

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
FAIRBANKS INTERNATIONAL AIRPORT

SAMPLE IN-TERMINAL RENTAL-CAR CONCESSION
AGREEMENT ADA-90808 - ADA-90813

June 1, 2016

**FAIRBANKS INTERNATIONAL AIRPORT
IN-TERMINAL RENTAL-CAR CONCESSION AGREEMENT ADA-SA-90808 - 90813**

<u>Article</u>	<u>TABLE OF CONTENTS</u>	<u>Page</u>
I	Definitions	
	1. Agreement	1
	2. Agreement Year	1
	3. Airport	2
	4. Airport Manager	2
	5. Certified Activity Report.....	2
	6. Concession	2
	7. Concession Fee	2
	8. Concession Recovery Fee	2
	9. Concessionaire	2
	10. Customer	2
	11. Disadvantaged Business Enterprise	2
	12. Environmental Law.....	2
	13. Gross Sales	3
	14. Hazardous Substance.....	5
	15. Manager.....	5
	16. Minimum Annual Guarantee	5
	17. Office-Counter Space	5
	18. Parking Operator.....	6
	19. Premises	6
	20. Ready-Return Space.....	6
	21. Rental Agreement.....	6
	22. Rental Car	6
	23. Terminal.....	6
	24. Transaction	6
	25. Valet Parking Service.....	6
II	Term	6
III	Rights Granted, Obligations, Reservations, and Prohibitions	
	A. Rights Granted.....	7
	B. Reservations	7
	C. Prohibitions	8
IV	Premises and Ready Return Space	
	A. Office-Counter Space	9
	B. Ready-Return Spaces.....	10
V	Fees and Payments	
	A. Concession Fee	12
	B. Ready-Return Space Fees.....	13
	C. Payment of Fees	13
	D. Waiver of Minimum Guarantee	14
	E. Foreign Currency Exchange	15
	F. Fees Vest in the State.....	15

**FAIRBANKS INTERNATIONAL AIRPORT
IN-TERMINAL RENTAL-CAR CONCESSION AGREEMENT ADA-SA-90808 - 90813**

<u>Article</u>	<u>TABLE OF CONTENTS</u>	<u>Page</u>
G.	Unpaid Fees.....	15
H.	Interest	15
I.	Bid Deposit.....	15
VI	Performance Bond.....	16
VII	Books, Records, Audits, and Reports	
A.	Maintenance of Books and Records	17
B.	Audits	18
C.	Audit Costs.....	18
D.	Concession Underpayments and Overpayments.....	19
E.	Certified Audited Statement of Gross Sales	19
F.	Preservation of Books and Records.....	21
G.	Additional Supporting Data	21
H.	Public Information	22
VIII	Disadvantaged Business Enterprise Participation	
A.	State Policy	22
B.	Concessionaire's Obligation.....	22
C.	DBE Officer	22
D.	DBE Contracts	22
E.	DBE Commitment	22
F.	Compliance Review	23
G.	Remedies.....	23
IX	Personnel	
A.	Manager.....	24
B.	Other Personnel.....	24
X	Service and Operation	
A.	Service Quality	24
B.	Orderly Operation.....	24
C.	Hours of Operation.....	24
D.	Child Safety Seats	24
E.	Inspection.....	24
F.	Janitorial and Cleaning Services.....	25
G.	Trash, Garbage, and Refuse	25
H.	Snow Removal	25
I.	Maintenance of Rental Cars	25
J.	Customer Parking of Rental Cars	25
K.	Driving Practices of Concessionaire's Employees	26
L.	Security	26
M.	Smoking	26
N.	Solicitation.....	26
O.	Complaints, Questions, or Concerns	27

**FAIRBANKS INTERNATIONAL AIRPORT
IN-TERMINAL RENTAL-CAR CONCESSION AGREEMENT ADA-SA-90808 - 90813**

<u>Article</u>	<u>TABLE OF CONTENTS</u>	<u>Page</u>
	P. Signs	27
	Q. Hazardous Substances	27
	R. Activities on Airport	28
XI	Maintenance, Construction, and Ownership	
	A. Maintenance	28
	B. General Construction Requirements	29
	C. Building Permit Process	29
	D. Ownership	29
	E. Abandonment of Property	30
XII	State Services	
	A. State Services	30
	B. Repairs and Alterations	30
	C. Hold Harmless	30
XIII	Addition or Reduction in Terminal Space	
	A. Addition in Space	31
	B. Reduction in Space	31
XIV	State-Directed Relocation	
	A. State Responsibilities	31
	B. Concessionaire Responsibilities	32
XV	Laws and Taxes	
	A. Laws	32
	B. Taxes	33
	C. Disputes	33
	D. Claims	33
XVI	Indemnification and Insurance	
	A. Indemnification	33
	B. Insurance	34
	C. Evidence of Insurance Coverage	35
	D. Obligations	36
	E. Increase or Revision	36
XVII	Cancellation by State	
	A. Breach of Agreement	36
	B. State's Right of Reentry	37
	C. Additional Rights of the State	37
	D. Ownership of Equipment and Improvements	38
	E. Survival of Concessionaire's Obligations	38
	F. Waiver of Redemption and Damages	38
	G. Surrender of Possession	39

