

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
CONCESSION CONTRACT NO. MWAA-6-19-00_**

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EXHIBITS

A – Premises

- A-1, Joint-Use Bus Loading and Unloading Area
- A-2, Rental Car Site Layout
- A-3, Contractor’s Site No. ____ Layout Detail

B – Monthly Itemized Certified Statement

C – Monthly Activity Car Rental Report

D – Standard Provisions

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

CONTRACT NO. MWAA-6-19-C00_

RENTAL CAR CONCESSION

AT

WASHINGTON DULLES INTERNATIONAL AIRPORT

This Lease and Concession Contract (hereinafter referred to as "Contract"), by and between the Metropolitan Washington Airports Authority, a public body corporate and politic whose address is 1 Aviation Circle, Washington, DC 20001-6000 (hereinafter referred to as the "Authority"), and _____, a corporation organized and existing under and by virtue of the laws of the state of **STATE**, whose address is _____ (hereinafter referred to as the "Contractor").

WITNESSETH:

WHEREAS, the Authority operates Washington Dulles International Airport (hereinafter referred to as the "Airport") pursuant to a long term lease of the Airport from the U.S. Department of Transportation and the Authority is authorized to enter into concession contracts; and,

WHEREAS, the Authority desires to provide for the establishment and operation of four (4) car rental concessions on the Airport to serve the traveling public; and,

WHEREAS, the Contractor's bid submitted in response to the Authority's public solicitation (Invitation For Bids No. 19-11081) was one of the four (4) highest bids meeting the requirements for this Contract and the Board of Directors of the Authority, on **DATE**, directed the President and Chief Executive Officer to enter into a Contract with the Contractor for the operation of an on-Airport rental car concession based on the terms and conditions hereinafter set forth; and,

WHEREAS, the Contractor operates a rental car business and warrants to the Authority that it is qualified, ready and able to conduct a rental car business on the Airport and meet the obligations hereinafter stated; and

WHEREAS, the Contractor agrees to equip, operate, and maintain its site to support the Contractor's rental car concession operation at the Airport.

NOW THEREFORE, for and in consideration of the premises and of the terms, conditions, and agreements contained herein, Contractor and Authority agree as follows:

ARTICLE 1. CONTRACT TERM

Section 1.01 Contract Term

- (a) The Contract shall be binding upon the parties as of the date it is fully executed by both the Contractor and the Authority. The Contract Term shall commence at 12:01 a.m. Eastern Daylight Time (EDT) on July 1, 2019, and expire at 11:59 p.m. EDT on June 30, 2024, subject to such earlier termination as provided for herein.
- (b) The Contractor's commencement of operations from its Site, as defined in Article 2, may be delayed for a period of up to sixty (60) days from the commencement of the Contract Term while the Authority coordinates the consolidation of the previous seven (7) Sites down to four (4) Sites. The Contractor shall be notified in writing by the Authority no later than thirty (30) days prior to the commencement of the Contract Term, of any anticipated or planned delay in the commencement of operations. In this event, the commencement and expiration dates of the Contract stated in 1.01(a) shall remain unchanged. The Contractor understands that it may suffer inconvenience resulting from such transition and agrees that any such inconvenience shall not affect the commencement date or expiration dates of this Contract nor shall it be entitled to any relief, compensation or adjustment of the Contract terms and conditions because of such inconvenience.
- (c) Two (2) one- (1) year Extension Periods may be exercised at the sole discretion of the Authority. The Authority shall notify the Contractor in writing whether it intends to exercise an extension no later than sixty (60) days prior to the expiration of the Contract.
- (d) For the purpose of this Contract, "Contract Year" shall mean the 12-month period of time beginning July 1 of each year and ending June 30 of the next year during the Contract Term (including any Extension Periods).

ARTICLE 2. PREMISES

Section 2.01 Premises

The Contractor shall be assigned the use of the facilities designated in paragraph (a) and leased the Site in paragraph (b) of this Section 2.01 for the sole purpose of the privileges granted in Section 3.01 herein. The assigned facilities and leased Site are collectively referred to herein as the "Premises" and are offered by the Authority and accepted by the Contractor in an "as is" condition for the conduct of the Contractor's rental car concession. The Premises as shown on Exhibit A-1, A-2, and A-3 shall consist of the following:

- (a) Joint-Use Bus Loading and Unloading Area

The assigned rental car Joint-Use Bus Loading and Unloading Area, as shown on Exhibit A-1, attached hereto, is reserved by the Authority for the use of the on-Airport rental car concessionaires, including the Contractor, to load and unload customers. The Authority will install signage to direct rental car customers to the Joint-Use Bus Loading and Unloading Area. The Authority will use its best efforts to provide sufficient curbside capacity to the Contractor to handle its peak period traffic.

(b) Contractor's Site

For the sole purpose of operating a rental car concession, the Contractor is leased Site No. _____ consisting of _____ square feet of space as shown on Exhibit A-3, attached hereto.

(c) Reduction or Relocation of the Premises

In addition to any other right of the Authority herein, the Authority may, at any time during the Term of this Contract and upon one hundred twenty (120) days prior written notice to the Contractor, require the Contractor to surrender all or any portion of the Premises in order to accommodate the construction of an on-Airport Consolidated Rental Car Facility as further defined in Section 4.01. In such event, the Authority shall in its reasonable discretion provide the Contractor with substitute premises which the Authority determines to be reasonably comparable to the portion of the Premises surrendered.

(d) Contractor Consolidation Responsibility

The Contractor shall be responsible for making the following improvements/modifications to the Contractor's Site to facilitate the consolidation of the sites from seven (7) to four (4):

- (1) Relocation of all interior fencing necessary for establishing the new boundaries for the four (4) sites (not required for Site 4).
- (2) Construction of a maximum of two (2) paved driveways across each grass median to provide interior access throughout the new sites (not required for Site 4).
- (3) Other fixed improvements as approved for reimbursement in writing by the Authority prior to such improvements being made by the Contractor.

Drawings and estimates of the work in (d) (1) and (2) above have been provided by the Authority in Exhibit A-3. The Authority shall reimburse the Contractor through Customer Facility Charges (CFC) as further defined in Section 5.01.(a)(6) and Section 7.04, for any expenses incurred for the above work, up to the Authority estimated amount as provided in Exhibit A-3. All such improvements/modifications to the Contractor's Site are subject to the requirements and procedures set forth in Section 7.02.

(e) Section 2.02 Overflow Area

If requested by Contractor, the Authority may provide an overflow area to the extent it is available, under a separate lease agreement, for the Contractor's overflow vehicle parking. The term of the lease agreement shall not exceed the Contract Term and either the Authority or the Contractor may terminate the lease agreement, for any reason, upon sixty (60) days written notice from one party to the other.

ARTICLE 3. PRIVILEGES AND OBLIGATIONS OF THE CONTRACTOR

Section 3.01 Concession Privileges

The Authority hereby grants unto the Contractor:

- (a) The privilege and obligation to conduct and operate a high-quality, well-managed, and efficiently run rental car concession from the Premises. The Contractor's family brands, including car-sharing products, may be offered for rental from the Site, so long as identified at the time of bid.
- (b) The privilege to rent, service and maintain passenger-type rental vehicles to the public on the Airport; to dispense fuel (expressly limited to fuel used by its rental vehicles and the Contractor's vehicles); the privilege to offer for sale related loss and collision damage waiver protection, personal injury and accident insurance, supplemental liability, uninsured motorist, and personal effects insurance; and the privilege to offer customer amenities, including but not limited to baby car seats and cellular/digital phones. Any additional rights shall be approved by the Authority in writing prior to implementation by the Contractor.
- (c) The privilege to engage in customer shuttle bus operations to transport its customers between the Joint-Use Bus Loading and Unloading Area and the Contractor's Site. The Contractor shall only use its shuttle bus to pick-up and deliver its customers to and from its Site. The Contractor shall not stage vehicles for customer pick-up or drop off in any public parking facility at the Airport or on the Main Terminal commercial curb or in any area not authorized by the Authority for use by the Contractor at the Airport.
- (d) Ingress and egress, without charge, to and from the Premises, over Airport roadways.
- (e) The privilege for the Contractor's employees to use, in common with other employees on the Airport, the employee parking facilities provided by the Authority, at such reasonable charge as the Authority may, from time to time, establish for all employees using the employee parking facilities. Employees may also park on the Contractor's Site.
- (f) All rights and privileges not specifically granted to the Contractor in this Contract shall be reserved to the Authority.

Section 3.02 Privileges Non-Exclusive

The privileges granted under this Contract are non-exclusive. By entering into this Contract, the Contractor acknowledges that the Authority is entering into similar agreements with up to three (3) other rental car concession contractors for similar services from on-Airport locations under similar terms. The Authority reserves the right to issue permits to other companies providing rental car services at the two Fixed Based Operator facilities on Airport (Signature Flight Support and Jet Aviation) and from off-Airport locations as provided in Section 6.2 and 6.4 of the Metropolitan Washington Airports Authority Regulations.

Section 3.03 Use of the Premises

- (a) In the conduct of its business, the Contractor covenants and agrees to restrict its activities on the Premises to only those authorized by this Contract and shall not use or permit the use of the Premises for any other purpose, nor shall it vacate the Site prior to the termination or expiration of this Contract unless authorized in writing in advance by the Authority.
- (b) The Contractor shall use its Site solely for the rental of passenger motor vehicles and the related provision of gasoline, loss and collision damage waiver protection, insurance (including but not limited to personal injury insurance), children's car seats, mobile telephones, navigation systems and such other services, items and equipment reasonably associated with the rental of passenger motor vehicles. Any additional uses require prior written approval of the Authority.
- (c) The Contractor may rent to the public any type of passenger motor vehicle, including vans, sport utility vehicles, pickup trucks, and station wagons. The terms "passenger motor vehicle", "automobile" or "car" shall not include other types of trucks, motorcycles, and large special purpose vehicles.
- (d) The Contractor shall not conduct used car sales activities on the Airport. Any business activities other than those expressly granted by this Contract or any activity which in the sole judgment of the Authority conflict with the rights generated by the Authority, shall not be conducted on the Airport without the prior written approval of the Authority.
- (e) The Site shall not be used for the long-term storage of disabled, damaged, destroyed, or inoperable vehicles. The Contractor shall promptly remove all damaged, destroyed, or inoperable vehicles and shuttle buses from its Site and the Airport, unless such vehicles are required to be held by the Contractor pending completion of an accident investigation or legal proceeding.

Section 3.04 Standards of Service

- (a) Except as provided in Section 3.04(b) herein, the Contractor shall offer for rental to the public only popular-make passenger motor vehicles of recent manufacture (not more than two (2) model years old). It is the Contractor's responsibility to maintain all the vehicles offered for rental in good and safe operating order, free from known mechanical defects and to keep the vehicles in a clean, neat, and attractive condition inside and out. The Contractor shall at all times maintain a sufficient number of automobiles to meet reasonably foreseeable demands of the traveling public.
- (b) Notwithstanding the provisions of Section 3.04(a) above, the Contractor may offer for rental antique, vintage, classic or other luxury or prestige automobiles or handicapped operated vehicles which are of good quality, free from any known defect and clean and attractive both inside and out. The Authority shall have the right to prohibit the Contractor from offering for rental any such automobile which the Authority determines not to meet the standards described in Section 3.04(a).

- (c) The Authority is committed to responsible environmental stewardship in all operations at the Airport. In support of this goal, the Contractor shall be required to provide Hybrid Electric Vehicles (HEVs) available for rent at the Airport according to the minimum specified average monthly percentage of total on-airport vehicles available for rent as listed in the table below. The Contractor shall also make every effort to promote the availability of HEVs to rental car customers when they rent at the Airport.

<u>Contract Year</u>	<u>Average Monthly Percentage of Total Vehicles Available For Rent</u>
1	0%
2	5%
3	10%
4	15%
5	20%
6 (first Extension Period)	20%
7 (second Extension Period)	20%

- (d) The Contractor shall accept at least three (3) nationally recognized credit cards for payment of passenger motor vehicle rental; and provide for a national reservation system for the services of the Contractor at the Airport.
- (e) The Contractor shall maintain a sufficient number of trained personnel to ensure that the Contractor's customers will receive prompt and courteous service at all times. All personnel of the Contractor, while on or about the Premises, shall be polite, clean and neat in appearance, and appropriately attired. The Contractor shall ensure that all employees who interface with the general public receive customer service training on an annual basis.
- (f) The Contractor shall not misrepresent to the public its prices or the terms and provisions of its rental agreements or those of its competitors. The Contractor shall comply with all applicable federal, state and local governmental rules and regulations. The Contractor shall fully inform each customer, prior to the execution of such customer's rental agreement, of all fees and charges applicable to such customer's rental. If the Authority determines, after notice and opportunity for the Contractor to comment, that any of the Contractor's business practices are unlawful, deceptive, or discriminatory, the Contractor shall immediately cease such practices upon receipt of a written order to do so from the Authority. The Authority will give advance notice to the Contractor that the Authority considers a certain practice to be unlawful or discriminatory and the Contractor shall have an opportunity to respond in writing within thirty (30) days of the date of the notice.
- (g) The Contractor shall establish written operating procedures covering the receipt, storage and dispensing of automobile fuel, including the installation, maintenance, safety checks, and safety procedures applicable to storage and dispensing equipment. Said procedures and equipment shall comply with the applicable laws, rules, regulations and standards of the federal, State, and local governmental bodies having jurisdiction over said fuel, fuel storage and fuel dispensing procedures, equipment, or facilities.

- (h) The Contractor shall at all times maintain its Site and all Fixed Improvements and Operating Facilities and other personal property located on the Site in a safe, clean, orderly, attractive and first-class condition satisfactory to the Authority. Any sign or other item on the Site which the Authority deems to be offensive to the public shall, upon notice from the Authority, be promptly and permanently removed from the Premises by the Contractor. The Contractor shall not permit any nuisance, waste or damage to be committed on its Site.
- (i) The Contractor, in its efforts to comply with the requirements applicable to its customers under the Payment Card Industry Data Security Standard, shall under no circumstances be required to use any network other than its own private network to ensure that its customers' credit card information is not compromised.

Section 3.05 Customer Complaints

In the event the Authority receives and forwards to the Contractor any written complaint concerning the Contractor's operation of the Concession, the Contractor shall promptly respond to such complaint in writing within thirty (30) days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. A copy of the response shall be provided to the Authority.

Section 3.06 Operating Hours

The Contractor shall be open for business from its Site to provide passenger motor vehicle rental services to Airport customers during all hours of scheduled airline operations at the Airport.

Section 3.07 Full-Time Manager

The management, maintenance and operation of the concession shall at all times be under the supervision and direction of an active, qualified, competent and experienced full-time manager who shall at all times be subject to the direction and control of the Contractor. The Contractor shall assign the manager an office at the Site and the manager shall be available during regular business hours. The Contractor shall at all times during the absence of the manager assign or cause to be assigned a qualified subordinate to assume and be directly responsible for carrying out the duties of the manager.

Section 3.08 Maintenance of the Site and Utility Systems and Correction of Deficiencies

- (a) The Contractor shall, at its sole cost and expense, provide the necessary management and labor to perform, on a continuing basis throughout the term of this Contract, complete general and structural maintenance service upon its Site, including the exterior and interior of building structures, installed and operating equipment, paved areas, signing, exterior and interior lighting, fuel storage and dispensing systems, quarterly cleaning of oil/water separators, and all connections to the utility distribution system. In addition, the Contractor agrees to provide all custodial, trash removal, and snow removal services, landscaping and maintenance service, equipment maintenance service, and building and parking area upkeep to maintain the Site in good condition and appearance. Such maintenance shall be performed at the Contractor's sole cost and expense and will be subject to monitoring by the Authority to ensure a continuing high quality of appearance and structural condition. The Contractor shall maintain the driveways, entrances and exit roadways from the Site to the airport roadway system. The

maintenance of such driveways, entrances and exit roadways shall include, but not be limited to, snow/ice removal and trash removal services.

- (b) The Contractor shall not conduct or authorize any activity from its Site that adversely affects the Authority drainage, sewage, and/or utility systems. The Authority reserves the right to request reimbursement, plus an overhead fee of 25%, for repairs required due to damages to the Authority drainage, sewage, and/or utility systems caused by the Contractor, its employees, agents, contractors and/or invitees.
- (c) The Contractor shall maintain, at its sole cost and expense, in good operating condition the utility systems and distribution lines on its Site and up to and including the point of connection to the Authority's utility distribution lines, its fuel storage and dispensing system, canopies, roof and building structures, paved areas, and drains and appurtenances, in a clean, orderly and safe condition and make all repairs, renewals and replacements to the same as and when necessary.
- (d) The Contractor shall maintain and to keep in good order and state of repair all curbs, areaways, and landscaped areas of its Site; make all repairs, renewals and replacements to the same as and when necessary; and keep the same free of unlawful obstructions and safety hazards. At the Contractor's sole cost and expense, the landscaped and grass areas shall be maintained with a professional nursery or landscaping service or by the Contractor's own staff providing mowing and mulching, pruning and replacement shrubs and trees as necessary to maintain the attractiveness of its Site. The Contractor shall keep all papers and debris picked up from its Site and sweep the pavements on a routine basis and provide for the removal of grease and oil residue.
- (e) The Contractor shall provide for complete, proper, lawful, and adequate sanitary handling and disposal, away from the Airport, of all garbage, trash, debris, and waste materials, toxic or otherwise, generated through the operation of its Site; and provide suitable covered metal receptacles, approved by the Authority, for all garbage, trash, refuse and waste materials on or about its Site. The Contractor shall not store boxes, cartons, crates, drums or the like on the outside in view of the public, or dump any solid or liquid waste matter of any nature on its Site, or permit contamination of the sewers or the Airport's drainage control systems. Hazardous materials must be handled, stored and disposed of in accordance with local, state and federal law. Copies of manifests and bills of lading for the proper disposal of wastes will be provided to the Authority upon request.
- (f) The Contractor, further agrees that in the event that it does not maintain its Site to the standards required by the Authority, the Authority at its option, may notify the Contractor in writing, of the Contractor's failure to do so, and if the Contractor has not taken steps to correct the condition within fourteen (14) days after receipt of such written notice, the Authority may perform such maintenance or have it done by others at the Contractor's expense, and the Contractor agrees to pay promptly all invoices for such service, plus a twenty five percent (25%) administrative fee.

Section 3.09 Shuttle Bus Service

- (a) The Contractor shall provide at its sole cost and expense a shuttle bus service to transport its rental car customers between the Main Terminal and the Site. The Contractor may elect to provide such shuttle bus system individually or in common with other contractors. In either event, the Contractor shall utilize only one shuttle bus operation to transport all of its customers and to service all brands offered by the Contractor. In the event the Contractor elects to provide for a common shuttle bus service jointly with one or more other on-Airport rental car concessionaires, the common shuttle bus service may be provided and operated by one or more of the concessionaires or by a contractor selected by the rental car companies and approved by the Authority. The specifications for any buses used in service at the Airport shall be subject to the prior written approval by the Authority. The Contractor may paint the buses with its corporate name and logo and its corporate bus paint scheme. Should the Contractor represent more than one rental car brand, its shuttle buses may be painted to identify each brand it offers under this Contract. No advertising, other than the Contractor's corporate name and logo shall be placed on any shuttle buses operating at the Airport.

The Contractor shall be responsible for maintaining its shuttle bus vehicles in good operating condition and shall immediately remove from service and repair or have repaired any vehicle that is damaged or has a defect that would affect the safety of passengers or others. The Contractor shall be responsible for maintaining and keeping in good operating condition the air conditioning, heating units, and pollution control systems within its shuttle bus vehicles. All buses operated by the Contractor shall be titled and licensed in the Commonwealth of Virginia and shall be subject to all local, State, and federal inspection requirements. The Contractor shall comply at all times with the Authority approved shuttle bus routes. The Contractor agrees to regulate and control the frequency and curbside dwell time of its shuttle bus vehicles in accordance with any reasonable written directives issued by the Airport Manager.

- (b) The Authority operates an Automatic Vehicle Identification (AVI) system for its various ground transportation modes and requires the Contractor to equip each of its shuttle buses with an AVI reader tag prior to operating on-Airport. The Contractor shall pay for the acquisition cost of the automated vehicle tracking devices and any costs associated with maintaining and installing the automated vehicle tracking devices in the buses within their fleet that are not currently tagged. The AVI system will identify the number of curbside trips and dwell time by time of day for each individual shuttle bus. The Contractor agrees to use reasonable efforts to minimize disruption of curbside operation. To optimize capacity on the curb, the Contractor agrees to no more than one vehicle on the commercial lane at one time. In the event more than one of the Contractor's vehicles are parked between the entry overpass and exit overpass of the commercial lane and the Authority, in its sole discretion, determines the vehicles disrupt the curbside operation, the Authority may charge the Contractor a fee in the amount of one hundred dollars (\$100) per occurrence.

Section 3.10 Contractor May Co-Brand

The Contractor may offer its customers its family brands under this Contract, provided the conditions of Section 3.01(a) herein are met. The Contractor must operate all stated brands within one hundred eighty (180) days of the contract commencement date. Should the Contractor delete a brand during the term of the

Contract, the Contractor must provide advance notice to the Authority, the deleted brand may not operate as an Authority off-airport rental car concessionaire for the remainder of the Contract, and the Contractor's Facility Rent and/or MAG shall not be reduced. The Authority shall reserve the right at its sole discretion to approve Contractor's offering of additional brands at the Site during the term of the Contract.

Section 3.11 Compliance with Law; Taxes, Licenses and Building Permits

- (a) The Contractor shall comply with all applicable Authority, local, state, and federal laws, ordinances, regulations and orders governing or regulating the Airport and the Premises, its use by the Contractor, and the operation of its concession hereunder.
- (b) The Contractor shall, at its sole cost and expense, procure and keep in force during the Contract Term, any and all necessary licenses, registrations, certificates, and permits required by applicable local, state and federal laws and regulations and this Contract.
- (c) The Contractor shall pay all taxes, including any sales, leasehold interest, or use taxes, license, certification, permit or examination fees and excises which may be assessed, levied, exacted or imposed by any governmental authorities having jurisdiction, on the Contractor's personal property, operations, Gross Receipts, income, Premises, or any Fixed Improvements to its Site, or on this Contract and the fees payable hereunder, or on the rights or privileges granted to the Contractor by this Contract. The Contractor shall make and file all applications, reports and returns required in connection with any such taxes or fees. The Contractor shall have the right to protest such taxes in accordance with the procedures of the applicable jurisdiction.
- (d) The Contractor shall pay for all traffic violation notices issued by Authority Police to the Contractor's vehicles while such vehicles are under the control or operation of the Contractor's employees.

