



December 21, 2020

PROSPECTIVE BIDDERS:

Attached is Addendum #1 to the Request For Competitive Bids - On-Airport Rental Car Concessions at Jackson Hole Airport.

We received several communications from prospective bidders requesting clarification and changes to the RFB and related appendices issued on November 24, 2020.

We have thoroughly evaluated all requests. The only changes to the RFB affect Appendix F the Airport Facilities Lease and Rental Car Concession Agreement. There are no other changes to the RFB document, its exhibits or appendices.

**The Proposal submittal deadline remains 3:00 p.m. Mountain Standard Time, January 20, 2021.**

The Board intends on this being the only addendum issued on this RFB.

Jackson Hole Airport Board looks forward to the opportunity to do business with your company.

Enclosures:

Addendum #1

Addendum Acknowledgement Form – to be returned with bid

Revised Appendix F – Airport Facilities Lease and Rental Car Concession Agreement



**JACKSON HOLE AIRPORT**

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*James P. Elwood, AAE, Executive Director*

**JACKSON HOLE AIRPORT**  
**JACKSON, WYOMING**

**REQUEST FOR COMPETITIVE BIDS**  
**ON-AIRPORT RENTAL CAR CONCESSIONS**  
**ADDENDUM #1**

**December 21, 2020**

Attached are answers to questions asked related to the Request for Competitive Bids (RFB) documents for On-Airport Rental Car Concessions at Jackson Hole Airport. Those answers which result in changes to the Airport Facilities Lease and Rental Car Concession Agreement are identified in Questions #1 - #4.

Appendix F – Airport Facilities Lease and Rental Car Concession Agreement

1. 4.1.4.2 – “Agreement Year” should be changed to “Operations Year”

***Response: See revised language provided in Section 4.1.4.2. of the revised Airport Facilities Lease and Rental Car Concession Agreement.***

2. MAG Abatement (CA 4.2)

- Please clarify the MAG waiver during the Runway closure. Suggest you simply advise that our MAGs for the affected year will be proportionately reduced by the number of days of closure.

***Response: See revised language provided in Section 4.2.5 of the revised Airport Facilities Lease and Rental Car Concession Agreement.***

- Please change the MAG Abatement language such that abatement is triggered by a decline in passengers relative to a reasonable base year (2019) rather than prior year. As we come out of the pandemic with historically low volumes, it is unreasonable to only contemplate any MAG abatement where passenger volumes fall significantly below the COVID-impacted numbers.

***Response: No Change.***

3. Sec. 7.1.3 – Please incorporate appropriate notice provisions along with cure periods as is typical.

***Response: See revised language provided in Section 7.1.3 of the revised Airport Facilities Lease and Rental Car Concession Agreement.***

4. 7.1.4 – Please strike this section or at least the first piece. Respectfully, Board cannot default an operator because it “believes” the Operator “will” fail. If we *actually are* engaging in conduct/activity detrimental to the airport, then that is a default.

**Response: The language in Section 7.1.4 has been deleted. See revised Section 7.1.4 of the revised Airport Facilities Lease and Rental Car Concession Agreement**

Below are the questions received that do not result in any changes to the RFB including appendices and exhibits:

RFB:

5. Section 2.1(a) page 1 and Exhibit 1. Please provide the length of each counter offered.

**Response: The width of all three of the terminal building positions depicted on Exhibit 1 are 22 feet wide – 19 feet of counter length and a 3 foot door opening.**

6. Section 2.2.3 page 2, and Exhibit 2. In the second sentence of this paragraph, a description of the curbside offered to off airport companies is mentioned. Please indicate where the off- airport companies and TNCs will access their customers on the diagram in Exhibit 2.

**Response: On Exhibit 2, the off-airport rental car companies drop off and pick up location is depicted in brown (on the outside lane in front of the terminal building above rental car block #2). The TNC drop off and pick up location is depicted in yellow (on the middle lane in front of the terminal building above rental car block #1).**

7. Sec. 2.5. Regarding the parking blocks:
- o Are these the same blocks as current but now expressed as total area in square feet as opposed to in stalls, as per last RFB and current agreements? In other words, are the parking blocks available under this RFB identical to the existing parking blocks?

**Response: Yes. These blocks are physically identical to the current parking blocks.**

8. Will the ready return or QTA spaces be grandfathered for incumbents should they win?

**Response: Ready return parking blocks will not be grandfathered for incumbents should they be successful bidders. QTA Facility Bays and their associated spaces will be grandfathered for incumbents should they be successful bidders as described in Section 2.6 of the RFB.**

9. Section 3.2., Page 5, **Explanation.** The timeline of questions, clarifications and possible addendums is outlined within this paragraph. We suggest a modification that would include a period to allow for follow up and clarifying questions prior to the final addendum. By example, such a timeline would include; 1) December 9<sup>th</sup>- Submission of original questions and comments by potential bidders; 2) December 21- addendum by airport staff containing answers and comments; 3) January 5<sup>th</sup> -Potential bidders submit clarifying questions relating **only** to answers published within the addendum or answers to questions that were overlooked in the first addendum; January 13<sup>th</sup>, publication of

second addendum addressing clarifying questions and comments and ; January 21<sup>st</sup>- Bid date.

**Response: No Change.**

10. Sec. 4.1 & Appendix B Qualification Form – Please confirm that the entire Qualification Form is waived for incumbent Operators or otherwise advise if any specific portions are still required as submission items.

**Response: Yes, Appendix B is waived in its entirety for incumbent operators. “Incumbent Operator” is defined as a legal entity bidding on this RFB that currently has an effective Airport Facilities Lease and Rental Car Concession Agreement at Jackson Hole Airport. The legal entity proposing must be the same legal entity that currently has a signed Airport Facilities Lease and Rental Car Concession Agreement at Jackson Hole Airport.**

11. Page 5. 4. Requirements for Competitive Bid item 4.1 Qualifications:  
Please confirm in writing that car rental operators currently operating inside the Jackson Hole Airport are exempt from having to provide the qualifications form **Appendix B.**

**Response: See Response to Question #10.**

12. Section 4.2, page 6, **ACDBE.** Will there be any requirements to make any submittal of anticipated ACDBE performance with the bid, or will reporting be only as outlined in the third paragraph?

**Response: There are no requirements to make any submittal of anticipated ACDBE performance with the bid.**

13. Please allow us to submit our Bid proposals electronically (via email or to a website). With our offices closed due to COVID, we do not have access to various personnel needed to sign originals or physical supplies and equipment. Our proposal will be prepared ‘from home’ with limited resources. It is exceedingly difficult under the circumstances to prepare original, hard copies of a proposal. We ask that you allow email submissions with scanned signatures and note that this approach is becoming more common generally at other airports.

**Response: No Change.**

14. Please allow an electronic submission instead of paper copies, due to the COVID pandemic shutting down many offices across the country and the risks of handling materials.

**Response: See Response to Question #13.**

15. In the event of allowing an electronic submission, please allow a copy of the bid-bond to be submitted digitally with the submission.

**Response: No Change.**

16. Please confirm that all incumbent and off-airport operators are not in arrears under 5.1.2.

**Response: As of December 16, 2020, all incumbent and off-airport operators are not in arrears.**

17. Please confirm that all incumbent and off-airport operators are in good standing.

**Response: As of December 16, 2020, all incumbent and off-airport operators are in good standing.**

18. Sec. 5.1.2 – Due to bid qualification requirements, please confirm that EAN Holdings, LLC is not in default or arrears with the Airport.

**Response: See Response to Questions #16 and #17.**

19. Sec. 5.1.3 - Please confirm that a single legal entity that rents vehicles under separate brands is permitted to submit more than one bid (for example, this single legal entity is allowed to submit one dual-branded bid & one separate single-branded bid, each containing different brands)?

**Response: Yes. A single legal entity may submit more than one bid as long as each bid contains different brands.**

20. Section 5.1.3 **Unacceptable bids.** Under the current rules of the RFP, one family brand of affiliated companies may lockup all three positions. We believe that this is not the best interest of is good customer renting cars at Jackson Hole. We suggest the following rules be implemented to prevent a dominant presentation by one affiliated group and to preserve the integrity of the presentation of multiple brand on airport.

- i. An affiliated group of companies or brands should be required to multi-brand the brands it wishes to operate on the airport under only one concession. A number of airports have followed this course in small and large markets (Tampa, Orlando etc).
- ii. If an affiliated group does not operate one of its brands on airport it may do so as an off- airport operator.
- iii. Affiliated companies may not add a brand to its on airport choice of brands if such brand was not displayed in its proposal submittal.
- iv. Should an affiliated group decides to cease operating an affiliated brand on the airport, such brand should not be allowed to be operated as an off airport permittee during the term of the concession agreement

**Response: No Change.**

21. Section 5.1.3 **Unacceptable bids** The Jackson Hole Airport has a limited number of positions offered for bid. From a rental car customer’s perspective, it is much better to be serviced on the airport. At Jackson Hole, 27% of rental car customers (as calculated by revenue) rent off the airport. We request that the airport board 1) add at least a fourth position and 2) Require affiliated groups of companies to multi-brand (occupy one concession position for all brands). As mentioned above this is now being practiced in a number of markets. In recent years creative signage arrangements have afforded concessionaires the opportunity to showcase multiple signs of brands without confusion. Technology has advanced such that concessionaires can better direct their customers and manage storage of cars with techniques as counter bypass, and flexing of ready return spaces. Adding operators and requiring multibranding will greatly enhance customer service for the overall market in Jackson Hole.

**Response: No Change.**

22. Page 7. 5. 1. Unacceptable Bids item 5.1.3:

The airport is restricting a single entity from bidding for a counter being offered in this RFB from branding counters with multiple brands to the use of only two brands. Is it the airport’s intent to prevent one entity e.g. an entity that owns three brand rights, or more, from gaining a monopoly in the Jackson Hole Airport by bidding separately for all three counters? Or is it the intent of the airport to enter into an agreement with the highest bidder for each counter regardless of the fact that many of the entities, and certainly the current on airport entities, have multiple brands thus creating a monopolistic environment where one entity operates out of all three counters offered in this RFB? The board has repeatedly over the years expressed their concerns over collusion regarding rates offered to customers a.k.a. “pricing fixing” does the Airport and the Board choose to “turn a blind eye” to the fact that a single entity (including us) could in fact successfully bid on and be awarded all three counters being offered in this RFP and subsequently charge the traveling public whatever rate they desire?

**Response: No Change.**

23. **We recommend that the airport board allow only one bid from an affiliated group of business entities.**

When we reference affiliated entities we refer to a broad definition of the term as “A group of business entities that are related through common ownership”. We believe that is it not ultimately beneficial to the rental car customer for the airport to impose policy that could essentially allow one company to occupy all concession positions. By example, Google (Alphabet) given its financial strength could place three bids (Waymo A, Waymo B and Waymo C) thereby locking up all available positions. While we understand that Google technically cannot “collude” in bidding against itself, and this specific example may be more realistic during the next RFP process, we believe it is not good **policy** for the airport to allow the possibility of such an outcome. We understand that your policy also limits the number of brands per concession position to two (2). Our recommendation does not include a limit to the number of brands offered by an affiliated group.

**Response: No Change.**

24. Sec 5.3.2 MAGs – in the last bid the Board placed a cap on the MAG escalation from year to year to avoid significant back-end loading of MAGs. The cap last time was not more than a 20% increase in MAGs bid each year. Especially as we recover from COVID it seems appropriate to again include an escalation cap and potentially at an even lower 10% rate.

**Response: No Change.**

25. Under 6.3 “Facilities Accepted As-Is”, please confirm whether previous tenants would be required to repair or restore the existing space, prior to handing over to the new winner?

**Response: Yes. Previous tenants are required to repair any damage to the premises. The current agreements require “Upon the expiration and/or termination of this Agreement, Operator shall immediately surrender the Premises to the Board in good condition and repair, ordinary wear and usage excepted; and Operator shall remove all of Operator’s personal property, trade fixtures, equipment or improvements removable by prior agreement with the Board from the Premises and shall repair any damage to the Premises caused by such removal.”**

26. Section 6.3, page 9 **Facilities Accepted As Is**. While we understand that while any space that a new operator is awarded that was held by a predecessor is accepted “as is” we believe that there is a minimum requirement for the predecessor operator to leave the space in some reasonable operative condition ordinary wear and tear excepted. Especially given the short duration of concession agreement.

**Response: See Response to Question #25.**

27. In the event that a single parent company is bidding for 2 or 3 of the spaces, should it submit separate Appendices C, D, and E for each?

**Response: Yes. Each bid a single parent company submits must contain all required information including all required appendices.**

28. Appendix D & E – Please confirm that we can we use our own, surety-approved forms for bid bond and performance bond.

**Response: If a bidder chooses to provide its bid security in the form of a Bid Bond, the Bidder should use the Bid Bond provided in Appendix D. Successful bidders may request the use of their standard Performance Bond form by providing such form to the Board for review and approval at least seven (7) days prior to the due date of the executed Agreement.**

29. Page 29 Appendix D:

In lieu of a bid bond for \$10,000.00, will the airport accept a cashier’s check in the amount of \$10,000.00 made payable to the Jackson Hole Airport Board?