**FAIRBANKS INTERNATIONAL AIRPORT
IN-TERMINAL RENTAL-CAR CONCESSION AGREEMENT ADA-SA-90808 - 90813**

<u>Article</u>	<u>TABLE OF CONTENTS</u>	<u>Page</u>
XVIII	Cancellation by Concessionaire.....	39
XIX	Transition at End of Term	
	A. Subsequent Agreement Award	39
	B. Transition Schedule at Expiration or Cancellation of Agreement by Concessionaire	39
	C. Vacation of Premises	40
XX	Assignment or Subletting	
	A. Prohibition	40
	B. Approval Process	41
	C. Merger, Consolidation, or Reorganization	41
XXI	General Covenants	
	A. Execution by State	41
	B. Approval by State	41
	C. Notices	42
	D. Modification	42
	E. Interrelationship of Provisions	42
	F. Validity of Parts	42
	G. Radio Interference	42
	H. Nondiscrimination	42
	I. Affirmative Action	43
	J. National Emergency	43
	K. No Waiver	43
	L. Disasters	43
	M. Condemnation.....	43
	N. Quiet Enjoyment	43
	O. Captions.....	43
	P. Entire Agreement	44
	Q. Force Majeure	44
	R. Costs and Fees Incurred to Enforce Agreement.....	44
Exhibits:		
	Exhibit A: Office-Counter Space	45
	Exhibit B: Ready-Return Spaces	46
	Exhibit C: Certified Activity Report	47
	Exhibit D: Sample Certified Audited Statement of Gross Sales.....	49
	Exhibit E: Restricted Access and Tower-Controlled Areas	50

**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
FAIRBANKS INTERNATIONAL AIRPORT
SAMPLE IN-TERMINAL RENTAL-CAR CONCESSION AGREEMENT
ADA-90808 through 90813**

THIS AGREEMENT is made this _____ day of _____, 2016, between the State of Alaska, Department of Transportation and Public Facilities, Fairbanks International Airport (State), whose address is Suite 1, 6450 Airport Way, Fairbanks, AK 99709, and _____, (Concessionaire), whose address is _____, facsimile number _____. In consideration of the rights and obligations under this Agreement, the parties agree as follows:

INTRODUCTION

Whereas, the State owns and operates the Fairbanks International Airport, located in Fairbanks, Alaska; and

Whereas, in connection with the Airport, the State owns and operates the passenger Terminal; and

Whereas, the Concessionaire desires to conduct a Rental-Car Concession in the Terminal; and

Whereas, the State has determined that it is in the best interest of the State and the traveling public to have rental-car service available in the Terminal and to select In-Terminal Rental-Car Concessionaires by the competitive bid process;

Now therefore, the State has solicited competitive bids for a maximum of six-In-Terminal Rental-Car Concessionaires, and the Concessionaire is a successful bidder.

ARTICLE I: DEFINITIONS

The following definitions apply for this Agreement:

1. **Agreement:** This Concession Agreement ADA-908___, together with the Exhibits and all future amendments or supplements executed by the parties to this Agreement.
2. **Agreement Year:** This Agreement includes the following five Agreement Years:

<u>Agreement Year</u>	<u>Time Period</u>
1	October 1, 2016 through September 30, 2017
2	October 1, 2017 through September 30, 2018
3	October 1, 2018 through September 30, 2019
4	October 1, 2019 through September 30, 2020

5	October 1, 2020 through September 30, 2021
6	October 1, 2021 through September 30, 2022
7	October 1, 2022 through September 30, 2023

3. **Airport:** The real property and facilities of the Fairbanks International Airport, Fairbanks, Alaska, as they exist on the execution date of this Agreement, together with any future additions or expansions.
4. **Airport Manager:** The department employee the commissioner has designated to supervise Fairbanks International Airport or that person's designated representative.
5. **Certified Activity Report:** A report that lists the Gross Sales generated by the Concession during the calendar month for which payment is made, as well as other data required by this Agreement. The format of the Certified Activity Report is specified in Exhibit C.
6. **Concession:** A Rental-Car business that operates in the Terminal at the Airport.
7. **Concession Fee:** The percentage fee described in Article V (Fees and Payments) of this Agreement that the State charges the Concessionaire in return for the rights and privileges granted the Concessionaire under this Agreement.
8. **Concession Recovery Fee:** Also known as "Airport Access Fee" - any fee that the Concessionaire charges a Customer as a line item on a Rental Agreement for the purpose of recovering the Concession Fee that the Concessionaire pays the State.
9. **Concessionaire:** A successful bidder for one of a maximum of six In-Terminal Rental-Car Concessions and who enters into this Agreement, or any subsequent Concessionaire as provided under Article XX (Assignment or Subletting) of this Agreement.
10. **Customer:** A purchaser or renter of goods or services of any kind from the Concessionaire.
11. **Disadvantaged Business Enterprise (DBE):** A business certified by the State of Alaska, Department of Transportation and Public Facilities, as a disadvantaged business enterprise as defined in 49 CFR, Part 23.
12. **Environmental Law:** Any federal, state, or local statute, regulation, ordinance, code, permit, order, decision, or judgment from a governmental entity relating to environmental matters, including littering and dumping; "environmental law" includes, as applicable, 42 U.S.C. 7401-7671 (Clean Air Act); 33 U.S.C. 1251-1387 (Federal Water Pollution Control Act); 42 U.S.C. 6901-6992 (Resource Conservation and Recovery Act); 42 U.S.C. 9601-9657 (Comprehensive

Environmental Response, Compensation, and Liability Act);
49 U.S.C. 5101-5127 (Hazardous Materials Transportation Act);
15 U.S.C. 2601-2692 (Toxic Substances Control Act); AS 46 (Alaska Water, Air,
Energy, and Environmental Conservation Acts); and the provisions of 18 AAC
(Environmental Conservation), implementing AS 46.