Section 3.12 Correction of Violations

Upon written notice to the Contractor by the Authority of any violation of the provisions of this Article 3, the Contractor shall immediately correct such violation at its sole cost and expense and promptly advise the Authority in writing, no later than fourteen (14) days of the notice, of the corrective measures it has taken.

Section 3.13 Correction of Hazardous Condition

If the Authority reasonably determines that a condition on the Premises is hazardous or potentially hazardous to persons or property and was caused by, or exists as a result of, the acts or omissions of, Contractor, its employees, agents, contractors and/or invitees, the Authority may, either in writing or orally, direct the Contractor to correct the condition, and the Contractor shall, at its own cost and expense, immediately comply with such directive.

Section 3.14 Cooperation with Successor Operator of Automobile Rental Car Concession

Upon the expiration or earlier termination of this Contract, the Contractor agrees to cooperate fully with the Authority and with any and all successor contractors to ensure a smooth transition from the Contractor to any successor contractor.

Section 3.15 Signs

The Contractor shall have the right to install and maintain appropriate graphics and identifying signs on its Site, provided that the type, size, design, content, color, location, installation, and operation of such graphics and signs shall be consistent with the graphic and sign standards of the Authority's Design Manual and that the Contractor obtains the prior written approval of the Authority before installation. Such approval by the Authority shall not be unreasonably withheld or delayed.

Section 3.16 Other Business Concessions

- (a) The Contractor may provide vending machines and public telephones at its Site.
- (b) The Contractor expressly acknowledges that the Authority maintains separate exclusive advertising concessions for the dissemination of local and national advertising on the Airport which includes, without limitation, the distribution of a magazine. The Contractor agrees that it shall not engage in any conduct which may conflict with such other concessions and further agrees that it shall not place, publish or distribute in any manner any advertising or magazine on the Premises herein, on shuttle busses operating at the Airport property, or in any passenger motor vehicles leased at the Airport unless such a magazine is solely an in-house promotional magazine that is confined strictly to the Contractor's products and that does not contain any advertising or promotional messages for any other person or entity, whether or not the Contractor receives any consideration from such person or entity for publishing or disseminating such advertising or promotional messages.

Section 3.17 Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation

- (a) The Authority has established an ACDBE participation goal for this Contract of ten percent (10%) of the Contractor's Gross Purchase Amount which is defined as the value of goods and services that the Contractor purchases for utilization at the Airport, including maintenance services for the RAC facility, construction services at the RAC facility, new and used vehicle purchases, auto repair services, auto supplies, fuel, insurance, and other professional and non-professional services. ACDBE participation may be achieved through the purchase of goods and services necessary to conduct the rental car business at the Airport from ACDBEs, as further described in the U.S. Department of Transportation's revised regulations governing ACDBE participation, 49 CFR Part 23 and participation may also be obtained through the engagement of ACDBEs through joint ventures and other partnerships according to the ACDBE regulations. These goods and services may include the purchase or lease of vehicles from any vendor that is a certified ACDBE. All ACDBE firms used to meet this contract's ACDBE goal must be certified as ACDBEs by the Virginia Unified Certification program which consists of the Authority and the Virginia Department of Small Business & Supplier Diversity.
- (b) On or before the 20th of each month during the term of this Contract hereof, the Contractor will furnish the Authority with an executed report certified by an officer of the Contractor's corporation, showing the total value of the goods and services that the Contractor has purchased from certified ACDBEs for its Airport operations during the previous month. The monthly certified report shall be titled "ACDBE Participation Report" and will clearly identify the Airport for which the report is prepared, the specific period of the report (i.e. July 1-31,

2019) and shall include the name and contact information of the company representative who prepared the report. The certified ACDBE Participation Report shall include at minimum the following information for each ACDBE for which goods or services were reported during the reporting period:

- (1) Name of Each ACDBE, Disadvantage Business Enterprise (DBE), Minority Business Enterprise (MBE) or Women Business Enterprise (WBE) firm that the company has procured goods or services from during the period
 - (2) Full mailing address for each ACDBE , DBE, MBE, WBE firm to include Telephone, and/or email.
 - (3) Contact person for each ACDBE
 - (4) Contact person's telephone number
 - (5) Contact person's email address
 - (6) Type of goods or services purchased or leased from each ACDBE and dates of purchases/lease (vehicle leases or purchases from ACDBE firms should be listed separately from other purchases from ACDBE firms)
 - (7) Proof of ACDBE certification for each ACDBE
 - (8) Reporting period (full dates)
 - (9) Names and Total paid to all firms (regardless of status) during reporting period for goods and services
 - (10) Amount of Gross Receipt during reporting period
 - (11) Signature of a company official responsible for ACDBE participation
 - (12) Type of business
 - (13) beginning and expiration dates of agreement, including options to renew
 - (14) Dates that material amendments have been or will be made to agreement (if known);
 - (15) Estimated gross receipts for the firm during the reporting period.
- (c) The Contractor shall make good faith efforts to obtain ACDBE participation from ACDBE providers of good and services other than ACDBEs engaged in the sale or lease of vehicles. To verify its good faith efforts, the Contractor shall provide in the ACDBE Participation Report an executed statement showing the efforts it made to obtain goods and services from ACDBEs (i.e. advertisements, solicitations, outreach events, individual and/or group meetings, etc.), other than ACDBEs selling or leasing vehicles.

Elements of the Good Faith Efforts statement should include:

- (1) Period covered by the report
- (2) Company Name
- (3) Company Address
- (4) Name, title, address, phone number and email of person preparing the report
- (5) Signature of a company official responsible for ACDBE participation
- (6) List of outreach activities conducted or participated in by the company (include name of the event, date of event, sponsoring organization, location of event)
- (7) List of ACDBE, DBE, MBE, WBE firms that the company has solicited for services (even if firms were not successful bidders)
- (8) Copies of correspondence to ACDBE, DBE, MBE, WBE firms regarding ACDBE opportunities or certification

Good faith efforts of an offeror shall be evaluated by the Authority to determine whether the efforts to obtain ACDBE participation were those that a firm aggressively seeking partners or subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable probability of success; and whether based upon the size, scope and complexity of the project, there were qualified ACDBEs available and willing to participate in a reasonable manner.

Efforts that are merely pro forma are not good faith efforts to meet the goal. Efforts to obtain ACDBE participation are considered pro forma, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of ACDBE participation to meet the ACDBE goal. For example, advertising or bulk mailings, alone or together are considered pro forma unless followed up with telephone calls and/or correspondence consistent with normal business practice. If the ACDBE firm provides a reasonable and/or legitimate offer, a reasonable effort to evaluate the participant and work towards a good business arrangement for both parties must be demonstrated.

- (d) If the Contractor fails to meet the 10% ACDBE participation goal for the twelve-month period covered by the ACDBE Participation Report, the Contractor shall provide, along with the Report, detailed documentation, in a form acceptable to the Authority, of its good faiths efforts to meet the goal. Such “good faith efforts” must meet the standards set forth in 49 CFR Parts 26 and 23.
- (e) The Contractor shall provide the Authority with all Contractor’s records relating to its compliance with the ACDBE provisions of this Contract, including but not limited to, canceled checks, Automated Clearing House (ACH) receipts, and accounting records, for the

purpose of ascertaining that ACDBE firms have provided the goods and services reported, and that the Contractor is meeting the ACDBE participation provisions of this Contract.

- (f) Failure to demonstrate that the Contractor has made good faith efforts to meet the ACDBE participation goal may result in termination of this Contract.
- (g) The Authority may conduct post award compliance reviews of the ACDBE participation under the Contract. Contractors shall keep all records as necessary to enable the Authority to determine compliance with the ACDBE obligations. Records to be kept by the Contractor will include, but are not limited to, information on the type of goods and/or services provided by the ACDBE firm(s), the dollars spent with each ACDBE firm, the ACDBE certification status of the firms, and the total spend with all firms (ACDBE and non-ACDBE) during the reporting period for the Airport. Records must be kept for at least three years.

Contractors will receive credit for ACDBE participation by firms that are certified as ACDBEs by the Virginia Unified Certification Program which consist of the Authority and the Virginia Department of Small Business & Supplier Diversity. The Contractor shall ensure that ACDBE firms are certified prior to engagement if engaged after the contract is awarded. All ACDBE applications and supporting documents for certification must be submitted at: <https://mwaa.diversitycompliance.com> or <https://directory.sbsd.virginia.gov/#/>. The applicant ACDBE shall include a statement of the goods or services that it plans to provide. Once certified by the Authority, ACDBE goods and services suppliers will be required to submit an annual "No Change Affidavit" as required under 49 CFR Part 26.

The Authority's Department of Supplier Diversity will assist interested Bidders in identifying current Authority certified ACDBE firms and other ACDBE firms upon request. **Any questions about ACDBE certification should be directed to the Authority's Department of Supplier Diversity at (703) 417-8660.**

- (h) To qualify as an ACDBE, the firm must meet the definition set forth below and the applicable small business size standard, defined in terms of the firm's average annual gross receipts for the preceding three (3) fiscal years. The applicable size standard for ACDBE rental car concessionaires is \$75.23million, which means the ACDBEs average annual gross receipts for the last three years (including gross receipts of all affiliates) cannot exceed \$75.23 million. However, the applicable small business size standard for ACDBE firms providing goods and services to rental car concessionaires is \$56.42million. The receipts of affiliate companies are included in determining size. In general, business concerns are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other, or (2) a third party (or parties) has the power to control both. Consideration is given to such factors as common ownership, common management, contractual relationships and overlapping authority.

An ACDBE, as defined by 49 CFR Part 23, is a business concern that meets the applicable size standard and is a small business (as defined by the Small Business Administration), which is: a) at least 51% owned and controlled by one (1) or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock is owned by one (1) or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one (1) or more of the

socially and economically disadvantaged individuals who own it "Socially and economically disadvantaged individuals" include:

- (1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis;
- (2) Any individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged;
- (3) Black Americans, which includes a person having origins in any of the Black racial groups of Africa;
- (4) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central, or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (5) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, and Native Hawaiians;
- (6) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (7) Subcontinent Asian-Americans, which includes persons whose origins, are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal.
- (8) Women; and,
- (9) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

The Authority generally will assume that business owners who fall into one of these groups are socially and economically disadvantaged. Their disadvantaged status will not be investigated, unless a third-party challenge is made or the Authority has reason to suspect that the owner(s) may not be disadvantaged

Other individuals may be found to be socially and economically disadvantaged on a case-by-case basis. For example, a disabled Vietnam veteran, an Appalachian white male or another person may claim to be disadvantaged. If such individual requests that his or her firm be certified as ACDBE, the Authority, as part of the certification process, will determine whether the individual is socially and economically disadvantaged under the criteria in 49 CFR Parts 26 and 23. These owners must demonstrate that their disadvantaged status arose from individual circumstances, rather than by virtue of membership in a group.

- (i) If, during the term of this Contract, the U.S. Department of Transportation alters the regulations governing ACDBE participation in rental car contracts, the Authority will negotiate with Contractor and the other on-airport rental car concessionaires concerning changes necessary to conform the Contract to the amended ACDBE regulation.
- (j) If during the Contract Term, the ACDBE's status changes, causing it to become ineligible for ACDBE certification, the Contractor shall promptly notify the Authority of this change. The Contractor shall be required to make good faith efforts to continue to meet the 10% ACDBE goal and shall therefore partner or subcontract with another ACDBE that has been certified and approved by the VA UCP. Within ninety (90) days after the date the Contractor is no longer certified as a ACDBE by the VA-UCP, the Contractor shall submit the name of the proposed ACDBE substitute firm, certification documents, and a draft of the agreement (subcontract or joint venture agreement) between the proposed ACDBE and Contractor shall be submitted to the Contracting Officer and the Department of Supplier Diversity (DSD). The proposed new ACDBE may not begin work under this Contract until it has been certified as an ACDBE by the VA UCP and the Authority has approved the substitution. .

The ACDBE goal is applicable to this Contract at all times during the Contract Term, including the Extension Periods. In unusual situations, the Authority may permit the Contractor to replace an ACDBE with another ACDBE. In the event of disapproval, the Contractor shall continue to maintain the current ACDBE until the Authority approves a substitution. If the substitution is approved, the Contractor shall replace the current ACDBE with another ACDBE that has been reviewed and approved by the Authority's DSD. The substitute ACDBE firm(s) shall participate at least to the same extent as the previous ACDBE participant. The Contractor shall monitor the certification status of any and all ACDBE firms included in this Contract, and shall ensure that their status as certified ACDBEs remains current.

ARTICLE 4. RIGHTS AND OBLIGATIONS OF THE AUTHORITY

Section 4.01 Development of a Future Consolidated Rental Car Facility (CRCF)

In the event the Authority undertakes design and construction of an on-Airport CRCF, it shall afford a representative of the Contractor, to be named by the Contractor, the opportunity, together with representatives of the other on-Airport rental car companies, to review the design plans and provide input into the Authority decision making process with respect to such CRCF. Notwithstanding such coordination, the Authority retains the sole right and authority to pursue the development of the CRCF and obligate on-Airport rental car contractors to conduct a portion of their operations from the CRCF under contracts to be bid in the future.

Section 4.02 Authority's Maintenance Obligation

- (a) The Authority shall, with reasonable diligence, prudently develop, improve, and at all times maintain, operate, and keep in good repair the Main Terminal, and Airport's public roadways and grounds, including the Dulles Access Highway, and the Airport's utility distribution systems, and all appurtenances, facilities, and services now or hereafter connected thereto. This obligation of the Authority does not include any obligation whatsoever to maintain and repair the Site except as otherwise provided in paragraph (b) below.

- (b) The Authority shall utilize CFC funding to make the following improvements/modifications to the Site to facilitate the consolidation of the sites from seven (7) to four (4):
 - (1) Replacement of all fencing along Autopilot Drive and/or Materials Drive according to specifications determined by the Authority (fencing installed by the Authority shall be consistent in design and material across all four Sites)
 - (2) Installation of new sign structures at each site entrance according to specifications determined by the Authority (sign structures installed by the Authority shall be consistent in design and material across all four Sites)
- (c) The Authority reserves the right to interrupt temporarily the Airport's utility services including electrical, gas, water and sewage when necessary to make repairs, alterations, replacements, or improvements in the utility systems. The Authority shall have no responsibility or liability for failure to supply utilities during any such period, or when prevented from doing so by laws, orders, or regulations of any federal, State, or local agency, or when prevented from doing so by accidents, or any other cause beyond the Authority's control. The Authority shall endeavor to provide advance notice to the Contractor of all planned interruptions of utility services.

ARTICLE 5. FINANCIAL CONSIDERATION

Section 5.01 Fees

- (a) In consideration of the rights and privileges to be granted to the Contractor by the Authority, the Contractor shall pay to the Authority as compensation the following fees during each Contract Year: (i) either the Minimum Annual Guarantee (MAG) as defined in Section 5.01(a)(1) herein or the percentage of Gross Receipts Fee as defined in Section 5.01(a)(2) herein, whichever is greater on a Contract Year basis; (ii) certain utility payments and other fees as defined in Section 5.01(a)(7); (iii) Facility Rent, as defined in Section 5.01(a)(8); and (iv) CFCs as defined in 5.01(a)(6). The fees described herein shall be paid to the Authority in lawful currency of the United States of America in the following manner:

- (1) Minimum Annual Guarantee. The Contractor shall pay the following MAG amounts for each year of the Contract:

Contract Year 1	\$ _____
Contract Year 2	\$ _____
Contract Year 3	\$ _____
Contract Year 4	\$ _____
Contract Year 5	\$ _____
<u>TOTAL</u>	\$ _____

One-twelfth (1/12) of the MAG for that Contract Year shall be paid in advance and without demand on the first day of each calendar month during the Contract Term. For any period of less than one (1) calendar month, the MAG shall be prorated. Said MAG shall be deemed delinquent if payment is not received by the tenth (10th) calendar day of the month.

- (2) Percentage of Gross Receipts Fee. The Percentage of Gross Receipts Fee equals ten percent (10%) of the Contractor's Gross Receipts generated each Contract Year during the Contract Term ("Percentage of Gross Receipts Fee").

The term "Gross Receipts" is defined in Section 5.02 herein. If the Percentage of Gross Receipts Fee for a Contract Year is greater than the MAG due for that Contract Year, the Contractor shall owe the Authority the difference between the MAG and the Percentage of Gross Receipts Fee due for the Contract Year. By no later than the twentieth (20th) day after the beginning of each calendar month during the Contract Term, the Contractor shall pay to the Authority, without demand or invoice by the Authority, a sum of money equivalent to the amount by which the Percentage of Gross Receipts Fee for the previous month exceeds the MAG paid for the previous month. In the event the Percentage of Gross Receipts Fee for the month does not exceed the MAG paid for that month, then no Percentage of Gross Receipts Fee shall be due for such month. Percent of Gross Receipt Fee payments, if due, shall be deemed delinquent if not received by the twentieth (20th) calendar day of the month.

- (3) Reconciliation of MAG and Percentage of Gross Receipts Fee. Within ninety (90) days following the end of each Contract Year, the Contractor shall determine, based upon the total Gross Receipts Fee for the Contract Year, whether the MAG or the Percentage of Gross Receipts Fee for that year is greater. The Contractor shall then determine whether the actual monthly payments of MAG and Percentage of Gross Receipts Fee equal the amount owed by the Contractor for that Contract Year. If the Contractor has underpaid, it shall submit the balance due on or before ninetieth (90th) day after the end of the Contract Year in which the Gross Receipts were earned. If there has been an overpayment, said overpayment shall be reported in the Annual Certified Statement and handled in accordance with Section 5.03 herein.
- (4) Monthly Itemized Certified Statement. Along with payment of the Percentage of Gross Receipts Fee if any, each month the Contractor shall submit an Itemized Certified Statement to the Authority, in the format shown in Exhibit B attached hereto and by such method as the Authority may reasonably request. Said Itemized Certified Statement shall include adequate documentation to support the monthly certified statements in a level of detail equivalent to the Contractor's own general ledger delineations, and shall (i) set forth the Contractor's entire Gross Receipts for the prior calendar month and any adjustments to Gross Receipts, (ii) list the number of rental transactions and rental transaction days occurring during the calendar month, (iii) list the CFCs collected for rental transaction days and remitted to the Authority, (iv) certify that the Contractor met the required minimum average monthly percentage of HEVs within its fleet of vehicles available for rent, and (v) be signed by an authorized official of the Contractor, certifying that the information submitted is accurate and complete. The Monthly Itemized Certified Statement shall be submitted by the Contractor by the 20th day of each calendar month even if no Percentage of Gross Receipts Fee is due for the preceding month.
- (5) Monthly Activity Rental Car Report. The Monthly Itemized Certified Statement must be accompanied by an activity report in an electronic format itemizing details by rental car agreement number or such other format as the Authority may request, of all

individual transactions that comprise the totals shown on the Monthly Itemized Certified Statement (Exhibit B). The electronic format will be an Excel spreadsheet file or such other format as the Authority may request and can be submitted via e-mail. An example of the format of the electronic file is included as Exhibit C, attached hereto. The totals on the electronic file must agree with the totals on the Monthly Itemized Certified Statement.

(6) Customer Facility Charge. During the Term of this Contract, the Contractor shall collect Customer Facility Charges (CFC) on behalf of the Authority. The purpose of the CFC is to provide a funding source for the initial development of the consolidated Sites provided herein and potential future design, development, and construction of a new CRCF. Any or all of the CFCs (which shall include any and all adjustments of such charge) for the benefit of the Authority may be used for any lawful purpose as determined by the Authority to include, but not limited to, the planning, design, construction, renovation, repair, operating and maintenance cost of existing and future facilities and common use transportation systems that are allocable or attributable to the car rental operations at the Airport.

(i) Collection of Fee. The Contractor shall collect CFCs from each rental car customer, including those receiving complimentary car rentals or discounted car rental rates. The charge, which is described in further detail below, shall be identified on a separate line on the rental car customer contract, before any state or local taxes, and described as the "Dulles International Airport (IAD) Facility Fee." Each twenty-four hour period or fraction thereof within the rental period shall constitute a separate day for which the CFC must be levied and collected.

The CFC revenue collected by the Contractor each month shall be held in trust by the Contractor for the Authority's benefit. All CFC revenue due and collected and held by the Contractor shall be considered the Authority's property and the Contractor shall not have any interest in such revenues. The CFC revenue due and collected including any interest earned shall be remitted by the Contractor to the Authority with each month's itemized monthly statement. The Contractor shall maintain records and controls which are sufficient to demonstrate the correctness of the CFC revenue due and collected by the Contractor and the amount of CFC revenue paid to the Authority. These records shall be available for inspection and examination at all times by the Authority or its duly authorized representative.

(ii) Amount of CFC. Effective on the commencement date of this Contract, a CFC of Three Dollars (\$3.00) for each day of each rental shall be levied on the rental at the Airport of any rental car.

(iii) Use of CFCs for reimbursement of Contractor's Fixed Improvements. CFCs may be used to reimburse the Contractor for costs associated with design and construction of fixed improvements at the Contractor's Site. The scope and amount of Contractor's fixed improvements eligible for reimbursement are subject to the prior written approval of the Authority. Upon completion of the

fixed improvement, the Contractor shall submit to the Authority a certified statement detailing the expenses incurred to include detailed invoices and proof of payment to receive CFC reimbursement for eligible fixed improvements as further detailed in Section 7.04 of this Contract.

- (7) Utilities Payments. The Contractor shall pay the cost of all utilities (electrical, gas and water/sewer) used or consumed on its Site. Such charges shall be calculated in accordance with the rates established, from time to time, by the Authority for all Airport tenants and concessionaires. The Contractor shall pay to the Authority any such charges for utilities within fifteen (15) days after its receipt of the Authority's invoice for such utilities charges. Utility charges shall not be assessed on the telephone boards in the Main Terminal.
- (8) Facility Rent.
- i. During the first Contract Year, the Contractor shall pay Facility Rent to the Authority at an annual rate of \$2.59 per square foot of the Site.
 - ii. Upon the commencement of the second Contract Year and each Contract Year thereafter, the Facility Rent shall increase by three percent (3%) of the Facility Rent charged to the Contractor in the previous Contract Year.
 - iii. The annual Rent shall be prorated and paid monthly in advance and without demand on the first day of each month during the Contract Term.
 - iv. The Authority reserves the right to charge the Contractor a new Facility Rent upon the commencement of the first Extension Period based on a continued escalation of three percent (3%) for each additional Contract Year or based on an appraisal of the Site by the Authority.
- (9) Remittances. All remittances shall be payable to the "Metropolitan Washington Airports Authority" and forwarded to:

Metropolitan Washington Airports Authority
P.O. Box 402816
Atlanta, GA 30353-2816
Attention: Accounts Receivable

All payments of Percentage of Gross Receipts Fees must be accompanied by the itemized monthly statement. All other payments shall set forth the purpose and the period for which payment is being made.