**Response: Yes. Per Section 4.4 of the RFB, a cashier's check payable to the Jackson Hole Airport Board is acceptable.**

30. Will a bid-bond from the parent company of an award winner fulfill the requirements, even if the contract is held by a subsidiary?

**Response: No. The bid bond must be in the name of the legal entity submitting the bid.**

Appendix F – Airport Facilities Lease and Rental Car Concession Agreement:

31. 1.3 CFCs

- Please confirm whether there is any cap on the number of days the RACs are required to charge the CFC for a single rental?

**Response: There is no cap on the number of days the RACs are required to charge the CFC for a single rental.**

- It is customary to have key CFC terms and language included in the concession agreement including detail on when and how the CFC rate may be changed and the required notice as well as permitted uses of CFC funds. We suggest that appropriate CFC language be added into the agreement in addition to referencing in the agreement the applicable Board Resolution.

**Response: No Change.**

32. 1.12 – Please provide for a grace period for delayed returns . . . “except that a partial day that is a grace period of no more than one (1) hour after the last 24-hour day booked shall not be considered a Transaction day.”

**Response: No Change.**

33. Section 2.3, page 4 – During a holdover period MAGs should be abated to the payments of the percentage of gross receipts fees. Bidders should be allowed to place guarantees just for the period under the proposal. Bidder should not be penalized if a new RFP process is not conducted timely.

**Response: No Change.**

34. 4.1.2 Rents –

- The proposed increases for all premises are excessive, especially under the current circumstances. Tying to airline rates where reduced activity leads to higher rents is not appropriate for RACs that also pay 10% of Gross Revenue. Please hold the rents at current levels for the Term.

**Response: No Change.**



- Please confirm that in addition to MAG abatement, all premises rent will be fully waived during the runway closure period. It would be unreasonable to charge us rent when there will be zero flight activity.

**Response: No Change.**

35. Please confirm the amount that is “the same per square foot per annum counter/office/queuing rate paid by the Airlines serving the Airport”, intended to be charged for the Customer Service Area, starting in July 2021.

**Response: Confirmed. The Terminal Building Exclusive Use Space Rental Rate is the same per square foot per annum charged to the airlines. This rate is adjusted effective July 1 of every year.**

36. Section 4.1.4 page 11 – This paragraph outlines how the cost of O & M expenses will be accrued and paid. Are the cost of major replacement and repairs reserved? Or will they roll through the ordinary process of payment. If there is no reserve are engineering reports periodically done to forecast and budget for the cost and timing of major repairs.

**Response: In the current agreement there is no O&M reserve for either major replacement or repairs. In the O&M Budget starting May 2021, a two-month reserve has been included for repairs. Major replacement items will be funded by CFCs to the extent CFCs are available.**

37. Section 4.1.6, page 11. Speaks to the Collection of CFCs. Please include a schedule of the showing the sources (collections from RAC) and uses (expenditures) of the past two contract years ending April 2020. Knowing that the COVID pandemic has affected many financial projections, do projected collections for the first contract year, (May 2021- April 2022) equal or exceed projected budgeted expenses outlined in Exhibit 6?

**Response: CFC collections and uses for the past two Operations Years are provided below.**

<i>Collections and Uses</i>	<i>May 2018 – April 2019</i>	<i>May 2019 – April 2020</i>
<i>CFC Collections</i>	<i>\$1,684,587</i>	<i>\$1,816,735</i>
<i>Interest Earned</i>	<i>\$7,430</i>	<i>\$4,122</i>
<i>QTA Construction Costs</i>	<i>\$2,134,808</i>	<i>\$0</i>
<i>QTA Interest and Principal Payments</i>	<i>\$242,770</i>	<i>\$1,570,282</i>
<i>Bank Charges</i>	<i>\$95</i>	<i>\$90</i>

***CFCs are not used to fund any of the expenses in Exhibit 6.***

38. 4.1.8 – Please eliminate the requirement to engage a CPA for annual statements. This is very costly. Please modify such that we have the option of having an officer of the company certify the statements.

**Response: No Change.**

39. Section 4.2.- page12- This section outlines the terms and conditions that would give rise to an abatement of the MAG should there be a major traffic reduction and the procedures to calculate the abatement. A couple of comments about this clause. First we should be careful and determine what would make a reasonable “base” year given the influence that COVID will have on Contract year May 2021 to April 2022. Secondly, we believe the “off” and “on” trigger should be congruent. That is, if it takes three consecutive months of at least a 25% reduction to trigger an abatement “on”, it should three consecutive months to trigger an abatement “off”.

**Response: No Change.**

40. Page(s) 12-13 4.2 Operator’s Right of Abatement item(s) 4.2.1—4.2.3:

The MAG abatement language under “normal” operating conditions states “A major traffic reduction shall be defined as a not less than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.” Which is an acceptable method of offering relief to on-airport car rental concessions; however, item 4.2.3 states “If the major traffic reduction continues for additional months, the proportional abatement will continue as well, **until there is a month** when traffic does not fall below the 25% threshold, at which time the full minimum annual guarantee payment shall be made for such month.” In the interest of maintaining a fair and equitable relationship between the Airport and the on-airport car rental concessionaires we feel the fair thing to do here is to apply the same three (3) consecutive calendar months equation to the reinstatement of 1/12<sup>th</sup> of the MAG payment being due upon three (3) consecutive calendar months of the number of passenger deplaning being above the 25% threshold changing the language to the following: states “If the major traffic reduction continues for additional months, the proportional abatement will continue as well, **until there three (3) consecutive months** when traffic does not fall below the 25% threshold, at which time the full minimum annual guarantee payment shall be made for such month.”

**Response: No Change.**

41. MAG Abatement (CA 4.2) Given the proposed change to proportional MAG abatement from full MAG abatement as contemplated in the current agreement, there should not be a requirement for a 3 month decline in passengers to trigger the relief. Instead abatement should apply, proportionally, for any month where there is such a decline. The proportional abatement or reduction in the MAG negates any need to for a longer period of decline that may have been appropriate for a full MAG waiver.

**Response: No Change.**

42. Page 13 item 4.2.5:

- a. This paragraph is not clear. The airport is planning a runway reconstruction project, which will most assuredly have an impact on deplaning passengers, as it is our belief that there will be no airplanes allowed to land at the Jackson Hole Airport during the runway construction project period. It is our understanding, based on comments made during the pre-bid conference call, that the runway construction project is scheduled to span ninety (90) days. Please clarify that MAG abatement will be in effect for the scheduled ninety (90) day runway construction project and further clarify that should the runway construction project exceed the estimated ninety (90) days of runway closure the on-airport car rental operators will be afforded MAG abatement until such a time as the Jackson Hole Airport has completed the runway construction project.

**Response: See Response to Question #2.**

- b. In addition to the clarification of MAG abatement during the planned runway construction project we request that the Airport offer a temporary abatement of the \$4.00 per day storage fee or at the very least the airport should offer a reduction in the amount of the storage fee to a maximum of \$1.00 per day. It is impossible to move every vehicle scheduled to be utilized at the Jackson Hole Airport off the Jackson Hole Airport during the runway reconstruction project; therefore, resulting in most rental vehicles remaining idle for much longer periods of time than what would be consider “*normal*”. The goal for car rental operations is to utilize every vehicle to the extent that there are very few vehicles that sit idle at any given airport. Utilizing vehicles is impossible when there are few or no deplaning passengers.

**Response: No Change.**

43. Given the fact that the United States is experiencing significant travel industry related reductions due the COVID-19 Pandemic and the existing on-airport operators at the Jackson Hole Airport have been granted a MAG abatement under the terms of the existing concession agreement that is currently in effect, we are concerned that the Board and the Jackson Airport have chosen to move forward with this RFB. Our greatest concern is that the Board and the Airport have chosen to move forward to negate the current MAG abatement and intend to negate the current MAG abatement we are currently operating under. Should an incumbent successfully bid for space under this RFB the existing MAG abatement currently in effect ***should not be reset***. Please confirm that **it is not the intent** of the Board or the Airport to negate the existing MAG abatement and require full MAG payment on May 1, 2021, if the current conditions have not improved and the MAG abatement we are currently operating under is still in effect.

**Response: No Change.**

44. Sec. 4.5.1.1 – Please provide for mutual indemnification for Operator that mirrors this language requiring Operator to indemnify the Board.

**Response: No Change.**

45. Sec. 4.5.2.1 – Please delete “*and independent contractors coverage*” – our contractors obtain their own insurance coverage.

**Response: No Change.**

46. Sec. 4.5.2.2 – Please delete “*Where any policy(ies) has (have) normal expirations during the term of this Agreement, written notice of renewal shall be furnished to the Board at least thirty (30) days prior to expiration of any policy during the term of this Agreement. Upon written request by the Board, the Operator shall permit the Board to inspect the originals of all applicable policies*” .... and replace with “**Operator shall furnish Board with renewed certificates of insurance prior to expiration.**” Our policies are confidential since they are blanket and include thousands of locations.

**Response: No Change.**

47. Sec. 7.6.1 – Please strike all references to paying fees and rents for the balance of the term. If Board elects to terminate the agreement, then all fees/rents should also terminate other than those accruing up to the date of termination.

**Response: No Change.**

Miscellaneous:

48. Please provide a passenger forecast. Given the pandemic, it is more important than ever that we understand the Board’s expected passenger volumes over the term of the proposed agreement.

**Response: Due to the uncertainly surrounding the COVID-19 pandemic and airline schedule changes, the Airport is not able to provide passenger forecasts. The Airport uses FAA published Terminal Area Forecasts (TAFs) which have not been issued since the COVID-19 pandemic began. However, the Airport provided the winter Airline schedules in the RFB for your information.**

49. Please confirm that all the terms and conditions specified in the RFB and any/all issued addenda will be incorporated and made a part of the Concession Agreement. Please add language to the Request for Bids and to the Concession Agreement that states: “*The Request for Bids, including all issued addenda and questions and answers, are hereby incorporated into and made a part of the Concession Agreement.*”

**Response: No Change. All changes posted via addenda will be reflected in the final Airport Facilities Lease and Rental Car Concession Agreement as appropriate.**

50. Please advise the Board’s policy with respect to any car sharing services and any peer to peer car rental operators and whether these would each be treated as off-Airport car rental companies and subject to the applicable agreement?

**Response:** *The Board considers car sharing services, such as but not necessarily limited to Turo, to provide car rental services. It is the Board's position that, to comply with Board rules and Town of Jackson ordinances, such companies must enter into an agreement with the Board prior to doing business on or from the Airport.*

51. Due to the emergence of various modes of non-traditional car rental in recent years, it is important to define a "Rental Car Company" in the agreement. Please incorporate the following definition into the agreement: A "Rental Car Company" is any business that, directly or indirectly, provides, procures and/or brokers rental vehicles as part of its business and/or conducts, facilitates, and/or manages vehicle rental activities as part of its business. This includes, but is not limited to, traditional rental car businesses, brokers for car rental businesses, rental car delivery companies, peer-to-peer car rental businesses and car sharing businesses.

