

CITY OF TYLER
Tyler Pounds Regional Airport
700 Skyway Blvd., Suite 201
Tyler, TX 75704
(903) 531-9825
www.flytyr.com



REQUEST FOR QUOTATIONS
RFQ NO. 17-002
ADDENDUM NO. 3

TO: **RENTAL CAR CONCESSION LEASES BID INTERESTS**
(VIA EMAIL AND AIRPORT WEBPAGE)

DATE: December 5, 2016

PROJECT: Rental Car Concessions Leases
RFQ No. 17-002 Addendum No. 3

The Requests for Quotations (RFQ) documents are modified as described below. All respondents shall acknowledge receipt of this and all other addenda on the last page of the quotation proposal. This addendum becomes a part of the RFQ documents. All provisions of the RFQ documents shall remain in full force and effect, except as modified by this addendum.

2. HISTORY AND CURRENT SITUATION

The Tyler Pounds Regional Airport has four counter spaces available for lease for rental car concessions inside the west terminal building. Each area contains on average 281 square feet of office and ticket counter space as shown in Exhibit "A". Presently there are four office spaces available for lease. It is the intent of the airport to minimize any disruption of services for rental car customers and operations around the terminal building. The locations of counter spaces will be awarded to bidders in numeral rank order, with the bidder offering the highest total minimum guarantee for the full three (3) year Term of the lease having first choice, the bidder offering the second highest total minimum guarantee for the Term having second choice, and so on.

Concessionaires shall also have use, at the west terminal building, of the rental car ready return parking lot as shown in REVISED Exhibit "B" and the rental carwash facility shown in REVISED Exhibit "C". ~~Ready return spaces will be allocated as a block of 26 parking spaces among the successful bidders, with any extra spaces allocated based on the bid share. Each block is allocated based on bid share among the rental car concessionaires, with the highest qualified bidder receiving first option for the preferred block.~~ The rental car ready return parking lot has a total of 104 spaces. The spaces will be allocated to the successful bidders by dividing each bidder's sum of the three (3) year's minimum annual guarantee bid by the sum of all successful bidders' three year's minimum annual guarantee bids. The location of each bidder's allocated spaces will be determined through a selection process to be coordinated by the Airport Manager's office with the Airport Manager having the final determination of the location of the successful bidders' spaces.

~~The rental carwash facility has thirty parking spaces for rental car storage to be divided proportionally according to the bid share of the successful bidders.~~ The rental carwash facility parking spaces for rental car storage have been divided into four blocks of seven parking spaces each as depicted in the attached REVISED Exhibit "C". The car wash facility parking blocks will be awarded to bidders in numerical rank order, with the bidder offering the highest total minimum guarantee for the full three (3) year Term of the lease having

first choice, the bidder offering the second highest total minimum guarantee for the Term having second choice, and so on.

SCHEDULE

~~December 13, 2016~~

December 27, 2016

Quotations are due to the City of Tyler Purchasing Department, 511 West Locust, Tyler, Texas 75702, ATTN: Sherry Pettit **no later 2:00 p.m.**, at which that time and place they will be publicly opened. All interested parties may attend.

~~December 16, 2016~~

December 30, 2016

Successful proponents will be notified and prepare to assume operation of rental car concessions at the Westside Terminal, on February 1, 2017.

3. RENTAL CAR LEASE AGREEMENT

The **REVISED** Auto Rental Lease

See Attached Revised Lease with changes depicted. A revised final lease agreement with changes incorporated is also attached for bidders to include with their proposal documents.

4. MANAGEMENT SERVICES

Services of a manager: to provide an adequate number of courteous, well-trained, uniformed, and neatly attired personnel as required to successfully operate and maintain a rental car concession. All personnel will be employees of the successful proposer. Lessee shall be required to dress with a professional appearance displaying the company's logo, according to the Lessee's company dress code.

See **REVISED** Auto Rental Lease agreement for details and complete scope of services provided.

5. DELIVERY OF PROPOSALS

~~An~~ **One (1) original and two (2) copies of the quotation must be submitted in a sealed package clearly marked on the outside with **"Quotation to Operate/Lease Rental Car Concession"** and delivered to **City of Tyler Purchasing Department, 511 W. Locust, Tyler, TX 75702 Attn: Sherry Pettit.****

Any quotations received **after ~~December 13, 2016~~ December 27, 2016, at 2:00 p.m.** will be returned unopened.

6. OBLIGATION OF PROPOSER

The proposer must become fully aware of the City's requirements for the operation of a rental car concession. Failure to do so will not relieve a successful proposer of its obligation to carry out the provisions of the **REVISED** auto rental lease agreement and to manage the rental car concession in a manner consistent with those provisions.

Proposers will be held responsible for having examined the details of the **REVISED** auto rental lease agreement. The proposer will use its personal knowledge and experience or professional advice as to the

character of the services required and any other conditions surrounding and affecting the proposed type of operation.

8. PREPARATIONS OF QUOTATIONS

- D) A written statement identifying the Bidder's company dress code, delivered on company letterhead or emailed via company email address. This shall be received in the Airport Manager's office, or at jprice@tylertexas.com prior to commencement of Lease on February 1, 2017.
- E) Each proposer shall include the **REVISED** Auto Rental Lease agreement with Addendums filled out completely, executed and notarized where indicated.

10. RESPONSIBLE PROPOSER CRITERIA

- A) "This Section A is waived for incumbents."
- E) Article IV, Section A, of the **REVISED** Auto Rental Lease agreement states that Concessionaire agrees to pay to City as rental either ten percent (10%) of the monthly gross revenue received by Lessee for the operation of the Airport car rental concession under this agreement, or a payment of \$___per month (**not less than \$30,000 per year, or \$2,500 per month**), whichever amount is greater. Concessionaire also agrees to additionally pay five hundred dollars (\$500.00) per month for office, counter and queuing space. ~~Concessionaire also agrees to additionally pay one thousand five hundred sixty dollars (\$1,560) per month for a block of 26 ready car spaces. Concessionaire also agrees to additionally pay its equal portion of the annual land lease totaling \$5,527.00 annually for the rental Car Wash Facility which will be divided equally between the numbers of successful bidders.~~ Concessionaire also agrees to pay a total of \$30.00 per month per space of ready car parking spaces during Contract Year 1, \$45.00 per month per space during Contract Year 2, and \$60.00 per month per space during Contract Year 3. Concessionaire shall also pay its portion of the car wash facility land lease annually totaling \$5,527.00 annually which will be divided equally among the numbers of successful bidders.
- H) ~~Those wishing to dual brand must bid for and work from separate counters for each brand, utilizing separate ready and return areas for each brand. If a Proposer bids dual brands, its rental fees, minimum annual guarantee and gross receipts/gross revenue as identified in the sample agreement shall include separate figures of each brand.~~ No dual branding allowed. We will require a single brand, per single counter, as a separate bid. Car rental companies that share more than one brand, must bid each brand separate, per single counter utilizing separate ready and return areas for each brand.
- J) Proposer must state if business is a Certified Disadvantaged Business Enterprise and provide certification. City will ensure that all information is complete and accurate and adequately documents the Proposer's good faith efforts before the City commits to the **REVISED** Auto Rental Lease agreement with the Proposer.
- K) The **REVISED** Auto Rental Lease agreement included herein will be filled out completely, executed and notarized where indicated.
- M) No "grandfathering" of previous rental car concession agreements will be practiced. All signage, advertising, counter space leasing, parking space leasing will be terminated and must be reapproved ~~upon execution of the new lease.~~ by the Airport Manager prior to installation.

CORPORATION STATEMENT

CORPORATION (OR LIMITED LIABILITY CORPORATION) STATEMENT

RENTAL FEE PROPOSAL FORM

~~A Block of 26 Parking Spaces ————— \$1,560.00 /month ———~~

Parking Spaces

\$30.00/space/month of Contract YR 1

\$45.00/space/month of Contract YR 2

\$60.00/space/month of Contract YR 3

\$5,527.00 annually for the rental Car Wash Facility which will be divided equally ~~between~~ among the numbers of successful bidders.

Please also reflect your bid in the **REVISED** Auto Rental Lease agreement

This Addendum No. 3 is considered the final addendum for Bid #17-002. Questions and discussions prior to Bid Opening have expired.

ADDENDUM NO. 3 ISSUED BY:
THE CITY OF TYLER – TYLER POUNDS REGIONAL AIRPORT

Jennifer L. Price, Airport Projects Coordinator

Receipt of Addenda No. 3 acknowledged:

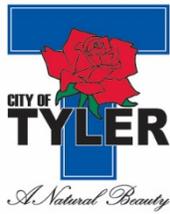
Signature

Date

RENTAL CAR CONCESSION

RFQ BID #17-002 with ADDENDUM No. 3

Red = Deletion; Blue = Insertion



**Tyler Pounds Regional Airport
Tyler, Texas
Request for Quotations
BID NUMBER 17-002
With
ADDENDUM NO. 3**



Lease and Operation of a Rental Car Concession

1. SOLICITATION

The City of Tyler (City), Tyler, Texas, is soliciting competitive quotations for four (4) available rental car concession leases at Tyler Pounds Regional Airport. Each Lease will end January 31, 2020. The City desires that all those submitting quotations possess certain experience and qualifications to ensure high quality operation of rental car concessions. In addition to obtaining the highest level of service, experience and expertise available, the City seeks to establish a strong, sound, and mutually beneficial relationship with a customer service oriented companies.

2. HISTORY AND CURRENT SITUATION

The following table reflects Tyler Pounds Regional Airport’s enplanement and deplanement history for the past 5 calendar years:

CALENDAR YEAR	ENPLANED	DEPLANED
CY 2012	74,019	70,743
CY 2013	85,069	82,399
CY 2014	85,690	82,955
CY 2015	71,906	70,108
CY 2016 (through 09/30/16)	40,143	39,302

The Tyler Pounds Regional Airport has four counter spaces available for lease for rental car concessions inside the west terminal building. Each area contains on average 281 square feet of office and ticket counter space as shown in Exhibit “A”. Presently there are four office spaces available for lease. It is the intent of the airport to minimize any disruption of services for rental car customers and operations around the terminal building. *The locations of counter spaces will be awarded to bidders in numeral rank order, with the bidder offering the highest total minimum guarantee for the full three (3) year Term of the lease having first choice, the bidder offering the second highest total minimum guarantee for the Term having second choice, and so on.*

Concessionaires shall also have use, at the west terminal building, of the rental car ready return parking lot as shown in *REVISED* Exhibit “B” and the rental carwash facility shown in *REVISED* Exhibit “C”. ~~Ready return spaces will be allocated as a block of 26 parking spaces among the successful bidders, with any extra spaces allocated based on the bid share. Each block is allocated based on bid share among the rental car concessionaires, with the highest qualified bidder receiving first option for the preferred block.~~ The rental car ready return parking lot has a total of 104 spaces. The spaces will be allocated to the successful bidders by dividing each bidder’s sum

of the three (3) year's minimum annual guarantee bid by the sum of all successful bidders' three year's minimum annual guarantee bids. The location of each bidder's allocated spaces will be determined through a selection process to be coordinated by the Airport Manager's office with the Airport Manager having the final determination of the location of the successful bidders' spaces.

~~The rental carwash facility has thirty parking spaces for rental car storage to be divided proportionally according to the bid share of the successful bidders.~~ The rental carwash facility parking spaces for rental car storage have been divided into four blocks of seven parking spaces each as depicted in the attached REVISED EXHIBIT "C". The car wash facility parking blocks will be awarded to bidders in numerical rank order, with the bidder offering the highest total minimum guarantee for the full three (3) year Term of the lease having first choice, the bidder offering the second highest total minimum guarantee for the Term having second choice, and so on.

SCHEDULE

Date	Event
November 2, 2016	Request for Quotation documents to be advertised to prospective proposers.
November 18, 2016	Pre-bid meeting to be held in the Airport conference room, second floor of the Westside Terminal Building, Tyler Pounds Regional Airport, 700 Skyway Blvd., Tyler, TX 75704 at 10:00 AM. <u>Remote attendance via conference call will also be made available for the same date and time of the same pre-bid meeting. Conference call phone number and access code can be requested via jprice@tylertexas.com or 903-531-9825.</u> Attendance is optional, not mandatory.
November 22, 2016	Final day for written questions from potential bidders regarding Request for Quotation documents.
December 13, 2016 December 27, 2016	Quotations are due to the City of Tyler Purchasing Department, 511 West Locust, Tyler, Texas 75702, ATTN: Sherry Pettit no later 2:00 p.m. , at which that time and place they will be publicly opened. All interested parties may attend.
December 16, 2016 December 30, 2016	Successful proponents will be notified and prepare to assume operation of rental car concessions at the Westside Terminal, on February 1, 2017.

Public meeting dates may be subject to change.

3. RENTAL CAR LEASE AGREEMENT

The **REVISED** Auto Rental Lease agreement attached is the final agreement to be executed by the successful proponent. No amendments shall be made to provisions of the approved lease other than by addendum issued through this RFQ. **Addendums must be signed and attached to the signed lease with proposer's bid.** The City's specific goals in awarding a Lease for the operation of a rental car concession include, but under no circumstances will be limited to, the following:

- To provide Tyler Pounds Regional Airport users with the highest level of customer service available through the professional operation of rental car concessions

4. MANAGEMENT SERVICES

All services normally expected for the operations of a rental car concession include, but are not limited to, the following:

- Services of a manager: to provide an adequate number of courteous, well-trained, uniformed, and neatly attired personnel as required to successfully operate and maintain a rental car concession. All personnel will be employees of the successful proposer. Lessee shall be required to dress with a professional appearance displaying the company's logo, according to the Lessee's company dress code.
- The successful proposer will have the exclusive right and privilege, within its defined areas, to operate a single branded rental car concession at Tyler Pounds Regional Airport.
- The City will not reimburse the successful proposer for any cost of licenses or registration with the State of Texas. The City will not reimburse the successful proposer for the cost of quotations.

See **REVISED** Auto Rental Lease agreement for details and complete scope of services provided.

5. DELIVERY OF PROPOSALS

~~An~~ **One** original ~~and two (2) copies~~ of the quotation must be submitted in a sealed package clearly marked on the outside with **"Quotation to Operate/Lease Rental Car Concession"** and delivered to **City of Tyler Purchasing Department, 511 W. Locust, Tyler, TX 75702 Attn: Sherry Pettit**. Each quotation submitted must clearly show the proposer's company name on the outside. Facsimile quotations will not be accepted. Any quotations received ~~after December 13, 2016~~ **December 27, 2016, at 2:00 p.m.** will be returned unopened. It is the sole responsibility of the proposer to have its quotation delivered to the City as specified herein on or before the above date and time. Reliance upon mail, public carrier or other delivery service is at proposer's risk. **LATE QUOTATIONS WILL NOT BE CONSIDERED.** All expenses for making a quotation to the City is to be borne by the proposer and will not be borne, charged to or reimbursed by the City in any manner or under any circumstance.

6. OBLIGATION OF PROPOSER

The proposer must become fully aware of the City's requirements for the operation of a rental car concession. Failure to do so will not relieve a successful proposer of its obligation to carry out the provisions of the **REVISED** auto rental lease agreement and to manage the rental car concession in a manner consistent with those provisions. The proposer must be familiar and comply with all federal, state and local laws, ordinances, rules and regulations that affect in any manner the operation of the assigned areas. The proposer must have all current licenses and/or permits (local, county, State or Federal) required to operate a rental car concession.

Proposers will be held responsible for having examined the details of the **REVISED** auto rental lease agreement. The proposer will use its personal knowledge and experience or professional advice as to the character of the services required and any other conditions surrounding and affecting the proposed type of operation.

The submittal of a quotation will be construed as evidence that all proposer obligations have been satisfied and no subsequent allowance will be made in this regard.

7. ADDENDA - CHANGES WHILE PROPOSING

No interpretation of the meaning of any part of request for quotations, nor corrections of any apparent ambiguity, inconsistency or error therein, will be made to any proposer orally. Meetings, other than the pre-proposal meeting, to discuss this bid with individual bidders will not be entertained by airport staff. Any request for interpretations or corrections must be made in writing to:

Jennifer Price, Airport Projects Coordinator
Tyler Pounds Regional Airport
700 Skyway Blvd., Ste. 201
Tyler, TX
75704 jprice@tylertexas.com

Any such request which is received after 2:00 pm CST on November 22, 2016 will not be considered. All interpretations and supplemental instructions will be in the form of written addenda to the request for quotation documents, which, if issued, will be delivered by email to all known prospective proposers and posted to the airport web site at www.tylerairport.com. However, it is the responsibility of each proposer, before submitting its quotation, to contact Airport Projects Coordinator, Jennifer Price, to determine if any addenda have been issued and to make such addenda a part of its quotation. Quotations submitted will be considered as if the addenda had been received. Only the interpretation or correction given by the **City** in writing will be binding.

8. PREPARATION OF QUOTATIONS

- A) All documentation submitted with this quotation shall be bound in a single

- volume.
- B) Quotations shall be prepared simply and economically providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this quotation. Emphasis should be on completeness and clarity of content and ease of locating responses to requested information.
 - C) A customer service summary shall be included in the quotation detailing specifically how the proposer will provide the highest level of customer service available to the users of Tyler Pounds Regional Airport.
 - D) A written statement identifying the Bidder's company dress code, delivered on company letterhead or emailed via company email address. This shall be received in the Airport Manager's office, or at jprice@tylertexas.com prior to commencement of Lease on February 1, 2017.
 - E) Each proposer shall include the REVISED Auto Rental Lease agreement with addendums filled out completely, executed and notarized where indicated.

9. WITHDRAWAL OF QUOTATIONS

Any Quotation may be withdrawn by written request of the proposer until the date and time established herein for opening of the Quotations. Any quotations not previously withdrawn will, upon opening, constitute an irrevocable offer for 90 days (or until one or more of the Quotations have been duly accepted by the City, whichever is earlier) to provide the City the services solicited in this request for quotation.