13. **Gross Sales:** The aggregate of the entire amount of all revenues paid by or billed to any Customer or any other person or entity, regardless of actual collection, for the rental, sale or any other provision of goods or services of every kind, name, and nature by the Concessionaire or any of its affiliates, subsidiaries, or contractors for cash, credit, exchange or otherwise on, at, or from the Premises or the Ready-Return Spaces or elsewhere on the Airport, or at any facility within ten miles of the Airport with respect to a Transaction with a Customer who enters into the Transaction with the Concessionaire or any of its affiliates or subsidiaries at that facility within 24 hours after the Customer is transported from the Airport by any means to that facility.
- A. Gross Sales shall include, but shall not be limited to, all revenues received or derived from the following:
- (1) The rental or sale of goods and services under this Agreement, including, but not limited to, the following:
- a. Time and Mileage or Rental Charges
 - b. Fees for insurance coverage, including:
 - Collision Damage Waiver (CDW) or Loss Damage Waiver (LDW)
 - Personal Accident Insurance (PAI)
 - Personal Effects Coverage (PEC) or Cargo
 - Life Insurance
 - Supplemental Liability Insurance
 - Safe Trip Insurance
 - Extended Protection
 - Other insurance coverage offered now or in the future
 - c. Fees for rental of equipment, including:
 - Child safety seats
 - Cellular phones (including revenues from use of)
 - Recreational gear and car racks for recreational gear
 - Tire chains
 - Portable personal computers and portable facsimile machines
 - Other equipment offered now or in the future

- d. Fees for office services, including fax transmittals, photocopying, and providing maps, and other services offered now or in the future.
 - e. Additional fees charged to Customers, including:
 - Additional and underage driver fees
 - Upgrade and exchange fees
 - Fueling fees and fees for fuel and other petroleum products
 - Inter-city charges (drop fees)
 - Transportation fees
 - Early pickup and late return fees
 - Parking fees, including fees for valet parking
 - Tire and battery recovery fees
 - Concession Recovery Fees
 - Vehicle license recovery fees
 - Frequent flyer recovery fees
 - Fees for miscellaneous services such as service calls
 - Other fees charged now or in the future.
 - f. The value of coupons and vouchers purchased by corporations and tour companies, either in advance or invoiced after use, if the rental charges are not shown on the actual closed Rental Agreement.
- (2) The contracting for, delivering, picking up, or renting of Rental Cars from Airport property, regardless of ownership, area, fleet, or location assignment and without regard to the manner in which, or place at which, the Rental Cars are ordered or furnished or where the Rental Cars are returned, and without regard to duration, or of where, how, or by whom payment is made.
 - (3) The rental or sale of goods and services by subcontractors of the Concessionaire, regardless of what portion, if any, of such revenue is received or retained by the Concessionaire. All subcontractors must have the prior written approval of the State.
 - (4) A Transaction in which a Rental Car is exchanged elsewhere when the Rental Car was originally contracted for, delivered, supplied, or rented at the Airport. The Concessionaire shall not allocate Transactions to any other location, regardless of which city or location owns the Rental Car, or where the Rental Car is ultimately returned.
- B. Gross Sales shall not be reduced by bank charges, uncollected or uncollectible credit accounts, charges made by collection agencies, bad debt losses, or any commission or other amount paid out or rebated by

the Concessionaire to travel agents or others with respect to any rental or sale of goods or services.

- C. The following are the only exclusions to the definition of Gross Sales under this Agreement. Each exclusion from Gross Sales shall be segregated as a separate account in the Concessionaire's General Ledger:
- (1) Any taxes now or hereinafter levied or imposed by any local, state, or federal law which are separately stated on the Rental Agreement and paid by the Customer and which are directly payable to the taxing or tax collecting authority by the Concessionaire.
 - (2) Any sums received by the Concessionaire as compensation for damage to Rental Cars or other property of the Concessionaire or for loss, conversion, or abandonment of such Rental Cars.
 - (3) Any sums received from the disposal of furniture, fixtures, equipment, and Rental Cars.
 - (4) Any sums received from a Customer for reimbursement of impound fees, towing fees, and parking and traffic tickets.
- D. Each Transaction made on installment or credit shall be treated as a Transaction for the full price in the month during which such charge or Transaction occurs, regardless of when the Concessionaire receives payment, whether full or partial.
- E. In no event shall the Concessionaire's Gross Sales from any Transaction be negative in any revenue category for purposes of this Agreement.
14. **Hazardous Substance:** Any substance that is defined under an environmental law as hazardous waste, hazardous substance, hazardous material, toxic, pollutant, contaminant, petroleum, petroleum product, or oil.
15. **Manager:** That person described in Article IX (Personnel) or having the hands-on Rental-Car experience.
16. **Minimum Annual Guarantee:** (MAG) The minimum amount the successful proposer agreed to pay the State for every month of each Agreement Year.
17. **Office-Counter Space:** An area in the Terminal which is designated for In-Terminal Rental Car Concessions, consisting of an office and counter assigned to the Concessionaire for the Concessionaire's use in conducting the business authorized under this Agreement, and depicted on Exhibit A to this Agreement.