- (10) Interest, Penalties, and Late Charges
- i. Without waiving any other right of action available to the Authority in the event of default in payment of charges and fees hereunder, if the Contractor fails to make a payment when due and said failure continues for a consecutive period of thirty (30) days, late charges will be assessed. Late charges may

consist of interest and penalties. Thereafter, late charges will be assessed for each additional 30-day period or portion thereof that the payment is late and a penalty of \$100 per day for each day the issue is not corrected.

- ii. The interest rate shall be at the rate per annum which is four percent (4%) higher than the prime rate as published in The Wall Street Journal on the date such payment was due.
- iii. In addition to interest, monthly late charges at the rate of six percent (6%) per annum (or as established periodically) of the amount due will be assessed on the unpaid portion of accounts more than ninety (90) days past due.

Section 5.02 Definition of Gross Receipts

- (a) The term “Gross Receipts” as used herein shall mean the total amount actually charged to the customer by the Contractor for or in connection with the use of an automobile contracted for, delivered, or rented to the customer at the Airport regardless of where or by whom the payment is made or where the vehicle is returned. Gross Receipts shall be determined by the total charges on the face of the customer’s receipt at the time of rental, less any charges excluded from the definition of Gross Receipts in Section (b) below. The retroactive adjustment by the Contractor to Gross Receipts designated as volume discounts or any other designation for any other purpose is prohibited.

Gross Receipts include, but are not limited to:

1. Time and Mileage. The time and mileage fees charged to the customer for the vehicle.
2. Insurance. All amounts charged to the customer for personal accident insurance, or any insurance incidental to the rental of vehicles, as part of an authorized vehicle rental agreement.
3. Waiver. All fees charged to the customer to waive deductibility in insurance, e.g., collision damage waiver (CDW), loss damage waiver (LDW), etc.
4. Inter-city Fees. All fees charged to the customer because the customer will be returning or returns a vehicle rented at the Airport to a location other than the Airport.
5. Fuel. Amounts charged to customers for all fueling services.
6. Other Vehicle or Vehicle-Related Items or Service Charges. All other fees charged to the customer (including, but not limited to, charges for additional or underage drivers, rental of cell phones, infant and child restraint seats, ski racks, satellite navigation systems or other technology, and other items of personal property) except those specifically excluded by this Contract.
7. Credits for Out-of-Pocket Purchases. Credits given to Contractor’s customers for such items as out-of-pocket purchases of gas, oil or emergency services, regardless of where made may not be deducted from Gross Receipts.

8. Bad Debts. Contractor shall have the right to accept payment by checks and to conduct all or a part of its business on a credit basis; provided, however, that the risk of such operation shall be borne by Contractor, and Contractor shall not be permitted to deduct from Gross Receipts any bad debts or non-payments by customers.
9. Fee Recovery. Gross Receipts shall also include any fees charged to the customer for the purpose of recovering fees charged by the Authority or another entity of the Contractor, such as airport concession fees, facility rent, CFCs and vehicle licensing fees.
10. Vehicle Exchange. If a vehicle is exchanged within a radius of fifty (50) miles from the Main Terminal of the Airport, the Gross Receipts from that rental shall continue to be included in Gross Receipts under this Contract, even if a new or replacement contract is issued to the customer.
11. Satellite Locations. All amounts charged to customers at a Contractor's rental car location, if located within a hotel that is within a five (5) mile radius of the Main Terminal of the Airport, and the hotel provides hotel shuttle service to and from the Airport. This requirement excludes customers with residences within a fifty (50) mile radius of the Main Terminal of the Airport as evidenced by a copy of the customer's driver's license.

The Contractor shall not allocate Gross Receipts from Airport rentals to any other location, regardless of where the vehicle is ultimately returned.

(b) The term "Gross Receipts" shall not include:

1. Amounts of any federal, state, or municipal sales or similar taxes which are separately stated on the rental agreement and collected from customers of the Contractor;
2. Sums received by the Contractor for damage to passenger motor vehicles or the Contractor's property or its Site, or for loss, conversion, or abandonment of passenger motor vehicles;
3. Sums received by reason of the Contractor's disposal of Operating Facilities or personal property (capital assets);
4. The payment of franchise taxes or taxes levied on Contractor's activities, facilities, equipment or real or personal property of the Contractor, or for commissions or similar amounts paid by the Contractor to travel agents or others;
5. CFC amounts collected by the Contractor.

(c) The Contractor shall be solely responsible for the payment of all sales, use or other taxes whether in effect at the time of the execution of this Contract or thereafter enacted that are levied upon vehicle rentals or on fees paid by Contractor, provided the Authority shall not impose any taxes or fees other than those specified in this Contract.

- (d) The intentional diversion, through direct or indirect means, of rental car revenues includable in Gross Receipts, as defined in Section 5.02 of this Contract, is prohibited. A shortage of rental cars at the Airport while having rental cars available elsewhere in the metropolitan Washington, DC area is presumed to be intentional diversion. In addition renting cars off Airport to a customer who arrived at the Airport and not including the resulting rental car revenue in the Gross Receipts defined under the Contract is presumed to be intentional diversion. The taking of a reservation, advising or suggesting to a potential customer arriving at the Airport that the customer rent a car at a location other than the Airport regardless of the reason and not including the rental car revenue resulting from such transaction in Gross Receipts is presumed to be intentional diversion. In addition to all other remedies available by law, the Authority shall have the right to immediately terminate this Contract upon a determination by the Authority that the Contractor has intentionally diverted revenues.

Section 5.03 Annual Certified Statement

- (a) Annual Statement. Within ninety (90) days following the end of each Contract Year, the Contractor, at its own cost and expense, shall deliver to the Manager, Airport Administration Department, an Annual Statement that includes schedules of the annual Gross Receipts and Percentage of Gross Receipts Fees paid for the Contract Year, as well as a schedule showing the amount of the CFC due and paid for the year and a certification of compliance with the HEV requirement in Section 3.04 (c) herein. The Annual Statement shall also include a statement by an independent certified public accountant that, in its opinion, after an examination and certification of such schedules, the Gross Receipts and fee schedules have been prepared in accordance with Generally Accepted Accounting Principles and under the terms and conditions of this Contract including, without limitation, the definition of Gross Receipts set forth in Section 5.02 herein. Such statement shall also contain a list of the Gross Receipts for each month, by type and category, as shown on the books and records of the Contractor and which were used to compute the fees paid to the Authority during the period covered by the Annual Statement. The Authority reserves the right to reject the selected independent CPA if the independent CPA does not have the appropriate qualifications and professional standing.
- (b) Additional Payment if Fees Underpaid. If the schedules provided by the Contractor to the Authority pursuant to Section 5.03(a) herein with respect to any Contract Year indicate that the amount of Percentage of Gross Receipts Fees which the Contractor actually paid to the Authority with respect to such Contract Year was less than the amount of Percentage of Gross Receipts Fees due and owing for such Contract Year under the terms of this Contract, then the Contractor shall pay the difference to the Authority at the same time it provides the Annual Statement to the Authority, together with interest on the amount of such difference at the rate specified in Section 5.01(a)(10)(iii)herein.
- (c) Credit if Fees Overpaid. If the schedules provided by the Contractor to the Authority pursuant to Section 5.03(a) with respect to any Contract Year indicate that the amount of Percentage of Gross Receipts Fees which the Contractor actually paid to the Authority with respect to such Contract Year was greater than the amount of Percentage of Gross Receipts Fees due and owing for that Contract Year under the terms of this Contract, then the amount of such excess shall, at the option of the Authority, either be paid in lump sum within a thirty (30) day period

or credited to the Percentage of Gross Receipts Fees next due and owing from the Contractor to the Authority, unless the Contract Term has expired, in which event such amount shall be promptly refunded by the Authority to the Contractor.

- (d) Proration for Portion of Contract Year. For the purposes of paying the Percentage of Gross Receipts Fees and of determining the Percentage of Gross Receipts Fees due for any portion of a Contract Year, the Percentage of Gross Receipts Fee shall be prorated on the basis of the actual number of days in such portion of such Contract Year.

Section 5.04 Books and Records of the Contractor

- (a) Contractor to Maintain Certain Books and Records. The Contractor shall maintain in a true and accurate manner and in accordance with Generally Accepted Accounting Principles and the terms and conditions of this Contract, such books and records as would normally be expected to be examined by an independent certified public accountant in performing an audit of the Contractor's Gross Receipts, and inventory of HEVs within the Contractor's fleet of vehicles available for rent in accordance with generally accepted accounting standards. Such books or records shall contain records of all the Contractor's receipts in connection with its operations on its Site in a form consistent with good accounting practice and shall contain itemized records of all Gross Receipts by such categories of sales as are specified in Section 5.02 above (or such other categories as the Authority may require from time to time) and of all other receipts derived by the Contractor from its operations on the Premises. This includes business records relating to customer transaction receipts, itemized rental transactions, trial balance and general ledger, and a complete chart of accounts.
- (b) Location of Books and Records. The Contractor may keep the books and records it is required to maintain under Section 5.04(a) at its corporate office or available for inspection under the provisions of Section 5.05 herein. Such books and records shall be kept segregated from the Contractor's books and records relating to operations other than pursuant to this Contract, and shall be retained by the Contractor for a period of no less than three (3) years following the end of the Contract Year to which such books and records relate (notwithstanding the expiration or earlier termination of this Contract).
- (c) Books, Records and Information. Books, records, and information to be made available to the Authority during an audit shall include, but not be limited to:
 1. All accounting source documents necessary to the Authority's performance of an audit in accordance with Generally Accepted Auditing Standards;
 2. The complete (cumulative) corporate general ledger for the period under audit;
 3. A detailed description of the Contractor's accounting system, including:
 - (i) flow chart tracing transactions through all accounting records from the basic rental agreement to the general ledger used to prepare the Airports monthly certified statement; with

- (ii) a description of the accounting system used for tracking individual rental agreement control numbers assigned to each location;
- 4. A complete copy of the chart of accounts and a detailed description of the accounts shown therein; and
- 5. Bank statements and other complete supporting documentation applicable to all cash receipts resulting from the operation of this concession at the Airport.
- 6. Sales tax returns filed for the operation of this concession at the Airport;
- 7. Inventory of HEVs within the Contractor's available vehicles to rent;
- 8. Documentation of all expenses related to construction of Fixed Improvements; and
- 9. Audit work, performed by the Contractor's external auditor related to the accuracy of gross receipts as defined in this Contract.

The Contractor shall also provide upon the written request of the Authority, the name and telephone number of the company accounting manager who has a thorough knowledge of the accounting system and the rental point of sale system as it pertains to this Contract and who will assist the Authority with its audit.

- (d) Controls. In addition to maintaining the books and records required by this Section 5.04, the Contractor shall cause to be installed on its Site, and shall at all times use, such cash registers, invoicing machines, sales slips and other accounting equipment, devices and forms as are reasonably necessary to record properly, accurately and completely all sales from and on the Contractor's Site of the Contractor's goods and services.

Section 5.05 Authority's Right to Inspect and Audit

- (a) Authority's Right to Audit. The Authority shall have the right, upon reasonable notice to the Contractor, to audit the corporate books and records relating to the Contractor's operation in order to determine the accuracy and completeness of the fees paid to the Authority for any contract year which ended no more than three (3) years prior to the date of commencement of such audit. The Authority's right to audit will extend to related parties of the Contractor. Additionally, the Authority representatives may conduct interviews with Contractor personnel, contact financial institutions and make copies of records as necessary. The Authority and its auditors also shall have the right to conclude that the documents provided in support of the audit are the Contractor's complete records; that transactions lacking source documents may be subjected to additional scrutiny and a recommendation for recovery of any additional Gross Receipts associated with the missing documents or a decision to exclude any amount normally included as an allowable deduction.
- (b) Books and Records Available for Inspection. The books and records required to be maintained by the Contractor under Section 5.04 above shall be available for inspection by the Authority or its duly authorized representative; during business hours no later than fifteen (15) days after receipt of written notice from the Authority. The Contractor shall deliver such

books and records to its Site for examination by the Authority. If the Contractor does not wish to make its Books and Records available in the Washington, DC area, then the Contractor shall pay reasonable travel and accommodation expenses for the Authority or its duly authorized representatives to travel to the Contractor's corporate offices to conduct the audit. If the Contractor fails to make Books and Records available for inspection, the Authority shall have the right to assess a penalty fee. The penalty fee shall be in the amount of \$250 per day and will begin to accrue five (5) days after the date the written notice is mailed from the Authority for the Books and Records. The Authority shall maintain a record showing the date the notice is mailed.

- (c) Fees and Interest if Underpayment Discovered by Audit. If, as a result of the audit performed under this Section 5.05, it is established that additional concession percentage fees are due from the Contractor to the Authority, the Contractor shall immediately, upon written demand from the Authority, pay to the Authority such additional concession percentage fees, together with interest on the amount of such additional fees at the rate specified in Section 5.01(a)(10)(iii) herein from the date such additional fees should have been paid. Further, if such audit establishes that the Contractor has understated and underpaid fees for any Contract Year by three percent (3%) or more, then the entire expense of such audit, whether internal or external, shall be paid by the Contractor.
- (d) Delinquent Audit Fees. In the event that it is established through an audit conducted by the Authority that fees or charges otherwise due to the Authority under this Contract have not been paid to the Authority as a result of the Contractor's improper recording of its Gross Receipts, the Contractor shall pay to the Authority as delinquent fees and charges (with interest in accordance with Section 5.01(c) herein an amount equal to the amount of fees or charges reasonably estimated to have been lost to the Authority.
- (e) Inspection and Audit Rights Survive Expiration. The Authority's right to inspect and audit the books and records of the Contractor shall survive the expiration or earlier termination of this Contract. The Authority's right to audit will extend to related parties of the Contractor. Additionally, Authority representatives may conduct interviews with Contractor personnel, contact financial institutions and make copies of records as necessary.

Section 5.06 Loss of Business

The Authority shall not be liable to the Contractor for any loss of business or revenues sustained by the Contractor as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the Main Terminal, the Airport roadway system, or any other facility or improvement on the Airport, including the Premises. Further, the Authority shall not be liable to the Contractor for any loss of business or revenues caused by closure of, or reduced operations at, the airport, or caused by any other reason whatsoever.

ARTICLE 6. PERFORMANCE GUARANTEE

Section 6.01 Performance Guarantee

- (a) The Contractor shall deliver a performance guarantee to the Authority as of the commencement date of the Contract Term. The performance guarantee shall be equal to fifty percent (50%) of the MAG for Contract Year 1. The performance guarantee for the first Contract Year shall be in the amount of _____ (\$_____). The performance guarantee for the first Contract Year shall be provided to the Authority at the time of award.
- (b) This performance guarantee is required to guarantee the full and faithful performance of the terms and conditions of this Contract by the Contractor and shall be subject to claim in full or in part by the Authority in the event of default by the Contractor. The Contractor must ensure that the performance guarantee is maintained at all times in the proper amount throughout the Contract Term. For each subsequent Contract Year, the performance guarantee must be in an amount equal to fifty percent (50%) of the MAG due for that Contract Year.
- (c) The performance guarantee, at the option of the Contractor, may be in the form of an irrevocable letter of credit from a bank, rated B or better by Sheshunoff Information Services, or a certified check, cashier's check, or money order, made payable to the Authority. The performance guarantee may also be in the form of a performance bond, issued by an insurance company acceptable to the Authority.
- (d) If the Contractor fails to provide or maintain the performance guarantee in effect at any time during the Contract Term, the Contractor shall be in default and the Contract may be terminated by the Authority.

ARTICLE 7. INSTALLATIONS BY CONTRACTOR: TITLE TO FIXED IMPROVEMENTS AND OPERATING FACILITIES; AMORTIZATION AND BUY-OUT

Section 7.01 Definitions

- (a) Fixed Improvements. The term "Fixed Improvements" whenever used in this Contract shall include: (i) all fencing, paving, landscaping, filling, and grading, underground and overhead wires, cables, pipes, conduits, and drains; (ii) all buildings and structures now or hereafter placed on the Site; (iii) all other property of every kind, nature and description which is so attached to the Site that the same may not be removed without material injury to the Site; and (iv) any and all alterations to any said Fixed Improvements; provided, however, property that is considered "Operating Facilities" under Section 7.01(b) shall not be considered Fixed Improvements.
- (b) Operating Facilities. The term "Operating Facilities" shall include, but not be limited to, any signs (electrical or otherwise) used to identify the Contractor's business; all machinery, carwash and maintenance equipment, and fuel tanks used in connection with the fueling and servicing of automotive vehicles on or about the Site, whether or not such machinery or equipment is bolted or otherwise attached to the Site; any portable lift, hoist, compressor or

other mechanical device used to service said automotive vehicles; and all other miscellaneous equipment that may be removed from the Site without causing material injury to the Site.

Section 7.02 Requirements and Procedures Concerning Alterations and Improvements

- (a) All Operating Facilities or Fixed Improvements constructed, altered, installed, or removed by the Contractor from its Site, and the plans and specifications therefore, including the size, location, text, material and appearance of any sign, shall be submitted to the Authority prior to any such alteration, installation, or removal. Following approval by the Authority, such Operating Facilities or Fixed Improvements shall be constructed, altered, installed, or removed in strict accordance with such plans and specifications, and in accordance with all applicable building code regulations, county, state and federal laws, ordinances and regulations, and with all applicable provisions of the Authority's Design Manual at the time of the construction, alteration, installation, or removal.
- (b) The Contractor shall obtain all necessary building permits from the Authority to accomplish the work described in Section 7.02(a) herein.
- (c) If any claims, liens or encumbrances are filed against the Site or any Operating Facilities or Fixed Improvements thereto, the Contractor shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.
- (d) Within ninety (90) days after the completion of construction the Contractor shall, at its own expense, provide the Authority with drawings showing the "as built" condition of all Fixed Improvements constructed, altered, installed, or removed by the Contractor on its Site.

Section 7.03 Amortization and Buyout of Improvements

The Authority shall not be responsible for the buy-out of any improvements of the Operating Facilities made by the Contractor under this Contract or any buyout of unamortized Fixed Improvement amounts made prior to the commencement of this Contract nor shall any provision be made under this Contract for the buyout of such Fixed Improvements by another party should the Contractor not succeed itself in the operation of its Site after the expiration of this Contract. Any buyout by the Contractor of previous unamortized investments in Fixed Improvements made to its Site shall be fully amortized by the Contractor during the term of the Contract.

Section 7.04 Reimbursement of Fixed Improvements

Any investments in Fixed Improvements made by the Contractor during the term of this Contract shall be fully reimbursed by the Authority through CFC funding provided the Contractor receives prior written approval of the Fixed Improvements from the Authority for CFC funding reimbursement prior to making such Fixed Improvements, the Fixed Improvements have been completed and the Authority has inspected and approved all of the Fixed Improvements made by the Contractor, and the Contractor provides the following documentation upon completion of the work for the expense related to the Fixed Improvement: .

- (a) The Contractor shall provide a certified statement summarizing the expenses incurred by the Contractor related to the Fixed Improvement with sufficient documentation including but not

limited to: invoices, canceled checks, and other such documents as the Authority may reasonably require supporting the total Fixed Improvement expense for which the Contractor is requesting reimbursement.

- (b) Within ninety (90) days after completion of the Fixed Improvement, the Contractor shall, provide the Authority with record drawings showing the “as built” condition of all Fixed Improvements constructed by the Contractor on its Site.
- (c) If the Authority disagrees with the Contractor's determination of (1) the categorization of an item as a construction cost; (2) with the reasonableness of the costs; or (3) if supporting cost documentation is not sufficient, it shall notify the Contractor in writing. The Contractor shall have sixty (60) days following receipt of the Authority's notice in which to respond or provide any additional information. Until such time as the Contractor provides the required information to the Authority, the costs will not be approved for reimbursement by the Authority.

Section 7.05 Title

- (a) Title to all Fixed Improvements installed by the Authority shall vest in the Authority immediately upon completion. Title to all Fixed Improvements installed by the Contractor shall vest in the Authority immediately upon reimbursement by the Authority through CFCs or the expiration or termination of this Contract (whichever occurs first). The Contractor shall be responsible for the maintenance of all Fixed Improvements (made by the Authority or the Contractor) within its Site. The Contractor shall have no right during the Contract Term to demolish or remove in whole or in part, any Fixed Improvements except with the prior written consent of the Authority, which may at the discretion of the Authority be conditioned on the obligation of the Contractor to replace the same by Fixed Improvements acceptable to the Authority.. The Authority may direct the Contractor to remove Fixed Improvements or Operating Facilities for which the Authority does not hold title of, upon termination or expiration of this Contract.
- (b) The Contractor shall execute all documents requested and deemed necessary by the Authority as evidence of transfer of clear title to Fixed Improvements to the Authority.
- (c) Title to the Contractor’s Operating Facilities shall vest in the Contractor, remain with the Contractor, and removed by the Contractor from its Site at the expiration or termination of the Contract unless otherwise agreed to in writing by the Authority.

ARTICLE 8. INDEMNIFICATION AND INSURANCE

Section 8.01 Indemnification

- (a) The Contractor shall defend, indemnify, and hold the Authority and its agents, officers, and employees completely harmless from and against any and all claims, suits, demands, actions, liabilities, losses, damages, judgments, or fines arising by reason of injury or death of any person, or damage to any property, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorney fees, court costs and expert fees) of any nature whatsoever arising out of the Contractor's activities on the Airport under this Contract, or in its

use or occupancy of the Premises, regardless of where the injury, death, or damage may occur, except to the extent such injury, death, or damage is caused by the sole negligent act or omission or willful misconduct of the Authority. The Authority shall give to the Contractor reasonable notice of and an opportunity to defend against, any such claims or actions, and the Authority shall take reasonable actions to mitigate its damages.