**Response:** *No Change.*

52. Please confirm whether previous winner Corepat assigned or transferred its agreement, and indicate the date.

**Response:** *The concession agreement between the Board and Corpat, Inc. was assigned to Enterprise RAC Company of UT, LLC effective September 18, 2018.*

53. Please confirm the legal names of all off and on site RAC operators currently in existence off/on at JAC.

**Response:** *The legal names of the current on-airport operators at JAC are Enterprise RAC Company of UT, LLC and Overland West, Inc. The legal names of the off-airport operators with agreements with the Board are Avis Budget Car Rental LLC, New Frontiers Auto Rental LLC, El Capitan Enterprises and Leisure Sports.*

54. Are there any requirements to silo or keep operations/employees distinct if a company holds multiple concessions?

**Response:** *No.*

**REQUEST FOR COMPETITIVE BIDS  
ON-AIRPORT RENTAL CAR CONCESSION**

**JACKSON HOLE AIRPORT**

**ACKNOWLEDGEMENT OF ADDENDUM**

Bidder Acknowledges Receipt of this Addendum #1 dated December 21, 2020:

Acknowledgment of Addendum #1 is hereby made;

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Business: \_\_\_\_\_

Date: \_\_\_\_\_

**AIRPORT FACILITIES LEASE  
AND RENTAL CAR CONCESSION AGREEMENT  
BETWEEN THE JACKSON HOLE AIRPORT  
AND**

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TABLE OF CONTENTS

1. **DEFINITIONS** ..... 1

2. **TERM** ..... 3

3. **RIGHTS AND PREMISES GRANTED** ..... 4

    3.1 **Concession Rights Granted** ..... 4

    3.2 **Leased Premises** ..... 4

    3.3 **Use of Premises** ..... 5

    3.4 **Acceptance of and Defects in Premises** ..... 6

    3.5 **Substitution or Provision of New Facilities** ..... 6

    3.6 **Alterations, Improvements and Trade Fixtures** ..... 7

4. **OBLIGATION OF OPERATOR** ..... 8

    4.1 **Concession Fee, Rents, and Fees** ..... 8

    4.2 **Operator’s Right of Abatement** ..... 12

    4.3 **Failure to Pay Rent or Fees** ..... 13

    4.4 **Financial Conditions** ..... 13

    4.5 **Indemnity and Insurance** ..... 15

    4.6 **Taxes** ..... 17

    4.7 **Additional Obligations of Operator** ..... 17

5. **RESERVED RIGHTS OF BOARD** ..... 19

6. **OTHER AGREEMENTS** ..... 20

    6.1 **Hazardous Substances** ..... 20

    6.2 **Hazardous Substances Storage** ..... 22

    6.3 **Damage or Destruction** ..... 23

    6.4 **Government Reservations and Restrictions** ..... 24

    6.5 **Agreement Subordinate to Bond Issuance** ..... 25

    6.6 **Utilities, Construction and Maintenance – Terminal, Ready Return Blocks and QTA Facility** ..... 25

    6.7 **Snow Removal** ..... 26

    6.8 **Advertising and Signage** ..... 26

    6.9 **Operator’s Personal Property/Trademarks** ..... 27

    6.10 **Replacement Operator – Most Favored Nations** ..... 27

    6.11 **Assignment and Subletting** ..... 27

    6.12 **Liens or Encumbrances, Lawsuits** ..... 28

    6.13 **Nondiscrimination** ..... 28

    6.14 **Airport Concession Disadvantaged Business Enterprise Participation (ACDBE)** ..... 30



<b>7. <u>TERMINATION, SURRENDER &amp; DAMAGES</u></b> .....	31
<b>7.1 Board’s Right of Cancellation</b> .....	31
<b>7.2 Operator’s Right of Cancellation</b> .....	32
<b>7.3 Surrender of Premises</b> .....	32
<b>7.4 Attorney Fees</b> .....	33
<b>7.5 Performance by Board</b> .....	33
<b>7.6 Board Remedies</b> .....	33
<b>8. <u>MISCELLANEOUS PROVISIONS</u></b> .....	34
<b>8.1 Severability</b> .....	34
<b>8.2 Approval or Direction by Board</b> .....	34
<b>8.3 Entire Agreement</b> .....	34
<b>8.4 Relationship of the Board and Operator</b> .....	35
<b>8.5 Non-Waiver of Breach</b> .....	35
<b>8.6 Survival of Indemnities</b> .....	35
<b>8.7 Applicable Law, Venue, Waiver of Trial by Jury</b> .....	35
<b>8.8 Notices</b> .....	35
<b>8.9 Time of Essence</b> .....	36
<b>8.10 Paragraph Headings</b> .....	36
<b>8.11 Authority of Operator’s Representative</b> .....	36

**EXHIBITS**

- Exhibit #1 – Terminal Building Counter/Queuing Position**
- Exhibit #2 – Ready/Return Block**
- Exhibit #3 – QTA Facility Bays**
- Exhibit #4 – ACDBE Attainment Report**
- Exhibit #5 – Monthly Reporting Form**
- Exhibit #6 – QTA O&M Budget**
- Exhibit #7 – Title VI - List of Pertinent Nondiscrimination Acts and Authorities**

**AIRPORT FACILITIES LEASE  
AND RENTAL CAR  
CONCESSION AGREEMENT  
JACKSON HOLE AIRPORT**

THIS AGREEMENT is made effective as of May 1, 2021, between the JACKSON HOLE AIRPORT BOARD, a body corporate, organized under the laws of Wyoming, and having its principal office at the Jackson Hole Airport, P.O. Box 159, Jackson, Wyoming 83001 (the "Board"), and \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, and having a principal address of \_\_\_\_\_ ("Operator"). The Board and Operator may be referred to herein individually as a "party" and collectively as the "parties."

**RECITALS**

The parties recite and declare that:

- A. The Board is the operator and proprietor of the Jackson Hole Airport.
- B. Automobile rental services at the Airport are desirable for the proper accommodation of passengers arriving at and departing from the Airport.
- C. The Board desires to make said services available at the Airport and the Operator is qualified, ready and able to perform or see to the performance of said services.
- D. In consideration of the foregoing and of the mutual covenants and agreements herein, the Board is willing to lease to the Operator a portion of the Airport premises, and grant the Operator certain non-exclusive rights and privileges, and Operator is willing to accept and lease such premises under the terms and conditions set forth herein.

**1. DEFINITIONS**

The following terms and phrases shall have the following meanings for purposes of this Agreement:

- 1.1. "Airport" as used herein shall mean, the Jackson Hole Airport located north of the Town of Jackson, in Teton County, Wyoming.
- 1.2. "Director" as used herein shall mean, the executive director and manager of the Airport, as may be designated from time to time by the Board.
- 1.3. "Customer Facility Charges" or "CFCs" as used herein shall mean, those fees authorized pursuant to resolution by the Board and required to be collected by Operator and remitted to the Board.
- 1.4. "Gross Revenues" as used herein shall mean, as determined in the reasonable discretion of the Board, all amounts charged to its customers, after discounts applied at the time of rental, by Operator for or in connection with agreements it secures through its

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

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

Gross Revenues shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenues permitted under this Agreement shall be the specific exclusions directly related to Operator's rental car operations at the Airport set forth below:

1.4.1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator's operations which are separately stated on customers' rental contracts and collected from customers of Operator;

1.4.2. Those fees referred to in this Agreement as Customer Facility Charges or CFCs;

1.4.3. Amounts received as insurance proceeds or otherwise specifically for loss of or damages of vehicles or other property of Operator;

1.4.4. Amounts received from the sale of vehicles off-Airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals or other products or services provided to persons through Operator's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenues; and

1.4.5. Reimbursements for towing, parking tickets and windshield replacement.

1.5. "Operations Year" shall mean May 1 through April 30 of each year.

1.6. "Premises" shall mean collectively those leasehold areas at the Airport which are a place where Motor Vehicles owned or leased by Operator for commercial rental are delivered, parked, stored, fueled, washed or maintained by Operator or its employees; or, where Operator's employees or officials are present to transact Operator's business and/or do transact such business; or, where Operator's logo is displayed; or, that is advertised in any way related to Operator's business; or, that is equipped for conducting business with,

without limitation, an Operator computer terminal, business telephone, FAX or, where commercial Transactions and/or business are conducted in any manner whatsoever, including but not limited to the Ready/Return Blocks, and Storage Spaces, QTA Facility .

1.7. “Ready/Return Blocks” consists of rental car vehicle parking spaces combined into three exclusive leased blocks in front of the Terminal for vehicle pick up and return by customers of Operator as shown on Exhibit #2.

1.8. “Rental Car” or “Motor Vehicles” shall mean motor vehicles designed primarily for the carriage of passengers and commonly classified as sedans, coupes, convertibles, station wagons, four-wheel drive vehicles, passenger vans, sports-utility vehicles, and pick-up trucks rated one-ton or less. Operator shall not park, store or rent from Premises any vehicles except Motor Vehicles as defined herein that it owns or rents and are properly available for rental as provided herein. Employee parking shall only be allowed in those areas designated by the Director.

1.9. “Storage Spaces” shall mean those rental car vehicle spaces, other than those in the Ready/Return Block, located at one or more locations on the Airport designated by the Director and available for Operator vehicle storage on an overnight basis.

1.10. “Terminal” is the passenger Terminal Building at the Airport, as it now exists or as may be hereafter altered or expanded.

1.11. “Transaction” shall mean the execution of an agreement or contract for the rental of a Motor Vehicle; or, the payment of funds or completion of a cash or credit transaction for payment for rental of a Motor Vehicle; or delivery of a Motor Vehicle to a customer for use in exchange for cash, credit or any other consideration.

1.12. “Transaction Day” shall mean each twenty-four (24) hour period or portion thereof, for which a customer of a Rental Car company rents, or otherwise enters into a similar arrangement for the use of a Motor Vehicle and for which the Rental Car company collects revenue from the customer. Late returns (after twenty-four (24) hours) shall be considered a Transaction Day.

1.13. “QTA Facility” shall mean the quick-turn-around facility building and associated improvements at the Airport.

1.14. “QTA Facility Bay” shall mean that portion of the QTA Facility which is leased on an exclusive use basis to Operators.

## **2. TERM**

2.1. The term of this Agreement shall be three (3) years commencing May 1, 2021 and ending April 30, 2024 unless sooner terminated or canceled as hereinafter provided.

2.2. Operator acknowledges that this Agreement contains no renewal clause and is subject to the Board's stated intent and obligation to expose the Premises and rights granted hereunder to public competitive selection process at the expiration or termination of this term.

2.3. Any holding over at the expiration or termination of the term of this Agreement, with or without the consent of the Board, shall constitute a tenancy from month-to-month. The month-to-month tenancy shall be subject to all other terms and conditions of this Agreement with the exception of rents, charges and fees; which shall be determined solely by the Board.

### **3. RIGHTS AND PREMISES GRANTED**

#### **3.1. Concession Rights Granted.**

3.1.1. The Operator is hereby awarded an Airport Facilities Lease and Rental Car Concession Agreement, hereinafter referred to as "Agreement" to operate a rental car business at Airport on a non-exclusive basis in common with others having similar agreements for the sole purpose of arranging and providing rental car services. The Operator shall not conduct any other business at Airport without the prior written consent of the Board.

3.1.2. The Operator shall conduct said Rental Car business in a professional manner continuously during the entire term of this Agreement. Operator agrees it will not disturb the Airport or any other tenant, person or licensee using the Airport, make or permit any disturbance or any unusual noise, vibration or other condition on or at the Airport.

3.1.3. Operator, its agents, employees, patrons and suppliers and other persons doing business with Operator shall have the right of ingress and egress to and from the premises over the Airport roadways, subject to regulations governing the use of the Airport.

3.1.4. Operator is a \_\_\_\_\_ and is authorized to do business in the State of Wyoming under the brand name or brand name(s) of \_\_\_\_\_. Operator shall do business at the Airport only under that brand name or brand names, and as that entity, unless this Agreement is amended in writing and approved by the Board pursuant to the terms of this Agreement.

#### **3.2. Leased Premises.**

3.2.1. The Board hereby leases to Operator the following Premises, hereinafter referred to as "Leased Premises", as designated on **Exhibit #1, Exhibit #2** and **Exhibit #3**, attached hereto and made a part hereof. Said Leased Premises are more particularly described as follows:

3.2.2. Terminal Building Counter/Office/Queuing Position: The Board hereby leases to Operator position number \_\_\_\_ ( ) of the counter/office/queuing area in the Terminal Building, as designated on **Exhibit #1** attached hereto and made a part hereof

3.2.3. Ready/Return Block: The Board hereby leases to Operator Ready Return Block # \_\_\_ as shown on **Exhibit #2**, attached hereto and made a part hereof.

3.2.4. Storage Spaces: The Board hereby leases to Operator jointly with other rental car Operators Storage Spaces designated for the overnight storage of vehicles that Operator intends for rent at the Airport. The Board grants Operator use of a minimum of \_\_\_\_\_ ( ) compressed vehicle Storage Spaces, with a seasonally varying number of additional Storage Spaces, if any, being allocated and assigned by the Director among all rental car agencies operating at and from the Airport, based upon and in proportion to Operator's minimum guaranteed bid.

3.2.5. QTA Facility Bay: The Board hereby leases to Operator bay number \_\_\_\_\_ ( ) of the QTA Facility as designated on **Exhibit #3** attached hereto and made a part hereof including the rental car service bay together with all fixtures, paving, fencing, grating, underground wires, cables, drains, and property of every kind and nature which is attached to said QTA Facility Bay.

**3.3. Use of Premises.** Operator shall use and occupy the Premises solely for the purpose of maintaining a commercial Rental Car location and conducting a non-exclusive commercial Rental Car operation, as defined and authorized herein. Any occupancy, use, activity, display or product not specifically permitted herein shall be and is hereby prohibited, except as by separate express prior written permission from the Director and under such terms and conditions as the Board, in its sole discretion, shall determine. Permitted uses, if such activities are conducted in a place and in a manner permitted by the Board, shall be limited to the following:

3.3.1. Storage, staging, washing, fueling of Motor Vehicles available for rent including movement of such vehicles necessarily incidental to these activities.

3.3.2. Staffing of the designated counter/office/queuing position in the Terminal for the purpose of providing information and arranging for and completing Transactions.

3.3.3. Identification of Operator's counter/office/queuing position, ready/return stalls and vehicle storage by signs or logos in numbers, size, color, design, content and type as approved in advance in writing by the Director.