18. **Parking Operator:** The operator of the Airport parking facilities, which includes the Ready Return Parking Lot containing the Concessionaire's Ready-Return Spaces.
19. **Premises:** The Office-Counter Space shown on Exhibit A and assigned to the Concessionaire under this Agreement.
20. **Ready-Return Spaces:** The parking spaces in the Ready Return Parking Lot that are designated for parking Rental-Cars as shown on Exhibit B.
21. **Rental Agreement:** A written contract between the Concessionaire and a Customer who rents a Rental-Car that states the terms and conditions of the Transaction and includes all Customer charges.
22. **Rental Car:** A motorized vehicle rented or available for rent.
23. **Terminal:** The State owned and operated passenger terminal building at the Airport.
24. **Transaction:** A separate and distinct act of business authorized under this Agreement between the Concessionaire and a Customer of the Concessionaire.
25. **Valet Parking Service:** A service in which a Customer-owned vehicle is parked at the Concessionaire's place of business and the Concessionaire transports the Customer to and from the Terminal.

ARTICLE II: TERM

This Agreement is effective on the date it is signed on behalf of the State. The State grants the Concessionaire the rights listed in Article III (Rights Granted, Obligations, Reservations, and Prohibitions) beginning at 12:01 a.m., **October 1, 2016**, and ending at midnight, **September 30, 2023**.

If the Concessionaire holds over without a written extension after this Agreement expires, the holding over does not operate as a new agreement or an extension of the rights granted under this Agreement, but, with the consent of the State, creates only a month-to-month tenancy, regardless of any rent payment that the State accepts. The Concessionaire's obligations for performance under this Agreement will continue during the month-to-month tenancy. Either party may terminate the holdover tenancy at any time by giving the other party at least 30 calendar days written notice. Unless otherwise mutually agreed to by both parties, payment for any holdover period is the greater of the amount bid by the Concessionaire over the original term of this Agreement or a percentage of the Concessionaire's Gross Sales as described in Article V (Fees and Payments) herein, plus the Ready-Return Space fees.

ARTICLE III: RIGHTS GRANTED, OBLIGATIONS, RESERVATIONS, AND PROHIBITIONS

Subject to the rights and obligations under this Agreement, the State grants the Concessionaire the authority to exercise the following rights:

A. Rights Granted

1. The right to conduct an In-Terminal Rental-Car Concession. During the term of this Agreement, the State will authorize no more than six In-Terminal Rental-Car Concessions to operate from the Terminal at any one time.
2. The right to conduct a Valet Parking Service.
3. The right to ingress, egress, and occupy the Premises and the Ready-Return Spaces by the Concessionaire, its officers, contractors, suppliers, service personnel, guests, Customers, and invitees, subject to the security rules of the Airport.
4. The right to install Concession equipment and construct improvements with prior State approval, as stated in Section C of Article XI (Maintenance, Construction, and Ownership).
5. This Agreement does not prohibit agreements or regulations pertaining to off-airport automobile rental companies.

B. Reservations

1. If there are fewer than six In-Terminal Rental-Car Concessionaires operating in the Terminal during the term of this Agreement, the State may, but is not obligated to, lease any vacant rental-car Office-Counter Space subject to public notice and other requirements of law concerning the leasing of airport terminal space. If the State offers Office-Counter Space for use as an In-Terminal Rental-Car Concession, the State will invite bids for the concession. Any re-bid for an In-Terminal Concession will not contain more favorable terms and conditions than this Agreement, and will expire on **September 30, 2023**. Any such incoming concessionaire will occupy the vacant Office-Counter Space, regardless of the amount bid.
2. The State reserves the right to grant to others any right or privilege on the Airport that the State has not specifically and exclusively granted to the Concessionaire under this Agreement. The rights and privileges granted the Concessionaire under this Agreement are the only rights and privileges granted the Concessionaire. The Concessionaire has no

easements, rights, or privileges, express or implied, other than those specifically granted under this Agreement.

3. The State reserves the right of ingress to and egress from the Premises, including buildings, and the right to enter any part of the Premises for the purpose of inspection at any reasonable time, subject only to the State's best efforts, except in the case of an emergency, to coordinate its inspection with the Concessionaire to minimize interference with the Concessionaire's activities on the Premises.
4. The State reserves the right to grant to third parties or reserve to the State easements or rights of way through, on, above, or under the Premises, so long as the easement or right of way does not unreasonably interfere with the Concessionaire's use of the Premises.
5. For the term of this Agreement, the Concessionaire will only operate the brands specified in this Agreement. The acquisition, transfer, or subletting of any brand(s) or trade name(s) must be approved by the State. Such approval may be withheld by the State for good and sufficient reasons, but will not be unreasonably withheld. A maximum of three (3) brands or trade names may occupy any single counter, back office or ready/return spaces. Any brand or trade name must be one hundred percent (100%) owned, controlled or have a contractual right to operate by Concessionaire.