10. RESPONSIBLE PROPOSER CRITERIA

In considering the responsibility of proposers the City will examine the following factors. The successful proponent will address each factor specifically and completely in its proposal:

- A) Degree of experience in operating a rental car concession. Proposers are required to have a minimum of three (3) years continuous successful experience operating a rental car concession, and must include a list of at least five (5) airport locations and their size. References can be concurrent with similar offices of same company at differing Airports. All references will include the contact person, title, company, address, telephone and email address for each reference given. **This Section A is waived for incumbents.**
- B) Operation of the rental car concession, to include management of multiple employees, and maintain all its rental automobiles in good operating order and free from known mechanical defects.
- C) Proposer must provide a copy of its license to do business in the State of Texas or documentation that the company is capable of becoming licensed.

- D) Proposer must submit a statement detailing any cancellation, default or notice of default for lack of performance or for any other reason at any airport location in the United States within the past five (5) years.
- E) Article IV, Section A, of the **REVISED** Auto Rental Lease agreement states that Concessionaire agrees to pay to City as rental either ten percent (10%) of the monthly gross revenue received by Lessee for the operation of the Airport car rental concession under this agreement, or a payment of \$_____per month (**not less than \$30,000 per year, or \$2,500 per month**), whichever amount is greater. Concessionaire also agrees to additionally pay five hundred dollars (\$500.00) per month for office, counter and queuing space. ~~Concessionaire also agrees to additionally pay one thousand five hundred sixty dollars (\$1,560) per month for a block of 26 ready car spaces. Concessionaire also agrees to additionally pay its equal portion of the annual land lease totaling \$5,527.00 annually for the rental Car Wash Facility which will be divided equally between the numbers of successful bidders.~~ Concessionaire also agrees to pay a total of \$30.00 per month per space of ready car parking spaces during Contract Year 1, \$45.00 per month per space during Contract Year 2, and \$60.00 per month per space during Contract Year 3. Concessionaire shall also pay its portion of the car wash facility land lease annually totaling \$5,527.00 annually which will be divided equally among the numbers of successful bidders.
- F) On-site car rental companies shall pay a minimum fee of three (\$3.00) per wash of a single vehicle with a fee of twenty-five cents (\$0.25) per minute for each additional minute thereafter for use of the rental car wash bay for the same vehicle. Fees include use of vacuums at no additional charge. Fees are set by Tyler City Code Section 12-31 and are subject to change according to Tyler City Code Section 12-31. **Lessee shall not stack or stage vehicles for consecutive washes. Failure to adhere to this provision can result in termination of car washing service to those employees found to violate this provision.**
- G) Concessionaire also agrees to collect a Customer Facility Charge (CFC) in the amount of \$3.00 per rental contract per day and remit such payments to City, monthly, separate from other rental commissions and fees as outlined in Article IV, Section A, of the Auto Rental Lease agreement.
- H) ~~Those wishing to dual brand must bid for and work from separate counters for each brand, utilizing separate ready and return areas for each brand. If a Proposer bids dual brands, its rental fees, minimum annual guarantee and gross receipts/gross revenue as identified in the sample agreement shall include separate figures of each brand.~~ No dual branding allowed. We will require a single brand, per single counter, as a separate bid. Car rental companies that share more than one brand, must bid each brand separate, per single counter utilizing separate ready and return areas for each brand.
- I) Proposer must declare outstanding obligations with the City of Tyler. Proposers with outstanding obligations with Tyler Pounds Regional Airport will not be

considered for award of a contract.

- J) Proposer must state if business is a Certified Disadvantaged Business Enterprise and provide certification. City will ensure that all information is complete and accurate and adequately documents the Proposer's good faith efforts before the City commits to the **REVISED** Auto Rental Lease agreement with the Proposer.
- K) The **REVISED** Auto Rental Lease agreement included herein will be filled out completely, executed and notarized where indicated.
- L) All forms included herein as "Bid Forms", as applicable, will be filled out completely and executed where indicated.
- M) No "grandfathering" of previous rental car concession agreements will be practiced. All signage, advertising, counter space leasing, parking space leasing will be terminated and must be reapproved ~~upon execution of the new lease.~~ by the Airport Manager prior to installation.

The City reserves the right to reject any or all quotations, in whole or part, and to waive any non-conformance in quotations or any other irregularities received, whenever such rejection or waiver is, in the sole discretion of the City, deemed to be in the best interest of the City.

11. DISQUALIFICATION OF QUOTATIONS

The City may disqualify a proposer and reject its quotation for any of the following reasons:

- A) Submission of more than one quotation for the same work by an individual Rental Car firm, partnership or corporation under the same brand name. If a Rental Car company has more than one division or branding, a separate quotation may be submitted for each brand name.
- B) Evidence of collusion among proposers in the preparation and submittal of any quotations.
- C) Failure to provide the notarized form(s) required in the quotation documents in a timely manner, or to satisfy any other requirements listed in section 11.

Minor irregularities that do not materially affect the quotation may be waived at the sole discretion of the City.

12. REJECTIONS OF IRREGULAR QUOTATIONS

Quotations will be considered irregular and may be rejected if they show omissions, alterations of form, additions not called for, conditions, limitations, alternate quotations or other irregularities of any kind. The City reserves the right to waive any non-conformance or irregularities of quotations, or to reject any or all quotations, in whole or in part, whenever such nonconformance or irregularities are minor and such action is, in the sole discretion of the City,

deemed to be in the best interest of the City.

13. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION GOALS

It is the policy of the City to require the inclusion of firms owned and controlled by minorities or women in contract awards and projects whenever feasible. This policy is consistent with the administrative mandate set out by the United States Department of Transportation in Part 26 Code of Federal Regulations, Title 49. City will ensure that all information is complete and accurate and adequately documents the Proposer's good faith efforts before the City commits to the Auto Rental Lease agreement with the Proposer. Article II, Paragraph K, of the Auto Rental Lease agreement outlines Airport Concession DBE requirements.

14. NONDISCRIMINATION PROVISIONS

Operator, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that "as a covenant running with the land" (1) no person on the grounds of race, color, sex, creed, national origin, or disabled status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or in the construction of any improvements on, or under such land, or the furnishing of services thereof and (2) that Operator shall use the premises in compliance with and conduct its operations in accordance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, or Section 504 of the Rehabilitation Act of 1973 (23 USC 794) and 49 CFR Part 27 and as said regulations may be amended, and that Operator will comply with such enforcement procedures as the United States might demand that City take.

15. EVALUATION OF PROPOSALS AND AWARD OF CONTRACT

The City reserves the right to accept or reject any or all Proposals, in whole or in part. The City's intent is to award four contracts to the bidders with the highest qualified total minimum annual guarantees. However, the City reserves the right to award the Contracts to the Proposers submitting the Proposals that the City, in its sole discretion, determines will be most advantageous and beneficial to the City. The City will be the sole judge of which Proposals will be in its best interest and its decision will be final.

REQUIRED BID FORMS

BUSINESS INFORMATION

1. Name of Firm (exactly as it is to appear on the Agreement):

2. Principal Office Address:

3. Telephone Number:

4. Contact Person/Title:

5. Form of Business Entity; check one and complete appropriate statement(s):
 - Partnership
 - Corporation
 - Joint Venture
 - Individual/Sole Proprietor (no additional page required)
 - Limited Liability Company (LLC)

PARTNERSHIP STATEMENT

If a PARTNERSHIP, answer the following:

- 1. Date of Organization?
- 2. General Partnership () Limited Partnership ()
- 3. Partnership Agreement Recorded? Yes () No ()
- 4. Has the Partnership done business in Texas? Yes () No ()
 If Yes, when?/where?
- 5. Name, address, and partnership shares of each partner:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENT OWNERSHIP</u>

- 6. If any partner is not an individual, the appropriate business entity statement must also be completed for that partner.
- 7. A certified copy of the partnership agreement must be submitted.

**CORPORATION (OR LIMITED
LIABILITY CORPORATION)
STATEMENT**

If a CORPORATION, answer the following:

1. When incorporated?
2. Where incorporated:
3. Is the corporation authorized to do business in Texas?
Yes () No () If yes, as of what date? _____

4. Address of the registered office in Texas

5. Name of registered agent in Texas at such office:

6. The Corporation is held: Publicly () Privately ()

7. Furnish the name, title, and address of each officer, director and principal shareholders owning 10% or more of the corporation's issued stock.

DIRECTOR'S NAME	ADDRESS	TITLE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

CORPORATION STATEMENT

(Page 2)

<u>OFFICER'S NAME</u>	<u>ADDRESS</u>	<u>POSITION</u>
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<u>SHAREHOLDERS</u>	<u>ADDRESS</u>	<u>PRINCIPAL PERCENT OWNERSHIP</u>
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8. If any principal shareholder is not an individual, the appropriate business entity statement must also be completed for such shareholder.

JOINT VENTURE STATEMENT

If a JOINT VENTURE, answer the following:

- 1. Date of Organization?
- 2. Joint Venture Agreement recorded? Yes () No ()
- 3. Have the Joint Venturers conducted business in Texas
 Yes () No () If yes, when?/where? _____
- 4. Name and Address and Percent Ownership of Each Joint Venturer:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENT OWNERSHIP</u>

- 5. If any joint venturer is not an individual, the appropriate business entity statement must also be completed for such joint venturer.
- 6. A certified copy of the joint venture agreement must be submitted with the proposal.

FINANCIAL INFORMATION

1. Fidelity Information

Have you or any entities in which you have had an ownership interest, ever had a fidelity bond canceled or forfeited?

Yes () No (). If yes, state name of bonding company, date, amount of bond and reason for such cancellation or forfeiture.

2. Bankruptcy Information

Have you or any entities in which you or they have had ownership interest, ever been declared bankrupt?

Yes () No (). If yes, attach statement setting forth date, court jurisdiction, amount of liabilities and amount of assets, type (e.g., Chapter 7, 9, 11, etc.), and resolution or current status.

3. Credit References (Attach Sheet)

Provide names, titles, addresses, and phone numbers of at least three (3) persons/firms (banks and vendors) your company has done business with for at least the most recent three (3) years.

RENTAL FEE PROPOSAL FORM
TO BE ATTACHED TO LEASE ONCE EXECUTED

Proposed Monthly Rental Fee:
Contract Period

Minimum Annual Guarantee

February 1, 2017 – January 31, 2018

(Amount in numbers) = \$ _____ / year
(Amount in words) = _____ / year

(Amount in numbers) = \$ _____ / month
(annual guarantee / 12)
(Amount in words) = _____ / month
(annual guarantee / 12)

February 1, 2018 – January 31, 2019

(Amount in numbers) = \$ _____ / year
(Amount in words) = _____ / year

(Amount in numbers) = \$ _____ / month
(annual guarantee / 12)
(Amount in words) = _____ / month
(annual guarantee / 12)

February 1, 2019 – January 31, 2020

(Amount in numbers) = \$ _____ / year
(Amount in words) = _____ / year

(Amount in numbers) = \$ _____ / month
(annual guarantee / 12)
(Amount in words) = _____ / month
(annual guarantee / 12)

TOTAL THREE YEAR MINIMUM ANNUAL GUARANTEE:

(Amount in numbers) \$ _____

Office, Counter & Queuing Space

\$500.00 /month

~~A Block of 26 Parking Spaces~~

~~**\$1,560.00 /month**~~

Parking Spaces

\$30.00/space/month of Contract YR 1

\$45.00/space/month of Contract YR 2

\$60.00/space/month of Contract YR 3

\$5,527.00 annually for the rental Car Wash Facility which will be divided equally ~~between~~ among the numbers of successful bidders.

Name of Rental Car Brand operating within the Leased Premises

Please also reflect your bid in the [REVISED](#) Auto Rental Lease agreement

This Addendum No. 3 is considered the final addendum for Bid #17-002. Questions and discussions prior to Bid Opening have expired.

Receipt of Addenda acknowledged:

Addendum No. 1,

Addendum No. 2

[Addendum No. 3](#)

Signature

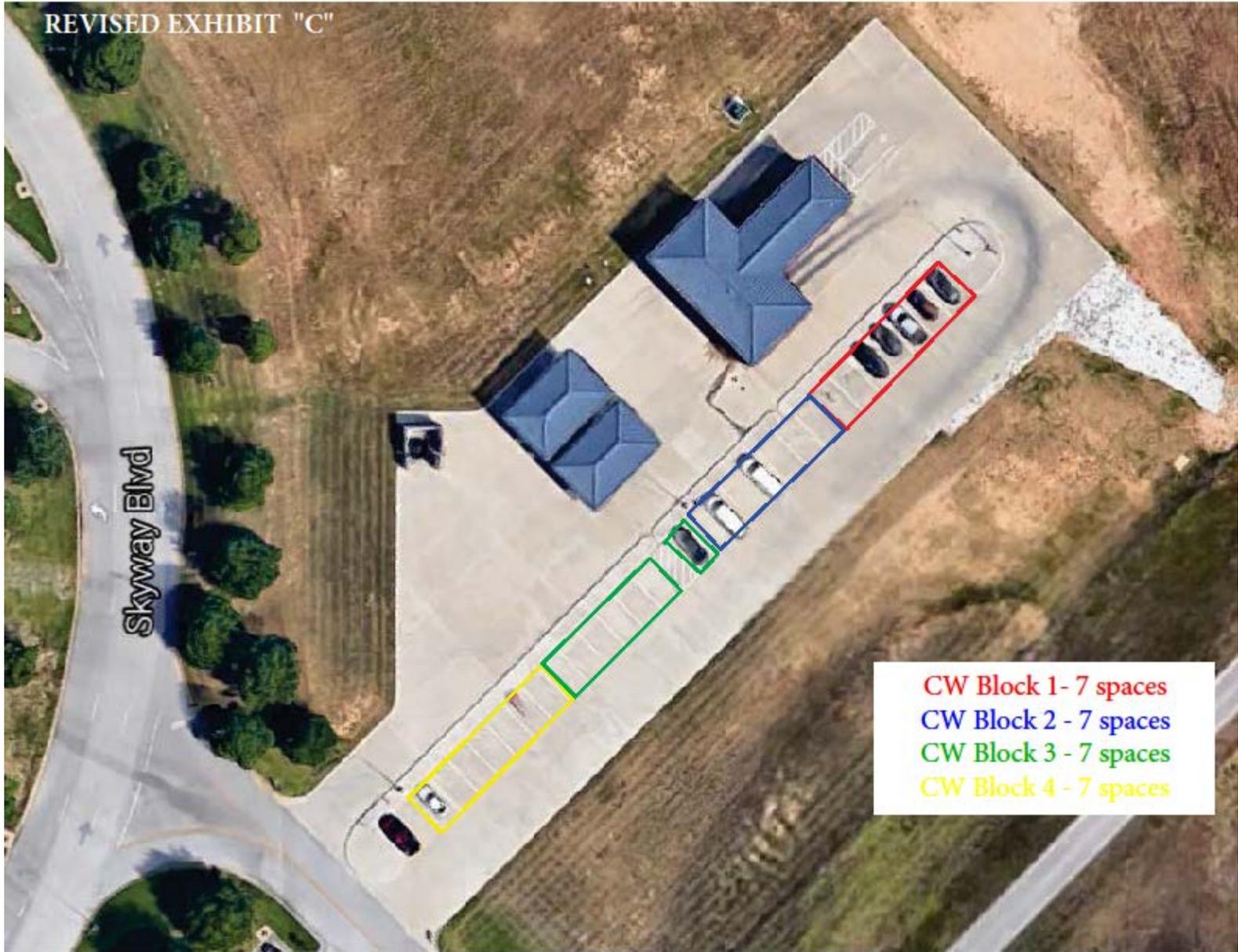
Date

Revised Exhibit "B" - Rental Car Ready Return Parking Lot



104 parking spaces - to be allocated per RFQ No. 17-002, Addendum No. 3
2 handicap spaces are not included in the 104 spaces or the allocation.

REVISED EXHIBIT "C"



RENTAL CAR CONCESSION LEASE AGREEMENT

MARK-UP

Red = Deletion; Blue = Insertion

TYLER POUNDS REGIONAL AIRPORT

The State of Texas
County of Smith

I N D E X

REVISED AIRPORT AUTO RENTAL LEASE

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FOR QUESTIONS CALL:		
Airport Manager, Davis Dickson, (903) 531-9825		

THE STATE OF TEXAS

∃

AIRPORT AUTO RENTAL LEASE

COUNTY OF SMITH

∃

∃

THIS LEASE is made between the CITY OF TYLER, TEXAS, political subdivision of the State of Texas, (hereinafter "City"), and _____, (hereinafter "Lessee").

WITNESSETH:

WHEREAS, City owns and operates the Tyler Pounds Regional Airport, located in Smith County, State of Texas, (hereinafter "Airport"); and

WHEREAS, the City of Tyler is home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Chapter 241 contains regulations related to municipal authority around airports; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, the City has established ordinances regulating activities at the Airport in Tyler City Code Chapter 12; and

WHEREAS, Tyler City Code Section 12-11.b. provides that no person may use the Airport or any part thereof for any activities or commercial purposes or for the carrying of passengers, freight, express or mail for hire or for instruction in any of the branches of aviation unless approved by the City Council; and

WHEREAS, Tyler City Code Section 12-30 requires anyone conducting commercial activities or solicitation for commercial on Airport property to have a valid lease, sublease, permit, or other form of City approval; and

WHEREAS, the City has certain airport space available for lease to Lessee; and

WHEREAS, the City has a consolidated rental carwash facility available for lease to Lessee; and

WHEREAS, the rental carwash facility has a storage space available for lease to Lessee; and

WHEREAS, Lessee is one of _____ successful bidders; and

WHEREAS, Lessee has indicated a willingness and ability to keep, maintain and improve said leased space in accordance with City standards, if granted a lease of sufficient term on said premises; and

WHEREAS, on _____, the Airport Advisory Board recommended approval of this lease to the City Council;

NOW, THEREFORE, for and in consideration of the mutual agreements, the parties agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

A. **DESCRIPTION OF PREMISES.** For and in consideration of the terms of this Lease to be performed by Lessee, all of which Lessee accepts, City hereby leases to Lessee the premises as shown on the attached Exhibits "A", **REVISED "B"**, and **REVISED "C"** for the West Side Terminal location, specifically as follows:

a) West Side Terminal

1. That portion of the West Side terminal building, as shown on the attached Exhibit "A" and by this reference made a part hereof. Said space shall be used for an auto rental counter and operations office.
2. Lessee shall have use of the rental car parking lot as shown on the attached **REVISED** Exhibit "B". Lessee further agrees to mark or sign these spaces at Lessee's expense as requested by City. The use of or rental of such spaces to the general public for the parking of vehicles is prohibited. **Lessee will not park nor allow its customers to park rental cars in passenger loading/unloading zones. Violations may be enforced by towing at Lessee's expense.**
3. Rental trucks or "trucks for hire", if such are kept on Airport property, will be stored in an area designated by the Airport Manager.
4. Rental Car Wash Facility as shown in **REVISED** Exhibit "C" for the purpose of cleaning, servicing and temporary storage of vehicles rented by the Lessee under the provisions of this lease.