- (b) Notwithstanding the above indemnification, the Contractor shall give the Authority notice of any matter covered herein and shall forward to the Authority every demand, notice, summons, or other process received in any claim or legal proceeding covered hereby.

Section 8.02 Insurance

- (a) The Contractor shall procure and maintain at its expense during the term of this Contract the following insurance coverage from an insurance company or companies that is/are financially sound possessing a rating of A- VII or higher from the A.M. Best Company or an equivalent rating service, insuring the Contractor against all liability, subject to policy terms, conditions, and exclusions, for injuries to persons (including wrongful death) and damages to property and any other liability arising from or caused by the Contractor's activities on Airports Authority premises or for services performed under this Contract. For those companies not subject to A.M. Best's ratings or equivalent, they shall have a nationally or internationally recognized reputation and responsibility and shall be approved by the Airports Authority with such approval not to be unreasonably withheld.
- (b) Contractor shall advise the Airports Authority of any cancellation, non-renewal, or material change in any policy within ten (10) business days of receiving notification of such action from the insurer.
- (c) All of the policies, excluding Professional Liability, required of the Contractor shall be primary and the Contractor agrees that any insurance, including self-insurance, whether primary, excess, or on any other basis, maintained by the Airports Authority shall be non-contributing with respect to the Contractor's insurance.
- (d) The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity as defined in the Contract. The Contractor must protect the Personally Identifiable Information data to which the Contractor has access to or is holding.
- (e) The Contractor may use commercial umbrella/excess liability insurance so that Contractor has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Contract. Any umbrella or excess liability coverage must be at least as broad as the primary coverage and contain all coverage provisions that are required of the primary coverage.
- (f) The Contractor and any Subcontractors are prohibited from operating Airports Authority owned vehicles and mobile equipment.
- (g) The Contractor is prohibited from operating any vehicle, including mobile equipment, on the restricted areas of the airport such as Air Operations Area.

(h) **Insurance Coverage and Minimum Limits**

1. **Commercial General Liability**

- i. Shall be a limit of not less than Five Million Dollars (\$5,000,000) per occurrence.
- ii. Coverage shall include, but not be limited to, Bodily Injury and Property Damage to Third Parties, Contractual Liability, Products-Completed Operations, Personal Injury and Advertising Injury Liability, Premises-Operations, Independent Contractors and Subcontractors, Mobile Equipment and Damage to Rented Premises.
- iii. The Products-Completed Operations coverage shall be provided for a minimum of two years following final acceptance of the work.
- iv. Additional Insured: The *Metropolitan Washington Airports Authority* shall be included as an Additional Insured.
- v. Waiver of Subrogation: Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the Airports Authority.

2. **Business Automobile Liability**

- i. In the event Contractor does not own automobiles, Contractor shall maintain coverage with the each accident limit identified below for Hired and Non-Owned Autos, which may be satisfied by way of endorsement to the Commercial General Liability policy described above or separate Business Auto Liability policy. Evidence of either must be provided.
- ii. Shall be a limit of not less than One Million Dollars (\$1,000,000) each accident for any vehicle (owned, non-owned, or hired/leased) used by the Contractor to fulfill the services contemplated by this Contract.
- iii. Coverage shall include handling of property for loading and unloading.
- iv. If hazardous materials are to be transported, coverage shall include hauling of hazardous cargo at least as broad as that provided under the ISO pollution liability CA 99-48, and the Motor Carrier Act endorsement (MCS 90). Contractor shall comply with all Federal laws and with all states' laws and insurance requirements where hazardous materials may be transported.
- v. Additional Insured: The *Metropolitan Washington Airports Authority* shall be included as an Additional Insured.

- vi. Waiver of Subrogation: Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the Airports Authority.

3. **Workers Compensation and Employers Liability**

- i. Contractor shall satisfy all compulsory requirements relating to workers compensation in any jurisdiction in which benefits may be claimed.
- ii. If the Contractor is required by Virginia law to carry Workers Compensation coverage, the coverage shall be at Virginia Statutory Limits with Virginia coverage added to item 3A of the policy; a Virginia listing under item 3C of the policy is not sufficient.
- iii. Employers Liability shall be a limit of not be less than One Million Dollars (\$1,000,000) for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- iv. Waiver of Subrogation: Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the Airports Authority.

4. **Environmental Liability**

- i. Shall be a limit of not less than Five Million Dollars (\$5,000,000) per loss for bodily injury, property damage, and environmental cleanup costs caused by pollution conditions, both sudden and non-sudden.
- ii. This requirement can be satisfied by either a separate environmental liability policy or through a modification to the Commercial General Liability policy. Evidence of either must be provided.
- iii. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract and that continuous coverage shall be maintained or an extended reporting period will be exercised for a period of not less than two years from termination or expiration of this Contract.
- iv. Additional Insured: The *Metropolitan Washington Airports Authority* shall be included as an Additional Insured.
- v. Waiver of Subrogation: Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the Airports Authority.

5. **Storage Tank Liability (Underground and Aboveground Storage Tanks) Insurance**

- i. Shall be maintained with limits not less than One Million Dollars (\$1,000,000)
- ii. Coverages shall be for both Financial Responsibility Regulations for Underground and Above Ground Storage Tank Systems and for third-party bodily injury and property damage from pollution conditions emanating from storage tanks.
- iii. Coverage shall also include corrective action and cleanup cost as required by applicable federal and state regulations.
- iv. Additional Insured: The *Metropolitan Washington Airports Authority* shall be included as an Additional Insured.
- v. Waiver of Subrogation: Coverage shall include a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the Airports Authority

6. **Cyber Liability (Network Security/Privacy Liability)**

- i. Subject to policy terms, conditions, and limitations there shall be a limit of not less than Two Million Dollars (\$2,000,000) per claim with a Four Million Dollars (\$4,000,000) aggregate.
- ii. The network security/privacy liability coverage exposures shall include, but not be limited to:
 - a. Coverage for unauthorized access, denial of service attacks, computer viruses, Trojan horses, worms, transmission of any other type of malicious or damaging code, and failure of security;
 - b. Hostile action or threat of hostile action with the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access/unauthorized use of a computer system, including exposing or publicizing confidential electronic data or causing electronic data to be inaccessible;
 - c. Dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons, to affect, alter, copy, corrupt, delete, disrupt, or destroy a computer system or obtain financial benefit for any party or to steal or take electronic data;
 - d. Denial of service for which the Contractor is responsible that results in the degradation of or loss of access to internet or network activities or normal use of a computer system;

- e. Loss of service for which the Contractor is responsible that results in the inability of a third party, which is authorized to do so, to gain access to a computer system and conduct normal internet or network activities;
 - f. Failure to prevent access to a computer system or computer system resources by an unauthorized person or an authorized person in an unauthorized manner;
 - g. Breach of privacy and the failure to protect and disclosure of personally identifiable information, and health information no matter how such loss occurs;
 - h. Violation of privacy regulations, as defined by the insurance policy, in connection with the protection of information;
 - i. Coverage shall not exclude the Airports Authority's notification and crisis management costs, identity theft monitoring and regulatory defense;
 - j. Disclosure of any third party's proprietary information including liability for interruption of Airports Authority or any third party's business including claims for loss of use.
- iii. Continuous coverage shall be maintained or an extended reporting period will be exercised for a period of not less than three years from termination or expiration of this Contract. The retroactive date shall precede the effective date of this Contract.
 - iv. Additional Insured for Vicarious Liability: The *Metropolitan Washington Airports Authority* shall be included as an **Additional Insured for Vicarious Liability** as in respects to the Contractor's actions on behalf of the Airports Authority.
 - v. Amend Insured v. Insured Exclusion: The policy shall not contain an exclusion for coverage in the event an "Additional Insured" brings an action against the "Named Insured". In the event the policy contains an "Insured v. Insured" exclusion, the Contractor shall ensure the "Insured v. Insured" exclusion is amended to allow an "Additional Insured" to bring an action against the "Named Insured".

7. **"All Risk" Property (Contractor's Property)**

Full value and full replacement cost coverage under an "All Risk" policy for any of the Contractor's real or personal property used or situated on Airports Authority's property.

If Contractor chooses to provide self-insurance for any of the Contractor's real or personal property used or situated on Airports Authority's property, the Contractor shall indicate by initialing on the line below that the self-insurance option has been chosen.

_____ Contractor elects to self-insurance "All-Risk" Property.

- (i) By requiring insurance herein, the Airports Authority does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the Airports Authority in this Contract.
- (j) The Airports Authority reserves the right at any time throughout the term of the Contract to adjust the aforementioned insurance requirements, if, in Airports Authority's reasonable judgment, the insurance required by the Contract is deemed inadequate to properly protect the Airports Authority's interest. The Contractor agrees that it will procure the adjusted insurance provided the coverage is available at commercially reasonable rates.
- (k) The Airports Authority reserves the right to inspect relevant endorsements, declaration pages, and/or a complete copy of the insurance policy(s) from the Contractor, evidencing the coverage required herein, upon written demand. The Contractor shall provide a reasonable opportunity for the Airports Authority to inspect such insurance documents, at the Contractor's corporate office located closest to the Airports Authority's main administrative office, within ten (10) business days of the Airports Authority's written request for such inspection.
- (l) The failure of the Airports Authority at any time to enforce the insurance provisions, to demand such certificate or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of the Contractor to maintain such insurance or to defend and hold the Airports Authority harmless with respect to any items of injury or damage covered by this Contract.
- (m) The Contractor's failure to maintain the insurance required by this Contract shall be the basis for immediate termination of this Contract at the Airports Authority's option.
- (n) The Contractor is responsible to ensure that all Subcontractors independently carry insurance appropriate to cover the Subcontractors' exposures, or are covered under the Contractor's policies. The Contractor is responsible for monitoring their Subcontractors' evidence of insurance to ensure compliance with their subcontract with Contractor. Copies of all Subcontractors' evidence of insurance should be maintained by the Contractor, and upon request, be supplied to the Contracting Officer.
- (o) The Contractor shall provide the Contracting Officer with a valid Certificate of Insurance, in advance of the performance of any work and as soon as possible after renewal but no later than ten (10) business days after said renewal, exhibiting coverage as required by the Metropolitan Washington Airports Authority's contract terms and conditions.

1. The Airports Authority has the right, but not the obligation, of prohibiting Contractor from performing work under this Contract until such evidence of insurance has been provided to the Contracting Officer in complete compliance with the contract terms and conditions.
2. The Certificate of Insurance shall be provided on the most current industry standard form by ACORD (Association for Cooperative Operations Research and Development) or other form acceptable to the Airports Authority.
 - i. For Liability Insurance, the ACORD 25 (2016/03) is the most current industry standard form. ACORD 25 forms older than 2016/03 may not be acceptable.
 - ii. Other evidence of insurance forms which may be acceptable include, but are not limited to, certificate forms created by the insurance company, Memorandum of Insurance, Certificate of Commercial Liability Insurance by ISO (Insurance Services Office, Inc.), and Manuscript Certificate of Insurance for certain offshore policy placements. Forms of these types will be considered on a case-by-case basis.
3. The Certificate of Insurance shall include the Contract Number.
4. If an Umbrella policy is used to meet the total insurance limits required by this Contract and covers more than General Liability and Automobile Liability, a statement must be provided on the Certificate of Insurance to indicate which policies are covered by the Umbrella policy.
5. If an Excess policy is used to meet the total insurance limits required by this Contract, a statement must be provided on the Certificate of Insurance to indicate which policy it follows.
6. The Certificate of Insurance shall be issued to:

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
ATTN: Airport Administration Department
P.O. Box 17045
Washington Dulles International Airport
Washington DC 20041

- (p) In the event that the Contractor shall at any time fail to provide the insurance required under this Section 8.02, the Authority may, at its option, immediately terminate this Contract.
- (q) The failure of the Authority, at any time, to enforce the insurance provisions, to demand such certificate(s) or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of Contractor to maintain such insurance or to defend and hold the Authority harmless with respect to any items of injury or damage covered by this Contract.

ARTICLE 9. ENVIRONMENTAL PROVISIONS

Section 9.01 Definitions

- (a) "Corrective Action" means, with respect to hazardous materials, investigation, passive remediation, active remediation removal, cleanup, containment, sampling analysis or monitoring, or any of them, as may be required by law.
- (b) The term "Hazardous Materials" shall mean any substance, chemical, or waste, including petroleum products, which at any time shall be defined as hazardous, toxic, or dangerous under applicable federal, State, or local laws or regulations, that govern (i) the existence, cleanup, or remedy of contamination on property; (ii) the protection of the environment from spilled, deposited or otherwise emplaced contamination; (iii) control of hazardous wastes; or (iv) the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.
- (c) The Contractor's "Hazardous Materials" means any hazardous materials arising out of the Contractor's past, present or future use or occupancy of the Premises or the Contractor's acts or omissions at the Premises or on the Airport. The Contractor's Hazardous Materials includes, but is not limited to any hazardous materials generated, used, stored, released, discharged, treated, disposed of, managed or transported by the Contractor or transported to the Premises under an agreement with the Contractor. As used herein, the Contractor includes employees, agents, sublessees, contractors, subcontractors, or persons acting on behalf of the Contractor.
- (d) "Law" or "laws" include, but are not limited to local, state, federal, or regional statutes, regulations, ordinances, rules, directives, orders, demands, or other laws of whatever nature, as they now exist or may hereinafter be adopted or amended including but not limited to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. "9604, *et seq.*
- (e) "Waters" includes but is not limited to groundwater, surface water or storm water.

Section 9.02 Compliance with Laws and Use of Hazardous Materials

The Contractor shall comply with all laws relating to Hazardous Materials on the Premises and/or related to the Contractor's activities at the Premises. Hazardous Materials shall be handled, stored, transported, and disposed of in accordance with all applicable federal, State, and local statutes, ordinances, and regulations. The Contractor shall not manage, use or store Hazardous Materials at the Premises, or surrounding areas, except as necessary for its operation of the concession at the Premises. The Contractor shall not dispose or treat any Hazardous Materials on the Premises or surrounding lands or waters. The Contractor shall upon request of the Authority provide a written list of Contractor's Hazardous Materials used or stored, or intended to be used or stored, at the Premises (except for petroleum products held for resale), and the approximate quantities to be used or stored.

- (a) The Contractor shall promptly respond to and clean up any release or threatened release of any Hazardous Material into the drainage systems, soils, groundwater, waters, or atmosphere caused by the Contractor and its customers, in a safe manner, in accordance with applicable

federal, State, and local statutes, ordinances, and regulations, and as authorized or approved by all federal, State, or local agencies having authority to regulate the permitting, handling, and cleanup of Hazardous Materials.

- (b) The contractor shall obtain its hazardous waste small quantity generator or other waste permit, as required by the Commonwealth of Virginia Department of Environmental Quality (VDEQ).
- (c) In addition, except for automobile washing soaps, window washing fluids, and fuel and oil products necessary to its operation of the concession which can be safely stored and used on the Contractor's Site, the Contractor shall not store, use, or dispose of on its Site, any Hazardous Materials which are explosive, toxic or otherwise hazardous unless the Contractor has first received the written authorization of the Authority. The Contractor will submit a Hazardous Materials Management Plan to obtain authorization to do so, and the Contractor will comply with any conditions as the Authority may impose, including the submission to the Authority of all Safety Data Sheets (SDS) for the chemicals stored on its Site.
- (d) In accordance with the Authority's Multi-Sector General Permit (MSGP) (issued under 40 CFR Parts 121 and 122 NPDES), the contractor shall prepare its Stormwater Pollution Prevention Plan and submit its electronic Notice of Intent application for a MSGP. Each contractor is responsible for obtaining and maintaining its MSGP as required under Part 8, Subpart S – Sector S – Air Transportation, as applied to vehicle maintenance and washwater requirements. The contractor shall also maintain best management practice (BMP) structures such as oil water separators and water quality structures on a periodic basis; quarterly at a minimum.
- (e) In addition, no machinery or apparatus shall be used or operated on the Premises that will injure or damage the Premises or the adjacent areas.

Section 9.03 The Contractor's Responsibility for Environmental Costs and Damages

The Contractor's Hazardous Materials shall be the sole responsibility of the Contractor and the Contractor shall be solely liable for and responsible for, including without limitation, at the Contractor's sole cost and expense:

- (a) Corrective Action related to the Contractor's Hazardous Materials as directed by any governmental agency, as required by any law, or as determined by a court of law to be necessary to prevent or eliminate any nuisance, trespass, waste or diminution in the value of the Premises or as necessary to avoid any impairment of the Authority's ability to use the Premises for Airport purposes upon expiration or termination of this Contract;
- (b) Damages for injury or death to persons, or injury to property, the Premises and surrounding lands and waters arising out of the Contractor's Hazardous Materials;
- (c) Claims resulting therefrom;

- (d) Fines, costs, fees, assessments, taxes, penalties, demands, orders, directives or any other requirements imposed in any manner by any governmental agency asserting jurisdiction, or under any law with respect to the Contractor's Hazardous Materials;
- (e) Costs and expenditures for Corrective Action resulting from the Contractor's Hazardous Materials;
- (f) Damages, costs and expenditures for injury to natural resources resulting from the Contractor's Hazardous Materials as required by applicable law;
- (g) Failure to comply with laws regarding the generation, use, storage, transportation, treatment, management or disposal of the Contractor's Hazardous Materials; and,
- (h) Any other liability related to the Contractor's Hazardous Materials. While the Authority is not required to incur any costs, fees (including attorney, consultant and expert witness fees) or expenses for environmental compliance, or Corrective Action relating to the Contractor's Hazardous Materials, should the Authority incur any such costs, expenses or fees due to the Contractor non-performance of its obligations under this Contract, the Contractor shall within thirty (30) days of demand reimburse the Authority for said costs, expenses or fees.

Section 9.04 Contractor's Indemnification of the Authority

In addition to any other indemnities in this Contract, the Contractor shall defend, indemnify, release and hold harmless the Authority, its officers, agents and employees, successors and assigns from any and all responsibilities, damages, claims, penalties, orders, decrees, fines, liabilities, costs, expenditures, attorney's fees, litigation expenses and court costs relating to the Contractor's liabilities and responsibilities referred to in Section 9.03 above or elsewhere in this Article 9. It is expressly agreed that the foregoing indemnity (1) shall be subject to the Contractor being given notice of and a reasonable opportunity to respond, to negotiate or defend any matter covered by indemnity; (2) shall not be applicable to any loss, claim, damage or liability arising out of any contractual obligations to any third party which the Authority may assume; (3) shall not be applicable to any loss, claim, damage or liability due to environmental contamination caused by the Authority or by any third party that is not an agent, employee, supplier, or subcontractor of the Contractor; (4) shall not be applicable to any damages or losses arising from loss of profits or business opportunity, or any other special or consequential damages, nor shall it be applicable to any attorney's fees or any fines or penalties levied upon the Authority; (5) shall be applicable only to leaks, spills, or discharges which result in a level of contamination exceeding the standards required by the applicable authorities as of the date of the Contractor's initial occupancy of the Premises; and (6) shall inure only to the benefit of the Authority, and not to any subsequent purchasers, assigns or successors of either, or to any person or entity. In the event the indemnity set forth in Section 8.01 conflicts with the foregoing indemnity, the foregoing indemnity shall govern the Contractor's indemnification obligations for matters arising under Article 9 of the Contract.

Section 9.05 Scope of Responsibilities

The promises, conditions, covenants, and indemnities by the Contractor in this provision shall apply without limitation to the Contractor's employees, agents, franchisees, sublessees, and guarantors of the Contract. Further, with respect to each of the promises, conditions, covenants and indemnities in this Section, the Contractor assumes responsibility to the Authority for the acts or omissions of the Contractor's employees, agents, franchisees, sublessees, shareholders, subsidiaries, contractors or subcontractors (whether or not such

acts or omissions are negligent or unlawful) in any way relating to the Contractor's Hazardous Materials, or environmental compliance with respect to the Contractor's Hazardous Materials. Each of the promises and indemnities in this provision apply to any discharges of Hazardous Materials at the Premises (or emanating from the Premises) by the Contractor, and to any corrective action with respect to the Contractor's Hazardous Materials, whether occurring before or after the Contractor vacates the Premises. The promises and indemnities by the Contractor are continuing and survive termination of the Contract.

Section 9.06 Underground and Aboveground Storage Tanks

- (a) In addition to the Contractor's other responsibilities, if USTs or ASTs are placed on the Premises by the Contractor to store Contractor's Hazardous Materials, the Contractor shall monitor the USTs/ASTs, obtain all required permits therefore, maintain appropriate records therefore, implement reporting procedures therefore, and perform all other requirements including but not limited to upgrade and other technical requirements under local, State and federal statutes, ordinances and regulations relating to underground storage of Hazardous Materials and cleanup, as they now exist or may hereinafter be adopted or amended. For purposes of compliance with these laws, during the Contract Term the Contractor is deemed the owner and operator of all UST, ASTs, and piping and related equipment placed on the Premises by the Contractor. No other tanks shall be installed except with the explicit written approval of the Authority, and all installation, use and maintenance is subject to any conditions set by the Authority.
- (b) Operation and Maintenance. The Contractor shall be responsible for the proper care and maintenance of the underground storage tanks (USTs) and aboveground storage tanks (ASTs), piping and dispensers assigned to it under this Contract. During the Contract Term, the Contractor will comply with all applicable federal, state and local laws and regulations for inspection and reporting as may be required now or in the future. The contractor shall maintain inspection records at its Premises to comply with VDEQ UST, AST, Stage I and Stage II regulations. The Contractor must have onsite at all times personnel who have received Underground Storage Tank Operator Training as required by the EPA and the VDEQ.
- (c) Leak Detection and Vapor Recovery. The Contractor shall be responsible for regularly monitoring and inspecting the UST's and ASTs assigned to it and for performing leak detection tests thereon in accordance with local, state and federal laws and regulations. Upon written request of the Authority, the Contractor shall provide copies of documentation of maintenance and annual checks of the Veeder-Root Tank Monitoring System, tank leak detection, line leak detectors and tightness testing, fuel high level alarms, and vapor recovery systems. The Authority shall be notified immediately of any leaks, releases, or failure of monitoring systems discovered at any time by the Contractor. The Contractor shall be responsible for repairs of any monitoring system.