C. Prohibitions

1. The Concessionaire may not conduct any business unless authorized in this Agreement without the advance written consent of the State. If a question or dispute arises concerning the rental or sale of any goods or services, the Concessionaire may submit a written request to the State asking for a review and decision concerning the dispute. The State will deliver a written decision to the Concessionaire and the decision of the State is final.
2. The Concessionaire may not divert any of its business under this Agreement or by its own action cause or allow any diversion of business from the Airport. A shortage of Rental Cars at the Airport, while having a Rental Car available elsewhere in the local area, and renting the Rental Car to a potential Customer who arrives at the Airport, and failing to include the revenues resulting from the Transaction as Gross Sales shall constitute an intentional diversion. The taking of a reservation for another car rental location, or advising or suggesting that a potential Customer arriving at the Airport should go to another car rental location (including any other location operated by the Concessionaire or by any other car rental business), regardless of the reason, and failing to include the

revenues resulting from the Transaction as Gross Sales shall constitute an intentional diversion. This does not preclude the Concessionaire from transporting a Customer or potential Customer from the Airport to the Concessionaire's Rental Cars at a location off Airport as long as the revenues resulting from the Transaction are reported as Gross Sales.

4. The Concessionaire may not allow the rental or use of the Ready-Return Spaces by anyone other than a Customer with a Rental Agreement, an employee of the Concessionaire, and other In-Terminal Rental-Car Concessionaires.
5. The Concessionaire may not advertise nor display brochures for any service or item not directly related to the Concession.
6. The Concessionaire may not park any vehicle longer than 20 feet in a Ready-Return Space.
7. If the Concessionaire charges its Customers a Concession Recovery Fee, the following conditions will apply:
 - a. The fee must be listed on each Rental Agreement as a separate line item identified as "Concession Recovery Fee."
 - b. The fee may not be shown on the Rental Agreement adjacent to taxes or in any way included with, associated with, or referred to as a tax.
 - c. The fee may not be identified as or referred to by the Concessionaire or the Concessionaire's employees, including counter personnel and reservation agents, as a fee imposed on the Customer by the State.

ARTICLE IV: PREMISES AND READY-RETURN SPACES

The State will deliver the Premises and the Ready-Return Spaces to the Concessionaire at 12:01 a.m. **on October 1, 2016**. The Concessionaire accepts the Premises and the Ready-Return Spaces in their then-present condition and "as is." The Concessionaire acknowledges that the State's obligation is limited to making the Premises available to the Concessionaire for its use, subject to Article XII (State Services).

- A. Office-Counter Space - Exhibit A: The State will revise Exhibit A after the Concessionaire selects its Office-Counter Space after the execution of this Agreement. The State will replace this revised Exhibit A in the Agreement without formal amendment and will deliver a copy of the revised Exhibit to the Concessionaire.

B. Ready-Return Spaces

1. Exhibit B: The State will revise Exhibit B after the Concessionaire selects its Ready-Return Spaces after the execution of this Agreement and again after each allocation of Spaces as described in this Section. The State will replace this revised Exhibit B in the Agreement without formal amendment and will deliver a copy of the revised Exhibit to the Concessionaire.
2. Allocation of Ready-Return Spaces:
 - a. Number of Spaces to be Rented: It is the desire of the State to rent all 224 Ready-Return Spaces to in-terminal rental-car concessionaires throughout the term of the agreements. The Concessionaire must rent a minimum of 15 Spaces throughout the Term of this Agreement. With the exception of Spaces rented under paragraphs 3 and 4 of this subsection, the Concessionaire will rent the number of Spaces allocated to the Concessionaire by the State for that Agreement Year.
 - b. Reservation: The State reserves the right to reduce the number of Ready-Return Spaces available for selection if there are fewer than six in-terminal rental-car concessionaires.
 - c. Methodology: After the first Agreement Year, and every three (3) years thereafter during the term of the Agreement, the State will determine the Concessionaire's allocation of Spaces for each of those Agreement Years by first allocating 15 spaces to each In-Terminal Rental-Car Concessionaire. The State will subtract the total number of spaces so allocated from the total number of 224 Spaces. The State will allocate the remaining Spaces proportionately among the In-Terminal Rental-Car Concessionaires based on the Concessionaire's percentage of Gross Sales for the prior Agreement Year compared to the total Gross Sales of all In-Terminal Rental Car Concessionaires for that same period. For example, if the Concessionaire's Gross Sales for the prior Agreement Year is \$150,000 and the total of all Gross Sales reported by all In-Terminal Rental-Car Concessionaires is \$600,000, the Concessionaire would receive an allocation of 25 percent of the remaining Spaces. The State will not include Ready-Return Space fees or Valet Parking Gross Sales in computing this allocation.

The concessionaire with the highest percentage of Gross Sales will receive first choice of Spaces, the concessionaire with the second

highest percentage of Gross Sales will receive second choice, and so on. By **September 1** of the first Agreement Year, and every three (3) Agreement years thereafter during the term of the Agreement, the State will notify the Concessionaire of the selection order and allocation of Spaces. The State may choose to re-allocate spaces more than once every three years and will notify each Concessionaire three months prior to its decision.