Lessee accepts the leased premises in their present condition subject to and including all defects, and Lessee will, without expense to City, repair and maintain any installations thereon and remove, or cause to be moved, any debris, buildings or improvements to the extent required for Lessee's use thereof.

B. **ACCESS.** Upon paying the rental hereunder and performing the requirements of this Lease, Lessee shall have the right of access to and from said premises over such roadway(s) as may be designed for that purpose. Said roadway(s) shall be used jointly with other Airport tenants, but not for the conduct of business on another Lessee's premises and Lessee shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as the City Council deems necessary.

C. **OBJECTS AND PURPOSE OF LEASE.** Lessee is hereby granted the right and privilege to use the leased area for rental car related activities, subject to the terms herein.

Lessee shall not use the premises for any purposes other than those authorized herein without the prior written consent of City.

It is understood and agreed that nothing herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958, [49 USCA §1349(a)] or successor statute.

The Concession allowed under this Lease agreement provides for the operation of a single vehicle leasing operation under one brand name, per lease agreement.

D. **CITY'S RESERVED RIGHTS.**

1. **Development.** N/A
2. **Oil, Gas, Mineral Interests.** It is understood and agreed that this Lease is made subject and subordinate to the terms of any oil, gas, and other mineral interest; leases; or right-of-way easements of any nature which may have been executed heretofore.

If third persons owning or claiming any interest in minerals in, under, or upon the premises, cause a permanent or temporary disruption of Lessee's operations upon the premises, Lessee expressly agrees not to sue City, nor City's agents, for any loss to Lessee caused by such event. Said disruption of possession is a risk which Lessee expressly assumes herein.

City agrees that (1) if it should, as a mineral owner under the premises, develop the Airport area, or a portion thereof, for oil, gas or other mineral purposes, no well will be drilled or other operations conducted on the leased premises; and (2) if it should hereafter execute an oil, gas or other mineral lease in favor of a third party covering the Airport area, or portion thereof, it will cause such lease to contain a provision that the lessee therein will not conduct any of its drilling or other operations on the land covered by this Lease, or in a manner which would unreasonably interfere with Lessee's use and enjoyment of the premises.

3. **Other Contracts.** This Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States, relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to City of federal funds for the development of the Airport. In the event this lease is subordinated due to the City's election to receive federal funds and that action results in reduction of Lessee's revenue producing activities, City and Lessee shall negotiate reasonable compensation to Lessee for such reduction.
4. **Other Leases.** Nothing herein shall limit City with respect to granting of leases to other aviation tenants. [In the event the CITY shall enter into any lease or agreement with another rental car operator within the Terminal Building, that agreement will not contain more favorable terms than this LEASE AGREEMENT, unless the same rights, privileges and favorable terms are concurrently made available to LESSEE.](#)

E. **PROHIBITED USES.** Lessee shall not use or permit the use of any part of the premises in any other manner than as set out in [Article I, Section C](#) of this Lease. Some specific activities prohibited are as follows:

1. Food sales.
2. Sales of alcoholic beverages at the leased premises.
3. Sales or advertisement of products other than those products related to aviation, travel or

rental car activities.

4. Any use prohibited by law.
5. Installation and operation of fueling facilities without the consent of the Airport Manager.
6. Rental car washing on Airport property is prohibited other than the use of the Airport owned car wash facility.

F. **CONSTRUCTION REQUIREMENTS WHERE THE NEED OR DESIRE FOR CONSTRUCTION EXISTS. ~~EXPOSURE EXISTS~~**

West Side Terminal Building. The provisions of this Section shall apply to the West Side Airport Terminal Building only. It is understood that some leaseholders have completed approved upfit construction from the previous lease term(s) and no new construction may be necessary. The requirements in this section are in place for all new or required construction. **All existing and new signage MUST be approved by the Airport Manager.**

1. Lessee shall design and construct office and up fit requirements as proposed by Lessee and accepted and approved by City.
2. City shall deliver the leased areas specified herein to the Lessee with counter shell to accept insert provided by Lessee, walls and floor “as is”. The Lessee shall accept such premises “as is”.
3. Lessee shall provide all improvements which are necessary to operate said concession to the satisfaction of City.
4. All construction work done, equipment supplied and installed, and interior design and decor furnished by Lessee pursuant to this Section shall be at its sole cost and expense, free and clear of liens for labor and material and Lessee shall hold City harmless from any liability in respect thereto.
5. Prior to the commencement of construction by Lessee, Lessee shall furnish, at its sole cost and expense, both Performance and Payment Bonds in the principal sum of the amount proposed by Lessee in Article I Section F.1 herein, or the security deposit for said amount acceptable to the Airport Manager, to guarantee compliance with this Section. This Bond shall be in a form acceptable to City and be issued by a surety company authorized and licensed to transact business in the State of Texas and be for the full amount of the proposed improvements with City of Tyler as obligee conditioned upon full, faithful and satisfactory performance by Lessee of its obligations to construct and install the aforementioned facilities and improvements. The principal amount of said Bond or other security deposit, however, may be reduced during the term hereof as Lessee completes the improvements contemplated thereby.
6. Prior to any work being ~~done~~ initiated, including installation of signage, Lessee shall obtain ~~City's~~ Airport Manager's written approval of all plans, and shall obtain other Permits and approvals required by law. **NO PREVIOUS SIGNAGE WILL BE GRANDFATHERED FROM PREVIOUS LEASES. ALL SIGNAGE, WHETHER**

NEW OR PREVIOUSLY USED, MUST BE APPROVED BY THE AIRPORT MANAGER PRIOR TO INSTALLATION.

7. Lessee shall provide distribution of utilities **within the leased premises as required.**
8. The City and City's Design Architects shall review each submittal and may reject any such submittal and require Lessee to resubmit design proposals until they meet with City's approval. Lessee shall obtain written approval from City and shall obtain approvals from applicable City departments before letting of contracts for the construction of said concession improvements.
9. All structural or other improvements, equipment and interior design and decor constructed or installed by Lessee in the concession areas, including the plans and specifications therefore, shall in all respects conform to and comply with all applicable federal, state, Northeast Texas Public Health District (hereafter "Health District"), and City statutes, ordinances, building codes, orders, rules and regulations governing the leased areas and Lessee's operations therein. The approval by City provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain in Lessee.
10. Lessee shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and decor, that the contractor doing, performing or furnishing the same shall comply with all applicable Federal, State, Health District, and City statutes, ordinances, codes, orders, rules and regulations, and shall submit to City evidence of required insurance coverage.
11. Upon completion of the leased improvements, Lessee shall, within 60 calendar days furnish City, at no charge: (1) a certificate certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all applicable Federal, State, Health District, and City laws, rules, ordinances and governmental rules, regulations and orders; Two [2] complete, reproducible sets of as-built drawings covering the structural and other improvements installed by Lessee in the leased areas plus the location and details of installation of all equipment, utility lines, heating, ventilating, air-condition ducts and related matters. Lessee shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made in or to the leased premises; and (3) as installation of the structural and equipment items, counters, partitions, furnishing and the interior design and decor is completed.

G. **IMPROVEMENTS ON LEASED PREMISES.** No material improvement, including signage, on the leased premises shall be made or installed by Lessee without the prior consent of the Airport Manager, which consent will not be arbitrarily withheld. Lessee agrees that prior to the installation or construction of any such fixture, structure, addition, or improvement, it shall submit the general plan, location, design and character thereof to the Airport Manager for approval, and that all construction will be in conformity with such plans and specifications. Approval of Lessee's plans by City shall not constitute a representation or warranty as to such conformity. Responsibility for such conformity shall at all times remain in Lessee.

Lessee understands that all development shall conform to Airport Master Plan Guidelines and

other Airport Rules and Regulations then in existence as approved by City Council. Intentional failure to conform development to approved plans and as scheduled shall be cause for termination of this Lease upon failure to conform within thirty (30) calendar days of City's notice to Lessee of its failure to conform.

Title to all improvements constructed or installed by Lessee on the leased premises shall throughout the term of this Lease remain in Lessee. However, upon expiration or termination of this Lease, Lessee shall have no further right or interest in the **permanent** improvements, except as provided for elsewhere herein.

H. **MORTGAGE OF LEASEHOLD INTEREST.** N/A

ARTICLE II - OBLIGATIONS OF LESSEE

A. **NET LEASE: MAINTENANCE AND OPERATION.** The use and occupancy of the leased premises by Lessee will be **without cost or expense to City, except as otherwise specifically set forth herein**. It shall be the sole responsibility of Lessee to construct, maintain, repair and operate the entirety of the leased premises and any improvements and facilities constructed thereon at Lessee's sole cost and expense except as specifically set forth in this Article.

Lessee shall maintain the leased premises at all times in a safe, neat and attractive condition and shall not permit the accumulation of any trash or debris on the premises. Lessee shall repair all damages to said **leased** premises or to any other Airport property caused by its employees, patrons, or its operation thereon. Lessee shall maintain and repair its area as necessary. **Normal and routine maintenance of roofs, walls, utility infrastructure, roadways, parking lots, building mechanical systems and structural building components will be performed by City.**

City reserves the right to make periodic inspection of leased premises and improvements and equipment therein during normal business hours.

City, in its reasonable discretion, shall be the sole judge of the quality of maintenance **within the leased premises** which shall uniformly apply to all Airport tenants. Upon written notice by City to Lessee, Lessee shall perform whatever reasonable maintenance City deems necessary, **that reflect Lessee's responsibilities for the up keep of assigned leased area**. If said maintenance is not undertaken by Lessee within ten (10) calendar days after receipt of written notice, City shall have the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

Lessee agrees to install and maintain such fire equipment and fire extinguishers as may be reasonably designated or requested by the Fire Marshal or in accordance with applicable safety standards.

B. **HOURS OF OPERATION.** Lessee agrees that its automobile rental services shall be available at the Rental Car counter at the Airport each day commencing **at least one hour before the first passenger flight is scheduled to depart** at the Airport and **ending at least one (1) hour after the last scheduled flight has arrived at the Airport**, and during such additional hours as the Airport Manager or designee, by notice to the Lessee.

C. **ALTERATIONS TO AND CONDITION OF LEASED PREMISES.** Lessee shall not remove or demolish, in whole or in part, any improvements upon the lessee's premises or airport without

the prior written consent of the Airport Manager which may, at its discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent.

Lessee shall have the right to change the door locks only in its leased area with Airport Manager's approval and shall not dispose of the locks provided by the City. Keys will be furnished to the Airport Manager, Tyler Police Department and Tyler Fire Department. Lessee further agrees that upon the expiration of the term of this Lease or sooner cancellation thereof, that the original locks provided by the City will be replaced in good operating condition at Lessee's expense and all keys to the leased premises possessed by Lessee shall be returned to the City.

Lessee further agrees that upon the expiration of the term of this Lease or sooner cancellation thereof, said premises will be delivered to City in good condition, reasonable wear and tear excepted, subject to the provisions of Article VI.

D. **TRASH, GARBAGE, LANDSCAPING.** Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused by operation of its business. Lessee shall provide and use approved receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unattractive or unsafe manner, on or about the leased premises is prohibited.

E. **PARKING LOT SIGNAGE.** Rental car parking lot signs shall be placed **at Lessee's expense**, with prior written approval by the Airport Manager, on poles or fencing provided by City. The maximum face size of each parking lot sign shall not exceed 220 square inches. Lessee shall maintain, from time to time and at its own expense, the Ready/Return Lot parking signs in the designated parking area leased by Lessee. At the termination of this lease, the lessee shall remove its signs from the Airport owned poles within five business days after termination.

Lessee agrees to reimburse City for any damage to the Westside Airport Terminal building or any other City property resulting from the installation, maintenance or removal of any such signs.

F. **UTILITIES.** City shall be responsible for electricity to existing electrical outlets, lighting fixtures, and HVAC within the leased area, inside the West Terminal building. City will also provide water and sewer within public areas for lessee's use. Lessee shall assume and pay for all costs or charges for additional utilities services, not provided herein, furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right, with written Airport Manager approval, to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefor. All telecommunications and data communication fees will be paid by Lessee.

G. **FIELD USE CHARGES.** N/A

H. **WORK STOPPAGES.** In the event of a strike or work stoppage by employees of Lessee, Lessee will continue to pay 10% gross revenue to include rentals, concessions, and Minimum Monthly Guaranteed, during the entire period of any such strike or work stoppage, the rentals due in this lease.

I. **COMPLIANCE WITH RULES.** Lessee will comply with any and all federal or state laws, rules and regulations, Health District rules, and all City ordinances and rules.

J. **NONDISCRIMINATION/FEDERALLY REQUIRED ASSURANCES.** Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that "as a covenant running with the land" (1) no person on the grounds of race, color, sex,

creed, national origin, or disabled status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or in the construction of any improvements on, or under such land, or the furnishing of services thereof; and (2) that Lessee shall use the premises in compliance with and conduct its operations in accordance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, or Section 504 of the Rehabilitation Act of 1973 (23 USC 794) and 49 CFR Part 27 and as said regulations may be amended, and that Lessee will comply with such enforcement procedures as the United States might demand that City take.

K. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) REQUIREMENTS [49 CFR Part 23 (26.53)]. In this Agreement, ACDBE means Airport Concession Disadvantaged Business Enterprise, as defined in 49 CFR Part 23, and means a concession that is a for-profit small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, Black Americans, Hispanic Americans, Asian-Pacific Americans and Asian-Indian Americans.

City will ensure that all information is complete and accurate and adequately documents the bidder/offeror’s good faith efforts before the City commits to the concession agreement with the bidder/offeror.

The City treats bidder/offeror’s compliance with good faith effort requirements as a matter of responsibility.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire’s commitment;
6. If the contract goal is not met, evidence of good faith efforts;
7. An annual report to be received by the Airport Concession Disadvantaged Business Enterprise Liaison Officer (ACDBELO) Jennifer Price, Airport Projects Coordinator, **by October 31st for the previous fiscal year ending September 30th to include the following information on all firms/suppliers participating in the concession:**

Vendor Name	Vendor Mailing Address	ACDBE Certified	Total Amount Spent with Vendor
		Y or N	\$
		Y or N	\$
		Y or N	\$

Within 20 calendar days of being informed by the City that it is not responsible because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire (Lessee) should make this request in writing to the following reconsideration official:

Jennifer Price (ACDBELO)
Tyler Pounds Regional Airport
700 Skyway Blvd., Suite 201
Tyler, Texas 75704
Office: 903-531-9825
jprice@tylertexas.com

The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The City will send the concessionaire a written decision on reconsideration, explaining the basis for the findings. The result of the reconsideration process is not administratively appealable to the Department of Transportation. The reconsideration official's decision is final, unless appealed pursuant to Tyler City Code Chapter 1, Article IV.

The City will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. The concessionaire shall notify the Airport Concession Disadvantaged Business Enterprise Liaison Officer (ACDBELO) immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the City will require the concessionaire to obtain prior City approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The concessionaire must include the specific reasons for the termination and/or failure to complete its agreement as set forth above. The concessionaire must also provide the ACDBE with any and all documents and information as may be requested with respect to the termination or substitution of the ACDBE.

If the concessionaire fails or refuses to comply in the time specified, the City will take appropriate measures until satisfactory action has been taken. If the concessionaire still fails to comply, the ACDBELO may issue a termination of this Lease for default proceeding.

L. **FAA AND OTHER APPROVAL OF USE.** Lessee agrees to secure approval from the Federal Aviation Administration concerning the height and location of all buildings or improvements or modifications thereof which may be constructed or installed on the leased premises and to satisfy any applicable environmental or other requirements of federal, state, and local authorities as to noise, smoke, fumes emissions, or other hazards or potential hazards or other offensive uses, if any, which may occur as a result of Lessee's operations on the leased premises.

M. **NON-INTERFERENCE WITH OPERATION OF AIRPORT/EASEMENTS.**

1. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not use the leased premises in any manner which might interfere with the landing and taking off of aircraft at Airport or otherwise constitute a hazard. If Lessee violates this provision, City reserves the right to enter upon the premises and remove the interference at the Lessee's expense.
2. City shall maintain and keep in good repair the landing area of the Airport, and shall have the right to direct and control all activities of the Lessee in this regard.
3. Easements. City retains the use and enjoyment of all utility and other easements located on, in, or about the hereinabove described premises. City shall retain the right to take, without compensation to Lessee, any additional easements as are necessary on the hereinabove described premises for installation or maintenance of utilities, whether they be to supply service to the Lessee hereunder or other Airport lessees, provided that such additional easements will not unreasonably interfere with Lessee's use of the premises.
4. City shall retain an easement over, above and on the leased premises in relation to aircraft noise and the utilization of air space for the operation of Airport.

N. **LESSEE AUTHORITY.** The officers of the Lessee which execute this Lease represent and promise that they are duly authorized by corporate resolution or other appropriate authorization to execute same on behalf of Lessee.