Section 9.07 Testing and Assessment By Authority

The Authority, at its sole discretion, may enter upon the Premises and perform tests, measurements, investigations or assessments the Authority deems necessary in order to determine the presence of Hazardous Materials or to evaluate the Contractor's compliance with this Contract. The Authority shall also have the right to enter upon the Premises for the purpose of performing multi-media environmental audit inspections and visits as well as to perform multi-media pollution prevention inspections. The Contractor shall have the

right to have a representative present and to split samples of any soil and/or groundwater testing. Should the Authority enter the Premises for the reasons specified in this Section, the Authority shall not unreasonably disrupt or interfere with Contractor's operations at the Premises. In addition, Authority shall restore the Premises to the condition existing prior to the Authority's entry onto the Premises. Nothing herein requires the Authority to conduct any such testing, measurement, investigation or assessment. The Authority shall give the Contractor a minimum of five (5) days written notice prior to conducting any such tests, investigations or assessment except no such notice is required under urgent or emergency conditions. If any of the Contractor's Hazardous Materials are detected requiring Corrective Action other than monitoring under this provision, or if any material violation of any law or the requirements of this provision are found by the consultant, the reasonable fees and expenses of said consultant shall be paid by the Contractor upon demand by the Authority. This is in addition to the Contractor's obligation to conduct all required Corrective Action of any of the Contractor's Hazardous Material releases or suspected releases at the Contractor's sole cost as provided in Section 9.03 herein.

Section 9.08 Environmental Testing/Corrective Action

- (a) Within thirty (30) days after the removal of USTs or ASTs or otherwise prior to the expiration of the Contract, the Contractor shall test the physical condition of the Premises. If the test results reveal that the Contractor has discharged or released petroleum products on the Premises in excess of governmental limits, the Contractor shall perform Corrective Action of the Contractor's Hazardous Materials to the satisfaction of the federal, State, or County exercising jurisdiction over the matter.
- (b) In order to facilitate any Corrective Action required under this Contract on the Premises, the Authority shall provide the Contractor and/or its contractors reasonable access to the Premises after the expiration or termination of this Contract. The Authority shall provide such access until the Contractor obtains the requisite clearance (i.e., "no further action") from the governmental authority exercising jurisdiction over this matter.
- (c) Within thirty (30) days after the removal of USTs or ASTs, or otherwise prior to the end of the Contract Term or earlier termination of the Contract, the Contractor shall investigate the condition of the area at the Premises and surrounding the tanks and take Corrective Action as required under Section 9.03 herein, the Contractor's Hazardous Materials from the Premises and surrounding lands and waters. The Contractor shall also, within thirty (30) days after vacating the Premises, remove all machinery and equipment which were used for fueling or which otherwise contain or contained Hazardous Materials. The Contractor shall also undertake Corrective Action if necessary in the area of said machinery and equipment. The Contractor shall give the Authority at least ten (10) days written notice prior to removing such tanks, piping or other equipment. Should the Contractor fail to comply with this Section, in addition to all other damages and remedies which may be available to the Authority, the Contractor shall be liable to the Authority for the fair rental value and the subsequent Contractor's MAG payments to the Authority for the Premises as if uncontaminated by the Contractor hazardous materials (which shall not be less than the monthly payments set forth in the Contract), or to the extent the Premises can be partially occupied by others, the reduction in the fair rental value, until the required removal or remediation has occurred. The Contractor's obligation for the fair rental value will arise if the Authority has diligently pursued all reasonable alternatives to lease the Premises for continued rental car use. Nothing in this Section shall operate to extend the term of this Contract or give the Contractor a right of

occupancy beyond the term of this Contract, or earlier termination of this Contract, except as set out in Section 9.08(b).

- (d) In the event that the Authority or any other third party plans any construction on the Premises during the Contractor's Corrective Action, the Authority shall review such plans with the Contractor in order to accommodate and facilitate the Contractor's Corrective Action to the maximum extent practicable. The provisions set forth in this Section 9.08 shall survive expiration or termination of this Contract.
- (e) If the Contractor is continuing to perform Corrective Action under this Section 9.08 at the same time as the Authority or any successive concessionaire is required to perform Corrective Action, the parties will cooperate and each perform (or, in the case of the Authority, require its successive concessionaire to perform) Corrective Action of the contamination for which each is responsible. If the Contractor has determined that the Corrective Action should only be performed by one party, it will be undertaken by the party whose fractional cost is greater. If either the Contractor or the Authority is performing Corrective Action to address contamination for which both it and the other party are responsible under this Contract, the parties shall discuss appropriate proportionate sharing of the cost of Corrective Action, and shall share such costs as Corrective Action is performed, with the party that is not performing the Corrective Action paying its share of costs to the other party as Corrective Action is performed, within thirty (30) days after the date invoices for such work and supporting documentation are presented by the party performing the Corrective Action to the other party. If the parties are unable to agree on the appropriate proportionate sharing of the cost of Corrective Action, The Contractor and the Authority shall hire, sharing the cost, a consultant mutually acceptable to the Authority and the Contractor to assess the impact of the contamination for which the Authority is responsible and for which the Contractor is responsible under the terms of this Contract for the environmental condition of the Premises. If the parties do not agree on a single consultant, each party shall hire its own consultant, and the two consultants shall jointly select a third consultant. The consultant's assessment must include a review of the Corrective Action that has been done as of the date of the new contamination for which the Authority or its successor concessionaire is responsible under this Contract and the remaining cost to complete the Contractor's Corrective Action absent this new contamination. In addition, the consultant must estimate the cost of the additional work that will be required due to this new contamination. In such case, the Contractor's fractional cost equals the estimated cost to complete Corrective Action before this new contamination divided by the estimated cost to complete this Corrective Action after the new contamination. The Authority's fractional cost equals 1 minus (the estimated cost to complete Corrective Action before this new contamination divided by the estimated cost to complete the Corrective Action after the new contamination).

Example: The Contractor is performing Corrective Action, then estimated (by the consultant, if needed) to cost \$100,000 to complete. A spill occurs for which the Authority or its successor concessionaire is responsible under this Contract. The estimated cost to complete Corrective Action after the new contamination is \$150,000 (\$100,000 original estimated cost plus \$50,000 estimated costs related to the new contamination).

A = Estimated cost to complete Corrective Action before this new contamination.

B = Estimated cost to complete Corrective Action after this new contamination.

The Contractor's fractional cost equals: A divided by B, or two-thirds (.667). The Contractor will pay two-thirds (.667) of Corrective Action costs incurred after the new contamination occurs.

The Authority's fractional cost equals: One (1) minus (A divided by B), or one (1) minus two-thirds (.667). The Authority will pay one-third (.333) of Corrective Action costs incurred after the new contamination occurs.

- (f) The Contractor may participate, from time to time, as a result of its Corrective Action activities, in a state-administered reimbursement program related to USTs. At the Contractor's request, the Authority shall, at no expense to the Authority, reasonably cooperate with the Contractor in satisfying the requirements of the applicable governmental agency to participate in or comply with this state program. The Contractor is entitled to retain all reimbursement received for Corrective Action performed by it. If the Authority or any successor concessionaire fails to comply with the USTs or other environmental regulations relating to the Premises and this failure results in a reduction in the reimbursement the Contractor received from the fund or results in the Contractor losing its fund eligibility, the Authority shall reimburse the Contractor for any reductions resulting from such noncompliance and all attorney's and consultant's fees in addressing such reduction promptly upon receipt from the Contractor of supporting documentation that demonstrates both the noncompliance and its effect upon Contractor's reimbursement.
- (g) The terms and provisions of this Section 9.08 shall survive the expiration or termination of this Contract.

Section 9.09 Effect of Other Terms and Conditions of the Contract

Any greater obligations on the Contractor, or further protections provided to the Authority, under this provision shall prevail over any terms or conditions in this Contract which are less stringent upon the Contractor, create less protection for the Authority, or are contradictory or inconsistent with this Section. The Contractor's obligations under this provision survive destruction of the Premises, condemnation and force majeure and continue until its obligation to perform corrective action ceases. In determining whether to consent to any assignment or subcontracting, the Authority may consider the proposed assignee's or subcontractor's use of Hazardous Materials. The Contractor shall provide to the Authority any additional information related to Hazardous Materials requested by the Authority.

Section 9.10 Air Quality

All underground storage tanks shall comply with all Stage I vapor recovery in accordance with the requirements of Virginia's regulations for the control and abatement of air pollution. All gasoline dispensing nozzles already equipped with Stage II vapor recovery equipment must be maintained as required by the Virginia regulations or decommissioned as allowed by the Virginia regulations. If the Contractor decides to decommission a Stage II system, the decommissioning shall be in accordance with the PEI RP300-09 Decommission Checklist and ACG-003, "Guidance for Decommissioning or Maintenance of Stage II Vapor Recovery Systems at Gasoline Dispensing Facilities in the Northern Virginia and Richmond Volatile Organic Compound Control Emission Control Areas".

Section 9.11 Water Management Requirements

The Contractor shall comply with the following requirements:

- (a) The Contractor shall designate a pollution prevention coordinator.
- (b) The Contractor shall implement good management practices including good housekeeping practices such as cleaning any or all spots of oil, grease and or gasoline/other fuels on the ground of the Premises that may contribute Hazardous Materials to the stormwater flows that run off from the Premises.
- (c) The Contractor shall be fully responsible for all compliance monitoring and inspections required by the VDEQ. All compliance mandates, consent orders, and/or fines levied by the VDEQ shall be the sole responsibility of the Contractor.

Section 9.12 Remediation of Gasoline, Oil and Hazardous Materials Releases

- (a) The Contractor shall be responsible for immediate spill response for oil, gasoline and other hazardous materials releases to prevent the spilled material from entering land or storm drainage systems. The Contractor shall be responsible for developing and maintaining a Spill Control Plan to include types and quantities of materials stored, spill cleanup equipment inventories, procedures to follow in the event of a spill, employee training, and notification procedures. The Contractor will submit the written plan on or before the commencement date of this Contract and will submit quarterly evidence of employee training sessions in the content of the Spill Control Plan.
- (b) In the event of any release of gasoline, oil, other petroleum product, or other hazardous material to the environment from a UST or AST assigned to the Contractor or otherwise caused by the Contractor, the Contractor shall be responsible for the initial abatement, site characterization and corrective action in accordance with the requirements of the Commonwealth of VDEQ or the EPA as set forth in applicable state and federal regulations. All reports and proposals shall be submitted to the Authority simultaneously with submission to the VDEQ or EPA. The Contractor shall continue remediation for as long as required by VDEQ or EPA and shall remain liable for any future expenses from incomplete remediation of the release as determined by the VDEQ or EPA, which may later be discovered. The Contractor shall be responsible for proper management and disposal of removed contaminated soils and/or product pursuant to all applicable federal, state or local laws or regulations. Contaminated soils shall be disposed of in accordance with VDEQ or EPA regulations. In the event fuel or oil from a Contractor's spill collects in a water quality structure at the Premises, the Contractor shall be responsible for pumping all fuel and contaminated water out of the structure and disposing of them. The Authority shall work with the Contractor to minimize the disruption caused by the remediation activities.
- (c) If the response to a release is not undertaken and completed by the Contractor in a timely manner, the Authority reserves the right to undertake the response itself and the Contractor shall be responsible for all the Authority's expenses incurred in connection with the response to the release of petroleum product plus an overhead fee of twenty five percent (25%).

ARTICLE 10. GENERAL PROVISIONS

Section 10.01 Incorporation of Standard Provisions.

The “Standard Provisions for Concession Contracts” dated June 22, 2017, attached as Exhibit D are hereby incorporated into and made a part of this Contract. In the event any provisions of this Contract are in conflict with any of the Standard Provisions, the language in the Contract shall control.

Section 10.02 Reservation by Authority Regarding Utility Lines and Services

The Authority reserves to itself the right to install, maintain, utilize and repair existing utility and drainage easements over, under or across the Site, and to run new water, sewer, electrical, telephone, gas, drainage and other lines over, under or through the Site and to grant necessary utility easements therefore; provided, however, that in the exercise of such rights, the Contractor's use of its Site shall not be unreasonably impaired and any damage to the Site caused by the Authority as a result thereof shall be repaired without cost to the Contractor. The Authority shall be obligated to repair and fully restore any damage to the ground, pavement, or other improvements on Site resulting from the laying, installation, repair or maintenance or from subsequent leaks or breaks in the lines or services. The Authority shall endeavor to provide a two week notice to the Contractor for new utility line and service installations and prior notice, if possible, for all maintenance and repairs conducted by the Authority or its contractors.

Section 10.03 Notices

All notices to be given to the Parties hereto shall be in writing unless otherwise stated and shall be properly given when personally delivered to the specific address stated below and left with a responsible person, or delivered by overnight service such as Federal Express and, in both instances, an appropriate receipt is obtained, or when sent by facsimile to the facsimile numbers listed below and an appropriate receipt is obtained, or when sent by registered or certified mail addressed to the Parties at their respective addresses hereinbelow given. The Parties may change the information below upon ten (10) days written notice given as herein specified. The date of notice shall be deemed, when notice is mailed, to be the date of mailing so long as the Postal Service certified actual delivery. A refusal to accept delivery from an overnight service or of registered or certified mail notice shall constitute actual delivery hereunder.

- (a) To the Authority for Washington Dulles International Airport:

Airport Manager
Metropolitan Washington Airports Authority
P.O. Box 17045
Washington Dulles International Airport
Washington, DC 20041

with a copy to:

Manager, Airport Administration Department
Metropolitan Washington Airports Authority
P.O. Box 17045

Washington Dulles International Airport
Washington, DC 20041

To the Contractor:

Section 10.04 Confidentiality

Financial information, excluding Gross Receipts data, submitted by the Contractor to the Authority during the Contract Term shall be considered proprietary and confidential and shall not be publicly disclosed or released to other persons outside the Authority.

Section 10.05 Prohibition of Oral Changes

This Contract may not be changed or terminated orally. All changes and terminations must be in writing and mailed in accordance with the terms of this Contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the date first written below.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

By: _____
Colleen Von Hoene
Manager, Airport Administration Department

Date: _____

(Insert Company Name)

By: _____

Title: _____

Date: _____

SECRETARY'S CERTIFICATE

I, _____ certify that I am the Secretary of the Corporation named as Contractor herein; that _____, who signed this Contract on behalf of the Contractor was then _____ of said Corporation, that said Contract was duly signed in accordance with its Schedule of Authorizations, which Schedule was approved by its Board of Directors, and is within the scope of its corporate powers.

Secretary's Signature (Corporate Seal)

EXHIBIT A

PREMISES

EXHIBIT A-1
Rental Car
Joint-Use Bus Loading and Unloading Area

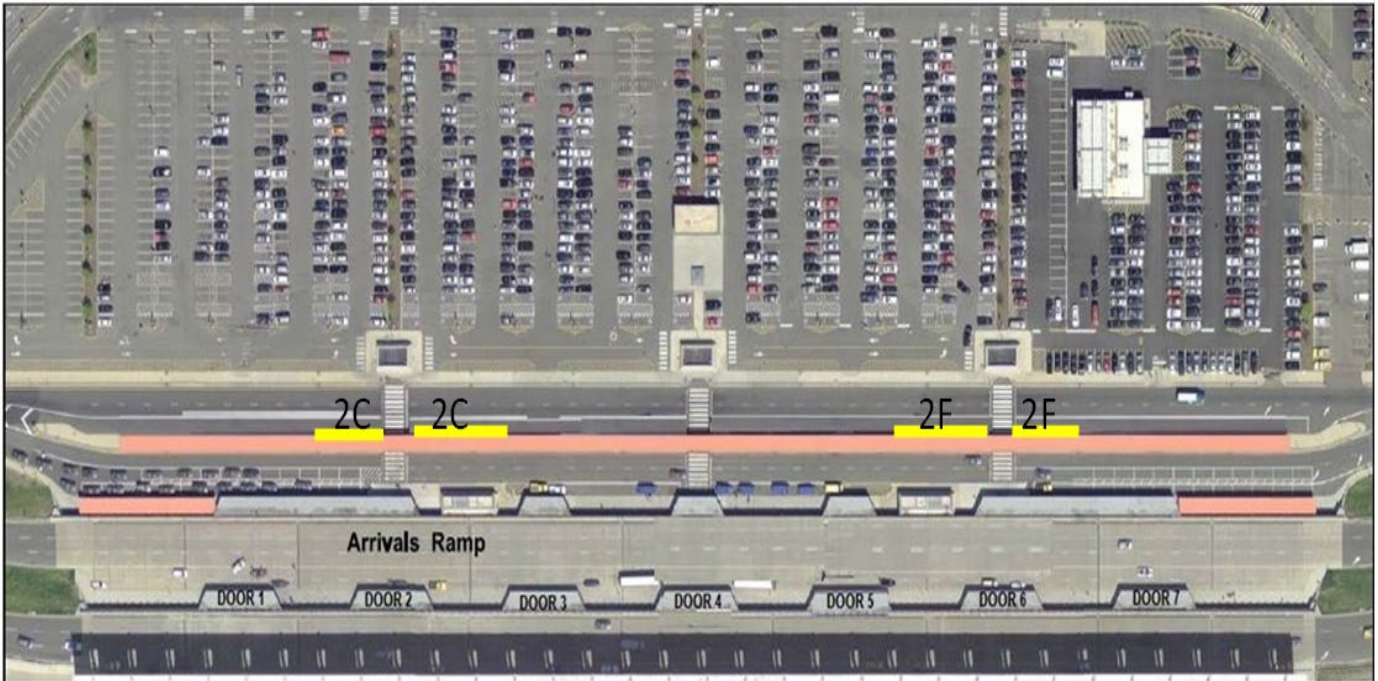


EXHIBIT A-2 Rental Car Site Layout



Square Feet by Site:

Site 1 – 373,638

Site 2 – 486,870

Site 3 – 371,991

Site 4 – 171,140

EXHIBIT A-3

Contractor's Site No. ___ Layout Detail

(To be inserted after award see IFB Attachments IX for drawings)

EXHIBIT B

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY			
<i>Itemized Certified Statement</i>			
MONTH:		YEAR:	
CONTRACTOR:		AIRPORT: Dulles	
CONTRACT NUMBER:			
LEASE TYPE: Conces	REVENUE CODE: Con		
TENANT TYPE: RNTCAR	LOCATION CODE: N3GT00		
GROSS RECEIPTS*		GROSS RECEIPTS DEDUCTIONS*	
Time and Mileage	\$	Sales Taxes	\$
Inter-city/Drop Fees		Adjustment/Credits Claimed (ATTACH EXPLANATION)	\$
Fuel		TOTAL DEDUCTIONS	\$
Personal Accident Insurance	\$	GROSS RECEIPTS Subject to Concession fee	\$
Collision Damage Waiver	\$	PERCENTAGE FEE DUE AUTHORITY	\$
Excess Liability		10% due 20th of the Month	
Other Insurance		Less Minimum Annual Guarantee (1/12th) due 1st of the month	\$
Sales Taxes		Net Amount due to the Authority	\$
Carbon Offsets	\$	Number of RENTAL TRANSACTIONS =	
Vehicle Exchange	\$	Number of RENTAL DAYS =	
Other Vehicle Related Revenue	\$	Customer Facility Charge Collected = \$	
Age Diff	\$	TOTAL AMOUNT DUE = \$	
Add'l Drivers	\$		
Child Seats	\$		
Mobile Phones	\$		
A/P Conc Fee Recovery	\$		
Navigation	\$		
Spec. Equipment	\$		
Vehicle Licensing Fee	\$		
Satellite Radio	\$		
Other	\$		
Credits for Out-of-Pocket Purchases	\$		
TOTAL GROSS RECEIPTS	\$	Average % HEV of Total Vehicles	
Hybrid Electric Vehicle Requirement			

* See Section 5 of Contract: Definition of Gross Receipts and Exclusions

I CERTIFY THAT THIS IS A TRUE AND ACCURATE STATEMENT OF GROSS REVENUES IN ACCORDANCE WITH THE CONCESSION CONTRACT.

Signature: _____

Name and Title: _____

Phone Number: _____

Date: _____

Please mail payment with a copy of the signed statement to the address at right. A late payment fee will be applied, pursuant to contract agreement. Electronic payments are encouraged. Call for wiring instructions.

Metropolitan Washington Airports Authority
P.O. Box 402816
Atlanta, GA 30353-2816
Attention: Accounts Receivable

Mail Copy of payment & Certified Statements to:

Metropolitan Washington Airports Authority
Contract Management Division, MA-236
Washington Dulles International Airport
P.O. Box 17045

Please submit this signed report to the email address listed below. The electronic submittal to the e-mail address satisfies the requirement to report to MWAA with a copy to the Contract Management Division.