3.3.4. Use of the common use areas associated with the Quick Turnaround Facility "QTA," which shall include roadways (and egress and ingress) and the

Airport's fuel facility, all of which shall be used in common by Operator and others as approved by the Board and pursuant to rules and policies adopted by the Board.

3.3.5. Parking, storage and rental on and from the Premises of only Motor Vehicles as defined hereinabove. No other vehicles, including trucks above 5,000 lbs. empty vehicle weight, motorhomes, buses, motorcycles, trailers, boats, or non-passenger vehicles shall be permitted on the Airport, without express prior written permission of the Director, at the discretion of the Board, under such fees, terms and conditions as the Board may require.

3.3.6. With respect to the QTA Facility Bay, the washing, cleaning, light maintenance, fluid replacement, vacuuming, storage and related activities for preparing its on-Airport vehicles pursuant to this Agreement, provided that washing of vehicles shall be conducted only in Operator's QTA Facility Bay.

Operator shall not use the Premises for any other purpose and is prohibited from servicing vehicles not for rent at the Airport, or for the sale of rental vehicles, without the prior written consent of the Director. Operator shall use the entire Premises for the conduct of such business in a professional manner continuously during the entire term of this Agreement.

#### **3.4. Acceptance of and Defects in Premises.**

3.4.1 The Operator agrees that its Premises have been inspected by Operator, are accepted for its purposes, and will be occupied by Operator on an "as is" basis. The Operator specifically waives any covenants or warranties regarding the Premises, including but not limited to any warranty of suitability and warranty of habitability or fitness for use

3.4.2 Operator expressly waives any and all claims against the Board, its agents and employees of whatever nature, for any and all loss or damage sustained by the Operator, except loss or damage caused by the sole negligence of the Board, its agents or employees, including interruption of the Operator's business operations, by reason of any defect, deficiency, failure or impairment of the Premises, or any utility service to or in the Premises, including, but not limited to, the water supply system, electrical wires leading to or in the Premises, gas, electric or telephone service, or any other failure which may occur during the term of this Agreement from any cause.

#### **3.5 Substitution or Provision of New Facilities.**

3.5.1. The Board may build or provide, or cause to be built or provided, new or substitute facilities at the Airport. In the event of the construction and occupancy of new or substitute facilities at the Airport during the term of this Agreement, the following shall apply:

3.5.2. The Board agrees to set aside counter/office/queuing position, ready/return spaces and storage spaces for use by the Operator.

3.5.3. Operator agrees to relocate operations from the Premises to the new or substituted premises and to thereafter conduct its operations therefrom. The new or substituted facilities shall be comparable to the previous facilities or better in terms of size, location and finish, all at the discretion of the Board. In the event the Board requires the move of facilities, the Board will reimburse reasonable actual out-of-pocket costs associated with the relocation as approved in advance subject to a maximum amount established by the Board.

3.5.4. Upon such relocation the Board shall have the right to demolish or use the existing the Premises as it sees fit.

**3.6. Alterations, Improvements and Trade Fixtures.**

3.6.1. All repairs made by the Operator or on its behalf shall be of high quality in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time to time by Board, Federal, State or local authority having jurisdiction over the work in or to the Operator's Premises.

3.6.2. No improvements, structures, alterations or additions shall be made in, to or upon the Premises without the prior written consent of the Director. All such improvements, structures, alterations, additions and work shall be in accordance with any conditions relating thereto then stated in writing by the Director.

3.6.3. Inside storage of material is required. Outside storage is not permitted. There shall be no outside storage of junk, salvage vehicle parts, non-operational equipment, unused or damaged equipment or material, solid waste or debris. Non-operational Motor Vehicles shall be removed from the Premises as soon as possible but in all cases within seven (7) days.

3.6.4. The installation of any type of fencing is prohibited on the Premises.

3.6.5. Upon providing notice, if possible, the Board or its duly appointed representatives shall have the right to enter the Operator's Premises to:

3.6.5.1. Inspect the Premises during the Operator's regular business hours or at any time in case of emergency to determine whether the Operator has complied with and is complying with the terms and conditions of this Agreement and other enumerated and health/operational standards. The Board may, at its discretion, require the Operator to effect repairs at the Operator's own cost.

3.6.5.2. Perform any and all things which the Operator is obligated to perform and has failed after reasonable written notice to perform, including: maintenance, repairs and replacements to the Operator's Premises or to respond to any public health or safety emergency. Notwithstanding the



above, in the event of an emergency condition, the Board or its duly appointed representatives shall have the right to enter the Operator's Premises to perform maintenance repair or replacement.

3.6.5.3. Undertake the maintenance, repair or replacements requested by the Board if the Operator refuses or neglects to make any repairs necessitated by the negligent acts or omissions of the Operator, its employees, agents, servants or licensees. The Board shall have the right to make such repairs on behalf of and for the Operator if Operator has not commenced such repairs with five (5) days after written notice by the Board. The cost for such work, plus a twenty percent (20%) administration fee, shall be paid for by the Operator within ten (10) days following demand by the Board for said payment.

3.6.6. Any improvements and alterations to the Premises thereon with respect to which the Board has given its written consent, shall be done at Operator's sole cost and expense and Operator shall not cause or permit any statutory claims or liens to be filed against the Premises or against the buildings or other improvements thereon by reason thereof and hereby does indemnify the Board against all costs and liabilities arising from such claims or liens filed as a result of Operator's activities.

3.6.7. Any such improvements or alterations to the Premises made by Operator shall become the property of the Board upon the termination of this Agreement and shall be surrendered with the Premises and as a part thereof, unless otherwise agreed upon in writing between the Board and the Operator.

3.6.8. Operator shall have the right, during the term hereof, at its own expense, at any time and from time to time, to install, maintain, operate, repair and replace any and all trade fixtures, removable structures, and other personal property used from time to time in its operations at the Airport, all of which shall be and remain the property of Operator except as herein provided, and may be removed by Operator prior to the expiration of the term of this Agreement, provided, however, that the Operator shall repair any damage to the structures caused by such removal. The failure to remove trade fixtures or other personal property shall not constitute Operator a holdover, but all such property not removed upon termination of the Agreement shall be deemed abandoned and thereupon be the sole property of the Board. The Board may reject said trade fixtures or personal property and require Operator to reimburse the Board for the cost to dispose of said fixtures and/or personal property.

#### **4. OBLIGATION OF OPERATOR**

##### **4.1. Concession Fee, Rents, and Fees.**

4.1.1. Concession Fee. The Operator shall pay to the Board a Concession Fee annually, outlined below, as compensation for the Concession Privilege granted to it pursuant to this Agreement:

4.1.1.1. Concession Fee – the greater of either:  
ten percent (10%) of the Operator’s annual Gross Revenues (“Percentage  
Concession Fee”); or

4.1.1.2. the respective yearly amount shown below as the  
Operator’s Minimum Annual Guaranteed fee “MAG”:

May 1, 2021 to April 30, 2022	\$ _____
May 1, 2022 to April 30, 2023	\$ _____
May 1, 2023 to April 30, 2024	\$ _____

For purposes of this Agreement, an “Operations Year” for the MAG  
shall be May 1 through April 30 annually.

Monthly payment shall be the greater of 1/12<sup>th</sup> of the respective  
year’s MAG or 10% of reported gross revenues for the previous month. The  
MAG payment shall be paid in advance on the first (1<sup>st</sup>) day of each month  
during each Operations Year, until such time as the Operator has paid to  
the Board an amount equal to the respective annual MAG identified in  
Article 4.1.1.2 above. On or before the 20<sup>th</sup> of each and every month the  
Operator shall provide the Board with i) a signed and certified Report of Gross  
Revenues for the preceding month ii) payment of any percentage concession  
fee shown to be due for the preceding month, as designated on Exhibit #5,  
attached hereto and made a part hereof.

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

Operator acknowledges that Concession Fee payments by Operator  
to the Board under this Agreement are for Operator’s privilege to use the  
Airport facilities and access the Airport market and are not fees imposed by  
the Board upon Operator’s customers. The Board does not require, but will  
not prohibit, a separate statement of and charge for the Concession Fee on  
customer invoices or rental agreements (“Recovery Fee”), provided that such  
Recovery Fee meets all of the following conditions: (a) such Recovery Fee  
must be titled “Concession Recovery Fee,” “Concession Recoupment Fee”  
or such other name first approved by the Director in writing; (b) the  
Recovery Fee must be shown on the customer rental car agreement and

invoiced with other Operator charges (i.e. “above the line”); (c) the Recovery Fee as stated on the invoice and charged to the customer shall be no more than 11.11% of Gross Revenues and shall be specifically included in the Definition of Gross Revenues for purposes of remittance to the Board; (d) Operator shall neither identify, treat, or refer to the Recovery Fee as a tax, nor imply that the Board is requiring the pass through of such fee.

4.1.2. Rent for Premises located at the Airport to be paid in advance. The Operator shall pay to the Board, in advance, on the 1<sup>st</sup> day of each month the following rent:

4.1.2.1. For the period commencing May 1, 2021 through June 30, 2021, Operator shall pay the sum of Fifty Dollars and Forty-One Cents (\$50.41) per square foot per annum for \_\_\_\_\_ ( ) square feet of counter/office/queuing position in the Terminal Building. Thereafter, commencing July 1, 2021, July 1, 2022 and July 1, 2023, the per square foot per annum rent shall be the same per square foot per annum counter/office/queuing rate paid by the Airlines serving the Airport.

4.1.2.2. For the period commencing May 1, 2021 through April 30, 2024, Operator shall pay the sum of Forty Cents (\$0.40) per square foot, per month for \_\_\_\_\_ ( ) square feet in Ready/Return Block #\_\_\_\_\_.

4.1.2.3. For the period commencing May 1, 2021 through April 30, 2024, Operator shall pay a Land Use Fee for the QTA Facility to sum of Seven and One-Half Cents (\$0.075) per square foot per month for the Operator’s proportionate share of the land footprint of the QTA Facility, which is \_\_\_\_\_( ) square feet.

4.1.3. Rent for Premises - Storage Spaces located on the Airport based on use. The Operator shall pay to the Board, no later than the 20<sup>th</sup> day of following the end of the month the following Storage Space rent:

4.1.3.1. For the period commencing May 1, 2021 through April 30, 2024, Operator shall pay the sum of Four Dollars (\$4.00) for each vehicle each day the vehicle is parked overnight in a Storage Space.

4.1.4. QTA Fee for QTA Facility Operation & Maintenance Costs. Operator shall pay a monthly QTA Fee for QTA Facility operation & maintenance costs in the amount of Operator’s Proportionate Share (as defined below) of 1/12 of the annual O&M Budget as presented by the Board. The Funds shall be deposited into an account administrated by the Board or its designee for payment of actual O&M expenses to be paid by the Board for operation of the QTA Facility. The first year’s QTA O&M budget is here by incorporated and attached as Exhibit #6.

4.1.4.1. In addition to the QTA Fee described above, on or before May 1, 2021, Operator shall pre-fund the current Operation Year's QTA Fee by way of a deposit to the Board in the amount of its Proportionate Share of the monthly QTA Facility maintenance expenses for a three-month period. At the end of each Operations Year, the Board shall provide a statement of expenses to each on-Airport Rental Car Company that is a party to such Agreement. Based upon such statement, the Board will use Operator's deposit amount to pay any shortage in collection of Operator's Proportionate Share of the QTA operation & maintenance expenses for the previously completed Operation Year. Operator shall then replenish their required deposit amount in order to pre-fund one-fourth (1/4) of its projected annual share of the projected costs of operation and maintenance for the following year according to its Proportionate Share.

4.1.4.2. Operator's current proportionate allocation (share) is \_\_\_\_\_%, ("the "Proportionate Share") based initially on the Board's estimate of Operator's total number of rental car Transaction Days at the Airport to the total number of Transaction Days by all on-Airport rental car companies. Operator's Proportionate Share will be adjusted each Operations Agreement Year by the Board based on its Transaction Day share. Operator agrees to provide the Board rental car transaction information monthly as part of its monthly report to the Board.

4.1.4.3. Monthly QTA Facility O&M expenses will include all cost incurred by the Board to operate and maintain the QTA Facility in good, clean and sanitary condition as it determines in its sole discretion.

4.1.4.4. Operator is specifically responsible for all operation & Maintenance expenses related to use of their QTA Facility Bay, including but not limited to separately metered utilities.

4.1.5. Fuel Use Reimbursement. Operator shall pay to Board monthly upon receipt of invoice from Board, reimbursement for fuel gallons purchased at the fuel dispensing unit at the QTA Facility during the previous month. The Fuel Use Reimbursement invoice will include the Board's cost of fuel plus fifteen percent (15%) for use of the new fueling facility.

4.1.6. Collection of CFCs. The Operator shall collect CFCs on behalf of the Board and remit to the Board the full amount of the Transaction Day fee collected from each rental Car customer.