O. **INSPECTION OF BOOKS AND RECORDS.** Upon 30 (thirty) days written notice by City, Lessee agrees to prepare and submit a written compiled financial statement based on activities and operations related or derived from this lease and at Tyler Pounds Regional Airport. This statement will be due within ninety (90) days after the end of each contract year during the term of this Agreement, and must be prepared and signed by a certified **independent** public accountant. To the extent permitted by law, this information will not be for public record.

City reserves the right to hire an independent certified public accountant to audit Lessee's books and records related to this lease and activities at Tyler Pounds Regional Airport at any time during the lease term. Lessee agrees that it will provide all requested books, detailed revenue reports and records to the independent auditor within ten (10) calendar days of written request. City also reserves the right to require that Lessee submit copies of any of Lessee's car rental contracts from previous business days, collected and submitted to the City at the car rental agencies' expense, if 2% or more data was determined underreported.

P. **BUSINESS SOLICITATION.** Lessee's solicitation of business at the Airport shall be confined to signs, advertising materials, and answering inquiries from the leased premises. Lessee shall prohibit its agents and employees from engaging in the solicitation of its auto rental services on or about the Airport in a loud, boisterous, offensive, or objectionable manner. In the event of questionable conduct in such solicitation, City shall be the sole judge in determining if said conduct is a violation of this paragraph. Upon notice from City, Lessee shall immediately take all steps necessary to eliminate the undesirable conditions.

No Diversion/Solicitation. Lessee shall not, through its officers, agents, representatives or employees, divert or cause to be diverted any prospective concession patrons from the Airport to another location within 3 miles of Airport. If any such diversion does occur, the diverted transaction shall be deemed to have occurred at the Airport. Additionally, Lessee shall not, through its officers, agents, representatives

or employees engage in the solicitation of, or pressure sales tactics for, services offered on or about the Airport.

Q. **EMPLOYEES.** Lessee shall at all times retain an active, qualified, competent and experienced manager to supervise the concession operations and to represent and act for Lessee in matters pertaining to the day-to-day operation of the concession.

Lessee shall be required to ~~wear a uniformed shirt of dress in~~ a professional appearance displaying the company's logo, ~~according to the Lessee's company dress code.~~ An appropriate badge, cap or other standard item of apparel shall identify the service. Employees shall be professional, clean, courteous, and efficient and neat in appearance at all times. Lessee shall not employ any person(s) in or about the leased premises who use improper language, acts in an improper manner, is not courteous to Airport patrons and does not respect Airport rules and City of Tyler policies.

Lessee shall maintain a close check over attendants and employees to insure a high standard of service to the public, the performance of such obligation to be determined at the sole discretion of the City. Upon written notice by the City to Lessee that any person employed by Lessee at the Airport is, in the City's opinion, detrimental to the best interests of the Airport, Lessee will respond in writing to Airport Manager within forty-eight (48) hours of its response and action.

Lessee shall receive a written notice of violation by the Airport Manager upon evident disregard to the rules stated in this contract. Upon issuing a second violation, employee shall be asked to leave the airport premises. Employee found to violate serious rules of the Airport or laws, may be asked to immediately leave the Airport premises.

R. **RENTAL VEHICLES.** Lessee shall at all times and at its own cost and expense maintain all of its rental automobiles in good operating order and free from known mechanical defects. Said automobiles shall be kept in a clean, neat and attractive condition inside and out.

Lessee shall at no times use automobiles whose year model is more than two years older than the current year model.

Lessee agrees to restrict its storage and service uses on the airport to vehicles owned or controlled by Lessee for the sole use of Airport rental car contracts.

S. **TRAFFIC RESTRICTIONS.** Lessee's employees shall observe and comply with all posted restrictions on parking or standing vehicles, speed limits, and traffic rules on the airport properties. The "ready line" vehicle parking area (or the leased premises) is intended strictly for authorized business purposes for the parking of company owned vehicles only. Employees or owners of the Lessee are not authorized to use the area for parking of their personal vehicles. Lessee may not use and may not advise customers to use passenger loading/unloading zones in front of the terminal building for drop off or pick-up of vehicles. **Violations of Federal regulations, State traffic regulations and City parking and traffic ordinances and/or restrictions may be enforced by towing at Lessee's expense. The use of or rental of parking spaces in the rental car parking lots to the general public for the parking of personal vehicles is prohibited.**

T. **RENTAL CAR WASH FACILITY.**

1. Lessee shall keep the leased parking areas free of junk, debris, trash, refuse, disabled vehicles, and junked vehicles. Lessee will maintain all Lessee installed signs in good repair. Lessee's responsibility for cleaning extends to the car wash, vehicle fueling area (if

- present), and to any other areas on the airport where trash, mud, grease, or other deposits are the direct result of the Lessee's operations or carelessness. Lessee will obtain written approval of the Airport Manager for all signs/pavement markings or modifications to the designated parking area.
2. City will maintain and inspect the Car Wash as recommended by the manufacturer including routine maintenance of the Car Wash for normal activities, wear and tear. Normal and routine maintenance of roofs, walls, utility infrastructure, roadways, parking lots, building mechanical systems and structural building components will be performed by City. Wash soaps, rinses, brushes and utilities will be provided by the City. Vacuum bags and hoses will be supplied by the City. City will provide routine cleaning of the Car Wash. City has the exclusive authority to stop the use of a Car Wash for maintenance and inspections as is necessary, at City's sole discretion, without damage or liability to Lessee. City will take reasonable action to notify Lessee for closure of the Car Wash.
 3. Expenses for any damages, maintenance and repairs as a result of negligent and/or intentional reckless acts of Lessee will be at the sole expense of the Lessee.
 4. Except where authorized by the Airport Manager in writing, Lessee is prohibited from selling fuel to any person or entity and from servicing, parking or storing any vehicles other than those owned or managed by Lessee in its business on the airport. Should such activities be permitted by the Airport Manager, all gross receipts from the City approved activity shall be included in the gross revenue calculations received by Lessee and made part of the monthly concession payment.
 5. Except where authorized by the Airport Manager in writing, no fuel facilities are permitted on the airport. Should such activities be permitted by the Airport Manager, all fuel flowage fees shall be paid to the airport for fuel delivered to be utilized for vehicles owned or managed by Lessee in its business on the airport.
 6. Lessee agrees that it will train its employees to operate the Car Wash in a responsible manner to prevent any damage to the Car Wash, vehicles being serviced, or the contents of vehicles being serviced.
 7. Lessee agrees not to modify, circumvent, tamper with or disable any safety feature, operational device, sensor, or limit switch on the Car Wash, without the specific knowledge and written consent of the City.
 8. ~~The Facility has thirty parking spaces for rental car storage. Spaces will be allocated equally among the successful bidders, with any extra spaces allocated based on the bid share.~~ The rental carwash facility parking spaces for rental car storage have been divided into four blocks of seven parking spaces each as depicted in the attached REVISED Exhibit "C".
 9. On-site car rental companies shall pay a minimum fee of three dollars (\$3.00) per wash of a single vehicle and receive twelve minutes of wash bay operation with a fee of twenty-five cents (\$.25) per minute for each additional minute thereafter for use of the rental car wash bay for the same vehicle. Fees include use of vacuums at no additional charge. Fees are set by Tyler City Code Section 12-31 and are subject to change according to Tyler City Code Section 12-31. **Lessee shall not stack or stage vehicles for consecutive washes. Failure to adhere to this provision can result in termination of car washing service privileges to the/those employee(s) found to violate this provision.**

ARTICLE III - TERM OF LEASE

The term of this Lease shall be for a period of ~~about~~ three (3) years from February 1, 2017, through January 31, 2020.

If Lessee shall hold over and remain in possession of the Leased Premises after expiration of the Term specified herein, such possession by Lessee shall be deemed to be a month-to-month tenancy that is terminable immediately on written notice delivered at any time by either party. During any such month-to-month tenancy, Lessee shall pay all the fees, charges and annual guarantees required by this Agreement. All provisions of this Agreement except those pertaining to Term shall apply to said month-to-month tenancy.

ARTICLE IV - RENTALS

A. PAYMENT SCHEDULE. For the privilege granted herein, Lessee shall pay to City either ten percent (10%) of the monthly Gross Revenue received by Lessee for the operation of the Airport car rental concession under this agreement, or a payment of one-twelfth (1/12) of the Minimum Annual Guarantee (MAG) specified in the bid proposal attached, whichever amount is greater. Refer to attached bid sheet with Lessee's MAG as bid for each contract year. Lessee shall also pay five hundred dollars (\$500.00) per month for office, counter and queuing space. ~~Lessee shall pay a total of \$1,560.00 per month per block of 26 spaces of ready car parking spaces.~~ Lessee also agrees to pay a total of \$30.00 per month per space of ready car parking spaces during Contract Year 1, \$45.00 per month per space during Contract Year 2, and \$60.00 per month per space during Contract Year 3.

In the Rental Car Wash Bay Facility, Lessee shall pay its portion of the annual land lease totaling \$5,527.00 annually for the rental Car Wash Facility which will be divided equally ~~between~~ among the numbers of successful bidders.

Rental trucks or "trucks for hire", if such are kept on Airport property, will be stored in an area designated by the Airport Manager. The designated area provided for such storage will be provided at a fee of ~~sixty dollars (\$60.00) per space per month.~~ \$30.00 per month per space during Contract Year 1, \$45.00 per month per space during Contract Year 2, and \$60.00 per month per space during Contract Year 3. The Concession allowed under this Lease agreement provides for the operation of a vehicle leasing operation within the Leased Premises under one single brand name. See Tyler City Code Section 12-31.

B. GROSS REVENUE. The term "Gross Revenue" as used herein means ,all monies due Concessionaire, whether paid or unpaid, from any and all customers for the use, rental or lease of vehicles and any additional services or accessories contracted for, delivered, supplied or rented at or from anywhere on the premises of Tyler Pounds Regional Airport regardless of where, how (cash, credit, barter or otherwise) or by whom payment is made; whether the customer is transported from Tyler Pounds Regional Airport to an off-site place of business; or where the vehicle is picked up or returned. Unless revenues are expressly and specifically excluded from Gross Revenues, all revenues derived from, arising out of or becoming payable on account of the Lessee, whether directly or indirectly, shall be included in Gross Revenues. Gross Revenues shall include, but not be limited to:

1. The time and/or mileage charges, after discounts taken at the time of rental, assessed by Lessee to its customers;
2. The premiums on any and all insurance sold, including personal accident personal effects and cargo insurance, life insurance and any other insurance sold in connection with the vehicle rental;
3. Sums received from customers for Collision Damage Waiver (CDW) protection and Loss Damage Waiver (LDW) protection;
4. Any and all add-on fees and charges including extra driver coverage, underage driver coverage and vehicle upgrade charges;
5. Any and all fees and charges for equipment, supplies and incidental items which are made available and charged for separate from the vehicle including, but not limited to, sporting

equipment, cellular telephones, child restraint seats, video equipment, and any other incidental items and services;

6. All “local revenue”. Local Revenue means revenue derived from a vehicle rental transaction with a customer who has not deplaned at Tyler Pounds Regional Airport yet the rental transaction occurred at Tyler Pounds Regional Airport. It also includes revenue derived from a vehicle transaction from fixed base operators (FBO) located at Tyler Pounds Regional Airport.
7. All charges attributable to any vehicle originally rented at Tyler Pounds Regional Airport which is exchanged at any other location of Lessee.
8. All proceeds from the long-term lease of vehicles from any location at Tyler Pounds Regional Airport.
9. The amount charged to Lessee’s customers at the commencement or the conclusion of the rental transaction for the cost of furnishing and/or replacing fuel provided by Lessee.
10. The amount charged by Lessee as a pass through to its customers of Concession Fees.
11. Charges commonly referred to as “drop charges” or “intercity fees”.

The following, however, shall not be considered as a part of Lessee’s gross revenue in Lessee’s monthly reports to City:

1. The amount of any sales taxes or other similar excise taxes, now or hereafter levied or imposed by a governmental agency, which were separately stated and collected from customers.
2. Any sums received by a Lessee as insurance proceeds or payments from Lessee’s customers or insurers specifically for physical damages to rented vehicles or other property of Lessee other than any administration fees.
3. Sums specifically received as the result of loss, conversion or abandonment of Lessee’s vehicles other than administration fees.
4. Sums specifically received from the sale of vehicles off- airport premises or other equipment used in the operation of the Concession, the use of which Lessee wishes to discontinue.
5. Reimbursements for amounts actually paid for red light tickets, parking tickets, other governmental fines and fees, tolls, towing and impounded vehicles from its customers to pass through without markup to an independent third party with no amount being retained by the Lessee. However, any amounts collected above the pass through amount shall be included as Gross Revenue under this Agreement.
6. The amount of any vehicle license recovery fee, now or hereafter permitted by the State of Texas.
7. The amount of any CFC(s) received by Lessee which are separately stated and collected from customers.

Any and all retroactive discounts given by Lessee including corporate volume discounts are not allowed as a deduction from Gross Revenue.

If the aggregate concession fee payments made for any contract year shall exceed the greater of (1) the minimum annual guaranteed concession fee applicable to such year, or (2) the appropriate applied percentage rate of said Gross Revenue during such contract year, the overpayment shall be credited to Lessee’s account and applied at City’s election to one or more of the next succeeding monthly payments during the next contract year, except the last year in which case an appropriate refund shall be paid to Lessee, unless Lessee continues operations at the Airport, in which case the monthly adjustment will apply. Any balance due the City in accordance with the annual guaranteed concession fee shall be paid within sixty (60) days following the end of the contract year.

As of the effective date of this Lease, if for any reason the number of passengers deplaning on scheduled airline flights at the Airport should decline below 75% of the number of such deplaning

passengers for the same ninety-day (90) day period, the minimum monthly guarantee amount as set forth in this Lease shall be abated during which such decline continues and if the Lessee's revenues are otherwise below such minimum monthly guarantee during such decline.

C. CUSTOMER FACILITY CHARGE. A Customer Facility Charge (CFC) per rental car contract per day on any rental of a rental car at the Airport, is imposed at Tyler Pounds Regional Airport, per Tyler City Code Section 12-31.j.

D. DELINQUENT RENTALS. There shall be added to all sums due City and unpaid, an interest charge on the unpaid balance of one and one-half percent (1-1/2 %) per month, if payment is not received **by the twentieth day of the month for which payment is due.** (Example: A delinquent fee will be added to January's rent if January rental is not received by the twentieth day of February.) No interest shall be charged upon that portion of any debt which, in good faith, is in dispute.

ARTICLE V - INSURANCE AND INDEMNITY BY LESSEE

A. TYPE AND AMOUNT. Lessee shall provide and maintain, at its own expense, the following types and amounts of insurance, during the term of this Lease:

<u>TYPE</u>	<u>AMOUNT</u>
1. Comprehensive General (Public) Liability - to include (but not limited to) the following:	\$1,000,000 per occurrence and
Premises/operations	
a. Independent contractors	\$1,000,000 general aggregate
b. Personal injury liability/contractual liability (insuring indemnity provision within this contract)	
2. Worker's Compensation and Employer's Liability (where required by state law)	<u>Statutory</u> \$500,000 per occurrence
3. <u>Property Damage Insurance</u> - physical damage coverage for the perils of Fire and Extended Coverage on the improvements and betterment to the leased property	<u>Coverage for a minimum of Eighty (80%) percent of the actual cash value of property</u>
4. <u>Comprehensive Automobile Liability</u> - to include coverage for:	
a. Owned/Lease Automobiles	\$5,000,000 per occurrence
b. Non-owned Automobiles	
c. Hired Cars	

The preceding amounts notwithstanding, the City Council reserves the right to increase the

minimum required insurance to be effective thirty (30) calendar days after notice is sent to the address provided herein. If City exercises the right to increase minimum insurance amounts, Lessee may choose to either comply with the increase or cancel this lease with no penalty.

The procuring of such policy of insurance shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of this Lease. Lessee's obligations to the City are, notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss as provided under the terms of the lease.

B. OTHER INSURANCE REQUIREMENTS. *Prior to the lease effective date*, Lessee shall furnish to Airport certificates or copies of the policies, plainly and clearly evidencing required insurance, and thereafter new certificates *prior to the expiration date of any prior certificate*. Lessee understands that it is its sole responsibility to provide this necessary information and that failure to comply timely with the requirements of this Article shall be a cause for termination of this Lease, under the provisions of the termination clause.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form, content, form of protection, and providing company. Rental car companies may be self-insured and must be able to provide a Certificate of Insurance. If not, a statement signed and notarized by an authorized corporate officer assuming liability will be acceptable if the company has the necessary financial resources to guarantee payment when such liability is imposed by law. When evaluating the acceptability of self-insurance a recent audited financial statement and description of the Self-Insurance Program, including how it is funded, must be supplied before operations at the airport commence. Financial statements and amendments of how the insurance program is funded must be supplied annually thereafter during the term of this lease. All statements and information relating to self-insurance shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form and content.

Insurance required by this Lease for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Lessee further agrees that with respect to the above required insurance, the City shall:

1. Be named as additional insured/or an insured, as its interest may appear; and
2. Be provided with a waiver of subrogation; and
3. Be provided with 30 days advance notice, in writing, of cancellation or material change.

If either requirement #1 or #2 requires the payment of additional premium by Lessee, Lessee may present such information to the City Council for its reconsideration. City will not be responsible for any of Lessee's insurance costs.

C. INDEMNITY. It is agreed for all purposes hereunder, Lessee is and shall be an independent contractor and shall not, with respect to its acts or omissions be deemed an agent or employee of City.

Lessee agrees to indemnify, hold harmless and defend City, City's officers, agents and employees, from and against all liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's fees and other reasonable costs occasioned by Lessee's occupancy or use of the leased premises and/or activities conducted in connection with or incidental to this lease

and arising out of or resulting from the intentional acts or negligence of Lessee, Lessee's officers, agents or employees, including all such causes of action based on common, constitutional, or statutory law, or based upon the negligent or intentional acts or omissions of Lessee, Lessee's officers, agents, employees, or other persons under its direction or control.