Dulles RACstatement@mwaa.com

MWAA Contract Management Office for Washington Dulles International Airport: (703) 572-2915

EXHIBIT C

MONTHLY ACTIVITY CAR RENTAL REPORT

Monthly Activity Rental Car Report

Agreement Number	Mileage Billed	Time & Mileage	Intercity/ Drop Fees	Fuel	Pers Accid. Insurance	Collision Dam Waiv	Excess Liab	Other Ins	Sales Tax
0001	100	\$ 20.00	\$ 5.00	\$ -	\$ 20.00	\$ -	\$ -	\$ -	\$ 20.00
0002	150	30.00	-	-	-	-	-	-	15.00
0003	200	40.00	-	-	-	-	-	-	50.00
0004	300	60.00	-	-	-	50.00	-	-	20.00
0005	400	80.00	-	25.00	25.00	25.00	-	-	20.00
0006	500	100.00	10.00	-	-	-	-	-	25.00
0007	200	40.00	-	-	-	-	25.00	-	20.00
0008	300	60.00	10.00	10.00	-	-	-	-	20.00
0009	300	60.00	-	-	50.00	-	-	-	25.00
0010	200	40.00	-	-	-	-	-	-	25.00
0011	300	60.00	-	-	-	-	-	-	10.00
Total	2,950	\$ 590.00	\$ 25.00	\$ 35.00	\$ 95.00	\$ 75.00	\$ 25.00	\$ -	\$ 250.00

Cont'd

Other Revenue										Total Gross
Age Diff	Add'l Driver	Child Seats	Mobile Ph	A/P Canc Fee Rec	Navig	Spec Eqp	Veh Lic Fee	Other	Total	Receipts
\$ -	\$ 50.00	\$ 50.00	-	\$ 200.00	\$ 25.00	\$ -	\$ -	\$ 50.00	\$ 375.00	\$ 440.00
-	-	-	-	200.00	-	-	-	25.00	225.00	270.00
-	-	-	-	250.00	-	-	-	25.00	275.00	365.00
-	-	-	20.00	150.00	-	-	-	45.00	215.00	345.00
25.00	25.00	-	-	25.00	-	-	-	25.00	100.00	275.00
-	-	25.00	-	100.00	-	-	-	10.00	135.00	270.00
-	-	-	-	25.00	-	-	-	25.00	50.00	135.00
10.00	10.00	10.00	10.00	100.00	-	-	-	25.00	165.00	265.00
-	-	-	-	25.00	-	50.00	-	25.00	100.00	235.00
-	-	-	-	10.00	-	-	-	10.00	20.00	85.00
-	-	-	-	10.00	-	-	-	10.00	20.00	90.00
\$ 35.00	\$ 85.00	\$ 85.00	\$ 30.00	\$ 1,095.00	\$ 25.00	\$ 50.00	\$ -	\$ 275.00	\$ 1,680.00	\$ 2,775.00

Cont'd

Deductions				
Sales Tax	Fuel	Adjust/ Credits	Total Deductions	Gross Rec Subj to Concess Fee
\$ 20.00	\$ -	\$ -	\$ 20.00	\$ 420.00
15.00	-	-	15.00	255.00
50.00	-	-	50.00	315.00
20.00	-	-	20.00	325.00
20.00	25.00	-	45.00	230.00
25.00	-	-	25.00	245.00
20.00	-	-	20.00	115.00
20.00	10.00	10.00	40.00	215.00
25.00	-	-	25.00	210.00
25.00	-	-	25.00	60.00
10.00	-	-	10.00	80.00
\$ 250.00	\$ 35.00	\$ 10.00	\$ 295.00	\$ 2,470.00

Perc Fee Due Authority	Min Monthly Gtee	Net Amt Due Authority	Number of Rental Trans	Number of Rental Days	Cust Contract Fee	Total Amt Due
\$ 247.00	\$ 250.00	\$ -	11	25	\$ 62.50	\$ 62.50

NOTE : The totals on this report must reconcile to the totals on the Monthly RAC Concession Certified Statement
The above report is an example of what should be submitted monthly

EXHIBIT D
STANDARD PROVISIONS

Standard Provisions
for
Concession Contracts

June 22, 2017

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Article 1. Definitions and Interpretation

1.01 Definitions. Except as otherwise clearly indicated by the context, the following words, terms and phrases wherever used in this Contract shall for the purpose of this Contract have the following meanings:

"Airport" or "Airports" means either or both Ronald Reagan Washington National Airport (DCA) or Washington Dulles International Airport (IAD) as the context of this Contract shall indicate.

"Airline" shall mean a company operating scheduled air transportation services that has entered into a standard airline use and lease agreement with the Authority.

"Authority" means the Metropolitan Washington Airports Authority, the entity that operates and controls Washington National and Washington Dulles International Airports, or its successor.

"Contracting Officer" means the Vice President, Office of Customer and Concessions Development for the Authority, or, for the ground transportation, rental car, Fixed Base Operator or parking concession contracts, the Manager of Airport Administration for the Airport at which the contract will be performed, or such other authorized individual to whom contracting authority is properly delegated in accordance with Authority delegations of authority. The Contracting Officer is authorized to change any of the terms and conditions of the Contract and is also the party responsible for the on-site administration and enforcement of the terms and conditions of this concession Contract in all areas.

"Contractor" means the person or entity that has been awarded the right to establish and operate the Airport concession activity that is authorized by this Contract.

"Day" means business day unless otherwise specified.

"Expiration Date" means the scheduled last day of the period of this Contract. If the period of this Contract is extended, the Expiration Date shall be the scheduled last day of the period so extended. If the Contract is canceled or terminated, prior to the originally fixed Expiration Date, then the Expiration Date shall be the effective date on which this Contract is canceled or terminated, as established by the Authority; provided, that if this Contract is canceled or terminated prior to the originally fixed Expiration Date for default by the Contractor, this definition shall not be construed to preclude the Contractor's liability to the Authority for the period beyond the effective date of the termination or cancellation.

"Fixed Improvement" means any alteration, addition, annexation or improvement to the Premises or a portion thereof that cannot be removed or changed without material damage to, or destruction of, either itself or the Premises or a portion thereof.

"Gross Receipts" means the total amount received or realized by, or accruing to the Contractor from all cash or credit sales at the Airport of services, materials, or other merchandise made pursuant to the privileges authorized by this Contract. Losses due to "bad" checks or credit cards are the responsibility of the Contractor and shall not be deducted from gross receipts. A sale shall be deemed made at the Airport if: (1) the merchandise or services are ordered at the Airport and filled at the Airport or elsewhere; or (2) if the merchandise or services are ordered elsewhere, but the order is filled at the Airport or the merchandise or services are delivered from the Airport. All revenue shall be deemed to be received at the time of determination of the amount due the Contractor for each transaction, whether for cash or credit, and not at the time of billing or payment, unless otherwise specifically stated in this Contract; PROVIDED, HOWEVER, Gross Receipts exclude (1) refunds made by the Contractor to its customers for merchandise returned to the Contractor and (2) any taxes imposed by law which are separately stated and paid by the customer, and directly payable to the taxing authority by the Contractor.

"Interior Maintenance" means the maintenance and keeping in good repair of the assigned Premises. This includes, but is not limited to, janitorial services, removal of trash, pest control, painting and maintenance of wall coverings, relamping and maintenance of light fixtures, interior and exterior washing of windows, repainting of Premises, and replacement of floor covering. It does not include maintenance and repairs required because of structural defects.

"Operating Equipment" means furniture, furnishings, special lighting fixtures, carpeting, draperies, decorations or other special finishing work, signs, appliances and trade fixtures and equipment that is furnished, installed or used by the Contractor in its operations on the Airport. It does not include Fixed Improvements, or repair or maintenance of Operating Equipment or Fixed Improvements or displays or decorations that are of a seasonal or temporary promotional nature.

"Premises" includes the areas at the Airports that the Contractor is authorized to use under this Contract, including any alterations, additions, repairs or Fixed Improvements made thereto.

"President" means the President and Chief Executive Officer, Metropolitan Washington Airports Authority, or such person or persons as may from time to time be authorized by the President to act for the President on matters pertaining to this Contract.

1.02 Interpretation. In this Contract, unless the context otherwise requires:

1. The terms "hereby," "herein," "hereof," "hereto," and "hereunder" and any similar terms used in this Contract refer to this Contract.
2. Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies as well as natural persons.
3. Any headings preceding the text of the Articles and Sections of this Contract, and any table of contents, shall be solely for convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect.
4. Words importing the male gender shall include the female gender and vice versa.
5. Words importing the singular shall include the plural and vice versa, unless the context clearly indicates otherwise.
6. A provision of this Contract that prohibits a party from performing an action shall be construed so as to prohibit the party from performing the action or permitting others to perform the action.
7. A provision of this Contract that requires a party to perform an action shall be construed so as to require the party to perform the action or cause the action to be performed.
8. "Including" means "including but not limited to."
9. The parties agree that this Contract sets forth the entire Contract between the parties, and that there are no promises or understandings other than those stated herein. Except as otherwise provided in this Contract, none of the provisions, terms, and conditions contained in this Contract may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.
10. All attachments to this Contract shall be deemed to be a part of this Contract.

11. In the event of a conflict between the body of the Contract and these Standard Provisions, the Contract shall take precedence.

Article 2. Incorporation of Proposal and Rights In Data

2.01 Incorporation of Proposal. Unless otherwise provided in this Contract, the Contractor's proposal is hereby made a part of the Contract. The Contractor's proposal may be subject to public disclosure in accordance with the Authority's Freedom of Information Policy. Notwithstanding the foregoing, however, the Authority will not publicly disclose commercial or financial information contained in the proposal which the Contractor specifically designates as confidential and provides the Authority with specific reasons protection is necessary.

2.02 Rights in Data. If the Contractor is required during the period of the Contract to submit data regarding revenue generated under the Contract, the Authority has the right to use such data in contract solicitations and the data may also be subject to public disclosure pursuant to the Authority's Freedom of Information Policy.

Article 3. Use of Premises and Operation of Concession

3.01 Use of Premises. The Contractor shall use the Premises only to operate the concession specified herein. No other uses are permitted unless previously authorized by the Authority in writing, which authorization may be withheld in the Authority's sole discretion.

3.02 Operation of Concession. Except as otherwise authorized by the Authority in writing, the Contractor shall:

1. Operate this business during such hours as may be deemed reasonably necessary by the Authority, or as specifically stated elsewhere herein.
2. Keep its Premises used for retail business fully staffed with knowledgeable, helpful, courteous, considerate and efficient employees. The Contractor shall require its employees to observe a strict impartiality as to services. The Contractor shall prohibit and restrain its agents, servants, and employees from loud, noisy and/or persistent announcement of its services on or about the Premises or the Airport.
3. Make every reasonable and lawful effort to maintain, develop and increase the business conducted by it under this Contract. The Contractor shall use its best efforts to achieve a maximum sales volume for the concession. It further agrees not to divert, or cause or allow to be diverted, any business from the Airport.
4. Use for office, clerical, storage or other non-selling purposes only such space in the Premises as is reasonably necessary for Contractor's business therein, and shall not perform any office, clerical, storage or other functions in the Premises for any other concession, business or store.
5. Not use the space outside or adjacent to the Premises for displays, sales or any other similar undertaking.
6. Not place any load on any floor in the Premises that exceeds the floor load per square foot that such floor was designed to carry.
7. Not use any roof over the Premises for any purpose. Contractor shall not use exterior walls of the Premises except that the Contractor may use any display windows that are part of the Premises and except that the Contractor may erect signs approved by the Contracting Officer.
8. Not use the Premises for any illegal trade or business, or for any other illegal purpose.

9. The Contractor shall not employ or retain in its service, or permit to remain upon the Premises, any person reasonably found by the Contracting Officer to be objectionable or unfit for such employment.
10. Not install or have installed or allow to be installed upon the Premises any sign, either lighted or unlighted, display, video, poster, magazine or other printed materials containing advertising. The Contractor expressly acknowledges that the Authority maintains separate exclusive advertising concessions at the Airport for the dissemination of local and national advertising and the distribution of a complimentary magazine relating to the Airports. The Contractor warrants that it shall not engage in any conduct which conflicts with such other concessions. Any sign, video, poster, magazine or printed material containing advertising, or other displays not approved by the Authority shall be removed from the Premises by the Contractor within one (1) day after notice from the Authority. The Authority may enter the Premises and remove the unapproved item(s) if the Contractor does not remove the item(s) itself.
11. Not install vending machines, public telephones and other similar coin-operated equipment on the Premises unless authorized by the Contracting Officer.

3.03 Merchandise; Prices to be charged. The Contractor shall keep the concession continuously stocked with high quality, saleable merchandise and establish reasonable prices to be charged for the products and services to be sold or exchanged that are consistent with the pricing set forth in its proposal. The Contractor may, subject to the written consent of the Contracting Officer, grant complimentary or reduced rates to certain persons as are customary in businesses of similar character.

1. Reasonableness of prices shall be judged by comparison with the Contractor's pricing contained in its proposal and by comparison to prices currently charged for comparable goods or services furnished or sold outside the Airport in the Washington, DC Metropolitan Area under similar conditions with due allowance for accessibility, availability, cost of labor and materials, type of patronage and other conditions customarily considered in determining charges. However, consideration may also be given to such other factors as the Contracting Officer may reasonably deem significant. The Contractor shall within forty-eight (48) hours after notice from the Contracting Officer, reduce any prices judged by the Contracting Officer to be unreasonable under this Section 3.03.
2. The Contractor shall sell only the merchandise and services specifically authorized herein and provide the Operating Equipment, Fixed Improvements, management, personnel, goods and commodities necessary therefor. The Authority reserves the right to determine the nature and type of merchandise and services that may be sold or furnished by the Contractor. The Contractor shall, within forty-eight (48) hours after receipt of written notice from the Contracting Officer, discontinue the sale of any product or service that the Contracting Officer reasonably determines to be in violation of the rights granted hereunder.

3.04 Insurance Rate. The Contractor shall comply with all insurance requirements relating to or affecting the Premises. If insurance premiums payable by the Authority for the Premises or the Airport exceed the rate that would have been applicable, because of a failure by the Contractor to comply with insurance requirements, or as a result of or in connection with the use to which the Premises are put by the Contractor (if such use is other than a use authorized under this Contract), Contractor shall, upon demand by the Authority, immediately reimburse the Authority for the excess insurance premiums paid by the Authority.

3.05 Hazardous Materials. Any Hazardous Materials shall be handled, stored, transported and disposed of in accordance with all applicable Federal, state and local statutes, ordinances, and regulations. The term "Hazardous

Materials" shall mean any substance, chemical, or waste which at any time shall be defined as hazardous, toxic, or dangerous under applicable federal, state or local laws or regulations that govern (1) the existence, cleanup, or remedy of contamination on property; (2) the protection of the environment from spilled, deposited or otherwise emplaced contamination; (3) control of hazardous wastes; or (4) the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

Article 4. Condition of Premises, Alterations, Discharge of Liens

4.01 No Representations or Warranties. The Authority makes no representations, covenants or warranties with respect to the Premises except as expressly set forth in this Contract.

4.02 Construction, Alterations or Repairs to Premises.

1. Contractor shall not make or permit anyone to undertake any construction or make any alterations, additions or improvements, structural or otherwise, or install any Fixed Improvements or Operating Equipment (hereinafter collectively referred to as "Alterations"), in or to the Premises without the prior written consent of the Contracting Officer. Prior to the commencement of work on any Alterations, the Contracting Officer's written approval must be obtained as to comprehensive plans and specifications showing all the proposed Alterations, including detailed descriptions of the effect of the proposed Alterations on the mechanical and electrical systems of the building in which the Premises are located and the compatibility of the Alterations with the design and general character of the Airport and the area in which the Premises are located. The Authority shall have the right to stop such work if the Authority or its designated agent determines that such work is not being done in a workmanlike manner or in accordance with the plans and specifications provided to the Authority. In such event, the Contractor shall promptly correct the problem that gave rise to the work stoppage. If the Contractor fails to do so within a time period determined by the Authority to be reasonable, then the Authority may, at its sole option, and at Contractor's expense, correct such problem(s), and complete the Alterations.
2. Said Alterations shall in all respects comply with the Virginia Uniform Statewide Building Code, the Authority's Design Manual; Authority regulations and directives; Federal Aviation Administration regulations, orders and advisory circulars; federal and state environmental regulations; the Authority's Construction Safety Manual; Authority insurance requirements; Virginia Occupational Safety and Health standards; applicable food and beverage codes and other health regulations (Arlington, Fairfax or Loudoun County, U.S. Public Health Service); and any other applicable federal, state and local laws and regulations. All construction, alterations or repairs to the Premises shall also be required to meet any other standards specifically referenced or stated elsewhere in this Contract.
3. Within a reasonable time after this Contract has been fully executed, the Contractor shall apply to the appropriate authorities for any permits that may be required in connection with the Alterations to be done by the Contractor pursuant to this Contract. The time in which the Contractor is required to comply with this subparagraph shall take into account the time needed to develop and obtain the Contracting Officer's approval of plans, drawings and specifications.

4.03 Discharge of Liens. If any mechanic's or materialman's lien is filed against the Premises as a result of any work or act of the Contractor, the Contractor shall discharge the lien within twenty (20) days after the filing of the lien. In addition to any other remedies available to the Authority, if the Contractor fails to discharge the lien, the Authority may bond or pay the lien or claim for the account of the Contractor without inquiring into the validity thereof. The Contractor is required to reimburse the Authority for any funds so spent by the Authority.

4.04 Incorporation of Plans, Drawings and Specifications. Upon approval, the final plans, drawings and specifications associated with any Alterations shall be deemed to be a part of this Contract. All Alterations done by the Contractor pursuant to this Contract shall be consistent with the plans, drawings and specifications approved by the Contracting Officer for this Contract.

4.05 Fire Extinguishers. The Contractor agrees to supply and maintain such adequate and readily accessible fire extinguishers, approved by fire underwriters for the protection of the Premises, it being understood and agreed that the Contractor shall not be required to maintain equipment necessary to fight successfully a fire of major proportions in the Premises.

4.06 Locks. The Contractor agrees to install a Best lock keying system compatible with the Authority's system on all entrances to the Premises and mechanical room entrances, for police, security, fire protection and maintenance reasons.

Article 5. Maintenance and Utilities

5.01 Maintenance by Contractor. Contractor shall keep the Premises (including but not limited to, surfaces of walls, windows and window casings and sills, both inside and outside, ceilings, floors, inside and outside doors and door jambs, and interior and exterior lighting) and Fixed Improvements and Operating Equipment located within the Premises in safe, neat, and clean condition and good order and repair, cause no waste or injury thereto, shall make any necessary repairs or replacements, and will, at the expiration or other termination of this Contract, surrender the same, broom clean, in the same order and condition in which they are on the commencement date of this Contract, ordinary wear and tear excepted. Maintenance, repair, and replacement of all Operating Equipment and/or Fixed Improvements within or for the exclusive benefit of the Premises, including but not limited to, air conditioning or heating equipment (except at Dulles Airport), bathroom fixtures, or any other type of equipment or improvements, shall be the sole responsibility of Contractor. The Contractor shall promptly undertake any maintenance, or replacement as may be considered necessary by the Authority and shall be done with material and personnel approved by the Contracting Officer. The Contractor shall also keep and maintain in good order any loading platform, truck dock and/or truck maneuvering space used by it.

5.02 Releases of Hazardous Materials. Promptly respond to and clean up any release or threatened release of any Hazardous Material (see definition in Article 3.05) into the drainage systems, soils, groundwater, waters or atmosphere, in a safe manner, in accordance with applicable federal, state, and local statutes, ordinances, and regulations, and as authorized or approved by all federal, state or local agencies having authority to regulate the permitting, handling and cleanup of Hazardous Materials. The Authority and the Airport Fire Department shall be notified immediately of any release or threatened release of any Hazardous Material.

5.03 Structural Maintenance by the Authority. The Authority shall maintain in good repair the foundation, sprinkler system, exterior structural walls excluding doors, windows, and interior surfaces of any walls, roof, utility distribution systems leading to the Premises, and the common areas adjacent to the Premises. Reasonable notice and opportunity to cure must be provided by the Contractor to the Authority in the event the Contractor believes that the Authority has failed to comply with this provision before the Authority may be considered in default. The Authority shall not be required to undertake any maintenance or repair required by reason of any act or omission of the Contractor, or caused by any alteration, addition, construction, or improvement by the Contractor.

5.04 Facilities and Services to be provided by the Authority. The Authority shall:

1. Provide outlets as they presently exist, or which the Authority may approve in writing to be installed at the cost and expense of the Contractor, for public utility services, including light, electric power, gas, running water, heat, air conditioning, CATV, data lines and telephone for such area.

2. Provide reasonable and normal requirements of heat, air conditioning, electricity and water to the Premises through such utility distribution system as may exist in the building in which the Premises are located. The Authority shall not be liable for failure to furnish or for suspension or delay in furnishing any or all of such utilities or services for any cause whatsoever.

5.05 Contractor Undertakings: Utilities. The Contractor covenants and agrees that, at its own cost and expense, it will arrange for, and pay for, all utilities consumed by it during the period of the Contract except for those utilities specified by this Contract to be provided by the Airport at no additional cost to the Contractor. The Authority shall have the right to charge the Contractor, and all other users of public utilities systems (including sewerage systems) serving Airport users, a reasonably allocated share of any costs that the Authority incurs in providing these services. Such charges shall be apportioned among the Contractor and all other users of the Airport systems, in a manner reasonably calculated to distribute such cost fairly in proportion to the respective use of such systems.

Article 6. Fixed Improvements and Operating Equipment

6.01 General. The Contractor covenants and agrees that, at its own cost and expense, it will provide and install all Fixed Improvements and Operating Equipment required for proper and adequate furnishing and performance of the concession services and goods to be provided under the terms of this Contract. All such installations are subject to the Contracting Officer's approval as specified in Article 4.

6.02 Title. Except as otherwise specifically provided herein, title to any Fixed Improvements and Operating Equipment installed by or assigned to the Contractor under this Contract, shall rest with the Contractor during the period of the Contract. The Contractor shall be responsible for maintaining such Fixed Improvements and Operating Equipment in good condition, ordinary wear and tear excepted. The Contractor shall not demolish, replace or modify Fixed Improvements or Operating Equipment already in place or installed by it unless otherwise authorized by the Contract or by prior written permission from the Authority. At the expiration or termination of this Contract, title to all Fixed Improvements and Operating Equipment shall vest in the Authority or its designee, unless otherwise authorized by the Contract. The Contractor agrees to execute all documents requested and deemed necessary by the Authority as evidence of said transfer of title.

6.03 Certified Statement of Costs of Fixed Improvements and Operating Equipment. Except as otherwise provided herein, within ninety (90) days after the substantial completion of the Fixed Improvements and Operating Equipment, the Contractor shall furnish to the Contracting Officer a certified statement setting forth in detail the total cost of the Fixed Improvements and Operating Equipment. The total cost of Fixed Improvements and Operating Equipment to be included on the statement is limited to construction, equipment and material costs, architectural and engineering fees (for Fixed Improvements only), taxes, freight fees, and performance and payment bond premiums attributable to construction. Overhead, "in-house", or personnel costs of the Contractor or its affiliates are not allowable except as otherwise provided herein. The costs of Fixed Improvements and Operating Equipment are subject to Authority audit.

Article 7. Authority Performance of Contractor Obligations

The Authority reserves the option with regard to maintenance, alterations, repairs, or improvements, if any, to be made by the Contractor under this Contract, to perform, or have performed, such maintenance, alterations, repairs or improvements itself and charge the Contractor the cost and expense thereof, whenever:

1. The Contractor has failed to take all practicable steps promptly to perform such maintenance, alterations, repairs, or improvements, after five (5) days written notice from the Authority requiring the same; or,
2. Performance of any such maintenance, alterations, repairs or improvements by other than the Authority is prohibited by law.

Article 8. Defaults; Termination by the Authority

8.01 General. Each of the following events shall constitute a Default:

1. The occurrence of an event of insolvency of the Contractor, including, but not limited to, an assignment for the benefit of creditors.
2. The occurrence of any act that operates to deprive the Contractor of the rights, powers and privileges necessary for the proper conduct of the concession.
3. Failure to operate the concession for a period of five consecutive days without prior written authorization from the Authority.
4. The assignment of the Contractor's interest in this Contract by operation of law.
5. The failure of the Contractor to perform, keep or observe any of the terms, covenants and obligations under the Contract and the failure continues for ten (10) days after written notice by the Authority of such failure.

