of the CONCESSIONAIRE's default or failure to perform as required. The CONCESSIONAIRE shall also be responsible for the default or failure to perform as required under the Contract by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. PAYMENT: The CONCESSIONAIRE and the SURETY on this Bond hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment, and tools, consumed or used by the CONCESSIONAIRE or any subcontractor.
3. GENERAL: Every SURETY on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
 - A. To consent without notice to any extension of time to the CONCESSIONAIRE in which to perform the Contract;
 - B. To consent without notice to any change in the Contract, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than 20% of the total contract price, and that this bond shall then be released as to such excess increase; and
 - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed, whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed.
 - D. That no provision of this Bond or of any other contract shall be valid that limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
 - E. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the OWNER including interest, benefits, and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys' fees (including overhead expenses of the OWNER's attorneys), and all costs and expenses of litigation as they are incurred by the OWNER. It is intended the CONCESSIONAIRE and SURETY will defend and indemnify the OWNER on all claims made against the OWNER on account of CONCESSIONAIRE's failure to perform as required in the Contract, that all agreements and promises set forth in the Contract, in approved amendments, and in this Bond will be fulfilled, and that the OWNER will be fully

indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

In the event the OWNER incurs any "outlay and expense" in defending itself against any claim as to which the CONCESSIONAIRE or SURETY should have provided the defense, or in the enforcement of the promises given by the CONCESSIONAIRE in the Contract or approved amendments, or in the enforcement of the promises given by the CONCESSIONAIRE and SURETY in this Bond, the CONCESSIONAIRE and SURETY agree that they will make the OWNER whole for all such outlay and expense, provided that the SURETY's obligation under this bond shall not exceed 125% of the penal sum of this bond.

In the event that any actions or proceedings are initiated regarding this Bond, the parties agree that the venue thereof shall be in either the Iowa District Court in Polk County, Iowa or the United States District Court for the Southern District of Iowa in Des Moines. **Each of the parties hereby irrevocably and unconditionally waives all rights to trial by jury in any action, proceeding or counterclaim arising out of or relating to this bond.** If legal action is required by the OWNER to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the OWNER, the CONCESSIONAIRE and the SURETY agree, jointly, and severally, to pay the OWNER all outlay and expense incurred therefor by the OWNER. All rights, powers, and remedies of the OWNER hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers, and remedies given to the OWNER, by law. The OWNER may proceed against SURETY for any amount guaranteed hereunder whether action is brought against the CONCESSIONAIRE or whether CONCESSIONAIRE is joined in any such action(s) or not.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all the promises of the Principal, as set forth and provided in the Contract, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a work, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, or the Contract; second, if not defined in the Bond, or Contract, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the Airport Concessions industry; and fourth, if it has no generally accepted meaning in the Airport Concession industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract is hereby made a part of this Bond.

Project No. _____

Witness our hands, in triplicate, this _____ day of _____, _____.

Surety Countersigned By:

PRINCIPAL:

Signature of Agent

CONCESSIONAIRE

By:

Signature

Printed Name of Agent

Title

Company Name

SURETY:

Company Address

Surety Company

By:

Signature Attorney-in-Fact Officer

City, State, Zip Code

Company Telephone Number

Printed Name of Attorney-in-Fact Officer

Company Name

Company Address

FORM APPROVED BY:

City, State, Zip Code

Attorney for OWNER

Company Telephone Number

NOTE:

1. All signatures on this performance, payment, and maintenance bond must be original signatures in ink; copies, facsimile, or electronic signatures will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.

Exhibit F - Summary of Maintenance Responsibilities

	A = Authority	C = Concessionaire
	MAINTENANCE	DAILY CLEANING
Terminal Building		
Building Structure	A	A
HVAC System	A	A
Terminal Common Areas	A	A
Rental Counter	C	C
Office	C	C
Signs	C	C
Utilities (to the leasehold)	A	--
Utilities (inside leasehold)	C	--
Interior Doors	A	C
Interior Surfaces (Paint, carpet, ceilings, etc.)	C	C
Parking Facilities		
Pavements and Pavement Markings	A	A
Snow Removal	C	C
Signs (directional)	A	A
Signs (stalls and branding)	C	C
Access Gates, Perimeter Fence, & Overhead Lights	A	C
Service Facility		
Building Exterior Walls	A	C
Roof	A	--
Pavements	A	C
Pavement Markings	A	A
Building Interior Walls	C	C
Utilities (to the leasehold)	A	--
Utilities (inside leasehold)	C	--
Interior Surfaces (Paint, carpet, ceilings, etc.)	C	C
Exterior Doors (Incl. maint. bay overhead doors, card access)	C	C
Interior Doors	C	C
Fueling System	A	C
Car Wash System - Equipment & Equipment Room	A	A
Wash Bays (Incl. overhead doors)	A	A
Equipment Storage Rooms	A	A
IT Systems - Authority Systems & Cables	A	A
IT Systems - Exclusive Devices	C	C
Access Gates, Perimeter Fence, & Overhead Lights	A	C
Lawn & Landscaping	A	C
Customer Service Building (CSB)		
Building Exterior Walls	A	--
Roof (Incl. Authority installed canopies)	A	--
Pavements	A	C
Pavement Markings	A	--
Building Interior Walls	C	C
Utilities (to the leasehold)	A	--
Utilities (inside leasehold)	C	--
Interior Surfaces (Paint, carpet, ceilings, blinds, etc.)	C	C
Exterior Doors (Incl. overhead doors, card access)	A	C
Interior Doors	C	C
IT Systems - Authority Systems & Cables	A	--
IT Systems - Exclusive Devices	C	C
Access Gates, Perimeter Fence, & Overhead Lights	A	--
Lawn & Landscaping	C	--
Snow Removal	C	C