To the extent permitted by law, City agrees to indemnify, hold harmless and defend Lessee, its officers, agents and employees, from and against all liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's fees and other reasonable costs associated by City's activities at the Airport and arising out of or resulting from the intentional acts or negligence of City, City's officers, agents or employees, including all such causes of action based on common, constitutional, or statutory law, or based upon the negligent or intentional acts or omissions of City, City's officers, agents, employees, or other persons under its direction or control.

Lessee further agrees that it shall at all times exercise reasonable precautions for the safety of Lessee's officers, agents, employees, customers, and visitors, as well as their property, while in or on the leased premises. It is expressly understood and agreed that City shall not be liable or responsible for the negligence or willful acts of Lessee, Lessee's agents, servants, employees, customers, and visitors. Provided, however, nothing herein shall be construed to create a duty owed by Lessee to third persons where no such duty exists by law.

Further, City assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premises defects in improvements constructed by Lessee which may now exist or which may hereafter arise upon the leased premises, any and all such defects being expressly waived by Lessee. Lessee understands and agrees that this indemnity provision shall apply to any and all claims, suits, demands, and/or actions based upon or arising from any such premise defects or conditions, including but not limited to any such claim asserted by or on behalf of Lessee or any of Lessee's members, agents, employees, customers, or visitors.

It is further agreed with respect to the above indemnity, that City and Lessee will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Lessee or City, and City shall have the right to compromise and defend the same to the extent of its own interests. Provided, however, nothing in this lease shall be construed as obligating Lessee to indemnify the City for the willful acts or negligence or actions of the City, City's agents, servants, or employees, or third parties over whom Lessee has no right of control.

D. FAILURE TO PROVIDE INSURANCE, SUSPENSION OF ACTIVITIES. Whenever a Lessee is unable to show proof of insurance required and after ten (10) calendar days prior written notice, then the City Manager, upon recommendation of the Airport Manager, shall have the authority, without any liability to the City, to suspend temporarily Lessee's airport activities on a daily, or portion of a day basis, until proof of required insurance is provided. This remedy is in addition to all others herein and is intended to obtain compliance without and before termination of the Lease.

ARTICLE VI - TERMINATION OF LEASE, CANCELLATION, ASSIGNMENT AND TRANSFER

A. **TERMINATION; RECAPTURE BY CITY.** Upon expiration of the Term as provided in Article III, or earlier termination as otherwise provided herein, Lessee shall have no further right or interest in the ground or improvements constructed thereon, except as provided by the other provisions herein relating to such improvements.

If City requires the leased premises for expansion or developing of the Airport, City reserves the right, on three (3) months' notice and without any liability, to relocate or replace Lessee's improvements at City's cost and expense in substantially similar form at another generally comparable location on Airport. During such period of relocation, City will use its best efforts to assist Lessee in obtaining temporary shelter ~~and rent payments will be abated only during the act of relocation and up to the return of operation.~~

During time of war or national emergency, City shall have the right to lease the Airport or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the lease to the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated.

B. **CANCELLATION BY CITY.** City shall have the right to cancel this lease if Lessee fails to rectify the following within ~~fourteen (14)~~ ten (10) calendar days of written notice to do same from City.

1. Default in the performance of any of the terms required herein and to be performed by Lessee.
2. Material failure to abide by all valid and enforceable laws of the United States or State of Texas, or any applicable Health District rules, or any ordinances or other Airport Rules and Regulations approved by the City Council.
3. Failure to replace any of Lessee's improvements which have been destroyed by fire, explosion, etc., (with exception to fire damage, explosion damage, etc. as a direct result of City negligence) within six (6) months from the date of such destruction, or if improvements are owned by Lessee, failure to replace them or request an amended site plan within six (6) months.
4. Abandonment of the leased premises for thirty (30) calendar days.
5. Bankruptcy; Being in arrears in the payment of the benefit of creditors; or making a general assignment for the benefit of creditors; or filing a voluntary petition of bankruptcy, or, if the proceedings in bankruptcy shall be instituted against Lessee and thereafter adjudicated a bankrupt pursuant to such proceedings; or if a receiver shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

If, after ten (10) calendar days from the date of such notice, the default, failure to perform, or breach complained of shall not have been corrected in manner satisfactory to City, then City shall have the right, without further notice to Lessee, to take immediate possession of the leased premises and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing and without liability, subject to Lessee's rights in the improvements provided for elsewhere herein. Upon said default, all rights of Lessee shall be forfeited; provided, however, City shall have and reserve all of its available

remedies at law as a result of said breach of this Lease.

Failure of either party to declare this Lease terminated upon the default of either party for any reasons set out shall not operate to bar, destroy or waive the right of such party to cancel this Lease by reason of any subsequent violation of the terms hereof. The acceptance of rentals and fees by City for any period(s) after a default of any of the terms herein contained to be performed by Lessee shall not be deemed a waiver of any rights of the City to cancel this lease for failure by Lessee to so perform, keep or observe any of the terms hereof to be performed. (The actual termination of this Lease shall occur when approved by the City Council.)

C. **WAIVER OF STATUTORY NOTICE TO QUIT.** If City exercises its option to cancel this Lease upon the happening of any or all of the events set forth in Section B (Cancellation by City) and the failure of Lessee to correct any such breach within the time allowed, a notice of cancellation given pursuant to Section B and sent to the address specified in Article VII Section F (or subsequent address provided in writing to Airport Manager) and City Council approval of the termination shall be sufficient to cancel this Lease. Upon such cancellation, Lessee will surrender up possession of the leased premises to the City, subject to Lessee's rights in the improvements as provided for elsewhere herein.

D. **PERSONAL PROPERTY.** City shall have a lien as security for any rentals or other payments owed to City upon all goods, wares, chattels, implements, fixtures, furniture, tools, improvements, and other personal property, excluding automobiles, which are or may be put or caused to be put on the leased premises by Lessee. Upon termination of this lease, Lessee shall remove all property from the leased premises within ten calendar (10) days after said termination; provided that Lessee shall at no time remove any improvement or other personal property for which it has or will receive a rental credit or rebate. If upon termination Lessee owes any payments to City, City may elect to retain possession of such property or may sell the same and keep the proceeds after first applying them to any payments in arrears, or may have such property removed at the expense of Lessee.

Lessee shall repair, at its own expense, any damage resulting from said removal of personal property and shall leave the leased premises in a neat and clean condition with all other improvements in place. Lessee shall leave the leased premises in a condition at least equal to, or better than, the condition when Lessee first leased the premises, [reasonable wear and tear accepted](#).

E. **CANCELLATION BY LESSEE.** This Lease shall be subject to cancellation by Lessee, at Lessee's option, after one or more of the following:

1. The permanent abandonment of the Airport as a public airport.
2. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport or any substantial part(s) thereof, in such a manner as substantially to restrict Lessee for a period of at least ninety (90) calendar days from operating thereof.
3. Damage to Lessee's improvements, by any instrumentality that renders such improvements unacceptable for the purpose for which they were intended.
4. The breach by City of any of the terms herein contained and the failure of City to remedy such breach for a period of thirty (30) calendar days after receipt of a written notice of the breach.
5. Cancellation of all regularly scheduled airline service into the airport.

Lessee may exercise such rights of termination upon 90 days prior written notice to City and this Lease shall terminate as of that date.

F. **SUBLETTING AND ASSIGNMENT.** Lessee shall not assign all or any part of such leased premises or the improvements located thereon without the prior written consent of the Airport Manager, which consent shall not be unreasonably withheld. Any assignees shall be subject to the same terms as set forth herein.

As a condition of and as consideration for approving any assignment, City may require amendment of the terms of this lease to conform to any different terms of the lease form then currently approved and adopted by City for new leases, provided, in the event of such amendment, assignee shall be given the option of taking over the unexpired balance of this Lease or entering into a new lease for such term as may then be approved by City for new leases for lease assignees. It is not the intention of the City that the assignments be misused as a method to avoid compliance with the minimum standards herein.

In the event of approved assignment, Lessee shall be relieved of any further obligation hereunder, and the City will look solely to such approved assignee for performance of this Lease subsequent to the date of such approved assignment. Said assignee shall not assign said Lease except with the prior written approval of the City, and any assignment by the Lessee shall contain a clause to this effect. Any attempted assignment without the prior written approval of the City shall be invalid, and shall further constitute a violation of this Lease.

Lessee shall not sublease all or any part of such premises or the improvements thereon.

All terms herein contained shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

ARTICLE VII - GENERAL PROVISIONS

A. **APPLICABLE LAW AND VENUE.** This Lease and all transactions made hereunder shall be construed and governed according to the laws of the State of Texas. Venue for any legal proceedings shall be in Smith County, Texas.

B. **INVALID PROVISIONS.** If any provision herein is held to be invalid by a court of competent jurisdiction, the invalidity of such provision shall in no way affect any other provision.

C. **PARAGRAPH HEADINGS.** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

D. **DEFINITION OF LESSEE.** The term "Lessee" shall include Lessee, its heirs or executors, and any corporations now or hereafter owned or controlled by Lessee, its heirs and executors, who are operating on the leased premises.

E. **FEDERAL AVIATION ADMINISTRATION.** Whenever the term "Federal Aviation Administration" is used in this Lease, it shall be construed as referring to the Federal Aviation Administration created by the federal government or to such other agencies of the State of Texas or the federal government having from time to time similar jurisdiction over Lessee or its business.

F. **AIRPORT SECURITY.** Lessee shall be responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state and /or local government entity regarding airport and/or airfield security.

G. **PROTECTION OF THE ENVIRONMENT.** Lessee will keep and maintain the leased premises in a clean and healthful condition and comply with the environmental laws, ordinances, rules and regulations whether State, Federal, or Municipal. Lessee shall undertake any obligation to remediate, or take any other action with respect to any environmental condition that is attributable to the activities on the premises of Lessee, any of its sublessees, or any of their respective officers, directors, agents, employees, contractors and other invitees.

H. **NOTICES.** Whenever any notice or payment is required by this Lease to be made, given or transmitted to the parties hereto, such notice or payment shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, or by recognized overnight delivery service, addressed to:

Notice and Payment to:
City of Tyler
Airport Manager
700 Skyway Blvd., Suite 201
Tyler, TX 75704
(903) 531-9825

and notices, consents and approval to Lessee addressed to:

Name: _____
Company: _____
Address: _____
Address line 2: _____
City, State, Zip: _____
Email address: _____

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed this _____ day of _____, 20_____.

CITY OF TYLER, TEXAS

LESSEE

BY: _____
Edward Broussard, CITY MANAGER
City Council approved: _____

BY: _____

ATTEST:

ATTEST:

Cassandra Brager, CITY CLERK

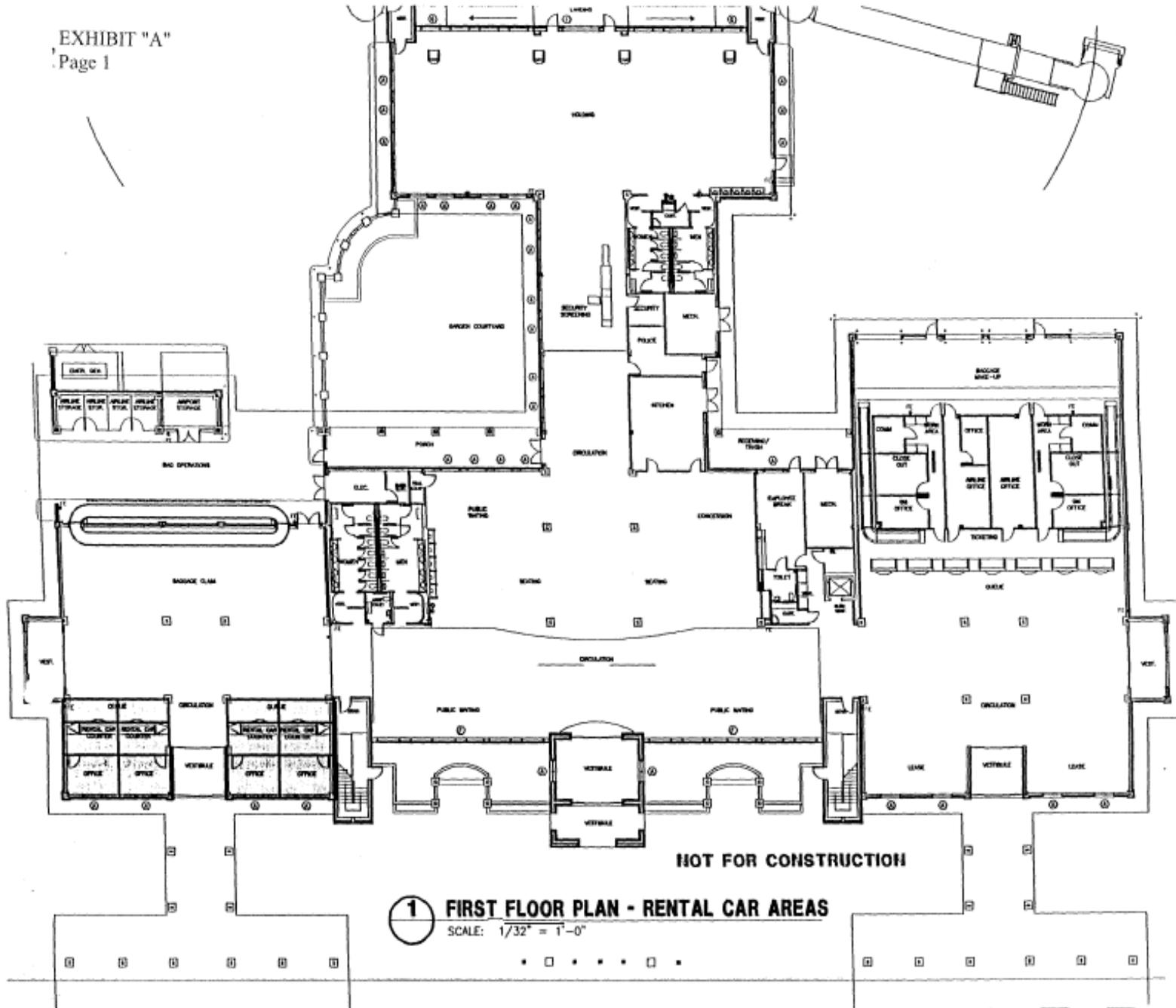
RECOMMENDED: _____
AIRPORT MANAGER
(Airport Advisory Board considered on _____
and recommended approval/denial)

APPROVED: _____
CITY ATTORNEY

THE STATE OF TEXAS
COUNTY OF SMITH

This instrument was acknowledged before me on _____, 20_____,
by _____, Lessee.

Notary Public in and for the State of Texas



NOT FOR CONSTRUCTION

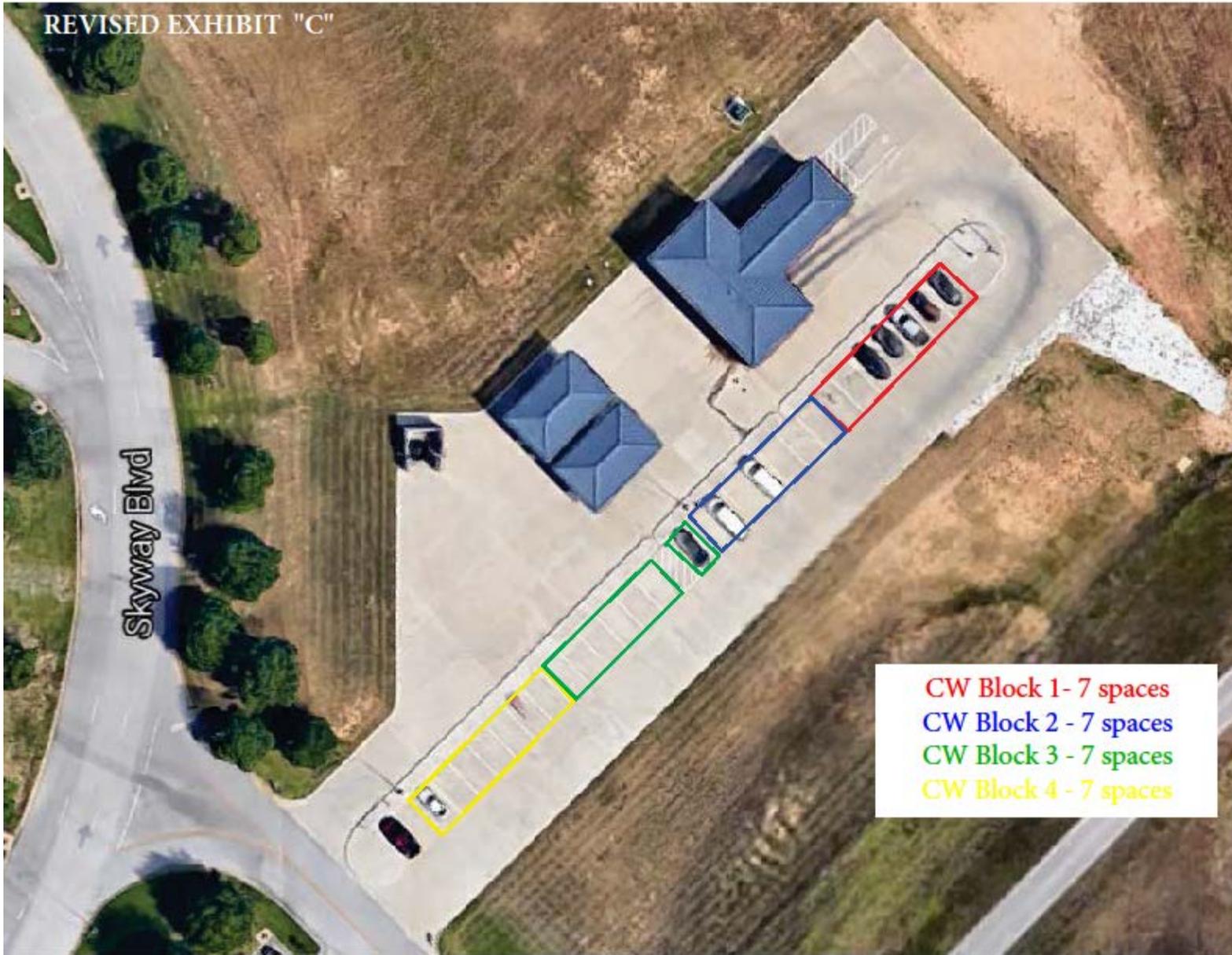
1 FIRST FLOOR PLAN - RENTAL CAR AREAS
SCALE: 1/32" = 1'-0"

Revised Exhibit "B" - Rental Car Ready Return Parking Lot



104 parking spaces - to be allocated per RFQ No. 17-002, Addendum No. 3
2 handicap spaces are not included in the 104 spaces or the allocation.