4.1.7. Remittance of Payments. Any and all payments due to the Board by Operator shall be remitted to the following address:

Jackson Hole Airport Board

Attn: \_\_\_\_\_  
P.O. Box 159  
1250 East Airport Road  
Jackson, Wyoming 83001

4.1.8. Year End Adjustments to Concession Fees, Rents and Fees. Within ninety (90) days following the end of each Operations Year, the Operator shall be required to submit to the Board a statement certified as complete and correct by an independent Certified Public Accountant and prepared in accordance with generally accepted accounting principles, showing the amount of Gross Revenues for the previous Operations Year "Certified Statement". In the event the amount of payments made during the preceding Operations Year exceeds the total of any payments due for such Operations Year, the excess payment shall be credited against the payments for the next Operations Year, except that any excess payment during the final Operations Year of this Agreement will be returned to the Operator within thirty (30) days after the Board's acceptance of the final Certified Statement described in this Article. Operator shall submit separate system generated reports for each brand name operated.

Within ninety (90) days after each Operations Year, Operator shall prepare and submit to the Board a certified statement of the Operator's actual total number of Transactions, Transactions Days and number of automobile days Operator stored vehicles overnight in Storage Spaces at the Airport for the most recent Operations Year.

**4.2. Operator's Right of Abatement.** In the event that the following condition exists during the term of this Agreement, the minimum annual guarantee hereinabove provided for in Article 4.1.1.2 shall be abated for the period of time the condition exists:

4.2.1 A major traffic reduction at the Airport. A major traffic reduction shall be defined as a not less than twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

4.2.2 The abatement amount for those months that are abated as defined in 4.2.1 will be the prorated reduction of that month's 1/12<sup>th</sup> payment of the minimum annual guarantee. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12<sup>th</sup> minimum annual guarantee payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.

4.2.3 If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does

not fall below the 25% threshold, at which time the full minimum annual guarantee payment shall be made for such month.

4.2.4 This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than 25% reduction in passenger deplanements. Overpayments of the MAG will be credited to the Concessionaire during the year-end reconciliation process described in Article 4.1.8.

4.2.5 The parties acknowledge that a runway closure associated with runway reconstruction at the Airport is anticipated to occur during the Term, and this will result in a planned reduction in deplaning passengers. The minimum annual guarantee payment shall also be abated when, as a result of such runway closure, there is not less than a twenty five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport in a given month, as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year. Provided, however, that such no month in which an abatement is granted for runway closure by this Section 4.2.5 shall also be a month which is counted as one of the three (3) consecutive calendar months described in Section 4.2.1 above.

The MAG will be reduced by the number of days the runway is closed for construction during the Operations Year. The MAG reduction calculation will be performed during the year-end reconciliation process for that Operations Year. Specifically, the MAG will be reduced by dividing the total number of days the runway is closed for construction by 365, then that percentage reduction will be multiplied by the annual MAG identified in Section 4.1.1.2 for that Operations Year to determine the reduced MAG required.

### **4.3. Failure to Pay Rent or Fees.**

4.3.1. No demand for rent or fees need at any time to be given. In the event Operator fails to pay rents, fees, charges or billings as required under the provisions of this Agreement after the payments become due, as described in Article 4.1, interest at 18% per annum shall be assessed until fully paid. The implementation of this provision shall not preclude the Board from terminating this Agreement for default in the payment of rents, fees or charges, or from enforcing any other provisions contained herein or pursuing any other remedy allowed by law and/or equity.

4.3.2. All payments hereunder shall be considered delinquent if not received by the twentieth (20<sup>th</sup>) of the month due. If the twentieth (20<sup>th</sup>) of the month is a Saturday, Sunday or Federal holiday, that payment shall be delinquent if not received on the following business day.

### **4.4. Financial Conditions.**

4.4.1. Security: During the term of this Agreement, the Board shall require the Operator to deliver (and thereafter maintain current for the entire term of this Agreement) an instrument of security in a form satisfactory to the Board, in its sole discretion, in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000), in order to secure the performance of all of Operator's obligations under this Agreement, including without limitation, the payment of all the percentages, minimums, fees, charges and costs set out herein. Said security may be in the form of a bond.

4.4.2. Records of the Operator: The Operator covenants and agrees that it will establish and maintain an accounting system (specifically including all books of account and records customarily used in the type or operation permitted by this Agreement) in full and complete accordance with generally accepted accounting principles and otherwise satisfactory to the Board for the determination of any CFC, Concession fee, or any other computation which may be necessary or essential in carrying out the terms of this Agreement. In the event the Operator institutes an audit of its own records, the Board reserves the right to receive a copy of said audit. Operator shall keep and maintain for a period of not less than thirty-six (36) months after the expiration or termination of this Agreement, true and accurate records, accounts, books and data accounting for all business conducted at the Airport. Operator agrees to operate its business at the Airport so that a duplicate rental agreement invoice, computer generated, shall be issued with each Transaction, whether for cash or credit. Operator shall submit separate system generated reports for each brand operated.

4.4.3. Audit: The Board reserves the right, at the Board's expense, to inspect all the Operator's financial records for the purpose of verifying Gross Revenues, number of Motor Vehicles stored on the Airport daily and CFCs. The Board shall give Operator fourteen (14) days written notice of said inspection of records. Further, the Board reserves the right to demand an independent audit conducted in accordance with generally accepted auditing standards of all the Operator's financial records, including, but not limited to, those maintained in Jackson, Wyoming. If, as a result of said audit, it is determined that the Operator has understated the Gross Revenues by three percent (3%) or more per Operations year, the entire expense of said audit shall be borne by the Operator. Any additional percentage fee due shall be paid by the Operator to the Board, with interest thereon at 18% per annum, from the date such additional fees became due which is the day under reporting commenced. All records, accounts, books and data<sup>333</sup> accounting of Operator shall be provided in electronic format.

4.4.4. Liquidated Damages: Operator recognizes that the Board will incur additional costs if records requested by the Board are not provided in a timely manner and the amount of those costs is difficult to establish with certainty. Consequently, if Operator has not provided any record requested by the Board within thirty (30) days after said request was submitted to Operator, Operator shall pay to the Board as liquidated damages and not a penalty, the sum of One Hundred

Dollars (\$100.00) per day until all such records have been provided to the Board. The per day liquidated damages will continue to accrue, in addition to interest at 18% per annum, until all records requested by the Board are satisfied and payment of liquidated damages shall not be offset against any other amount due the Board.

#### **4.5. Indemnity and Insurance.**

##### **4.5.1. Indemnity and Waiver of Damages.**

4.5.1.1. The Operator shall indemnify, hold harmless and defend the Board, their appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of whatever nature, including attorney's fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Operator's conduct of business or from any activity or other things done, permitted, or suffered by Operator in, or about the Premises and/or Airport or other act or failure to act, excluding only claims or actions arising out of the sole negligence of the Board, their appointed officials, agents and employees, provided that the Board shall give the Operator prompt notice of any such claim or actions made or filed against it.

4.5.1.2. Operator hereby agrees to release and hold harmless the Board, its appointed officials, agents and employees, from any damages to the Operator caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on the Airport; and the Operator does hereby fully waive, remise and release any right or cause of action which it may now have or which it may have in the future against the Board, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operation at or on the Airport. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft operators.

4.5.1.3. Operator further agrees to hold the Board, its agents, officials and employees free and harmless for any claims arising out of the damage, destruction or loss of any or all of Operator's equipment excluding any claims arising out of the sole negligence of the Board, their elected officials, agents and employees.

##### **4.5.2. Insurance.**

4.5.2.1. The Operator shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet



the minimum limits of liability specified below, and insurance shall be placed with companies or underwriters authorized to do business in the State of Wyoming and carry a Best's rating no lower than A-. Failure to obtain and maintain such insurance shall constitute a default under this Agreement. The insurance policy(ies) shall be standard commercial general liability covering all operations of the Operator and shall include, but not be limited to, general commercial liability; broad form property damage coverage and bodily injury coverage; automobile including owned, non-owned, leased and hired; contractual coverage, including the obligations of Article 4.5.1 - INDEMNITY AND WAIVER OF DAMAGES, herein; and independent contractors coverage. The Board, its appointed officials, agents and employees, shall be included as additional insureds with respect to Operator's use of the Airport and the Premises which are subject of this Agreement. The Operator shall, promptly after execution of this Agreement, furnish to the Board appropriate certificates of insurance evidencing coverage effected and to be maintained for the term of this Agreement. The coverage shall not be less than Five Million Dollars (\$5,000,000) combined single limit or split limits equal to and not less than Five Million Dollars (\$5,000,000) for bodily injury and property damage with respect to each occurrence, which can be satisfied with a combination of primary and excess coverage.

4.5.2.2. The insurance policies shall not be subject to cancellation or material change except after notice to the Board at least thirty (30) days prior to the date of such cancellation or material change. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written notice of renewal shall be furnished to the Board at least thirty (30) days prior to expiration of any policy during the term of this Agreement. Upon written request by the Board, the Operator shall permit the Board to inspect the originals of all applicable policies. The Board, its appointed officials, agents and employees, shall be included as additional insureds with respect to Operator's use of the Airport and the Premises which are subject of this Agreement.

4.5.2.3 Operator shall also maintain workers compensation insurance to the extent and in the amounts required by law.

4.5.2.4 Operator shall be responsible for obtaining insurance covering any of its trade fixtures, improvements and personal property which are located on the Premises against fire, casualty and other loss in amounts it deems reasonable from time-to-time.

4.5.2.3. This Article 4.5.2 shall be subject to periodic adjustments by the Board.

4.5.3 Waiver of Subrogation. The Board and Operator each waive any rights it may have against the other on account of any loss or damage occasioned to

Board or Operator, as the case may be, their respective property, the Premises or its contents or to other portions of the Airport arising from any liability, loss, damage or injury caused by fire or other casualty for which property insurance is carried or required to be carried pursuant to this Agreement. Each of the parties hereto, on behalf of their respective insurance companies insuring the property of either the Board or Operator against any such loss, to the extent of any recovery under such insurance, waives any right of subrogation that it may have against the other. Each waiver shall be expressly included in, and shall comply with the requirements of the respective insurance policies. Should either or both of the respective insurance companies assess a charge for such waiver, each party shall pay only for the charges assessed by its respective insurer.

**4.6. Taxes.** The Operator shall be liable for and pay when due all taxes and assessments of every kind and nature that may arise by virtue of the execution of this Agreement. Operator shall be responsible for payment of any statutory tax or other fiscal obligations imposed by applicable local, state or federal laws with respect to Operator's agents, employees, or Operator's property, occupancy of, or other activities on the Premises. Nothing herein shall prevent the Operator from protesting through due process, any taxes levied.

**4.7. Additional Obligations of Operator.** The Operator hereby covenants and agrees:

4.7.1. That the Rental Cars used by the Operator at the Airport shall be maintained, at the Operator's sole expense, in good, safe and operative order, free from mechanical defects, and in a clean, neat and attractive condition, inside and outside.

4.7.2. That the facilities and services to be provided by the Operator for the purpose of providing Rental Car service at the Airport shall remain open and staffed for such periods during each day, and such days during each week, as may be necessary to meet demands for said service.

4.7.3. That the personnel performing services at the Airport shall be neat, clean and courteous. The Operator shall not permit its agents, servants or employees to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, or to solicit business at the Airport in any manner whatsoever except through the use of signs as allowed herein.

4.7.4. Operator's personnel shall be responsible for the removal of known debris, foreign materials or other hazards in or on the Premises of the Operator.

4.7.5. Personnel are prohibited from parking personal vehicles in the Ready/Return Block, QTA Facility, public parking areas or anywhere on Airport other than designated employee parking areas.

4.7.6. Operator agrees parking of vehicles and equipment by the Operator, its agents, servants, employees or licensees shall be restricted to those areas leased by Operator. Parking of employee vehicles is prohibited at Premises. Operator's employees shall be required to park in Director designated employee lot.

4.7.7. Operator shall educate and orient each of its employees which will drive Operator's vehicles on the Airport, with respect to speed limits, parking restrictions, lane use, and vehicular safety and courtesy on the Airport; it shall ensure that employee drivers of its vehicles on the Airport comply with Airport rules and posted signs relating to vehicle operation, and operate such vehicles in a safe, courteous and non-reckless manner; it shall periodically monitor its employees' compliance with the requirements of this paragraph; it shall ensure payment of any and all citations issued to its employees relating to vehicular operation on the Airport; and, that, after notice and opportunity for hearing before the Director, and notwithstanding the existence or lack of any criminal or traffic citation by a law enforcement officer, it shall pay contract damages to the Board of \$100 for each breach by its employees of this paragraph with respect to Airport speed limits and/or traffic rules while operating one of the Operator's vehicles. Such violations may be established by radar, still and/or motion photography, the eye-witness testimony on Board employees, or by any other reasonable means. Operator may appeal any such decision of the Director to the Board by filing a written appeal within seven days of such decision, and the decision of the Director shall be stayed until the appeal is decided by the Board, which Board decision shall be final and non-appealable.