8.02 Notices of Termination. This Contract is subject to the limitation that, if a Default occurs, the Authority may give to the Contractor a Notice of Termination of this Contract. The Notice shall specify the termination date. The termination date may occur no sooner than seven (7) calendar days from the date of the Notice. In the event the Default involves a failure to perform obligations and such failure occurs more than once in any twelve-month period, the Authority shall not be required during the remaining period of the Contract to provide any notice and opportunity to cure prior to issuing a Notice of Termination. At the termination date, the period of this Contract shall expire and all of the rights and interests of the Contractor under this Contract shall end. The Contractor shall then surrender the assigned Premises to the Authority. The Contractor's liability under all of the provisions of this Contract shall continue as though the termination had not occurred, however.

8.03 Re-entry by the Authority. If this Contract is terminated because of a Default, the Authority or its agents, employees or designee may immediately or at any time thereafter, re-enter the Premises and remove the Contractor, Contractor's agents, subcontractors, invites and property from the assigned premises. Re-entry and removal may be affected by summary dispossess proceedings, by any suitable action or proceeding at law, by force, or otherwise. The Authority shall be entitled to the benefits of all provisions of law respecting speedy recovery of the assigned Premises held over by the Contractor or the proceedings in forcible entry and retainer. Contractor waives any right to the service of any notice of the Authority's intention to re-enter provided for by any present or future law. The Authority shall not be liable in any way in connection with any action it takes pursuant to this subparagraph. The Contractor's liability shall survive the Authority's re-entry, the institution of summary proceedings, and the issuance of any warrants with respect thereto.

8.04 Contractor Remains Liable. If this Contract is terminated under this Article, the Contractor shall remain liable (in addition to accrued liabilities) to the extent legally permissible for the amounts that the Contractor would have been required to pay to the Authority under this Contract had the contract not been terminated. The Contractor shall pay, as damages, the difference between amounts obtained by adding the amounts owed to the Authority plus the Authority's expense in reentering or repossessing the Premises, putting the Premises in proper repair, altering the assigned Premises for a new contractor, protecting the Premises, and contracting expenses to obtain a new contractor, minus the revenue to be paid to the Authority by a new contractor occupying the Premises for the remaining contract period. In addition, the Contractor shall pay to the Authority such sums as the court which has jurisdiction there over may adjudge as reasonable attorney's fees with respect to any lawsuit or action instituted by the Authority to enforce the provisions of this Contract. If this Contract requires the payment of a percentage of gross receipts to the Authority, the percentage of gross receipts owed after a Default shall be based upon the

average of the Contractor's gross receipts under this Contract during the last twelve months of the contract or during the period of the contract, whichever is shorter.

8.05 Replacement Contractor. The Authority may enter into a new contract with another contractor that will occupy the Premises for all or any part of the unexpired portion of the period of this Contract or for any longer period. The Authority has the sole and absolute discretion with respect to the selection of a new contractor and the use of the Premises. The Authority shall be under no obligation to enter into or attempt to enter into a new contract for the Premises.

8.06 Cure by Authority. If the Contractor is in Default under this Contract, the Authority may cure the Default at any time through any action deemed appropriate by the Authority for the account and at the expense of the Contractor. Contractor shall reimburse the Authority for any amounts expended by the Authority in connection with the cure. Such cure shall not constitute a waiver of the Authority's rights with respect to that or any other Default, unless otherwise expressly stated in writing by the Authority.

8.07 No Waiver by Authority. The Authority's rights and remedies set forth herein shall be in addition to any other right and remedy now and hereafter provided by law. All rights and remedies shall be cumulative and not exclusive of each other. No delay by the Authority in exercising a right or remedy shall constitute a waiver or acquiescence to the Default. No waiver of a Default shall be effective unless it is in writing. No waiver of a Default shall extend or affect any other Default, excuse future similar Defaults, or impair any right or remedy with respect thereto.

8.08 Right of Authority to Lien. The right to lien on the inventory and other property of the Contractor is expressly granted to the Authority in any case where the Contractor fails to pay amounts due to the Authority under this Contract.

8.09 No Authority Liability for Damage. The Authority shall not be liable for any damage, including, but not limited to, loss of profit, and the Contractor shall not make a claim of any kind whatsoever against the Authority, its agents or representatives, by reason of any action taken pursuant to this Article.

8.10 Bankruptcy or Reorganization of the Contractor. To the extent that the Authority's right to terminate this Contract in accordance with this Article is determined to be unenforceable under 11 U.S.C. Section 101 et.seq. as amended from time to time (the "Code"), or under any other statute, then Contractor as well as any trustee for the estate of Contractor agree to: (1) perform promptly every obligation of Contractor under this Contract (other than non-monetary obligations of the Contractor that are not capable of being performed due to the filing of a bankruptcy case by the Contractor under the Bankruptcy Code) until this Contract is either rejected, assumed or deemed rejected under the Bankruptcy Code; (2) pay the post-petition monthly payments of rent and other fees and expenses as and when such payments become due under the Contract; (3) assume or reject this Contract within the minimum period of time provided for so doing under the Bankruptcy Code and in connection therewith, Contractor hereby waives any right to request extensions of such time period unless Authority agrees in writing to permit an extended time period; (4) provide the Authority at least thirty (30) days prior written notice of any intended filing relating to its assumption of this Contract and in such notice, provide detail regarding any proposed assignee of the Contract, including financial information regarding such intended assignee; (5) upon the assumption of the Contract, cure any pre-petition default of Contractor under the Contract and provide Authority with adequate assurance regarding the ability of Contractor to continue to comply with the Contract; (6) provide the Authority adequate assurance of future performance under the Lease by the Contractor or Contractor's assignee. Nothing herein shall be deemed a consent by Authority regarding Contractor's ability to assign this Contract to any third party without Authority's written consent. For purposes of this paragraph, "adequate assurance of future performance" shall be determined by the Authority in its sole discretion, provided however that Authority shall be reasonable in such determination. If there exists any post-petition default under the Contract, Contractor agrees to consent in writing to relief from the automatic stay under the Bankruptcy Code in favor of the Authority to enable Authority to terminate the Contract as expeditiously as possible. (1) to perform promptly every obligation of Contractor under this Contract until this Contract is either rejected, assumed or deemed rejected under the Code;

(2) to pay on a current basis, as set forth herein, the monthly payments; (3) to reject or assume this Contract within sixty (60) days of a filing of a petition under the Code; (4) to give the Authority at least forty-five (45) days prior written notice of any proceeding relating to assumption of this Contract; (5) to cure or provide adequate assurance of a prompt cure of any default of Contractor under this Contract; (6) to provide to the Authority adequate assurance of future performance under the Contract.

Article 9. Laws, Regulations and Compliance

9.01 Laws and Regulations. The Contractor and the Authority shall each comply with all applicable Federal, state and local laws, codes, regulations, including regulations of the Authority, ordinances, rules and orders now or hereafter enacted.

9.02 Safety and Fire Regulations. The Contractor shall conduct its operations and activities under this Contract in compliance with all safety regulations and directives of the Authority and applicable Federal, state and local laws. The Contractor shall procure and maintain such fire prevention and extinguishing devices as required by the Authority and shall at all times be familiar with and comply with the fire regulations and orders of the Authority.

9.03 Airport Security. The Contractor shall be familiar with and conduct its operations in accordance with all regulations and directives of the Authority and the Transportation Security Administration, and any other federal, state or local government having jurisdiction over the airport, with respect to the maintenance of airport security.

9.04 Authority Issuance of Rules and Regulations. The Authority shall have the right to prescribe, in its sole discretion, such reasonable rules and regulations that in the Authority's reasonable judgment are necessary or appropriate for the general well-being, safety, security, care, and cleanliness of the Airport.

9.05 Compliance by Other Concessionaires and Tenants. The Authority shall, whenever possible, make reasonable efforts to obtain uniform compliance with the Authority's rules and regulations; however, the Authority shall not be liable to the Contractor for any violation or non-observance of such rules and regulations by any user, tenant, concessionaire, invitee, licensee, or trespasser at the Airports nor shall such violation or non-observance by a user, tenant, concessionaire, invitee, licensee, or trespasser at the Airports, constitute a waiver of the Contractor's obligation to comply with Authority rules and regulations.

9.06 Notification of Theft or Damage. The Contractor shall inform the Authority and the Airport Police Department, in writing, within twenty-four (24) hours after the Contractor becomes aware of any damage to or alleged theft of Authority or private property.

Article 10. Damage or Destruction of the Premises

10.01 Partial Damage. If all or a portion of the Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, but not rendered untenable, the same will be repaired with due diligence by the Authority at its own cost and expense, and there will be no abatement of rent, subject to the limitations of Section 10.04; provided, however, that if the damage is caused by the act or omission of the Contractor, its sublessees, agents, or employees, to the extent that such damage is not covered by insurance, the Contractor shall be responsible for reimbursing the Authority for the cost and expense incurred in such repair.

10.02 Extensive Damage. If the damages referred to in Section 10.01 shall be so extensive as to render the Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by the Authority at its own cost and expense, subject to the limitations of Section 10.04. An appropriate portion of the concession fee shall abate unless the damage is caused by the act or omission of the Contractor, its subcontractors, agents or employees. If the damage is caused by the act or omission of the Contractor, its subcontractors, agents or employees, to the extent that such damage or destruction is not covered by insurance, the Contractor shall be responsible for reimbursing the Authority for the cost and expense incurred in such repair.

10.03 Complete Destruction.

1. Except as stated in Section 10.03(2), in the event the Premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty or so damaged that they are untenable and cannot be repaired or replaced except after more than thirty (30) days, the Authority shall undertake the repair, replacement, and reconstruction of the Premises. All or a portion of the concession fees shall abate as of the time or such damage or destruction until such time as said Premises are fully restored and certified by the Authority's Engineers as ready for occupancy, provided, however, if within twelve (12) months after the time or such damage or destruction said Premises shall not have been repaired or reconstructed, the Contractor may give the Authority written notice of its intention to cancel this Contract in its entirety.
2. Notwithstanding the foregoing, if said Premises are completely destroyed as a result of the act or omission of the Contractor, its subcontractors, agents or employees, rentals and fees shall not abate and the Authority may, at its discretion, require the Contractor to repair and reconstruct the Premises within twelve (12) months of such destruction and pay the costs therefor; or the Authority may repair and reconstruct the Premises within twelve (12) months of such destruction and the Contractor shall be responsible for reimbursing the Authority for the costs and expenses incurred in such repair to the extent such costs and expenses exceed the insurance proceeds.

10.04 Limits of the Authority's Obligations Defined. It is understood that, in the application of the foregoing Sections in this Article, the Authority's obligations shall be limited to repair and reconstruction of the terminal buildings, to, as nearly as possible, a condition and quality as existed at the commencement of their operations hereunder. Redecoration and replacement of furniture, fixtures, equipment and supplies shall be the responsibility of the Contractor and any such redecoration and refurbishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

Article 11. Additional Bond Security

When the Contract requires the posting of a bond, guarantee or security, the Contractor shall promptly furnish additional security required to protect the Authority under this Contract when:

1. Any surety upon any bond required furnished with this Contract becomes unacceptable to the Authority;
2. Any surety fails to furnish reports on its financial condition as required by the Authority; or
3. The revenue payable to the Authority by the Contractor is increased so that the penal sum of any bond or guarantee as set forth in the contract becomes inadequate in the opinion of the Contracting Officer.

Article 12. Damage and Injury; Indemnification and Insurance

12.01 Damage Caused by the Contractor. All damage to the Premises or to the Airport in any way caused by the Contractor or its agents, employees, contractors, visitors, guests or invites, shall be repaired at the expense of the Contractor. In the event of such damage, the Authority shall have the option to make such repairs as are necessary, and any charge, costs, or damages so incurred by the Authority shall be paid by the Contractor.

12.02 Indemnification - General. The Contractor shall defend, indemnify, and hold the Authority and its directors, officers, agents and employees completely harmless from and against any and all claims, suits, demands, actions, liabilities, losses, damages, judgments, or fines, including all reasonable costs for investigation and defense thereof

(including, but not limited to, attorney fees, court costs and expert fees), of any nature whatsoever arising out of the Contractor's conduct of its business on the Airports, or in its use or occupancy of the Premises. The Authority shall give to the Contractor reasonable notice of, and an opportunity to defend against, any such claims or actions, and the Authority shall take reasonable actions to mitigate its damages.

12.03 Indemnification - Violation of Laws. The Contractor shall defend, indemnify, and hold the Authority, and its agents, officers, and employees, completely harmless from and against any claim, suit, demand, action, liability, loss, damage, judgment, fine, or civil penalty and all costs and expenses of whatever kind or nature (including, but not limited to, attorney fees, court costs and expert fees) associated therewith in any way arising from or based upon the violation of any Federal, state, or municipal laws, statutes, resolutions, or regulations by the Contractor, its agents, employees, subcontractors, or sublessees, in conjunction with the Contractor's use and/or occupancy of the Airport. The Authority shall give the Contractor reasonable notice of, and an opportunity to defend against, any such claims or actions, and the Authority shall take reasonable actions to mitigate its damages.

12.04 Indemnification - Airport Security. If the Authority is deemed to be in noncompliance with laws or regulations governing access to secure areas of the Airport and said non-compliance is the result of or due to the act or omission of the Contractor or of any of the Contractor's employees, agents, subcontractors or sublessees, and such breach results in an action against the Authority by the Transportation Security Administration or any other federal, state or local government with authority over security at the airport, the Contractor agrees to reimburse the Authority for all expenses, including reasonable attorney fees incurred by the Authority in defending against the action and for any fine, penalty or settlement amount paid by the Authority as a result of the action. The Authority shall give the Contractor reasonable notice of any allegation, investigation, or proposed or actual penalty that relates to acts or omissions of the Contractor.

12.05 Survival of Indemnification. The provisions of Sections 12.02, 12.03 and 12.04 shall survive the expiration, termination, or early cancellation of this Contract.

12.06 Notice by Contractor; Types of Insurance Coverage. Notwithstanding the above indemnification, the Contractor shall give the Authority notice of any matter that may be covered by the indemnification and shall forward to the Authority every demand, notice, summons, or other process received in any claim or legal proceeding covered thereby. Further, the Contractor, at its sole cost and expense, shall throughout the Period of this Contract, keep all of its operations on the Airports, and its obligation to indemnify the Authority pursuant to this Article, continuously and fully insured, and shall provide a certificate of insurance evidencing all required coverages are in effect, prior to the commencement of this Contract. The following types of insurance are required; the specific minimum amounts and limits of such insurance, as well as any additional types of required insurance, are specified elsewhere in this Contract. Said limits shall in no event be construed to limit or modify the Contractor's obligation to indemnify the Authority as set forth above.

1. Virginia Statutory limits with All States Endorsement for Workers' Compensation and Employer's Liability.
2. Commercial General Liability Insurance. Coverage must include Broad Form Contractual, Property Damage, Products-Completed Operations, Personal Injury, Premises-Operations, Independent Contractors and Subcontractors, Liquor Legal Liability and Fire Legal Liability. Such policy or policies shall be issued on an occurrence basis.
3. Comprehensive Automobile Liability Insurance. Coverage must include bodily injury and property damage per occurrence for owned, non-owned and hired vehicles.
4. Property coverage for the Contractor's personal property used on Authority property. Policy must provide replacement cost and contain a waiver of subrogation by the carrier for all claims and suits against the Authority, including recovery of any deductibles.

12.07 Insurance Requirements.

1. All insurance maintained by the Contractor pursuant to this Contract shall be obtained from an insurance company or companies possessing a rating of A VII or higher from the A.M. Best Company or an equivalent rating.
2. Said policy or policies of insurance shall contain a provision that written notice of cancellation, alteration, or any material change thereof shall be delivered to the Authority not less than thirty (30) days in advance of the effective date of this Contract, and in no event shall such policies be canceled by the Contractor without the Authority's prior written consent unless equivalent replacement policies are then issued and available. All policies, except Workers' Compensation and Employer's Liability shall identify the Authority, its agents, employees, and representatives, if any, as additional insured in a manner satisfactory to the Authority. Said policy shall cover only claims arising from events addressed in the Contract.
3. If, in the Authority's opinion, the minimum limits of the insurance herein required have become inadequate during the period of the Contract, the Contractor shall increase such minimum limits by reasonable amounts on request of the Authority provided that said coverage is available at standard commercial rates.
4. The Contractor shall deliver each policy and certificate of required coverage to the Contracting Officer for approval upon the Contractor's execution of the Contract.

Article 13. Method of Payment; Late Charges; Gross Receipts Reports

13.01 Commencement of Payment Obligation. The Contractor's obligation to make payments to the Authority under this Contract shall commence on the effective date of the Contract, unless otherwise specified in the Contract. All payments shall be made in coin or currency of the United States of America, which at the time of payment is legal tender for public and private debts.

13.02 Payment by Checks. All checks shall be made payable to the "Metropolitan Washington Airports Authority" and forwarded to the address designated in this Contract for receipt of payment.

13.03 Payment by Other Methods. Payment may also be made by Automated Clearing House Debit or by bank wire transfer.

13.04 Late Charges. Without waiving any other right of action available to the Authority in the event of default in payment of charges and fees hereunder, if the Contractor fails to make a payment when due, late charges will be assessed from the date payment was due. Late charges may consist of interest and penalties.

13.05 Interest. The interest rate shall be at the rate per annum which is four percent (4%) higher than the "prime rate" published in The Wall Street Journal on the date such payment was due.

13.06 Charges. In addition to interest, monthly penalty charges at the rate of six percent (6%) per annum (or as established periodically) of the amount due will be assessed on the unpaid portion of accounts more than thirty (30) days past due.

13.07 Certified Statements.

1. Monthly Statement. Contractor shall submit to the Authority not later than the fifteen (15th) day of each calendar month during the period of this Contract, or at such other intervals as specified herein, a certified statement setting forth the Contractor's Gross Receipts for the preceding calendar

- month. Said statement shall be in the format specified by the Authority, shall include all information required by the Authority and be certified as complete by the Contractor's principal financial officer.
2. Annual Statement. Within ninety (90) days following the end of each Contract Year, the Contractor, at its own cost and expense, shall provide to the Authority an Annual Statement of Gross Receipts and concession fees paid to the Authority for the Contract Year just ended. . The Annual Statement shall also include a statement by the independent CPA that in its opinion such Gross Receipts and fees paid have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) and in accordance with the terms and conditions of the Contract including the definition of Gross Receipts set forth herein. Such Annual Statement shall also contain a list of the Gross Receipts, by month, as shown on the books and records of the Contractor and which were used to compute the fees paid to the Authority during the period covered by the Annual Statement. The Authority reserves the right to reject the Contractor's choice of independent CPA if said independent CPA does not, in the Authority's view, have the appropriate standing and reputation.
 3. Additional Payment if Fees Underpaid. If the Annual Statement provided by the Contractor to the Authority pursuant to Section 13.07 herein with respect to any Contract Year indicate that the amount of percentage and fixed concession fees, which the Contractor actually paid to the Authority with respect to such Contract Year was less than the amount of fees due and owing for such Contract Year under the terms of this Contract, then the Contractor shall pay the difference to the Authority at the same time it provides the Annual Statement to the Authority, together with interest on the amount of such difference at the rate specified in Section 13.05 and 13.06 herein.
 4. Credit if Fees Overpaid. If the Annual Statement provided by the Contractor to the Authority pursuant to Section 13.07(b) with respect to any Contract Year indicate that the amount of concession fees which the Contractor actually paid to the Authority with respect to such Contract Year was greater than the amount of concession percentage fees due and owing for that Contract Year under the terms of this Contract, then the amount of such excess shall, at the option of the Authority, either be paid in lump sum within a thirty (30) day period or credited to the concession fees next due and owing from the Contractor to the Authority, unless the period of the Contract has expired, in which event such amount shall be promptly refunded by the Authority to the Contractor.
 5. Proration for Portion of Contract Year. For the purposes of paying the concession fees due for any portion of a Contract Year, the fees shall be prorated on the basis of the actual number of days in such portion of such Contract Year.

Article 14. Records and Books; Inspections; Audits

14.01 Contractor to Maintain Certain Books and Records. Contractor shall maintain in a true and accurate manner and in accordance with GAAP, such accounts, books, records, information technology system records and data as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of Contractor's revenue and expenses in accordance with GAAP and with generally accepted auditing standards. Upon request of the Contracting Officer, Contractor and its subcontractors shall, in a form acceptable to the Contracting Officer, submit a third party attestation report regarding its policies, controls, processes and security.

14.02 Location of Books and Records. The Contractor may keep the books and records it is required to maintain under Section 14.01 at its corporate office, or available for inspection under the provisions of Section 14.05 herein. Such books and records shall be kept segregated from the Contractor's books and records relating to operations other than pursuant to this Contract.

14.03 Books, Records and Information. Books, records, and information to be made available to the Authority shall include, but not be limited to all supporting documentation that is fundamental for the performance of an audit in accordance with Generally Accepted Auditing Standards.

14.04 Controls. In addition to maintaining the books and records required by Article 14 herein, Contractor shall install on the Premises, and shall at all times use, cash registers, invoicing machines, sales slips and other accounting equipment, devices and forms necessary to record properly, accurately and completely all sales of goods and services under any part of this Contract on or from the Premises.