REVISED EXHIBIT "C"



- CW Block 1 - 7 spaces
- CW Block 2 - 7 spaces
- CW Block 3 - 7 spaces
- CW Block 4 - 7 spaces

RENTAL CAR CONCESSION LEASE AGREEMENT

REVISED and FINAL

TYLER POUNDS REGIONAL AIRPORT

The State of Texas
County of Smith

I N D E X

REVISED AIRPORT AUTO RENTAL LEASE

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FOR QUESTIONS CALL:		
Airport Manager, Davis Dickson, (903) 531-9825		

THE STATE OF TEXAS

∃

AIRPORT AUTO RENTAL LEASE

COUNTY OF SMITH

∃

∃

THIS LEASE is made between the CITY OF TYLER, TEXAS, political subdivision of the State of Texas, (hereinafter "City"), and _____, (hereinafter "Lessee").

WITNESSETH:

WHEREAS, City owns and operates the Tyler Pounds Regional Airport, located in Smith County, State of Texas, (hereinafter "Airport"); and

WHEREAS, the City of Tyler is home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Chapter 241 contains regulations related to municipal authority around airports; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, the City has established ordinances regulating activities at the Airport in Tyler City Code Chapter 12; and

WHEREAS, Tyler City Code Section 12-11.b. provides that no person may use the Airport or any part thereof for any activities or commercial purposes or for the carrying of passengers, freight, express or mail for hire or for instruction in any of the branches of aviation unless approved by the City Council; and

WHEREAS, Tyler City Code Section 12-30 requires anyone conducting commercial activities or solicitation for commercial on Airport property to have a valid lease, sublease, permit, or other form of City approval; and

WHEREAS, the City has certain airport space available for lease to Lessee; and

WHEREAS, the City has a consolidated rental carwash facility available for lease to Lessee; and

WHEREAS, the rental carwash facility has a storage space available for lease to Lessee; and

WHEREAS, Lessee is one of _____ successful bidders; and

WHEREAS, Lessee has indicated a willingness and ability to keep, maintain and improve said leased space in accordance with City standards, if granted a lease of sufficient term on said premises; and

WHEREAS, on _____, the Airport Advisory Board recommended approval of this lease to the City Council;

NOW, THEREFORE, for and in consideration of the mutual agreements, the parties agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

A. **DESCRIPTION OF PREMISES.** For and in consideration of the terms of this Lease to be performed by Lessee, all of which Lessee accepts, City hereby leases to Lessee the premises as shown on the attached Exhibits "A", REVISED "B", and REVISED "C" for the West Side Terminal location, specifically as follows:

a) West Side Terminal

1. That portion of the West Side terminal building, as shown on the attached Exhibit "A" and by this reference made a part hereof. Said space shall be used for an auto rental counter and operations office.
2. Lessee shall have use of the rental car parking lot as shown on the attached REVISED Exhibit "B". Lessee further agrees to mark or sign these spaces at Lessee's expense as requested by City. The use of or rental of such spaces to the general public for the parking of vehicles is prohibited. **Lessee will not park nor allow its customers to park rental cars in passenger loading/unloading zones. Violations may be enforced by towing at Lessee's expense.**
3. Rental trucks or "trucks for hire", if such are kept on Airport property, will be stored in an area designated by the Airport Manager.
4. Rental Car Wash Facility as shown in REVISED Exhibit "C" for the purpose of cleaning, servicing and temporary storage of vehicles rented by the Lessee under the provisions of this lease.

Lessee accepts the leased premises in their present condition subject to and including all defects, and Lessee will, without expense to City, repair and maintain any installations thereon and remove, or cause to be moved, any debris, buildings or improvements to the extent required for Lessee's use thereof.

B. **ACCESS.** Upon paying the rental hereunder and performing the requirements of this Lease, Lessee shall have the right of access to and from said premises over such roadway(s) as may be designed for that purpose. Said roadway(s) shall be used jointly with other Airport tenants, but not for the conduct of business on another Lessee's premises and Lessee shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as the City Council deems necessary.

C. **OBJECTS AND PURPOSE OF LEASE.** Lessee is hereby granted the right and privilege to use the leased area for rental car related activities, subject to the terms herein.

Lessee shall not use the premises for any purposes other than those authorized herein without the prior written consent of City.

It is understood and agreed that nothing herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958, [49 USCA §1349(a)] or successor statute.

The Concession allowed under this Lease agreement provides for the operation of a single vehicle leasing operation under one brand name, per lease agreement.

D. **CITY'S RESERVED RIGHTS.**

1. **Development.** N/A
2. **Oil, Gas, Mineral Interests.** It is understood and agreed that this Lease is made subject and subordinate to the terms of any oil, gas, and other mineral interest; leases; or right-of-way easements of any nature which may have been executed heretofore.

If third persons owning or claiming any interest in minerals in, under, or upon the premises, cause a permanent or temporary disruption of Lessee's operations upon the premises, Lessee expressly agrees not to sue City, nor City's agents, for any loss to Lessee caused by such event. Said disruption of possession is a risk which Lessee expressly assumes herein.

City agrees that (1) if it should, as a mineral owner under the premises, develop the Airport area, or a portion thereof, for oil, gas or other mineral purposes, no well will be drilled or other operations conducted on the leased premises; and (2) if it should hereafter execute an oil, gas or other mineral lease in favor of a third party covering the Airport area, or portion thereof, it will cause such lease to contain a provision that the lessee therein will not conduct any of its drilling or other operations on the land covered by this Lease, or in a manner which would unreasonably interfere with Lessee's use and enjoyment of the premises.

3. **Other Contracts.** This Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States, relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to City of federal funds for the development of the Airport. In the event this lease is subordinated due to the City's election to receive federal funds and that action results in reduction of Lessee's revenue producing activities, City and Lessee shall negotiate reasonable compensation to Lessee for such reduction.
4. **Other Leases.** Nothing herein shall limit City with respect to granting of leases to other aviation tenants. In the event the CITY shall enter into any lease or agreement with another rental car operator within the Terminal Building, that agreement will not contain more favorable terms than this LEASE AGREEMENT, unless the same rights, privileges and favorable terms are concurrently made available to LESSEE.

E. **PROHIBITED USES.** Lessee shall not use or permit the use of any part of the premises in any other manner than as set out in Article I, Section C of this Lease. Some specific activities prohibited are as follows:

1. Food sales.
2. Sales of alcoholic beverages at the leased premises.
3. Sales or advertisement of products other than those products related to aviation, travel or

rental car activities.

4. Any use prohibited by law.
5. Installation and operation of fueling facilities without the consent of the Airport Manager.
6. Rental car washing on Airport property is prohibited other than the use of the Airport owned car wash facility.

F. **CONSTRUCTION REQUIREMENTS WHERE THE NEED OR DESIRE FOR CONSTRUCTION EXISTS.**

West Side Terminal Building. The provisions of this Section shall apply to the West Side Airport Terminal Building only. It is understood that some leaseholders have completed approved up fit construction from the previous lease term(s) and no new construction **may** be necessary. The requirements in this section are in place for all **new** or required construction. **All existing and new signage MUST be approved by the Airport Manager.**

1. Lessee shall design and construct office and up fit requirements as proposed by Lessee and accepted and approved by City.
2. City shall deliver the leased areas specified herein to the Lessee with counter shell to accept insert provided by Lessee, walls and floor “as is”. The Lessee shall accept such premises “as is”.
3. Lessee shall provide all improvements which are necessary to operate said concession to the satisfaction of City.
4. All construction work done, equipment supplied and installed, and interior design and decor furnished by Lessee pursuant to this Section shall be at its sole cost and expense, free and clear of liens for labor and material and Lessee shall hold City harmless from any liability in respect thereto.
5. Prior to the commencement of construction by Lessee, Lessee shall furnish, at its sole cost and expense, both Performance and Payment Bonds in the principal sum of the amount proposed by Lessee in Article I Section F.1 herein, or the security deposit for said amount acceptable to the Airport Manager, to guarantee compliance with this Section. This Bond shall be in a form acceptable to City and be issued by a surety company authorized and licensed to transact business in the State of Texas and be for the full amount of the proposed improvements with City of Tyler as obligee conditioned upon full, faithful and satisfactory performance by Lessee of its obligations to construct and install the aforementioned facilities and improvements. The principal amount of said Bond or other security deposit, however, may be reduced during the term hereof as Lessee completes the improvements contemplated thereby.
6. Prior to any work being initiated, including installation of signage, Lessee shall obtain Airport Manager’s written approval of all plans, and shall obtain other Permits and approvals required by law. **NO PREVIOUS SIGNAGE WILL BE GRANDFATHERED FROM PREVIOUS LEASES. ALL SIGNAGE, WHETHER**

NEW OR PREVIOUSLY USED, MUST BE APPROVED BY THE AIRPORT MANAGER PRIOR TO INSTALLATION.

7. Lessee shall provide distribution of utilities **within the leased premises as required.**
8. The City and City's Design Architects shall review each submittal and may reject any such submittal and require Lessee to resubmit design proposals until they meet with City's approval. Lessee shall obtain written approval from City and shall obtain approvals from applicable City departments before letting of contracts for the construction of said concession improvements.
9. All structural or other improvements, equipment and interior design and decor constructed or installed by Lessee in the concession areas, including the plans and specifications therefore, shall in all respects conform to and comply with all applicable federal, state, Northeast Texas Public Health District (hereafter "Health District"), and City statutes, ordinances, building codes, orders, rules and regulations governing the leased areas and Lessee's operations therein. The approval by City provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain in Lessee.
10. Lessee shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and decor, that the contractor doing, performing or furnishing the same shall comply with all applicable Federal, State, Health District, and City statutes, ordinances, codes, orders, rules and regulations, and shall submit to City evidence of required insurance coverage.
11. Upon completion of the leased improvements, Lessee shall, within 60 calendar days furnish City, at no charge: (1) a certificate certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all applicable Federal, State, Health District, and City laws, rules, ordinances and governmental rules, regulations and orders; Two [2] complete, reproducible sets of as-built drawings covering the structural and other improvements installed by Lessee in the leased areas plus the location and details of installation of all equipment, utility lines, heating, ventilating, air-condition ducts and related matters. Lessee shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made in or to the leased premises; and (3) as installation of the structural and equipment items, counters, partitions, furnishing and the interior design and decor is completed.

G. **IMPROVEMENTS ON LEASED PREMISES.** No material improvement, including signage, on the leased premises shall be made or installed by Lessee without the prior consent of the Airport Manager, which consent will not be arbitrarily withheld. Lessee agrees that prior to the installation or construction of any such fixture, structure, addition, or improvement, it shall submit the general plan, location, design and character thereof to the Airport Manager for approval, and that all construction will be in conformity with such plans and specifications. Approval of Lessee's plans by City shall not constitute a representation or warranty as to such conformity. Responsibility for such conformity shall at all times remain in Lessee.

Lessee understands that all development shall conform to Airport Master Plan Guidelines and other

Airport Rules and Regulations then in existence as approved by City Council. Intentional failure to conform development to approved plans and as scheduled shall be cause for termination of this Lease upon failure to conform within thirty (30) calendar days of City's notice to Lessee of its failure to conform.

Title to all improvements constructed or installed by Lessee on the leased premises shall throughout the term of this Lease remain in Lessee. However, upon expiration or termination of this Lease, Lessee shall have no further right or interest in the permanent improvements, except as provided for elsewhere herein.

H. **MORTGAGE OF LEASEHOLD INTEREST.** N/A

ARTICLE II - OBLIGATIONS OF LESSEE

A. **NET LEASE: MAINTENANCE AND OPERATION.** The use and occupancy of the leased premises by Lessee will be **without cost or expense to City, except as otherwise specifically set forth herein.** It shall be the sole responsibility of Lessee to construct, maintain, repair and operate the entirety of the leased premises and any improvements and facilities constructed thereon at Lessee's sole cost and expense except as specifically set forth in this Article.

Lessee shall maintain the leased premises at all times in a safe, neat and attractive condition and shall not permit the accumulation of any trash or debris on the premises. Lessee shall repair all damages to said leased premises or to any other Airport property caused by its employees, patrons, or its operation thereon. Lessee shall maintain and repair its area as necessary. Normal and routine maintenance of roofs, walls, utility infrastructure, roadways, parking lots, building mechanical systems and structural building components will be performed by City.

City reserves the right to make periodic inspection of leased premises and improvements and equipment therein during normal business hours.

City, in its reasonable discretion, shall be the sole judge of the quality of maintenance within the leased premises which shall uniformly apply to all Airport tenants. Upon written notice by City to Lessee, Lessee shall perform whatever reasonable maintenance City deems necessary, that reflect Lessee's responsibilities for the up keep of assigned leased area. If said maintenance is not undertaken by Lessee within ten (10) calendar days after receipt of written notice, City shall have the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

Lessee agrees to install and maintain such fire equipment and fire extinguishers as may be reasonably designated or requested by the Fire Marshal or in accordance with applicable safety standards.

B. **HOURS OF OPERATION.** Lessee agrees that its automobile rental services shall be available at the Rental Car counter at the Airport each day commencing **at least one hour before the first passenger flight is scheduled to depart** at the Airport and **ending at least one (1) hour after the last scheduled flight has arrived at the Airport**, and during such additional hours as the Airport Manager or designee, by notice to the Lessee.

C. **ALTERATIONS TO AND CONDITION OF LEASED PREMISES.** Lessee shall not remove or demolish, in whole or in part, any improvements upon the lessee's premises or airport without the prior written consent of the Airport Manager which may, at its discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent.

Lessee shall have the right to change the door locks only in its leased area with Airport Manager's approval and shall not dispose of the locks provided by the City. Keys will be furnished to the Airport Manager, Tyler Police Department and Tyler Fire Department. Lessee further agrees that upon the expiration of the term of this Lease or sooner cancellation thereof, that the original locks provided by the City will be replaced in good operating condition at Lessee's expense and all keys to the leased premises possessed by Lessee shall be returned to the City.

Lessee further agrees that upon the expiration of the term of this Lease or sooner cancellation thereof, said premises will be delivered to City in good condition, reasonable wear and tear excepted, subject to the provisions of Article VI.

D. **TRASH, GARBAGE, LANDSCAPING.** Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused by operation of its business. Lessee shall provide and use approved receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unattractive or unsafe manner, on or about the leased premises is prohibited.

E. **PARKING LOT SIGNAGE.** Rental car parking lot signs shall be placed **at Lessee's expense**, with prior written approval by the Airport Manager, on poles or fencing provided by City. The maximum face size of each parking lot sign shall not exceed 220 square inches. Lessee shall maintain, from time to time and at its own expense, the Ready/Return Lot parking signs in the designated parking area leased by Lessee. At the termination of this lease, the lessee shall remove its signs from the Airport owned poles within five business days after termination.

Lessee agrees to reimburse City for any damage to the Westside Airport Terminal building or any other City property resulting from the installation, maintenance or removal of any such signs.

F. **UTILITIES.** City shall be responsible for electricity to existing electrical outlets, lighting fixtures, and HVAC within the leased area, inside the West Terminal building. City will also provide water and sewer within public areas for lessee's use. Lessee shall assume and pay for all costs or charges for additional utilities services, not provided herein, furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right, with written Airport Manager approval, to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefor. All telecommunications and data communication fees will be paid by Lessee.

G. **FIELD USE CHARGES.** N/A

H. **WORK STOPPAGES.** In the event of a strike or work stoppage by employees of Lessee, Lessee will continue to pay 10% gross revenue to include rentals, concessions, and Minimum Monthly Guaranteed, during the entire period of any such strike or work stoppage, the rentals due in this lease.

I. **COMPLIANCE WITH RULES.** Lessee will comply with any and all federal or state laws, rules and regulations, Health District rules, and all City ordinances and rules.

J. **NONDISCRIMINATION/FEDERALLY REQUIRED ASSURANCES.** Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that "as a covenant running with the land" (1) no person on the grounds of race, color, sex, creed, national origin, or disabled status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or in the construction of any improvements on, or under such land, or the furnishing of services thereof; and (2) that Lessee shall use

the premises in compliance with and conduct its operations in accordance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, or Section 504 of the Rehabilitation Act of 1973 (23 USC 794) and 49 CFR Part 27 and as said regulations may be amended, and that Lessee will comply with such enforcement procedures as the United States might demand that City take.

K. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) REQUIREMENTS [49 CFR Part 23 (26.53)]. In this Agreement, ACDBE means Airport Concession Disadvantaged Business Enterprise, as defined in 49 CFR Part 23, and means a concession that is a for-profit small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, Black Americans, Hispanic Americans, Asian-Pacific Americans and Asian-Indian Americans.

City will ensure that all information is complete and accurate and adequately documents the bidder/offeror’s good faith efforts before the City commits to the concession agreement with the bidder/offeror.