- d. Selection of Spaces: The Concessionaire must select its Spaces in "compact blocks" adjacent to the selection made by the prior concessionaire so that concessionaires near the end of the process are not left with widely separated spaces. For the purpose of this selection process, the term "compact block" means contiguous and/or adjacent groups of spaces containing no vacant spaces.
- e. Notification of Selection: The Concessionaire must notify the State of its selection of Ready-Return Spaces by **September 16** of the first Agreement year and every three (3) Agreement years during the term of the Agreement. The State will review and approve or disapprove the selection of Spaces and notify the Concessionaire of its decision.
- f. Nullification of Selection Process: The State will consider the a selection process valid only if there is unanimous consent among all In-Terminal Rental-Car Concessionaires as evidenced by signed forms provided by the State. If there is not unanimous consent among the concessionaires, the State will nullify the Space selection process and assign the Spaces. Notwithstanding the unanimous consent of all the concessionaires, the State may nullify the Space selection process if, in the State's sole determination, the Concessionaire does not select Spaces in "compact blocks." The State will assign Spaces to form "compact blocks," as described above, to the greatest extent possible.
- g. Installation of Signs and Relocation of Rental Cars: The Concessionaire will relocate its parking signs and provide and install any additional parking signs required for its Spaces at the Concessionaire's own cost. The Concessionaire must begin the relocation of signs and Rental-Cars from the Concessionaire's former Spaces to the new Spaces by **September 28** of the first Agreement year and every three (3) Agreement years thereafter and complete the process by midnight **September 30** of the first Agreement year and every three (3) Agreement years thereafter during the term of the Agreement.

3. Additional Spaces:
 - a. In addition to the Concessionaire's allocated number of Spaces, the State may rent additional Spaces to the Concessionaire if Spaces become available during this Agreement. Additional Spaces will be rented to the Concessionaire for a maximum term of one Agreement Year. The Concessionaire will pay the then-current fee for the additional Spaces. The State will allocate available Spaces on a reasonable basis if other In-Terminal Rental-Car Concessionaires also request additional Spaces and the State cannot accommodate all requests.
 - b. In addition to the Concessionaire's allocated number of Spaces, the Concessionaire may make arrangements to rent additional Spaces from other In-Terminal Rental-Car Concessionaires provided the fee per Space is not more than the fee charged by the State and prior written approval is obtained from the State.
4. Unforeseen Reduction of Ready Return Space: In the event of an unforeseen, unavoidable reduction in the total area of the Rental Return parking lot, or in the number of rental return spaces available, whether by reason of national security, an act of a superior governmental authority, an act of the public enemy, an act of God, or any other unforeseen and unavoidable circumstance, the State may require a temporary reallocation for the duration of the reduction, or until the next annual reallocation, to ensure that all concessionaires retain an equitable proportion of ready return spaces. Should such reallocation be required the State will utilize the methodology described under Section 2 above for the reduced number of spaces.

ARTICLE V: FEES AND PAYMENTS

Beginning on **October 1, 2016**, and continuing for the term herein, the Concessionaire agrees to pay the State for the use of the Premises and the Ready-Return Spaces and for the rights and privileges granted to the Concessionaire under this Agreement the following fees:

- A. Concession Fee: For the use of the Premises and for the business opportunity afforded by the State to the Concessionaire, the Concessionaire will pay to the State, on a monthly basis in arrears, a Concession Fee equal to the **GREATER** of one-twelfth of the Concessionaire's MINIMUM ANNUAL GUARANTEE of \$_____ or ten percent of Gross Sales for the immediate preceding month.

B. Ready-Return Space Fees

1. The Concessionaire will pay \$50 per month per space for each Ready-Return Space the Concessionaire rents each month in arrears during the Term of this Agreement.
2. The State may change the fees charged for the Ready-Return Spaces on written notice to the Concessionaire and without formal amendment to this Agreement. The State will base any change on reasonable and justifiable grounds.

C. Payment of Fees

1. On or before the 20th day of each month, beginning **November 20, 2016**, and ending on **October 20, 2023**, the Concessionaire will pay to the State the Concession Fee set forth in Section A of this Article plus the Ready-Return Space fees set forth in Section B of this Article.

During any Agreement Year, if the Concessionaire's cumulative Concession Fee payments equal the MINIMUM ANNUAL GUARANTEE, the Concessionaire will pay only the percentage fee and the Ready-Return Space fees for the remainder of that Agreement Year, beginning the month after the MINIMUM ANNUAL GUARANTEE is met.

If, for any Agreement Year, payments to the State, excluding Ready-Return Space fees, exceed both the MINIMUM ANNUAL GUARANTEE and ten percent of Gross Sales for that Agreement Year, the State will, at its discretion, either credit the overpayment toward future payments due the State or refund the overpayment to the Concessionaire within 60 days after the Concessionaire submits the financial information and any payment required under Article VII (Books, Records, Audits, And Reports).

2. Each payment specified in Section C, Paragraph 1 above must be submitted with a Certified Activity Report that must include the following information for the calendar month for which payment is made and that must be presented using the State's form as shown in Exhibit C attached hereto:
 - a. Gross Sales
 - b. Calculated Concession Fee due for the month
 - c. Cumulative Concession Fee payments for the Agreement Year
 - d. Gross Sales attributed to a DBE
 - e. Gross Sales from Valet Parking Transactions
 - f. The number of Valet Parking Transactions

3. Payments must be received by Airport Accounting, Fairbanks International Airport, Suite 1, 6450 Airport Way, Fairbanks, AK 99709, on or before the due date. Payments must be free from any claim, demand, setoff, or counterclaim of any kind against the State, and must be made in cash or by check, bank draft, or money order payable to the State of Alaska. The Concessionaire will make all payments in United States of America currency.
4. Time is of the essence in meeting these requirements, and the Concessionaire shall pay an administrative fee to cover costs incurred if the Certified Activity Report is not received on or before the 20th day of each month as specified in Section C, Paragraph 1 of this Article. The administrative fee is \$30 for the first day the Certified Activity Report is late and \$15 for each additional day. The fee will be assessed beginning the day after the Certified Activity Report is due and will include the day it is received. If the 20th falls on a weekend or holiday, the Concessionaire will provide the State with a Certified Activity Report by the end of the first work day following the weekend or holiday.