4.7.8. Operator agrees to participate in the Airport's recycling program by making a good faith effort to recycle, but at a minimum shall cause waste of corrugated cardboard, cardboard & paper, glass, plastic and newspapers generated by and in conjunction with its operations to be deposited so as to reasonably assure its recycling.

4.7.9. In accordance with Airport Grant Assurances, Operator shall take appropriate action to protect instrument and visual operations at the Airport. Operator shall adequately clear and protect Airport operations by removing, lowering, relocating, and marking all lighting hazards on its Premises including shading or adjusting lighting to prevent glare, installation of obstruction lighting as instructed by the Board.

4.7.10. That it shall observe and comply with any and all applicable Airport, federal, state and local laws, statutes, ordinances, regulations and standards and shall abide by and be subject to all rules and regulations which are now, or may, from time to time, be promulgated by the Board concerning management, operation or use of the Airport. The Operator shall obtain and keep in force all permits required by law for operation of the Rental Car business.

4.7.11. That it shall meet all expenses in connection with its operation at the Airport, and the rights and privileges herein granted, including, without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully

levied or assessed upon the Operator, and that it will secure all such permits and licenses.

4.7.12. That it shall not engage in any business or other activity that will divert business and/or customers from the Airport to an off-site office, parking lot, garage, etc., for any purpose whatsoever, including, but not limited to, writing of sales agreements off-Airport premises. If the Board believes, in its sole opinion, that the Operator is engaging in such diversion of business or other activity described hereinabove, it reserves the right to inspect Operator's records, regardless of whether such records pertain to activities at the Airport or off-Airport premises. Failure to permit such inspection or rectify any violations provided herein shall be subject to the Board's right as specified in Article 7.1 – BOARD'S RIGHT OF CANCELLATION. In addition, the Board shall have the right to include such business or other activity within the definition of Gross Revenues and the right to recover any amounts lost as a result of any diversion of business from the Airport.

4.7.13. That it shall comply with the rules and practices as set forth in the current Jackson Hole Airport Security Plan, as may be amended from time to time in the discretion of the Board. Any fines assessed against the Airport by the Transportation Security Administration (TSA) as a result of the Operator's failure to comply with the provisions of this paragraph or other intentional or negligent acts or omissions of Operator, its employees or agents will be paid promptly upon demand to the Board by the Operator.

4.7.14. That it shall coordinate with other on-Airport rental car operators the use of its designated fueling and automated car wash facility by such other operators in the event any other fueling, or car wash equipment owned by the Airport at the QTA Facility is not operational. In the event the Board determines Operator has failed to coordinate with other on-Airport operators for use of the fueling and car wash equipment at the QTA Facility, the Board will dictate the use of the equipment.

4.7.15. The Board shall be the sole and final judge of the quality and the adequacy of the services furnished by the Operator as specified herein. In the event the Board determines that Operator has failed to comply with the requirements hereunder with respect to the quality and adequacy of its services, the Board may, upon thirty (30) days written notice, exercise its right to terminate this Agreement as per Article 7.1 – BOARD'S RIGHT OF CANCELLATION, contained herein. However, the Board may, in its sole discretion, extend the time for compliance if, in its opinion, the Operator is making progress in complying with the requirements of this Agreement.

## **5. RESERVED RIGHTS OF BOARD**

5.1.1. Upon providing notice, if possible, the Board reserves the right to inspect the Premises and improvements throughout the term of this Agreement. Unless an emergency or unlawful condition exists which makes reasonable notice impractical, Operator, or Operator's authorized agent shall accompany the Board or

its authorized representative(s) in order to inspect the Premises and any improvements thereon. The Board's agents or employees shall not be liable for any civil or criminal claim or cause of action for damage because of entering the Premises or improvements in order to perform its duties under the rights granted by this Agreement.

5.1.2. The Board reserves the right to direct, in its sole discretion, all activities of the Operator at the Airport in the event of an emergency.

5.1.3. The Board reserves the right to direct, at its discretion, Operator's operations in the event that Operator's operations are unreasonably interfering with the use by others of the Airport and/or Premises; e.g. to restrict the use of "public" areas of the Terminal, and public-access curbs, sidewalks and roadways in favor of the traveling public.

5.1.4. The Board reserves the right to further plan, develop, improve, remodel and/or reconfigure the Airport, including the Premises and existing vehicle and pedestrian traffic patterns, as the Board deems appropriate without interference or hindrance by the Operator, and the Board shall have no liability hereunder to Operator by reason of any interruption to Operator's operations on the Premises occasioned by such Board activities; provided, however, that the Board shall consult in advance with Operator on such changes and if Operator shall be unable to conduct reasonably normal seasonal business operations on the Premises by reason of any such Board activities, then the fees hereunder may be equitably adjusted during the period of such interruption.

5.1.5. The Board reserves the right, in its sole discretion, to enter into agreements for the financing or re-financing of the Airport and Operator agrees to cooperate in providing information to prospective lenders and in providing estoppel certificates, if so requested.

5.1.6. The Board reserves the right to establish and enforce rules and regulations for the conduct of activities and uses permitted herein and also to promulgate Minimum Standards for the conduct of commercial activities related hereto including, without limitation, minimum hours of operation if the Board determines that the needs of the traveling public are not being met.

5.1.7. The Board reserves the right, to permit off-airport Rental Car companies to operate or conduct business at the Airport.

## **6. OTHER PROVISIONS**

### **6.1. Hazardous Substances.**

6.1.1. Operator acknowledges receipt of a Phase I Environment Site Assessment and Baseline Predevelopment Soil Conditions Investigation dated February 28, 2018 which was prepared by Partner Engineering and Science, Inc.,

and which includes coverage of the area upon which the portions of the Leased Premises have been constructed (the “Investigation”). The condition of the area on and surrounding the area upon which such portions of the Leased Premises have been constructed, as disclosed in the Investigation, shall be the “Baseline.” With respect to Hazardous Substances, the Operator shall not be responsible under this Agreement for any condition of such portions of the Leased Premises or its surrounding area that may exist upon Operator’s surrender of such portions of the Leased Premises and which is within the Baseline.

6.1.2. If at the commencement of the term of this Agreement Operator will be occupying any portion of the QTA Facility for the first time, then such occupation by Operator shall be conclusively deemed to be an acknowledgment that it has inspected for Hazardous Substances which are not within the Baseline, and has accepted such portion of the QTA Facility notwithstanding the presence of such Hazardous Substances which are not within the Baseline. Provided, however, that nothing herein shall require Operator to take possession of any portion of the QTA Facility for the first time if it has promptly, and prior to commencement of the term of this Agreement, given written notice to the Board of the presence of such Hazardous Substances which are not within the Baseline. Any such notice shall document with specificity the location and nature of such Hazardous Substances. In the event such a notice is given, the Board in its sole discretion may cure the contamination by (i) removing such contamination, (ii) pursuing others for removal of such contamination, and/or (iii) choosing to allow such contamination to remain in which case it will indemnify Operator with respect to such contamination as if it were from adjacent property as described in Section 6.1.3 below. During the period that the Board is pursuing such cure or cures the Operator shall not be required to take possession of the affected QTA Facility and rental due with respect to the QTA Facility shall be abated.

6.1.3. The Board shall indemnify, defend and hold the Operator harmless from any and all costs due to Hazardous Substances contained within the Baseline, or that Operator establishes flowed, leached, diffused, migrated, or percolated into, onto, or under the Premises from adjacent properties after the term of the Agreement commences..

6.1.4. Subject to the provision of Article 6.1.3 above, Operator agrees to indemnify, defend and hold harmless the Board from any and all claims, damages, from or in connection with the presence of Hazardous Substances in, on or coming from the Premises, unless the Hazardous Substances are identified in the Baseline or in a written notice under Section 6.1.2 above, or are present as a result of the sole negligence, willful misconduct, or other acts of the Board its agents and employees.. Without limitation of the foregoing this indemnification shall include any and all costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. With respect to cleanup of any contamination from any Hazardous Substances on the Premises, Board and Operator agree to work together to approve cleanup criteria and investigation, monitoring and remediation activities for the Premises that

comply with, but are no more stringent than the most stringent of all applicable municipal, state, and federal laws, and rules and regulations.

6.1.5. For the purposes of this Agreement, the term "Hazardous Substances" shall be interpreted broadly to include but not be limited to substances (chemicals or waste) designated as hazardous, toxic, or dangerous, including but not limited to petroleum or petroleum containing products, under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., or the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601, et seq. or as may be amended, the Model Toxics Control Act (M.T.C.A.), R.C.W. 70.105D, et seq., and any applicable federal, state, or local law or regulation relating to safety, preservation or protection of human health and the environment ("Environmental Laws").

## **6.2. Hazardous Substances Storage.**

6.2.1. The Operator is solely responsible for taking all steps and actions to remove or remediate any Hazardous Substances or any other environmental contamination on or under the Premises that are a result of the Operator's use or occupancy of the Premises pursuant to Article 6.1 of this Agreement. The Operator is responsible for the protection of public health and safety and the environment from actual or potential harm and is obligated to ensure that the Premises are in compliance with all Environmental Laws. If any remediation work is required, Operator, at its sole expense, shall perform all work required and provide to the Board for approval, a written plan of action for completing said remediation work.

### 6.2.2. Hazardous Substances

6.2.2.1. Except for any Hazardous Substances used for the operation and maintenance of the Premises as a rental car facility, used in commercially reasonable quantities and in compliance with Environmental Laws, Operator shall not engage in or allow the generation, use, manufacture, treatment, transportation, or storage of any Hazardous Substance in, on, under, or adjacent to the Premises, except by written permission of the Board.

6.2.2.2. Operator shall not engage in or allow the unlawful release of any Hazardous Substance in, on, under or adjacent to Premises (including air, surface water and ground water on, in, under or adjacent to the property). Operator shall at all times be in compliance with Environmental Laws (and shall cause its employees, agents and contractors to be) with respect to the Premises or any hazardous substance and shall handle all Hazardous Substances in compliance with good industry standards and management practices.

6.2.2.3. Operator shall promptly notify the Board and any and all adjacent property tenants, in writing, if Operator has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be

released, discharged or disposed of, on, in, under or from the Premises. Operator shall immediately take such action as is necessary to report to governmental agencies as required by Environmental Laws and to detain the spread of and remove, to the satisfaction of any governmental agency having jurisdiction, any Hazardous Substances released, discharged or disposed of as the result of or in any way connected with the conduct of Operator's business, and which is now or is hereafter determined to be unlawful or subject to governmentally imposed remedial requirements subject to Article 6.1.3 of this Agreement.

6.2.2.4. Operator shall at all times maintain an employee or consultant familiar with applicable laws and charged with responsibility for Operator's compliance with all applicable laws relating to Hazardous Substances.

### **6.3. Damage or Destruction.**

#### **6.3.1. Leased Premises.**

6.3.1.1. If the Premises, excluding Operator's leasehold improvements or trade fixtures, are partially damaged by fire or other casualty, but not rendered untenable, the same shall be repaired with due diligence by the Board. The Premises shall be repaired or restored at the Board's expense to essentially the same condition as that which existed prior to such damage. In the event such damage is caused by any negligence of the Operator, its officials, agents or employees, it shall be the responsibility of the Operator to pay all loss, damage and costs not covered by any insurance proceeds. Should a portion of the Premises be untenable, not due to any negligence of the Operator, rent for the affected portions of the Premises shall be abated for the period from the occurrence of the damage to the completion of the repairs.

6.3.1.2. If the Premises, excluding Operator's leasehold improvements or trade fixtures, are completely destroyed by fire or other casualty or so damaged as to remain untenable for more than sixty (60) days, the Board shall be under no obligation to repair or reconstruct such Premises. The rent of the affected portions of Premises shall be abated for the period from the date of such occurrence until such space is temporarily replaced with other space sufficient to allow the Operator to operate. The Board shall notify Operator within sixty (60) days of the occurrence of such casualty whether it intends to repair or reconstruct the damaged Premises. If the Board elects to repair or reconstruct, it shall do so with due diligence and at its expense, unless such damage was caused by any negligence of the Operator, its officials, employees, or agents, in which case it shall be the responsibility of the Operator to pay all loss, damage and costs not covered by any insurance proceeds. Should the Board elect not to repair or reconstruct, this



Agreement as to the destroyed or damaged Premises shall terminate on the date of notification by the Board as specified in this Article. In such event, the Board agrees to use its best efforts to obtain adequate substitute space for Operator.

6.3.2. Other Airport Property. In the event of damage or destruction of Airport property caused by the Operator, its agents, employees, or equipment, Operator agrees to repair, reconstruct, or replace the affected property to essentially the same condition which existed prior to such damage or destruction, to the extent that same is not covered by insurance required under this Agreement. Operator further agrees to cause such repair, reconstruction or replacement of affected property with due diligence.

**6.4. Government Reservations and Restrictions.** The Premises being leased and rights granted by this Agreement shall be subject to all enforced reservations and restrictions, including but not limited to, the following:

6.4.1. Nothing herein contained shall be construed to grant or authorize the granting of any exclusive right forbidden by the Airport Development Act, 49 U.S.C., 47101, et seq., Section 308 of the Federal Aviation Act of 1958 and as amended.