The City treats bidder/offeror’s compliance with good faith effort requirements as a matter of responsibility.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire’s commitment;
6. If the contract goal is not met, evidence of good faith efforts;
7. An annual report to be received by the Airport Concession Disadvantaged Business Enterprise Liaison Officer (ACDBELO) Jennifer Price, Airport Projects Coordinator, **by October 31st for the previous fiscal year ending September 30th to include the following information on all firms/suppliers participating in the concession:**

Vendor Name	Vendor Mailing Address	ACDBE Certified	Total Amount Spent with Vendor
		Y or N	\$
		Y or N	\$
		Y or N	\$

Within 20 calendar days of being informed by the City that it is not responsible because it has not documented sufficient good faith efforts, a concessionaire may request administrative reconsideration. Concessionaire (Lessee) should make this request in writing to the following reconsideration official:

Jennifer Price (ACDBELO)
Tyler Pounds Regional Airport
700 Skyway Blvd., Suite 201
Tyler, Texas 75704
Office: 903-531-9825
jprice@tylertexas.com

The reconsideration official will not have played any role in the original determination that the concessionaire did not document sufficient good faith efforts.

As part of this reconsideration, the concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The concessionaire will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The City will send the concessionaire a written decision on reconsideration, explaining the basis for the findings. The result of the reconsideration process is not administratively appealable to the Department of Transportation. The reconsideration official's decision is final, unless appealed pursuant to Tyler City Code Chapter 1, Article IV.

The City will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. The concessionaire shall notify the Airport Concession Disadvantaged Business Enterprise Liaison Officer (ACDBELO) immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the City will require the concessionaire to obtain prior City approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The concessionaire must include the specific reasons for the termination and/or failure to complete its agreement as set forth above. The concessionaire must also provide the ACDBE with any and all documents and information as may be requested with respect to the termination or substitution of the ACDBE.

If the concessionaire fails or refuses to comply in the time specified, the City will take appropriate measures until satisfactory action has been taken. If the concessionaire still fails to comply, the ACDBELO may issue a termination of this Lease for default proceeding.

L. **FAA AND OTHER APPROVAL OF USE.** Lessee agrees to secure approval from the Federal Aviation Administration concerning the height and location of all buildings or improvements or modifications thereof which may be constructed or installed on the leased premises and to satisfy any applicable environmental or other requirements of federal, state, and local authorities as to noise, smoke, fumes emissions, or other hazards or potential hazards or other offensive uses, if any, which may occur as a result of Lessee's operations on the leased premises.

M. **NON-INTERFERENCE WITH OPERATION OF AIRPORT/EASEMENTS.**

1. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not use the leased premises in any manner which might interfere with the landing and taking off of aircraft at Airport or otherwise constitute a hazard. If Lessee violates this provision, City reserves the right to enter upon the premises and remove the interference at the Lessee's expense.
2. City shall maintain and keep in good repair the landing area of the Airport, and shall have the right to direct and control all activities of the Lessee in this regard.
3. Easements. City retains the use and enjoyment of all utility and other easements located on, in, or about the hereinabove described premises. City shall retain the right to take, without compensation to Lessee, any additional easements as are necessary on the hereinabove described premises for installation or maintenance of utilities, whether they be to supply service to the Lessee hereunder or other Airport lessees, provided that such additional easements will not unreasonably interfere with Lessee's use of the premises.
4. City shall retain an easement over, above and on the leased premises in relation to aircraft noise and the utilization of air space for the operation of Airport.

N. **LESSEE AUTHORITY.** The officers of the Lessee which execute this Lease represent and promise that they are duly authorized by corporate resolution or other appropriate authorization to execute same on behalf of Lessee.

O. **INSPECTION OF BOOKS AND RECORDS.** Upon 30 (thirty) days written notice by City, Lessee agrees to prepare and submit a written compiled financial statement based on activities and operations related or derived from this lease and at Tyler Pounds Regional Airport. This statement will be due within ninety (90) days after the end of each contract year during the term of this Agreement, and must be prepared and signed by a certified **independent** public accountant. To the extent permitted by law, this information will not be for public record.

City reserves the right to hire an independent certified public accountant to audit Lessee's books and records related to this lease and activities at Tyler Pounds Regional Airport at any time during the lease term. Lessee agrees that it will provide all requested books, detailed revenue reports and records to the independent auditor within ten (10) calendar days of written request. City also reserves the right to require that Lessee submit copies of any of Lessee's car rental contracts from previous business days, collected and submitted to the City at the car rental agencies' expense, if 2% or more data was determined underreported.

P. **BUSINESS SOLICITATION.** Lessee's solicitation of business at the Airport shall be confined to signs, advertising materials, and answering inquiries from the leased premises. Lessee shall prohibit its agents and employees from engaging in the solicitation of its auto rental services on or about the Airport in a loud, boisterous, offensive, or objectionable manner. In the event of questionable conduct in such solicitation, City shall be the sole judge in determining if said conduct is a violation of this paragraph. Upon notice from City, Lessee shall immediately take all steps necessary to eliminate the undesirable conditions.

No Diversion/Solicitation. Lessee shall not, through its officers, agents, representatives or employees, divert or cause to be diverted any prospective concession patrons from the Airport to another location within 3 miles of Airport. If any such diversion does occur, the diverted transaction shall be deemed to have occurred at the Airport. Additionally, Lessee shall not, through its officers, agents, representatives

or employees engage in the solicitation of, or pressure sales tactics for, services offered on or about the Airport.

Q. **EMPLOYEES.** Lessee shall at all times retain an active, qualified, competent and experienced manager to supervise the concession operations and to represent and act for Lessee in matters pertaining to the day-to-day operation of the concession.

Lessee shall be required to dress in a professional appearance displaying the company's logo, according to the Lessee's company dress code. An appropriate badge, cap or other standard item of apparel shall identify the service. Employees shall be professional, clean, courteous, and efficient and neat in appearance at all times. Lessee shall not employ any person(s) in or about the leased premises who use improper language, acts in an improper manner, is not courteous to Airport patrons and does not respect Airport rules and City of Tyler policies.

Lessee shall maintain a close check over attendants and employees to insure a high standard of service to the public, the performance of such obligation to be determined at the sole discretion of the City. Upon written notice by the City to Lessee that any person employed by Lessee at the Airport is, in the City's opinion, detrimental to the best interests of the Airport, Lessee will respond in writing to Airport Manager within forty-eight (48) hours of its response and action.

Lessee shall receive a written notice of violation by the Airport Manager upon evident disregard to the rules stated in this contract. Upon issuing a second violation, employee shall be asked to leave the airport premises. Employee found to violate serious rules of the Airport or laws, may be asked to immediately leave the Airport premises.

R. **RENTAL VEHICLES.** Lessee shall at all times and at its own cost and expense maintain all of its rental automobiles in good operating order and free from known mechanical defects. Said automobiles shall be kept in a clean, neat and attractive condition inside and out.

Lessee shall at no times use automobiles whose year model is more than two years older than the current year model.

Lessee agrees to restrict its storage and service uses on the airport to vehicles owned or controlled by Lessee for the sole use of Airport rental car contracts.

S. **TRAFFIC RESTRICTIONS.** Lessee's employees shall observe and comply with all posted restrictions on parking or standing vehicles, speed limits, and traffic rules on the airport properties. The "ready line" vehicle parking area (or the leased premises) is intended strictly for authorized business purposes for the parking of company owned vehicles only. Employees or owners of the Lessee are not authorized to use the area for parking of their personal vehicles. Lessee may not use and may not advise customers to use passenger loading/unloading zones in front of the terminal building for drop off or pick-up of vehicles. **Violations of Federal regulations, State traffic regulations and City parking and traffic ordinances and/or restrictions may be enforced by towing at Lessee's expense. The use of or rental of parking spaces in the rental car parking lots to the general public for the parking of personal vehicles is prohibited.**

T. **RENTAL CAR WASH FACILITY.**

1. Lessee shall keep the leased parking areas free of junk, debris, trash, refuse, disabled vehicles, and junked vehicles. Lessee will maintain all Lessee installed signs in good repair. Lessee's responsibility for cleaning extends to the car wash, vehicle fueling area (if present), and to any other areas on the airport where trash, mud, grease, or other deposits are the direct result of the Lessee's operations or carelessness. Lessee will obtain written approval of the Airport Manager for all signs/pavement markings or modifications to the designated parking area.
2. City will maintain and inspect the Car Wash as recommended by the manufacturer including routine maintenance of the Car Wash for normal activities, wear and tear. Normal and routine maintenance of roofs, walls, utility infrastructure, roadways, parking lots, building mechanical systems and structural building components will be performed by City. Wash soaps, rinses, brushes and utilities will be provided by the City. Vacuum bags and hoses will be supplied by the City. City will provide routine cleaning of the Car Wash. City has the exclusive authority to stop the use of a Car Wash for maintenance and inspections as is necessary, at City's sole discretion, without damage or liability to Lessee. City will take reasonable action to notify Lessee for closure of the Car Wash.
3. Expenses for any damages, maintenance and repairs as a result of negligent and/or intentional reckless acts of Lessee will be at the sole expense of the Lessee.
4. Except where authorized by the Airport Manager in writing, Lessee is prohibited from selling fuel to any person or entity and from servicing, parking or storing any vehicles other than those owned or managed by Lessee in its business on the airport. Should such activities be permitted by the Airport Manager, all gross receipts from the City approved activity shall be included in the gross revenue calculations received by Lessee and made part of the monthly concession payment.
5. Except where authorized by the Airport Manager in writing, no fuel facilities are permitted on the airport. Should such activities be permitted by the Airport Manager, all fuel flowage fees shall be paid to the airport for fuel delivered to be utilized for vehicles owned or managed by Lessee in its business on the airport.
6. Lessee agrees that it will train its employees to operate the Car Wash in a responsible manner to prevent any damage to the Car Wash, vehicles being serviced, or the contents of vehicles being serviced.
7. Lessee agrees not to modify, circumvent, tamper with or disable any safety feature, operational device, sensor, or limit switch on the Car Wash, without the specific knowledge and written consent of the City.
8. The rental carwash facility parking spaces for rental car storage have been divided into four blocks of seven parking spaces each as depicted in the attached REVISED Exhibit "C".
9. On-site car rental companies shall pay a minimum fee of three dollars (\$3.00) per wash of a single vehicle and receive twelve minutes of wash bay operation with a fee of twenty-five cents (\$.25) per minute for each additional minute thereafter for use of the rental car wash bay for the same vehicle. Fees include use of vacuums at no additional charge. Fees are set by Tyler City Code Section 12-31 and are subject to change according to Tyler City Code Section 12-31. **Lessee shall not stack or stage vehicles for consecutive washes. Failure to adhere to this provision can result in termination of car washing service privileges to the/those employee(s) found to violate this provision.**

ARTICLE III - TERM OF LEASE

The term of this Lease shall be for a period of three (3) years from February 1, 2017, through January 31, 2020.

If Lessee shall hold over and remain in possession of the Leased Premises after expiration of the Term specified herein, such possession by Lessee shall be deemed to be a month-to-month tenancy that is terminable immediately on written notice delivered at any time by either party. During any such month-to-month tenancy, Lessee shall pay all the fees, charges and annual guarantees required by this Agreement. All provisions of this Agreement except those pertaining to Term shall apply to said month-to-month tenancy.

ARTICLE IV - RENTALS

A. PAYMENT SCHEDULE. For the privilege granted herein, Lessee shall pay to City either ten percent (10%) of the monthly Gross Revenue received by Lessee for the operation of the Airport car rental concession under this agreement, or a payment of one-twelfth (1/12) of the Minimum Annual Guarantee (MAG) specified in the bid proposal attached, whichever amount is greater. Refer to attached bid sheet with Lessee's MAG as bid for each contract year. Lessee shall also pay five hundred dollars (\$500.00) per month for office, counter and queuing space. Lessee also agrees to pay a total of \$30.00 per month per space of ready car parking spaces during Contract Year 1, \$45.00 per month per space during Contract Year 2, and \$60.00 per month per space during Contract Year 3.

In the Rental Car Wash Bay Facility, Lessee shall pay its portion of the annual land lease totaling \$5,527.00 annually for the rental Car Wash Facility which will be divided equally among the numbers of successful bidders.

Rental trucks or "trucks for hire", if such are kept on Airport property, will be stored in an area designated by the Airport Manager. The designated area provided for such storage will be provided at a fee of \$30.00 per month per space during Contract Year 1, \$45.00 per month per space during Contract Year 2, and \$60.00 per month per space during Contract Year 3. The Concession allowed under this Lease agreement provides for the operation of a vehicle leasing operation within the Leased Premises under one single brand name. See Tyler City Code Section 12-31.

B. GROSS REVENUE. The term "Gross Revenue" as used herein means ,all monies due Concessionaire, whether paid or unpaid, from any and all customers for the use, rental or lease of vehicles and any additional services or accessories contracted for, delivered, supplied or rented at or from anywhere on the premises of Tyler Pounds Regional Airport regardless of where, how (cash, credit, barter or otherwise) or by whom payment is made; whether the customer is transported from Tyler Pounds Regional Airport to an off-site place of business; or where the vehicle is picked up or returned. Unless revenues are expressly and specifically excluded from Gross Revenues, all revenues derived from, arising out of or becoming payable on account of the Lessee, whether directly or indirectly, shall be included in Gross Revenues. Gross Revenues shall include, but not be limited to:

1. The time and/or mileage charges, after discounts taken at the time of rental, assessed by Lessee to its customers;
2. The premiums on any and all insurance sold, including personal accident personal effects and cargo insurance, life insurance and any other insurance sold in connection with the vehicle rental;
3. Sums received from customers for Collision Damage Waiver (CDW) protection and Loss Damage Waiver (LDW) protection;
4. Any and all add-on fees and charges including extra driver coverage, underage driver

coverage and vehicle upgrade charges;

5. Any and all fees and charges for equipment, supplies and incidental items which are made available and charged for separate from the vehicle including, but not limited to, sporting equipment, cellular telephones, child restraint seats, video equipment, and any other incidental items and services;

6. All "local revenue". Local Revenue means revenue derived from a vehicle rental transaction with a customer who has not deplaned at Tyler Pounds Regional Airport yet the rental transaction occurred at Tyler Pounds Regional Airport. It also includes revenue derived from a vehicle transaction from fixed base operators (FBO) located at Tyler Pounds Regional Airport.

7. All charges attributable to any vehicle originally rented at Tyler Pounds Regional Airport which is exchanged at any other location of Lessee.

8. All proceeds from the long-term lease of vehicles from any location at Tyler Pounds Regional Airport.

9. The amount charged to Lessee's customers at the commencement or the conclusion of the rental transaction for the cost of furnishing and/or replacing fuel provided by Lessee.

10. The amount charged by Lessee as a pass through to its customers of Concession Fees.

11. Charges commonly referred to as "drop charges" or "intercity fees".

The following, however, shall not be considered as a part of Lessee's gross revenue in Lessee's monthly reports to City:

1. The amount of any sales taxes or other similar excise taxes, now or hereafter levied or imposed by a governmental agency, which were separately stated and collected from customers.

2. Any sums received by a Lessee as insurance proceeds or payments from Lessee's customers or insurers specifically for physical damages to rented vehicles or other property of Lessee other than any administration fees.

3. Sums specifically received as the result of loss, conversion or abandonment of Lessee's vehicles other than administration fees.

4. Sums specifically received from the sale of vehicles off- airport premises or other equipment used in the operation of the Concession, the use of which Lessee wishes to discontinue.

5. Reimbursements for amounts actually paid for red light tickets, parking tickets, other governmental fines and fees, tolls, towing and impounded vehicles from its customers to pass through without markup to an independent third party with no amount being retained by the Lessee. However, any amounts collected above the pass through amount shall be included as Gross Revenue under this Agreement.

6. The amount of any vehicle license recovery fee, now or hereafter permitted by the State of Texas.

7. The amount of any CFC(s) received by Lessee which are separately stated and collected from customers.

Any and all retroactive discounts given by Lessee including corporate volume discounts are not allowed as a deduction from Gross Revenue.

If the aggregate concession fee payments made for any contract year shall exceed the greater of (1) the minimum annual guaranteed concession fee applicable to such year, or (2) the appropriate applied percentage rate of said Gross Revenue during such contract year, the overpayment shall be credited to Lessee's account and applied at City's election to one or more of the next succeeding monthly payments during the next contract year, except the last year in which case an appropriate refund shall be paid to Lessee, unless Lessee continues operations at the Airport, in which case the monthly adjustment will apply. Any balance due the City in accordance with the annual guaranteed concession fee shall be paid within sixty (60) days following the end of the contract year.

As of the effective date of this Lease, if for any reason the number of passengers deplaning on scheduled airline flights at the Airport should decline below 75% of the number of such deplaning passengers for the same ninety-day (90) day period, the minimum monthly guarantee amount as set forth in this Lease shall be abated during which such decline continues and if the Lessee's revenues are otherwise below such minimum monthly guarantee during such decline.

C. CUSTOMER FACILITY CHARGE. A Customer Facility Charge (CFC) per rental car contract per day on any rental of a rental car at the Airport, is imposed at Tyler Pounds Regional Airport, per Tyler City Code Section 12-31.j.

D. DELINQUENT RENTALS. There shall be added to all sums due City and unpaid, an interest charge on the unpaid balance of one and one-half percent (1-1/2 %) per month, if payment is not received **by the twentieth day of the month for which payment is due.** (Example: A delinquent fee will be added to January's rent if January rental is not received by the twentieth day of February.) No interest shall be charged upon that portion of any debt which, in good faith, is in dispute.

ARTICLE V - INSURANCE AND INDEMNITY BY LESSEE

A. **TYPE AND AMOUNT.** Lessee shall provide and maintain, at its own expense, the following types and amounts of insurance, during the term of this Lease:

<u>TYPE</u>	<u>AMOUNT</u>
1. Comprehensive General (Public) Liability - to include (but not limited to) the following:	\$1,000,000 per occurrence and
Premises/operations	
a. Independent contractors	\$1,000,000 general aggregate
b. Personal injury liability/contractual liability (insuring indemnity provision within this contract)	
2. Worker's Compensation and Employer's Liability (where required by state law)	<u>Statutory</u> \$500,000 per occurrence
3. <u>Property Damage Insurance</u> - physical damage coverage for the perils of Fire and Extended Coverage on the improvements and betterment to the leased property	<u>Coverage for a minimum of Eighty (80%) percent of the actual cash value of property</u>
4. <u>Comprehensive Automobile Liability</u> - to include coverage for:	
a. Owned/Lease Automobiles	\$5,000,000 per occurrence
b. Non-owned Automobiles	
c. Hired Cars	

The preceding amounts notwithstanding, the City Council reserves the right to increase the minimum required insurance to be effective thirty (30) calendar days after notice is sent to the address provided herein. If City exercises the right to increase minimum insurance amounts, Lessee may choose to either comply with the increase or cancel this lease with no penalty.