14.05 Authority's Right to Inspect and Audit

1. Books and Records Available for Inspection Contractor may keep the books and records required under Article 14 herein at the Contractor's corporate office or elsewhere available for inspection. Such books and records shall be kept segregated from the Contractor's books and records relating to other operations. Contractor shall make such books and records available to the Authority or its designee within seven (7) business days of receiving said request from the Authority. Should Contractor not wish to make the corporate books and records available in the Washington, D.C. area, then the Contractor shall pay reasonable travel and accommodation expenses for the Authority or the Authority's authorized representatives to travel to the Contractor's office to conduct the audit.
2. Authority's Right to Audit. The Authority shall have the right, upon reasonable notice to Contractor to audit the corporate books and records, including information technology system records, relating to the operation of the Contractor in order to determine the correctness of the fees paid to the Authority for any Contract Year. The Authority's right to inspect and audit extends to the books and records of all subcontractors and/or partners under this Contract as they relate to this Contract. If the audit discloses intentional inaccuracies, this Contract, at the option of the Authority, may be terminated. The Authority reserves the right to require an agreed upon procedures audit and will provide the procedures for such audit.
3. Fees and Interest if Underpayment Discovered by Audit. If, as a result of the audit performed under Article 14 herein, additional fees are due from the Contractor to the Authority, the Contractor shall immediately pay to the Authority such additional fees, together with interest on the amount of such additional fees at the rate specified herein from the date such additional fees should have been paid. Further, if the audit establishes that the Contractor has understated and underpaid fees by three percent (3%) or more for any Contract year, then the entire expense of such audit, whether internal or external, shall be paid by the Contractor.
4. Delinquent Audit Fees. In the event that it is established through an audit conducted by the Authority that fees or charges otherwise due to the Authority under this Contract have not been paid to the Authority as a result of the Contractor's improper recording of its Gross Receipts, the Contractor shall pay to the Authority as delinquent fees and charges (with interest and charges in accordance with Sections 13.05 and 13.06 herein) an amount equal to the amount of fees or charges reasonably estimated to have been lost to the Authority.
5. Inspection and Audit Rights Survive Expiration. The Authority's rights under Article 14 to inspect and audit the books and records of the Contractor shall survive the expiration or earlier termination of this Contract. The Contractor shall retain and keep available all documents and records relating to this Contract for not less than three (3) years after the expiration or termination date of the Contract term or any extension, on in the event of litigation or claims relating to this Contract until such litigation or claims are completely disposed of and all time limits for appeal have expired.

Article 15. Applicability of Contract Terms to Subcontractors

15.01 Inclusion of Contract Terms. Any restriction or requirement imposed upon the Contractor under this Contract shall be deemed to extend to Contractor's agents, employees, subcontractors, and guarantors. It shall be the Contractor's obligation to cause these persons to comply with the restrictions and requirements.

15.02 Inclusion of Contract Terms in Contractor's Documents. The Contractor shall include all of the clauses and Standard Provisions of this Contract in all subcontracts it enters into pursuant to this Contract. The clauses and provisions shall be altered only as necessary to identify properly the contracting parties and the Contracting Officer under this Contract or as otherwise deemed necessary by the Authority. Notwithstanding anything to the contrary herein, the damage and indemnification provisions contained in Sections 12.01, 12.02, 12.03, 12.04, 12.05, and 12.06 herein, when incorporated into a subcontract, shall clearly state that the subcontractor's indemnification relates only to the subcontractor's activities on the Airport, not to all of the Contractor's activities on the Airport.

Article 16. Surrender of Occupancy; Abandonment

16.01 Surrender of Occupancy. Except as otherwise provided in this Contract, when this Contract expires or is terminated in whole or in part as provided for elsewhere in this Contract, the Contractor shall surrender its assigned Premises and all Fixed Improvements and Operating Equipment therein broom clean and in good condition and repair, with the exception of reasonable wear and tear and damage by loss or casualty not covered by insurance which the Contractor is required to maintain pursuant to this Contract and not otherwise attributable to the Contractor's fault or negligence.

16.02 Abandonment. The Contractor shall be deemed to have abandoned to the Authority any property that it has failed to remove from its assigned Premises within fifteen (15) calendar days after the end of the period of the Contract or the effective date of termination thereof, unless the Authority grants additional time for this purpose in writing. After the expiration of the fifteen-day period, or any extension thereof granted by the Authority, the Contracting Officer shall have the right to remove the property and restore the area to a satisfactory condition and hold the Contractor liable for all costs incident thereto. In the event it is necessary for the Authority to remove such property, the Authority shall not sustain or be charged with any liability by reason of the removal or custodial care of the same.

Article 17. Impact of Construction Activities

The Contractor recognizes that from time to time during the period of this Contract, it will be necessary for the Authority to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair on the Airport, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience or impair the Contractor in its operation at the Airport. The Contractor agrees that no liability shall attach to the Authority, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences or impairment, and the Contractor waives any right to claim damages or other consideration for such inconveniences or impairment.

Article 18. Assignment

18.01. Prohibition. Contractor shall not transfer or assign this Contract or its interest in this Contract or subcontract its rights under this Contract without the express written consent of the Authority. Transfers or assignments occurring by operation of law are also prohibited. Any attempted transfer, assignment or subcontract shall be void and confer no rights upon any third person. No assignment or subcontract shall relieve Contractor of any obligations under this Contract. The consent by the Authority to any transfer, assignment or subcontract shall not be deemed to be a waiver on the part of the Authority to any prohibition against any future transfer, assignment or subcontract.

18.02 Sale of Stock or Sale of Partnership Interest. Except as provided below, the sale of any of the stock of Contractor, or, if the Contractor is a partnership, sale of any partnership interest therein, shall constitute an assignment of the Contract in the context of this Section if, after giving effect to all previous transfers of the stock or partnership interests after the date of this Contract, more than fifty (50) percent of the stock of, or partnership interests in, the Contractor shall have been transferred. This clause shall not apply to the sale of stock or to a merger or consolidation of a public corporation; to the sale of a subsidiary of a public corporation to its parent or another subsidiary of the public corporation; to a merger or consolidation of a public corporation with one or more of its subsidiaries; or to a merger or consolidation of one or more subsidiaries of a public corporation with each other.

18.03 Transfers. The term "transfer" includes, but is not limited to, transactions in which the Contractor's interest in the Contract or Premises is mortgaged or otherwise encumbered, or in which the Contractor sublets, rents or otherwise permits occupancy or use of the Premises by a third party.

18.04 Consent. If the Authority consents to any transfer, assignment or subcontract, that consent shall not be effective unless and until Contractor gives notice of the transfer or assignment and a copy of the transfer, assignment or subcontract agreement to the Authority, and the transferee, assignee, or subcontractor assumes all of the obligations and liabilities of the Contractor under this Contract.

Article 19. Subordination to Federal Agreements and Actions

19.01 Relationship to Federal Lease. This Contract shall be subordinate and subject to the provisions of the Federal Lease dated March 2, 1987, between the United States Department of Transportation and the Authority, providing for the Authority's lease of the Airports effective June 7, 1987. The Authority will use its best efforts to notify the Contractor of any material amendments to the Federal Lease that would affect the Contractor.

19.02 Other Government Agreements. This Contract shall be subordinate and subject to (a) the terms of any "Airport Sponsor's Assurances" or like agreement that has been or may be made between the Authority and the United States of America, its boards, commissions, or agencies, including without limitation the Federal Aviation Administration (FAA), or required by applicable Federal, state or local laws, codes, regulations, ordinances, rules and orders (now or hereafter enacted) as a condition precedent to receiving Federal financial assistance for development of the Airports or other programs for and activities of the Airports, and (b) the terms of any agreement that has been or may be made between the Authority and the United States of America related to the transfer of rights or property to the Authority for airport purposes, or the operation, improvement, maintenance or development of the Airports. The Contractor shall abide by the requirements of agreements entered into between the Authority and the United States of America, and shall consent to amendments and modifications of this Contract if required by such agreements, or if required as a condition of the Authority's entry into such agreements.

19.03 Federal Government's Emergency Clause. All provisions of this Contract shall be subordinate and subject to the rights of the United States of America to operate or close the Airports or any portion thereof during time of war or declared national emergency in accordance with established lawful procedures. Such rights shall supersede any provision of this Contract that is inconsistent with the operation of the Airports by the United States of America during time of war or national emergency.

Article 20. Non-Discrimination and Affirmative Action

20.01 General Civil Rights Provisions. The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision obligates the Contractor for the period during which Federal assistance is extended to the airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the Contractor for the longer of the following periods:

- (a) The period during which the property is used by the Authority for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) The period during which the Authority retains ownership or possession of the property.

20.02 Participation by Airport Concession Disadvantaged Business Enterprises. This Contract is subject to the requirements of the United States Department of Transportation's regulations, 49 CFR Part 23. The Contractor 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 Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

20.03 Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees as follows:

1. Compliance with Regulations: The Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are set forth in Section 20.04 of these Standard Provisions for Concessions Contracts.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor 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.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor 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 Contractor of the Contractor's obligations under this Contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this Contract, the Authority will impose such Contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to: withholding payments to the Contractor under the Contract until the Contractor complies; and/or cancelling, terminating, or suspending a Contract, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of subparagraphs one through six of this Section 20.03 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor 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 Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

20.04 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Contract, the Contractor, 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);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by 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 non-discrimination against minority populations by discouraging

programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, 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. 1681 et Seq.).

20.05 Title VI Grant Agreement Covenants

1. The Contractor for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract 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 Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the List of Pertinent Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. The Contractor for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (i) 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, (ii) 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, (iii) that the Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Acts And Authorities.

3. With respect to the Contract, in the event of breach of any of the above Nondiscrimination covenants, the Authority will have the right to terminate the Contract and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Contract had never been made or issued.

20.06 Affirmative Action. The Contractor assures that: (a) it shall undertake an affirmative action program as required by the Authority, and by all federal and state laws, rules and regulations pertaining to Civil Rights (and any and all amendments thereto), including, without limitation, 49 CFR Part 21 and 49 U.S.C. § 47123, to assure that no person shall, on the grounds of race, creed, color, national origin, sex, or age be excluded from participation in or denied the benefits of the program or activity conducted with or benefitting from Federal financial assistance received by the Authority from the FAA; (b) it shall not engage in employment practices that result in excluding persons on the grounds of race, creed, color, national origin, sex, or age, from participating in or receiving the benefits of any program or activity conducted with or benefitting from Federal financial assistance received by the Authority from the FAA, or in subjecting them to discrimination or another violation of the regulations under any program covered by 49 CFR Part 21 and 49 U.S.C. § 47123; and (c) it shall include the preceding statements of this Section in the Contractor's subcontracts and other applicable documents under this Contract, and shall require that its contractors and others similarly include these statements in their subcontracts and applicable documents.

20.07 Compliance with DBE Requirements. Unless otherwise provided in this Contract, if this Contract has a Disadvantaged Business Enterprises (DBE) participation goal, the Contractor shall implement DBE participation

consistent with its proposal approved by the Authority upon the commencement of this Contract, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract, and shall carry out all other applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts, including this Contract and the Contractor's contracts with its contractors under this Contract. Alteration of any aspect of the Contractor's DBE participation shall not occur without the prior written consent of the Authority. Failure by the Contractor to carry out these requirements shall be a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate, which may include, but is not limited to (a) withholding monthly progress payments; (b) assessing sanctions; (c) liquidated damages; and/or (4) disqualifying the Contractor or its contractors from future bidding as non-responsible. The Contractor shall include the preceding statements of this Section 20.07 in contracts with its contractors under this Contract that are covered by 49 CFR Part 26, and shall require that its contractors similarly include these statements in their subcontracts.

Article 21 Fair Labor Standards Act

The provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), are incorporated in this Contract 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 Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Article 22 Occupational Safety and Health Act

The requirements of 29 CFR Part 1910 are incorporated in this Contract with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor 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). Contractor 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.

Article 23. Strikes or Picketing Affecting Access to Airport

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (1) is directed at the Contractor and/or subcontractor or any employee or either, and (2) impedes or threatens to impede access by any person to the facility or facilities where the site(s) of the work is (are) located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the utilization of any other available judicial or administrative remedies. In the event the Contractor's operations are curtailed, interrupted, or otherwise handicapped, in whole or in part, because of an employee strike against the Contractor, such condition shall not operate to relieve the Contractor of its obligation to pay charges and fees required under this Contract, except as otherwise specifically provided for elsewhere in this Contract.

Article 24. Disputes

24.01. It is the Authority's policy to encourage resolution of disputes by mutual agreement between the Contracting Officer and the contractor. Consistent with this intent, the Authority requires, as a condition precedent to the initiation of litigation, the exhaustion of the administrative dispute procedure contained in the Contract. If the dispute is not resolved by the administrative disputes procedure, the Contractor may proceed to court litigation.

24.02. The Contractor shall proceed diligently with performance of the Contract's requirements, including the disputed portions, pending resolution of any dispute.

24.03. In order to initiate the administrative disputes procedure, the Contractor shall submit a written monetary or non-monetary claim, certified as true and accurate by a duly authorized officer of the Contractor. The written claim or statement shall at a minimum include a) a full explanation of the claim or reason why the Contractor believes the Authority has acted contrary to the Contract; b) the relief requested; c) a full explanation of the reason why the Contractor believes it is entitled to this relief or why the Authority is liable; c) the claim must state that it is made in good faith, that the supporting facts and data are current, accurate, and complete as of the date of certification, and that the relief requested by the Contractor reasonably reflects the damage the Contractor believes it has incurred; and c) the claim must include or specifically reference all records, data or facts that relate to the Contractor's claim.

24.04. Monetary claims based on anticipatory profits are prohibited.

24.05. Discussions between the Contracting Officer and the Contractor concerning the claim presented shall occur within a reasonable time after submission of the claim and receipt by the Contracting Officer of sufficient information, including information resulting from an audit, if deemed necessary. Discussions shall be conducted in good faith for the resolution of the dispute, including the exchange of relevant information. The Contractor shall provide any additional information or audit access deemed necessary by the Contracting Officer. Failure to provide requested information or audit access shall be a bar to further consideration of the Contractor's claim or issue.

24.06. The Contracting Officer and the Contractor may agree to engage in non-binding evaluative mediation or some other reasonable method of alternative disputes resolution before the Contractor may litigate the claim or issue. Such mediation or alternative dispute resolution shall be conducted in accordance with the Virginia Code. Each party shall bear its own costs of such alternative dispute resolution, and shall evenly split the costs of the mediation proceeding or other alternative dispute resolution proceeding.

24.07. If discussions with the Contracting Officer, or if required, alternative dispute resolution, do not result in an agreement, an impasse can be declared. Upon the declaration of an impasse, the Contractor shall request a written final decision by the Contracting Officer. The Contracting Officer shall issue a final decision within sixty (60) days following receipt of the request and adequate documentation, unless the dispute is determined to be complex in nature by the Contracting Officer in which case the Contracting Officer shall establish a reasonable deadline for the issuance of the final decision. The final decision of the Contracting Officer shall be final and conclusive unless within thirty (30) days from the receipt of the Contracting Officer's final decision, the Contractor mails or otherwise furnishes a written notice of appeal to the Vice President of Business Administration or, if the contract is a ground transportation, rental car, fixed base operator or parking concession contract, to the appropriate Vice President and Airport Manager.

24.08. Following completion of the administrative process, including providing the notice of appeal, the dispute may be resolved by litigation without a jury before a court of competent jurisdiction within the Commonwealth of Virginia. To the extent allowed by law, the venue for any action arising from this Contract shall be Arlington County, Virginia, for National Airport and Loudoun County, Virginia, for Dulles Airport.

24.09. The Contractor hereby waives all right to trial by jury in any claim, action, proceeding or counterclaim by either the Contractor or the Authority against each other or any matters arising out of or in any way connected with this Contract.

24.10. In the event the Contractor makes a claim that is found by a court to be based upon any reckless statement contained in the certification of the claim or is found by a court to be of frivolous nature or materially overstated in amount, then the Contractor shall be liable to the Authority and shall pay to it a percentage of the costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorney fees) the frivolous or

overstated claim. The percentage of costs referenced shall be equal to the percentage of the Contractor's total claim which is determined through litigation to be the result of a reckless statement or frivolous claim. "Frivolous" shall mean having no basis in law or in fact. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

24.11. Any claim by the Contractor that is based on false or misleading statements or material misrepresentations shall entitle the Authority to a full recovery of all costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorney fees) the claim. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

Article 25. Miscellaneous

25.01 Rights Reserved to the Authority. All rights not specifically granted to the Contractor by this Contract are reserved to the Authority.

25.02 Authority Not Liable. Except as specifically provided for in this Contract, the Authority shall not be under any duty or obligation to the Contractor to repair or maintain the Premises, or any portion thereof, or any facilities or equipment constructed thereon. The Authority shall not be responsible or liable to the Contractor for any claims, losses, damages, or injury, including lost profits, sustained by the Contractor or any of its joint venturers or subcontractors, resulting from any failure of water supply, heat, air conditioning, electrical power, or sewer or drainage facility, or from natural physical conditions on the Airport, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado or other physical event, or from any act of God, state of war, civilian commotion or riot, act of the Federal government or any other cause beyond the reasonable control of the Authority.

25.03 Security. The Contractor understands that the police security protection provided by the Authority is finite and limited to that generally provided to any other businesses on the Airports and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Premises, equipment, improvements, and the Contractor's personal property, and that of its employees and invitees shall be the sole responsibility of the Contractor and shall involve no cost to the Authority.

25.04 Inspection. The Contractor shall allow the Authority's authorized representatives entry to the Premises for the purpose of examining and inspecting said Premises, for purposes necessary, incidental to, or connected with the performance of the Authority's rights and obligations under this Contract or in the exercise of its governmental functions. Except in the case of an emergency, or except if a Default has occurred, the Authority shall conduct such inspections during reasonable business hours, and in the presence of the Contractor's representative.

25.05 Relationship of the Parties. The Contractor is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts and omissions, and the Authority shall in no way be responsible therefor. Nothing in this Contract shall be construed as making the Contractor an agent or representative of the Authority for any purpose whatsoever. Further, nothing in this Contract is intended or shall be construed as in any way creating or establishing the relationship of copartners between the Parties hereto.

25.06 Ingress and Egress. For the purpose of Contract performance, the Contracting Officer will grant the Contractor without charge therefor, the right of ingress and egress from said Premises by the Contractor, its employees, contractors, suppliers, servicemen, licensees, guests, patrons, and invites. PROVIDED that such right of ingress and egress shall at all times be exercised in compliance with any and all regulations promulgated by lawful authority for the care, operation, maintenance, and protection of the Airport that apply to all users of the Airport. PROVIDED further, that such right of ingress and egress shall not be construed to prohibit the Airport Manager from establishing and assessing a fee or charge for the privilege of entry upon the Airport when such fee or charge is levied upon all users of the Airport, nor to prohibit the Airport Manager from assessing a fee or charge on the Contractor's employees for parking their personal vehicles in the employee parking areas or on persons

conducting a business on the Airport. For purposes of this Article, a person shall be deemed to conduct business on the Airport if he occupies any space on the Airport or if he provides any services on the Airport, other than utilities, on a regular or continuing basis.

25.07 Waiver of Performance. The failure of the Authority or the Contractor, in any one or more instances, to invoke a provision, term, covenant, reservation, condition, or stipulation of this Contract, or to enforce or take action to enforce, or to demand performance by the other party hereto, or to insist upon a strict performance by the other of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Contract shall not be considered a waiver or relinquishment of the rights to invoke enforce, demand, or insist thereon, but the same shall continue and remain in full force and effect, and no waiver by either party of any provision, term, covenant, reservation, condition, or stipulation hereof shall be deemed to have been made in any instance unless expressed in writing. In the event any provision contained in this Contract is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder.

25.08 Force Majeure. Except as herein provided, neither the Authority nor the Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations of this Contract, by reason of circumstances beyond the party's reasonable control, such as strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, acts of the federal government, riots, rebellion, or sabotage; provided, however, the Contractor shall pay all rentals, fees, and charges associated with performance prior to the force majeure event when due, even if such rentals, fees, and charges are not due and payable until after the occurrence of the force majeure event.

25.09 Severability. If any article, section, provision, term or condition of this Contract is held to be invalid by a court of competent jurisdiction, the remainder of this Agreement, including the remaining rights and obligations of the Authority and the Contractor, shall not be affected thereby.

25.10 Prohibition Against Exclusive Rights. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the Authority reserves the right to grant to others the privileges and right of conducting any or all activities of an aeronautical nature.

25.11 No Third Party Beneficiaries. This Contract is for the benefit of the parties hereto only and is not intended to and shall not create any rights in or confer any benefits upon any person or entity other than the parties hereto.

25.12 Covenant Against Contingent Fees. The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.

1. "Bona fide agency", as used in this clause, means an established commercial or selling agency, maintained by the Contractor for the purpose of securing business, that neither exerts nor proposed to exert improper influence to solicit or obtain Authority contracts nor holds itself out as being able to obtain any Authority contract or contracts through improper influence.
2. "Bona fide employee", as used in this clause, means a person, employed by the Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Authority contracts nor holds himself out as being able to obtain any Authority contract or contracts through improper influence.

3. "Contingent fee", as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing an Authority contract.
4. "Improper influence", as used in this clause, means any influence that induces or tends to induce an Authority employee or officer to give consideration or to act regarding an Authority contract on any basis other than the merits of the matter.

25.13 Prohibition Against Board Member Participation. No member of the Authority's Board of Directors shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

25.14 Governing Law. This Contract shall be governed by and in accordance with the laws of the Commonwealth of Virginia.

25.15 Notices. All notices to be given to the Parties hereto shall be in writing unless otherwise stated and shall be properly given when personally delivered to the address specified in the Contract and left with a responsible person, or delivered by overnight service such as Federal Express, and, in both instances, an appropriate receipt is obtained, or when sent by facsimile to the facsimile numbers specified in the Contract and an appropriate receipt is obtained, or when sent by registered or certified mail addressed to the Parties at their respective addresses specified in the Contract. The Parties may change the notice address information at any time by giving notice as provided for in this section. The date of notice shall be deemed, when notice is mailed, to be the date of mailing so long as the Postal Service certified actual delivery. A refusal of overnight service or a registered or certified mail notice shall constitute actual delivery hereunder.

25.16 Effectiveness. The submission of an unsigned copy of this Contract to the Contractor for the Contractor's consideration does not constitute an offer to enter into a Contract. This Contract shall not be binding upon either party until executed by both parties.

25.17 Duplicate Counterpart Originals. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

25.18 Capacity to Execute. The individuals executing this Contract warrant that they each have full authority to execute this Agreement on behalf of the Contractor or the Authority as the case may be.

25.19 Execution. The parties hereto acknowledge that they have thoroughly read this Contract, including any exhibits or attachments hereto and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

25.20 Clear Title. The Authority covenants that at the granting and delivery of this Contract, it has the right and authority to lease or assign the Premises to the Contractor as set forth in this Contract.

25.21 Binding Effect. The terms, conditions, and covenants of this Contract shall inure to the benefit of, and be binding upon, the parties hereto and upon their successors and assigns, if any. This provision shall not constitute a waiver of any conditions regarding assignments contained in this Contract. No party shall be bound by this Contract until it is executed by both parties.

25.22 Modifications. This Contract may be modified in writing by mutual agreement of the Contractor and the Authority. Modifications beyond the scope of the original Contract may require approval of the Authority's Board of Directors.