D. Waiver of Minimum Guarantee

1. The State will waive the minimum guarantee payable under this Agreement if any of the following events occur:
 - a. Any event, not the fault of the Concessionaire that damages the Terminal in a manner that prevents the normal operation of the Concessionaire's business for a period that exceeds 30 consecutive days. If the normal operation of the Concessionaire's business is prevented for a period exceeding 30 consecutive days, the waiver will be effective from the first day following said 30 consecutive-day period and will continue until normal operations can resume.
 - b. Complete closure of the Airport to the commercial air transport of passengers for a period that exceeds 30 consecutive days. If complete closure of the Airport exceeds 30 consecutive days, the waiver will be effective from the first day following said 30 consecutive-day such period and will continue until the Airport is reopened to the commercial air transport of passengers.
 - c. A 25% or more drop in passengers deplaned at the Terminal for any month during this Agreement as compared to the same month of the year preceding the first year of this Agreement. This waiver only applies to any month in which the 25% or more drop occurs.

- d. Loss of the Concessionaire's rights granted under this Agreement unless the loss is the fault of the Concessionaire. This waiver is effective from the first day of any such loss and continues until the Concessionaire regains its rights.
2. For any period of time the minimum guarantee is waived under this Section, the Concessionaire will pay the State the percentage of Gross Sales described in Section A of this Article and the Ready-Return Space Fees as described in Section B of this Article for those days the waiver is in effect. For the purposes of this Section, the minimum guarantee may require computation on a daily basis to determine the Concessionaire's correct monthly fee.
 3. The State may either credit any overpayment resulting from any minimum guarantee waiver toward future payments due the State or refund the overpayment to the Concessionaire within 60 calendar days after the State receives the final Certified Activity Report for the period during which the waiver of minimum guarantee event occurred.
- E. Foreign Currency Exchange: The Concessionaire may make foreign currency exchanges only as necessary to make change in sales transactions. Foreign currency received by the Concessionaire in sales transactions may only be sold by the Concessionaire to a bona fide currency exchange firm, bank, or other financial institution that provides currency exchange services.
- F. Fees Vest in the State: The fees due to the State for any business the Concessionaire is authorized to conduct under this Agreement immediately vest in and become the property of the State, whether for cash or credit and whether collected or uncollected. The Concessionaire is responsible for those fees until delivered to the State.
- G. Unpaid Fees: Any rent, charge, fee, or other consideration due but unpaid at the expiration or voluntary or involuntary termination or cancellation of this Agreement is a charge against the Concessionaire and its property, real or personal, and the State has any lien rights allowed by law. Either the State or its authorized agent may provide enforcement.
- H. Interest: Beginning the day after payment is due, all fees due and unpaid accrue interest at the legal rate for post-judgment interest under Alaska law.
- I. Bid Deposit: The State will cash the Concessionaire's bid deposit and apply the funds to the fees due the State beginning with the first payment required under this Agreement.

ARTICLE VI: PERFORMANCE BOND

A. Performance Bond

1. Prior to October 1, 2016, the Concessionaire will submit a performance bond to guarantee performance of all obligations and payment of all sums due under this Agreement. The amount of the performance bond shall be \$40,000. The Concessionaire will keep a performance bond in effect throughout the period of this Agreement and until the Concessionaire meets all Agreement obligations.
2. The State will accept a bond in the form of a cash deposit, a time certificate of deposit, a performance bond, an annual renewable bond, or an irrevocable letter of credit, all subject to State approval.
3. The State will base its approval of the form of the bond on certainty of the assurance that the Concessionaire's failure to make timely payments or comply with any requirement of this Agreement will readily allow the State to attach and collect the full amount of the bond.
4. The State may increase or revise the amount of the performance bond by written demand. The State will base any such increase or revision on reasonable and justifiable grounds.

B. The State will file a claim against the bond or irrevocable letter of credit if the Concessionaire fails to perform any of the following after notice and an opportunity to cure:

1. Failure on the part of the Concessionaire to make timely payment of any amounts due the State under the terms and conditions of this Agreement.
2. Any damage to or loss of Airport property caused by the Concessionaire.
3. Removal and storage expense incurred by the State if the Concessionaire does not promptly remove its property from the Premises and the Ready-Return Spaces within three calendar days after this Agreement is terminated.
4. Costs incurred by the State at the time the Agreement is terminated if the Concessionaire fails to leave the Premises and the Ready-Return Spaces in satisfactory condition.

C. If the State draws on a performance bond or irrevocable letter of credit and as a result the amount secured by the bond or letter of credit is less than \$40,000, the Concessionaire will promptly provide the State with an additional bond or letter of credit in an amount equal to the deficiency.

- D. Release of Bond: The State will release the bond or letter of credit only by written authorization after the Concessionaire meets all obligations under this Agreement. Neither cancellation nor expiration of this Agreement constitutes a release or discharge of the bond.