6.4.2. During time of war or national emergency, the Board shall have the right to lease the landing area or any part thereof to the United States government for military or naval use and, if such lease agreement is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the agreement or lease with the Government, shall be suspended.

6.4.3. This Agreement shall be subject to the terms of any sponsor's assurances and agreements now required or imposed in the future, between the Board and the Federal Aviation Administration or any successor federal agency.

6.4.4. This Agreement is expressly subject to the terms and conditions of the AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR AND THE JACKSON HOLE AIRPORT BOARD dated April 27, 1983 (the "Interior Agreement"), as amended, and all applicable federal, state and local laws, rules and regulations. To the extent anything herein conflicts with the Interior Agreement or the applicable laws, rules and regulations, the provisions of the Interior Agreement, or the applicable laws, rules and regulations shall control. The Board shall be free, in the future, to renegotiate the Interior Agreement on such lawful terms and conditions as it deems appropriate and in the public interest, without any consent or approval of Operator or any other person, and Operator shall be bound by the terms of such renegotiated agreement.

6.4.5. This Agreement shall be subordinate to the provisions of any other existing or future agreement between the United States Government and the Board relative to the use, operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal

funds for the development of the Airport, by the provisions of the Airport Improvement Program, and as the program may be amended, or any other federal act, deed, grant agreement or program affecting the operation, maintenance of the Airport now or in the future.

**6.5. Agreement Subordinate to Bond Issuance.** This Agreement and all rights of the Operator hereunder are expressly subordinated and subject to the lien and provisions of any pledge or assignment by the Board to secure any bonds authorized by law to be issued for the development or improvement of the Airport including the QTA Facility, and the Board and the Operator agree that the holders of the said Bonds shall possess, enjoy and may exercise all rights of the Board hereunder to the extent such possession, enjoyment and exercise are necessary to ensure compliance by Operator and the Board with the terms and provisions of the bond covenants. The Operator agrees to take all action reasonable and necessary to execute any amendment in writing to this Agreement to ensure that the Board remains in compliance with the terms and provisions of the bond covenants for any existing or proposed tax exempt (or non-tax exempt) financing for or on behalf of the Board.

**6.6. Utilities, Construction and Maintenance – Terminal, Ready Return Blocks and QTA Facility.**

6.6.1. Board's obligations: The Board shall provide the Operator with the following:

6.6.1.1. Utilities to the leased counter/office/queuing position, except as hereunder stated; and

6.6.1.2. Security lights, signposts, and maintenance of same to the leased ready/return blocks.

6.6.1.3. Security lights, signposts, and maintenance of the same to the leased QTA Facility.

6.6.2. Operator's obligations: The Operator shall maintain and keep the Premises in good repair and clean condition in accordance with applicable laws, rules and regulations. Operator shall be responsible for providing the following:

6.6.2.1. All items not provided by the Board in 6.7.1 of this Article.

6.6.2.2. Maintenance of office space, janitorial and garbage service for the counter/office/queuing space; Operator shall ensure that trash generated by its operations is immediately placed in covered containers, that no fugitive trash is generated, that the premises are policed for trash on a daily basis, and that trash and other wastes are disposed of lawfully and promptly.

6.6.2.3. Maintenance of all ready/return spaces in their Block.

6.6.2.4. Maintenance, supplies, janitorial and garbage service for operations in their QTA Facility Bay. Operator shall ensure that all oil, trash, debris and garbage generated by its operations or found in or around the QTA Facility are collected and disposed of lawfully and promptly. Operator shall at all times keep and maintain its QTA Facility Bay clean, neat and in an orderly condition. If Operator damages any portion of the Premises, it shall immediately notify the Board, which as soon as reasonably practical under the circumstances, shall repair or cause repairs to be made, including with respect to the structure, electrical, plumbing, structural and door repair and window replacement, and Operator shall pay or reimburse the Board the reasonable cost of such repairs and/or replacement within fifteen (15) days of being provided an invoice therefor.

6.6.2.5. Operator agrees to cooperate with the Board with the provision and installation of any new communication services such as paging, courtesy phones, flight and baggage information systems, etc., necessary to properly operate the Airport. Operator is responsible for all communication and computer services required to operate its Rental Car business.

6.6.2.6. Neither party shall be liable to each other, or any other person, for any interruption or failure in the supply of any utility service to the Premises. In the event of interruption of utility services to the Premises, the Operator and the Board shall take immediate action to restore such utility services as rapidly as possible to avoid unnecessary interruption of the Operator's business operations.

**6.7. Snow Removal.** The Board shall provide snow removal services within the Blocks, provided however, that Operator agrees to cooperate and coordinate with the Board in removing Motor Vehicles prior to snow removal service of the Blocks. Operator shall be responsible for providing snow removal in the storage areas used by Operator and in the entrance and exit of the QTA Facility Bay.

**6.8. Advertising and Signage.**

6.8.1. Operator shall have the right, at its own expense to install and maintain signs for the purpose of identification and advertising. Prior to installation of such signage, the Operator shall submit plans and obtain written approval of Director or his/her designee. The right to install identification signs or other advertising devices for information to its customers shall be at a location, in the number and type, size and design approved in writing by the Director. In the event the signs are removed and not replaced, Operator shall repair the area to its normal appearance. To the extent that Operator uses any electronic medium for identification and/or advertising which includes any reference to Operator's

relationship with the Board, the Board shall have the right to review and approve the same.

6.8.2. All signs shall be repaired or replaced by Operator as they fade, peel, or generally deteriorate. Internal or external sign lighting shall be maintained by Operator with any burned-out fixtures replaced promptly. Signs which are no longer appropriate due to a change of tenant shall be removed immediately by Operator prior to leaving.

6.8.3. Operator shall not install any exterior lighting, shades or awnings or any exterior decorations or paintings, or build any fences or make any change to the exterior portions of the Premises without Board's consent.

**6.9. Operator's Personal Property/Trademarks.**

6.9.1. All personal property, equipment, furnishings, decorations and trade fixtures placed upon the Premises by Operator shall be at Operator's sole risk, and the Board shall not be liable for damage to or loss of such personal property or trade fixtures arising from the acts or omissions of any person or from any causes whatsoever.

6.9.2. Operator represents that it is (and will be for the entire term hereof) the owner of or fully authorized to use any and all services, processes, machines, articles, trade names, trademarks, logos or slogans to be used by it in its operation under or in any way connected with this Agreement. Operator agrees to save and hold the Board, its officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit, demand or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claims arising out of the operations of Operator under or in any way connected with this Agreement.

**6.10. Replacement Operator – Most Favored Nations.**

6.10.1. If this Agreement is terminated prior to the end of its term, the Board reserves the right to enter into an agreement with a replacement operator, through bid procedure, negotiation or otherwise, upon the same terms and conditions as exist in this Agreement, or upon other terms as the Board deems appropriate.

6.10.2. So long as this Agreement is in effect, if the Board enters into any concession agreement with another on-Airport rental car operator, such agreement shall not contain terms which are materially more favorable to the operator than those contained in this Agreement, unless such more favorable terms are concurrently made available to Operator, provided however that this clause shall not be construed to give Operator the right to relocate its terminal, parking or service facility space.

**6.11. Assignment and Subletting.**

6.11.1. The Operator shall not assign, sublet or transfer this Agreement or any interest herein, nor shall this Agreement, nor any interest therein, be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of the Board. Such consent shall provide that the assignment, transfer or subletting is in compliance with this Agreement and that any increase in rent, above and beyond the rent in this Agreement, on a per square foot per annum basis, or any increase in minimum guarantee, resulting from such action, is paid to the Board, and provided further that any assignee shall possess sufficient experience financial security to insure compliance with all of the terms and conditions of this Agreement.

6.11.2. Subject to all other provisions of this Agreement, including Article 6.11.1 above, and subject to prior approval by the Board, it is expressly agreed and understood that any and all obligations of Operator hereunder may be fulfilled or discharged either by Operator or by a member of Operator's system, duly appointed thereto by Operator and that any and all privileges of every kind granted Operator hereunder may extend to and be enjoyed by such Operator so appointed; provided, however, that notwithstanding the method of operation employed by Operator hereunder, Operator shall continue always to remain directly liable to the Board for the performance of all terms and conditions of this Agreement.

**6.12. Liens or Encumbrances, Lawsuits.**

6.12.1. Operator agrees that it shall pay, or cause to be paid, all costs and expenses for work done, materials delivered and professional services provided to the Premises for improvements done at Operator's request, during the leasehold term for improvement to the Premises. Operator shall keep the Premises free and clear of all mechanic's or materialmen's liens or any other liens on account of any work done on the Premises at Operator's request. Operator agrees to and shall indemnify, and hold the Board free from and harmless against all liability, loss, damage, cost, attorney's fees and all other expenses on account of claims of lien of laborers or materialmen, or others, for work performed or materials or supplies furnished to Operator for use on the Premises. Board may require lien releases as a condition of approval.

6.12.2. Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the Operator's operation at the Airport. The Board and Operator shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. The Operator is an independent contractor in every respect, and not the agent of the Board.

**6.13. Nondiscrimination.**

6.13.1. The Operator agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from

participating in any activity conducted with or benefiting from Federal assistance. If the Operator transfers its obligation to another, the transferee is obligated in the same manner as the Operator.

The provision obligates the Operator for the period during which the property is owned, used, or possessed by the Operator and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

6.13.2. During the performance of this Agreement, the Operator, for itself, its assignees and successors in interest agrees as follows:

6.13.2.1. **Compliance with Regulations:** Operator will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are attached as **Exhibit #7** and which are herein incorporated by reference and made a part of this Agreement.

6.13.2.2. **Nondiscrimination:** Operator, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. Operator will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

6.13.2.3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Operator for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Operator of the operator's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color or national origin.

6.13.2.4. **Information and Reports:** Operator will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Operator is in the exclusive possession of another who fails or refuses to furnish the information, the Operator will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

6.13.2.5. **Sanctions for Noncompliance:** In the event of Operator's noncompliance with the non-discrimination provisions of this Agreement, the Board will impose such Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending this Agreement, in whole or in part.

6.13.2.6. **Incorporation of Provisions:** The Operator will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Operator will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Operators becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Operator may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Operator may request the United States to enter into the litigation to protect the interests of the United States.

**6.14. Airport Concession Disadvantaged Business Enterprise Participation (ACDBE).**

6.14.1. The Board strictly prohibits all unlawful discrimination and preferential treatment in contracting, subcontracting and purchasing, including any Agreements, or any subcontracting or purchasing under said Agreements. Additionally, this Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 Code of Federal Regulations Part 23. Operator shall comply with the Board's ACDBE Plan. Operator shall also comply with the Board's Non-Discrimination Policy and shall not discriminate against any business owner because of the owner's race, color, religion, sex, national origin, ancestry, age physical or mental disability, marital status, sexual orientation in connection with its performance under this Agreement. The Operator shall cooperate with the Board in the Board's policies to make good faith efforts to ensure that contracting, subcontracting and purchasing opportunities available under this Agreement are accessible and available to all qualified business owners, including Airport Concession Disadvantaged Business Enterprises. Operator acknowledges that the Board is required to develop and obtain approval of the Federal Aviation Administration of an ACDBE plan and Operator agrees to comply with any applicable provisions of an ACDBE plan approved by the FAA and adopted by the Board and Operator shall comply fully with the reporting provisions outlined in Exhibit #4, JACKSON HOLE AIRPORT RENTAL CAR ACDBE ATTAINMENT REPORT.

6.14.2. In order to ensure compliance with the Board's ACDBE Plan, the Operator agrees as follows:

6.14.2.1. Operator agrees that by January 1 of each year, during the term of the Agreement, Operator will provide a report to the Board, in the form acceptable to the Board, (see attached ACDBE Attainment Report – Exhibit #4) describing the dollar amount of its purchases or leases of goods and services during the previous federal fiscal year (October – September) from any vendor that is certified as an ACDBE pursuant to the ACDBE Rules, together with documentation, in form acceptable to the Board, of its good faith efforts during such year to obtain other ACDBE providers of goods and services. Operator shall also provide such additional information to the Board, including any ACDBE participation in direct ownership of the Operator's business, as the Board may reasonably request in order to permit the Board to comply with the requirement of the ACDBE Rules, including the developing, establishing, meeting and monitoring of the ACDBE goal for car rentals

6.14.2.2. The Board has an approved ACDBE plan and Operator shall comply with the terms and conditions of such ACDBE Plan applicable to Rental Car Companies.

6.14.2.3. The Operator's breach of any obligation under this Article shall be a default by Operator under the Agreement and shall entitle the Board to exercise all of its contractual and legal remedies, including termination of this or any other Agreement with Operator.