The procuring of such policy of insurance shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of this Lease. Lessee's obligations to the City are, notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss as provided under the terms of the lease.

B. OTHER INSURANCE REQUIREMENTS. *Prior to the lease effective date*, Lessee shall furnish to Airport certificates or copies of the policies, plainly and clearly evidencing required insurance, and thereafter new certificates *prior to the expiration date of any prior certificate*. Lessee understands that it is its sole responsibility to provide this necessary information and that failure to comply timely with the requirements of this Article shall be a cause for termination of this Lease, under the provisions of the termination clause.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form, content, form of protection, and providing company. Rental car companies may be self-insured and must be able to provide a Certificate of Insurance. If not, a statement signed and notarized by an authorized corporate officer assuming liability will be acceptable if the company has the necessary financial resources to guarantee payment when such liability is imposed by law. When evaluating the acceptability of self-insurance a recent audited financial statement and description of the Self-Insurance Program, including how it is funded, must be supplied before operations at the airport commence. Financial statements and amendments of how the insurance program is funded must be supplied annually thereafter during the term of this lease. All statements and information relating to self-insurance shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form and content.

Insurance required by this Lease for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Lessee further agrees that with respect to the above required insurance, the City shall:

1. Be named as additional insured/or an insured, as its interest may appear; and
2. Be provided with a waiver of subrogation; and
3. Be provided with 30 days advance notice, in writing, of cancellation or material change.

If either requirement #1 or #2 requires the payment of additional premium by Lessee, Lessee may present such information to the City Council for its reconsideration. City will not be responsible for any of Lessee's insurance costs.

C. INDEMNITY. It is agreed for all purposes hereunder, Lessee is and shall be an independent contractor and shall not, with respect to its acts or omissions be deemed an agent or employee of City.

Lessee agrees to indemnify, hold harmless and defend City, City's officers, agents and employees, from and against all liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's fees and other reasonable costs occasioned by Lessee's occupancy or use of the

leased premises and/or activities conducted in connection with or incidental to this lease and arising out of or resulting from the intentional acts or negligence of Lessee, Lessee's officers, agents or employees, including all such causes of action based on common, constitutional, or statutory law, or based upon the negligent or intentional acts or omissions of Lessee, Lessee's officers, agents, employees, or other persons under its direction or control.

To the extent permitted by law, City agrees to indemnify, hold harmless and defend Lessee, its officers, agents and employees, from and against all liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's fees and other reasonable costs associated by City's activities at the Airport and arising out of or resulting from the intentional acts or negligence of City, City's officers, agents or employees, including all such causes of action based on common, constitutional, or statutory law, or based upon the negligent or intentional acts or omissions of City, City's officers, agents, employees, or other persons under its direction or control.

Lessee further agrees that it shall at all times exercise reasonable precautions for the safety of Lessee's officers, agents, employees, customers, and visitors, as well as their property, while in or on the leased premises. It is expressly understood and agreed that City shall not be liable or responsible for the negligence or willful acts of Lessee, Lessee's agents, servants, employees, customers, and visitors. Provided, however, nothing herein shall be construed to create a duty owed by Lessee to third persons where no such duty exists by law.

Further, City assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premises defects in improvements constructed by Lessee which may now exist or which may hereafter arise upon the leased premises, any and all such defects being expressly waived by Lessee. Lessee understands and agrees that this indemnity provision shall apply to any and all claims, suits, demands, and/or actions based upon or arising from any such premise defects or conditions, including but not limited to any such claim asserted by or on behalf of Lessee or any of Lessee's members, agents, employees, customers, or visitors.

It is further agreed with respect to the above indemnity, that City and Lessee will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Lessee or City, and City shall have the right to compromise and defend the same to the extent of its own interests. Provided, however, nothing in this lease shall be construed as obligating Lessee to indemnify the City for the willful acts or negligence or actions of the City, City's agents, servants, or employees, or third parties over whom Lessee has no right of control.

D. FAILURE TO PROVIDE INSURANCE, SUSPENSION OF ACTIVITIES. Whenever a Lessee is unable to show proof of insurance required and after ten (10) calendar days prior written notice, then the City Manager, upon recommendation of the Airport Manager, shall have the authority, without any liability to the City, to suspend temporarily Lessee's airport activities on a daily, or portion of a day basis, until proof of required insurance is provided. This remedy is in addition to all others herein and is intended to obtain compliance without and before termination of the Lease.

ARTICLE VI - TERMINATION OF LEASE, CANCELLATION, ASSIGNMENT AND TRANSFER

A. **TERMINATION; RECAPTURE BY CITY.** Upon expiration of the Term as provided in Article III, or earlier termination as otherwise provided herein, Lessee shall have no further right or interest in the ground or improvements constructed thereon, except as provided by the other provisions herein relating to such improvements.

If City requires the leased premises for expansion or developing of the Airport, City reserves the right, on three (3) months' notice and without any liability, to relocate or replace Lessee's improvements at City's cost and expense in substantially similar form at another generally comparable location on Airport. During such period of relocation, City will use its best efforts to assist Lessee in obtaining temporary shelter and Rent payments will be abated only during the act of relocation and up to the return of operation.

During time of war or national emergency, City shall have the right to lease the Airport or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the lease to the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated.

B. **CANCELLATION BY CITY.** City shall have the right to cancel this lease if Lessee fails to rectify the following within ten (10) calendar days of written notice to do same from City.

1. Default in the performance of any of the terms required herein and to be performed by Lessee.
2. Material failure to abide by all valid and enforceable laws of the United States or State of Texas, or any applicable Health District rules, or any ordinances or other Airport Rules and Regulations approved by the City Council.
3. Failure to replace any of Lessee's improvements which have been destroyed by fire, explosion, etc., (with exception to fire damage, explosion damage, etc. as a direct result of City negligence) within six (6) months from the date of such destruction, or if improvements are owned by Lessee, failure to replace them or request an amended site plan within six (6) months.
4. Abandonment of the leased premises for thirty (30) calendar days.
5. Bankruptcy; Being in arrears in the payment of the benefit of creditors; or making a general assignment for the benefit of creditors; or filing a voluntary petition of bankruptcy, or, if the proceedings in bankruptcy shall be instituted against Lessee and thereafter adjudicated a bankrupt pursuant to such proceedings; or if a receiver shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

If, after ten (10) calendar days from the date of such notice, the default, failure to perform, or breach complained of shall not have been corrected in manner satisfactory to City, then City shall have the right, without further notice to Lessee, to take immediate possession of the leased premises and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing and without liability,

subject to Lessee's rights in the improvements provided for elsewhere herein. Upon said default, all rights of Lessee shall be forfeited; provided, however, City shall have and reserve all of its available remedies at law as a result of said breach of this Lease.

Failure of either party to declare this Lease terminated upon the default of either party for any reasons set out shall not operate to bar, destroy or waive the right of such party to cancel this Lease by reason of any subsequent violation of the terms hereof. The acceptance of rentals and fees by City for any period(s) after a default of any of the terms herein contained to be performed by Lessee shall not be deemed a waiver of any rights of the City to cancel this lease for failure by Lessee to so perform, keep or observe any of the terms hereof to be performed. (The actual termination of this Lease shall occur when approved by the City Council.)

C. **WAIVER OF STATUTORY NOTICE TO QUIT.** If City exercises its option to cancel this Lease upon the happening of any or all of the events set forth in Section B (Cancellation by City) and the failure of Lessee to correct any such breach within the time allowed, a notice of cancellation given pursuant to Section B and sent to the address specified in Article VII Section F (or subsequent address provided in writing to Airport Manager) and City Council approval of the termination shall be sufficient to cancel this Lease. Upon such cancellation, Lessee will surrender up possession of the leased premises to the City, subject to Lessee's rights in the improvements as provided for elsewhere herein.

D. **PERSONAL PROPERTY.** City shall have a lien as security for any rentals or other payments owed to City upon all goods, wares, chattels, implements, fixtures, furniture, tools, improvements, and other personal property, excluding automobiles, which are or may be put or caused to be put on the leased premises by Lessee. Upon termination of this lease, Lessee shall remove all property from the leased premises within ten calendar (10) days after said termination; provided that Lessee shall at no time remove any improvement or other personal property for which it has or will receive a rental credit or rebate. If upon termination Lessee owes any payments to City, City may elect to retain possession of such property or may sell the same and keep the proceeds after first applying them to any payments in arrears, or may have such property removed at the expense of Lessee.

Lessee shall repair, at its own expense, any damage resulting from said removal of personal property and shall leave the leased premises in a neat and clean condition with all other improvements in place. Lessee shall leave the leased premises in a condition at least equal to, or better than, the condition when Lessee first leased the premises, reasonable wear and tear accepted.

E. **CANCELLATION BY LESSEE.** This Lease shall be subject to cancellation by Lessee, at Lessee's option, after one or more of the following:

1. The permanent abandonment of the Airport as a public airport.
2. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport or any substantial part(s) thereof, in such a manner as substantially to restrict Lessee for a period of at least ninety (90) calendar days from operating thereof.
3. Damage to Lessee's improvements, by any instrumentality that renders such improvements unacceptable for the purpose for which they were intended.
4. The breach by City of any of the terms herein contained and the failure of City to remedy such breach for a period of thirty (30) calendar days after receipt of a written notice of the breach.

5. Cancellation of all regularly scheduled airline service into the airport.

Lessee may exercise such rights of termination upon 90 days prior written notice to City and this Lease shall terminate as of that date.

F. **SUBLETTING AND ASSIGNMENT.** Lessee shall not assign all or any part of such leased premises or the improvements located thereon without the prior written consent of the Airport Manager, which consent shall not be unreasonably withheld. Any assignees shall be subject to the same terms as set forth herein.

As a condition of and as consideration for approving any assignment, City may require amendment of the terms of this lease to conform to any different terms of the lease form then currently approved and adopted by City for new leases, provided, in the event of such amendment, assignee shall be given the option of taking over the unexpired balance of this Lease or entering into a new lease for such term as may then be approved by City for new leases for lease assignees. It is not the intention of the City that the assignments be misused as a method to avoid compliance with the minimum standards herein.

In the event of approved assignment, Lessee shall be relieved of any further obligation hereunder, and the City will look solely to such approved assignee for performance of this Lease subsequent to the date of such approved assignment. Said assignee shall not assign said Lease except with the prior written approval of the City, and any assignment by the Lessee shall contain a clause to this effect. Any attempted assignment without the prior written approval of the City shall be invalid, and shall further constitute a violation of this Lease.

Lessee shall not sublease all or any part of such premises or the improvements thereon.

All terms herein contained shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

ARTICLE VII - GENERAL PROVISIONS

A. **APPLICABLE LAW AND VENUE.** This Lease and all transactions made hereunder shall be construed and governed according to the laws of the State of Texas. Venue for any legal proceedings shall be in Smith County, Texas.

B. **INVALID PROVISIONS.** If any provision herein is held to be invalid by a court of competent jurisdiction, the invalidity of such provision shall in no way affect any other provision.

C. **PARAGRAPH HEADINGS.** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

D. **DEFINITION OF LESSEE.** The term "Lessee" shall include Lessee, its heirs or executors, and any corporations now or hereafter owned or controlled by Lessee, its heirs and executors, who are operating on the leased premises.

E. **FEDERAL AVIATION ADMINISTRATION.** Whenever the term "Federal Aviation Administration" is used in this Lease, it shall be construed as referring to the Federal Aviation Administration created by the federal government or to such other agencies of the State of Texas or the federal government having from time to time similar jurisdiction over Lessee or its business.

F. **AIRPORT SECURITY.** Lessee shall be responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state and /or local government entity regarding airport and/or airfield security.

G. **PROTECTION OF THE ENVIRONMENT.** Lessee will keep and maintain the leased premises in a clean and healthful condition and comply with the environmental laws, ordinances, rules and regulations whether State, Federal, or Municipal. Lessee shall undertake any obligation to remediate, or take any other action with respect to any environmental condition that is attributable to the activities on the premises of Lessee, any of its sublessees, or any of their respective officers, directors, agents, employees, contractors and other invitees.

H. **NOTICES.** Whenever any notice or payment is required by this Lease to be made, given or transmitted to the parties hereto, such notice or payment shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, or by recognized overnight delivery service, addressed to:

Notice and Payment to:
City of Tyler
Airport Manager
700 Skyway Blvd., Suite 201
Tyler, TX 75704
(903) 531-9825

and notices, consents and approval to Lessee addressed to:

Name: _____
Company: _____
Address: _____
Address line 2: _____
City, State, Zip: _____
Email address: _____

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed this _____ day of _____, 20_____.

CITY OF TYLER, TEXAS

LESSEE

BY: _____
Edward Broussard, CITY MANAGER
City Council approved: _____

BY: _____

ATTEST:

ATTEST:

Cassandra Brager, CITY CLERK

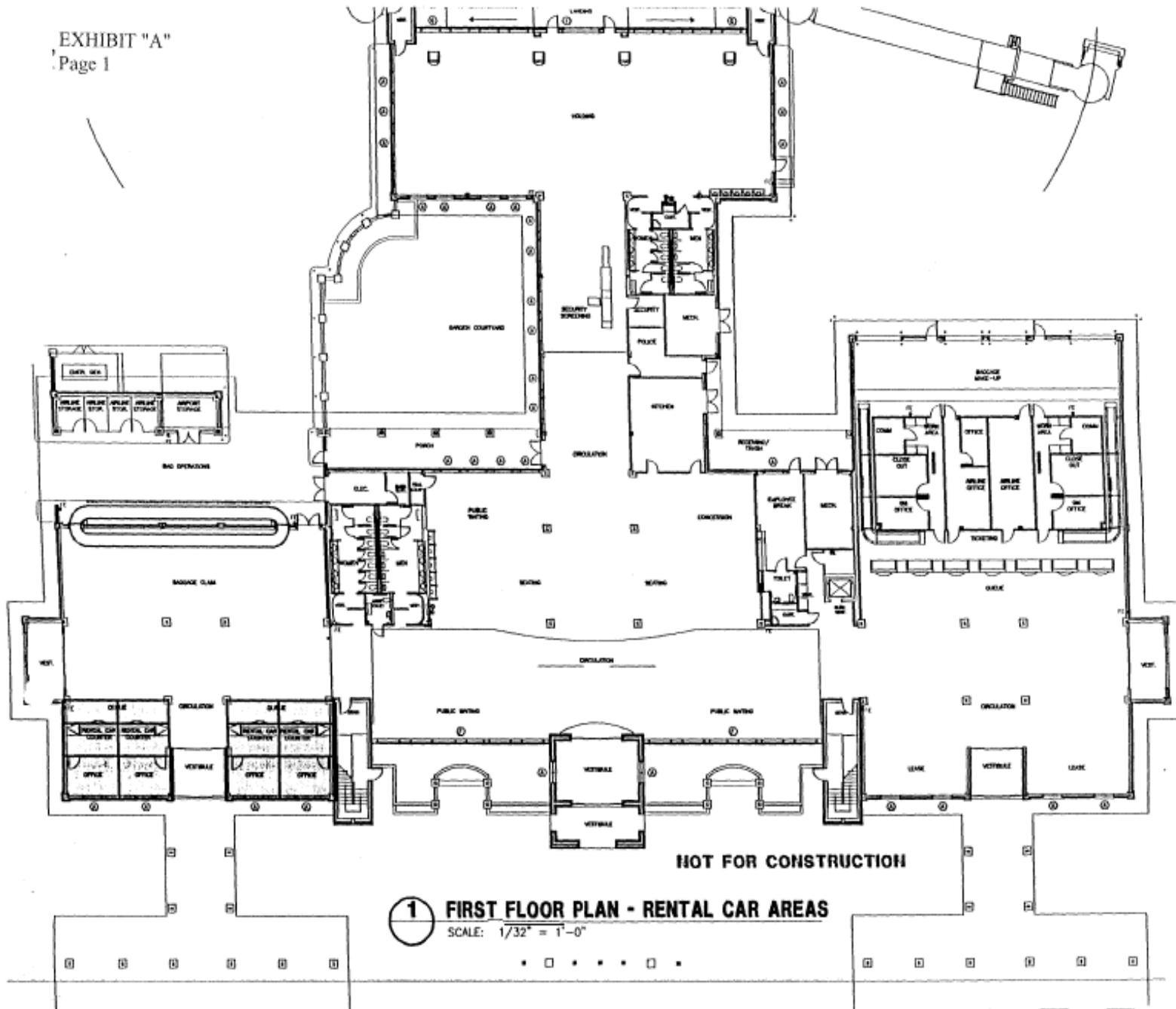
RECOMMENDED: _____
AIRPORT MANAGER
(Airport Advisory Board considered on _____
and recommended approval/denial)

APPROVED: _____
CITY ATTORNEY

THE STATE OF TEXAS
COUNTY OF SMITH

This instrument was acknowledged before me on _____, 20_____,
by _____, Lessee.

Notary Public in and for the State of Texas



1 FIRST FLOOR PLAN - RENTAL CAR AREAS
SCALE: 1/32" = 1'-0"

NOT FOR CONSTRUCTION

Revised Exhibit "B" - Rental Car Ready Return Parking Lot



104 parking spaces - to be allocated per RFQ No. 17-002, Addendum No. 3
2 handicap spaces are not included in the 104 spaces or the allocation.

REVISED EXHIBIT "C"