## **7. TERMINATION, SURRENDER & DAMAGES**

**7.1. Board's Right of Cancellation.** In addition to any conditions as specified herein and all other remedies available to the Board, this Agreement shall be subject to cancellation by the Board should any one or more of the following occur:

7.1.1. If the Operator shall file a voluntary petition in bankruptcy, or proceedings in bankruptcy shall be instituted against the Operator and Operator is thereafter adjudicated a bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of the Operator and its assets pursuant to proceeding brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a Receiver for the Operator's assets is appointed, or if the Operator shall be divested of its rights, powers and privileges under this Agreement by other operation of law and such proceeding is not dismissed within sixty (60) days of filing.

7.1.2. If the Operator shall vacate, abandon or discontinue for thirty (30) consecutive days the conduct and operation of its Rental Car operation on the Airport, except when such abandonment be caused by runway closure, or by fire, earthquake, war, strike or other calamity beyond Operator's control.



7.1.3. If the Operator shall fail to perform, keep and observe any of the other applicable obligations, covenants and/or conditions contained in this Agreement, where such failure shall continue for a period of five (5) business days after written notice thereof from the Board to Operator; provided, however, that if the nature of the Operator's default as determined by Board is such that more than five (5) business days are reasonably required for its cure, then Operator shall not be deemed to be in default if Operator commences such cure as soon as possible within said five (5) business day period and thereafter diligently prosecutes such cure to completion, and in any case completes said cure within twenty (20) business days after the aforesaid written notice.

~~7.1.4. If the Board has a reasonable basis to believe the Operator will fail in the same, or the Operator engages in conduct or activity detrimental to the operations of the Airport, provided that upon the happening of any contingency recited in this Article or a reasonable basis to believe any such contingency will happen, the Operator shall be given written notice to correct or cure such default, failure to perform or breach. This subsection intentionally omitted.~~

7.1.5. The discovery by the Board that any financial or background information or statement provided to the Board by the Operator, or any agent, representative, successor, grantee, or assign of the Operator, was materially false.

**7.2. Operator's Right of Cancellation.** In addition to all other remedies available to the Operator, this Agreement shall be subject to cancellation by Operator should any one or more of the following occur:

7.2.1. The permanent abandonment of the Airport.

7.2.2. The issuance of any order, rule or regulation by the Federal Aviation Administration or its successor federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport for scheduled air transportation, except for the planned runway closure discussed in Section 4.2.5 above.

7.2.3. The breach by the Board of any covenants, terms or conditions of this Agreement to be kept, performed and observed by the Board and the failure to remedy such breach for a period of sixty (60) days after written notice from Operator of the existence of such breach.

7.2.4. The assumption of the United States Government, or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such manner as to substantially restrict the Operator from conducting its business, if such restriction be continued for a period of ninety (90) continuous days or more.

**7.3. Surrender of Premises.**

7.3.1. Upon the expiration and/or termination of this Agreement, Operator shall immediately surrender the Premises to the Board in good condition and repair, ordinary wear and usage excepted; and Operator shall remove all of Operator's personal property, trade fixtures, equipment or improvements removable by prior agreement with the Board from the Premises and shall repair any damage to the Premises caused by such removal. Any personal property of Operator, or anyone claiming under Operator, which shall remain upon the Premises at the expiration or termination of this Agreement shall be deemed to have been abandoned and may be retained by the Board as Airport property or disposed of by the Board in such manner as the Board sees fit without compensation to any party.

7.3.2. By delivery to Operator of written notice not later than thirty (30) days prior to the end of the term of this Agreement, the Board may require Operator to remove any QTA Facility alterations, additions, or improvements that Operator has made to Premises by the expiration or termination of this Agreement. The Board may require the removal at any time of all or any part of alterations, additions, or improvements which have been made to the Premises by Operator without the Board's prior consent.

**7.4. Attorney Fees.** In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of any rent, fees or other sum or charges otherwise payable by Operator, this Agreement or the breach of any covenant or condition of this Agreement, or for the restitution of the Premises to the Board and/or eviction of Operator during the term of this Agreement, or after the expiration thereof, the prevailing party will be entitled to reasonable attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal.

**7.5. Performance by Board.** If the Operator should fail to do anything required to be done under the terms and conditions of this Agreement, except for the payment of rents, fees or charges, the Board may, at its sole option and after giving written notice to the Operator, perform such act on behalf of the Operator. Upon notification to the Operator of the cost thereof by the Board the Operator shall promptly pay the Board the amount due.

**7.6. Board Remedies.**

7.6.1. If Operator should, after notice, fail to remedy any default (i) in the payment of any sum due under this Agreement for ten (10) days after being provided with notice, or (ii) in the keeping of any other term, covenant or condition herein with all dispatch, not exceeding thirty (30) days after being provided with notice, then at its option, in addition to and not exclusive of any other remedy the Board may have at law or in equity, without any further demand or notice, enter the Premises and evict all persons therefrom, using all necessary force to do so, and either (i) declare this Agreement at an end, in which event Operator shall immediately pay the Board a sum of money equal to the amount, if any, by which the then cash value of the Concession Fee and Rent for Premises reserved hereunder for the balance of the term

of this Agreement exceeds the then cash rental value of the Concession Fee and Rent for Premises for the balance of said term, or (ii) without terminating this Agreement, may re-let the Premises, or any part thereof, as the agent and for the account of Operator, upon such terms and conditions as the Board may deem advisable. In the event the Board re-lets the Premises, the Operator shall be obligated to pay, in addition to the deficiencies in the Concession Fee and Rent for Premises and the re-letting rent amount, all necessary renovation and alteration costs and expenses, attorney's fees, and real estate commissions. Said necessary renovations and alterations, attorneys' fees, and real estate commissions paid shall be deemed additional rent due and owing by the Operator. The Board shall apply all rents collected upon re-letting toward payment of all sums due or to become due to the Board. Thereafter, if the rents collected upon re-letting are insufficient to pay the original Concession Fee and Rent for Premises and the additional rent due and owing as described above, the Board may bring an action for any deficiencies due and owing to the Board as a result of the Operator's default under the terms and conditions of this Agreement.

7.6.2 If the Board shall have the right to re-enter and take possession of the Premises hereunder, it may enter and eject the Operator and those claiming through or under it and remove its property and effects (using force, if necessary) without being guilty of any manner of trespass; without any liability therefore; without prejudice to any other remedies of the Board; and without liability for any interruption of the conduct of the affairs of Operator or those claiming through or under it. The Board's agents or employees shall not be liable for any civil or criminal claims or cause of action because of entering the premises and improvements at reasonable times and in a reasonable manner to carry out the provisions of this Article.

## **8. MISCELLANEOUS PROVISIONS**

**8.1. Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**8.2. Approval or Direction by Board.** Wherever consent, approval or direction by the Board is required under this Agreement, such consent, approval or direction by the Board shall be effective if given by the Director or his designee in the manner set forth in this Agreement.

**8.3. Entire Agreement.** This Agreement embodies the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and agreements whether written or oral. This Agreement may not be altered, modified or changed in any manner except by a writing signed by both parties.

**8.4. Relationship of the Board and Operator.** Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Agreement nor any acts of Operator and the Board shall be deemed to create any relationship other than that of Operator and the Board.

**8.5. Non-Waiver of Breach.** The waiving of any of the covenants of this Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by the Board to any act by Operator requiring Board's consent shall not be deemed to waive consent to any subsequent similar act by Operator.

**8.6. Survival of Indemnities.** All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Operator shall, at the Board's option, defend the Board at Operator's expense by counsel satisfactory to the Board.

**8.7. Applicable Law, Venue, Waiver of Trial by Jury.** This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of Wyoming. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in either the United States District Court for Wyoming or the Teton County District Court for the State of Wyoming, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for the purposes of determining such action and waive any right to assert a claim for inconvenient forum. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

**8.8. Notices.** All payments, demands and notices required herein shall be deemed to be properly served if personally delivered, or if sent by overnight courier or certified mail return receipt requested, to the last address furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

BOARD: Executive Director  
Jackson Hole Airport Board  
PO Box 159  
1250 East Airport Road  
Jackson, Wyoming 83001

OPERATOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The date of service of such notice shall be upon personal delivery, one (1) day after such notice is deposited with reliable overnight courier, or three (3) days after such notice is deposited in in the U.S. Mail, postage prepaid.

**8.9. Time of Essence.** It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

**8.10. Paragraph Headings.** Paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any provisions of this Agreement.

**8.11. Authority of Operator's Representative.** As an inducement to the Board to execute this Agreement, the undersigned representative of Operator represents that he/she is expressly authorized to execute this Agreement and to bind Operator to the terms and conditions hereof and acknowledges that the Board is relying upon this representation, authorization and execution.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year above written.

**JACKSON HOLE AIRPORT BOARD**

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

\_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_

EXHIBITS #1, #2 and #3 (PREMISES)

SAMPLE

**JACKSON HOLE AIRPORT  
RENTAL CAR ACDBE ATTAINMENT REPORT**

Rental Car Brand: \_\_\_\_\_

Business name: \_\_\_\_\_

This company/business,  is  is not, a certified ACDBE firm  
(if a certified ACDBE please provide evidence of this certification and percentage of direct ACDBE  
ownership of business) \_\_\_\_\_ % ACDBE direct ownership of business

Reporting Period: From: \_\_\_\_\_, 20 \_\_\_\_\_ To: \_\_\_\_\_, 20 \_\_\_\_\_

Reported By: \_\_\_\_\_

Name \_\_\_\_\_ phone # \_\_\_\_\_

Gross Revenues for this period \$ \_\_\_\_\_ Concession fees paid to the Airport \$ \_\_\_\_\_

Dollar value of goods & services purchased or leased by this company from \_\_\_\_\_

Certified ACDBEs: \$ \_\_\_\_\_

Name of ACDBE firms included in this figure:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of Good Faith Efforts to obtain other ACDBE providers of goods and services: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that the above information is true and accurate to the best of my knowledge and accurately  
reflects our ACDBE participation and good faith efforts during the period indicated.

\_\_\_\_\_  
Owner/Manager

\_\_\_\_\_  
Date

Exhibit #5

**JACKSON HOLE AIRPORT (JAC)  
RENTAL CAR CONCESSION - MONTHLY REPORTING FORM**

Revenue Report for the Month of: \_\_\_\_\_

Concessionaire Name: \_\_\_\_\_

Prepared By: \_\_\_\_\_

Gross Revenues (attach detail): \_\_\_\_\_

Concession Fee: \_\_\_\_\_

Less 1/12<sup>th</sup> MAG\*: \_\_\_\_\_

**Additional Concession Fee Due:** \_\_\_\_\_

Number of Transaction Days: \_\_\_\_\_

**CFC per Day =** \_\_\_\_\_

Number of Nights Vehicles  
Stored in the Storage Spaces: \_\_\_\_\_

**Storage Space Rents =** \_\_\_\_\_

**Amount Due at time of report:** \_\_\_\_\_

Total Number of Transactions: \_\_\_\_\_

Report to be submitted electronically to:  
Michelle Anderson at [Michelle.Anderson@jhairport.org](mailto:Michelle.Anderson@jhairport.org)  
And copied to Robin Usher at [Robin.Usher@jhairport.org](mailto:Robin.Usher@jhairport.org)

Payments should be mailed to:  
Jackson Hole Airport  
P.O. Box 139  
Jackson, WY 83001

\*1/12<sup>th</sup> of the Minimum Annual Guarantee (MAG) is due on the first day of each month.



Exhibit #6

Jackson Hole Airport Board  
Jackson Hole Airport  
QTA Service Facility  
Operations and Maintenance Budget - May 1, 2021 to April 30, 2022

This budget includes one year operations and maintenance estimates for the building common areas and building exterior. This budget specifically excludes any operations and maintenance expenses related to the fueling facility. The budget also excludes any expenses associated with operations inside of leased space - no expenses are included for separately metered utilities or exclusive leased space repairs and maintenance.

<b>EXPENSES:</b>	<b>Total</b>
Utilities - Electricity	\$ 19,389
Utilities - Water	2,500
Utilities - Sewer	2,639
Utilities - Refuse	2,209
Utilities - Oil/Water Separator Sumping	10,000
HVAC Maintenance	5,000
Snow Removal Equipment/Supplies	8,832
Snow Removal Labor	17,959
Garage Door Maintenance	10,000
Vendor Services	12,604
Pavement Markings & Crack Sealing	10,000
Fire Alarm Monitoring/Security Monitoring	1,402
Management/Administration Labor	30,000
Insurance	36,982
Car Wash Maintenance	29,753
O&M Reserve (2 months of O&M Budget)	33,200
<b>Budgeted O&amp;M Expenses</b>	<b>\$ 232,470</b>

**TENANT RESPONSIBILITY:**

Utilities - Natural Gas  
Data Services (fiber, phone, etc.)  
Janitorial Supplies  
Janitorial Labor  
Soap and Detergent Supplies

## EXHIBIT #7 - Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Operator, for itself, its assignees, and successors in interest (hereinafter referred to as the “Operator”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).