ARTICLE VII: BOOKS, RECORDS, AUDITS, AND REPORTS

A. Maintenance of Books and Records

1. To provide a satisfactory basis for confirming to the State the accuracy of the Concessionaire's Certified Activity Reports, the Concessionaire will establish and maintain books and records concerning the conduct of the business authorized under this Agreement in accordance with Generally Accepted Accounting Principles (GAAP). Such books and records shall include all individual Rental Agreements as well as records of Transactions with, and receipts from, Customers in a form consistent with good accounting practices (which may include, without limitation, electronic media compatible with computers available to the State or computer generated hard copies) as well as a breakdown of the various components of Gross Sales and the permitted exclusions therefrom. Microfiche or microfilm is not sufficient for audit purposes, unless that data is printed on hard copy. Daily business reports shall not suffice to take the place of the general ledger or other revenue journals or summaries. If the Concessionaire maintains separate general ledgers for tour operations, these must also be available to the State.
2. The Concessionaire will maintain complete records of all Transactions pertaining to the business conducted under this Agreement, and the State or its designee(s) shall have access to and have the right to reproduce or make copies of all documents pertaining to any Transaction under this Agreement. If printed hard copies of reports are not furnished, the Concessionaire will provide the State modem computer access to its financial records for audit purposes. Failure to provide the State with copies of open and closed Rental Agreements pertaining to Transactions and to the general ledger as well as other books of account and records shall be deemed by the State to be a breach of this Agreement.
3. The Concessionaire will maintain books and records of business conducted under this Agreement segregated from the Concessionaire's books and records for any other business that is conducted outside the scope of this Agreement.
4. The Concessionaire's books and records of business conducted under this Agreement must, in the determination of the State, enable the

Concessionaire to accurately report, and the State to easily check, payments due to the State under this Agreement.

5. The Concessionaire will operate its business under this Agreement so that a Rental Agreement, which is sequentially numbered and identifies the Airport as the place of origination of the Transaction, shall be issued with each Transaction entered into with a Customer who rents a Rental-Car. A Rental Agreement may not exceed 60 days. The Concessionaire will create and maintain written documentation on any other type of Transaction with a Customer.
 6. The Concessionaire will maintain a copy of every closed Rental Agreement issued under this Agreement, regardless of where the Rental Car was returned. The Concessionaire will maintain a log of all Rental Agreement numbers assigned to the Airport location and will maintain accountability for all Rental Agreements, issued and unissued.
 7. All such accounting records shall be stored sequentially or in such manner approved by the State to provide reasonable and expeditious access for audit purposes.
- B. Audits: The Concessionaire will permit the State to inspect, copy, and audit the Concessionaire's books, records, and any supporting data at the State's request during regular business hours. The Concessionaire may either transport the necessary books and records to a location on the Airport for inspection and copying by the State's auditors or request the State to perform the audit at the location where the Concessionaire maintains the records. The State reserves the right to perform the audit, at its own expense, at the location where the books and records are located if the State desires. If, at the State's request, the Concessionaire fails to transport the books and records to a location at the Airport within thirty (30) days, the State reserves the right to perform the audit at the location where the Concessionaire maintains the books and records, subject to the Concessionaire's paying expenses as provided for in paragraph C below. If the Concessionaire's place of business and record keeping is outside of Fairbanks, Alaska, and If the Concessionaire elects to have the State perform the audit at that location, or if the State elects to perform the audit at that location because the Concessionaire has failed to provide the books and records within thirty (30) days as required above, the Concessionaire will pay the State for the audit costs incurred. The Concessionaire shall provide all information requested by the auditor in a timely manner. If the auditor does not specify a deadline to submit requested information, the term "timely manner" shall mean "not more than thirty (30) days."
- C. Audit Costs: Audit costs include round-trip air and ground transportation from the auditor's duty station to the location where the Concessionaire maintains the books and records and per diem at the then-current State of Alaska rate for each

day of travel and on-site audit work. Audit costs do not include the salary and benefit costs of the auditor. After the audit, the State will bill the Concessionaire for the costs incurred, and the State will provide a copy of the travel authorization form used by the State. The Concessionaire will pay these costs within thirty (30) calendar days of the State's billing date.

D. Concession Underpayments and Overpayments

1. The Concessionaire shall pay, within 30 days of the billing date, any underpayment disclosed by an audit plus
 - a. interest at the rate provided in AS 45.45.010 from the date payment was required to be made on the relevant activity had it been accurately and timely reported;
 - b. any actual costs and attorney fees that the State incurs to collect the underpayment; and
 - c. if the underpayment is more than \$5,000 in any fiscal year, all audit costs that the State incurs, including salary and benefit costs of the auditor.
2. If the State collects the difference through litigation, the Concessionaire will pay the State the State's full costs and attorney's fees incurred to collect the underpayment. Further, the Concessionaire is liable for the full costs and attorney's fees if the State finds it necessary to take legal action either to levy the performance bond under Article VI (Performance Bond) or take other action necessary to collect money the Concessionaire owes to the State.
3. If an inspection or audit discloses that the Concessionaire has overpaid for the audit period, the State shall, at the State's discretion, issue a refund to the Concessionaire or credit the Concessionaire's account.

E. Certified Audited Statement of Gross Sales

1. The Concessionaire will provide to the State, at the Concessionaire's sole cost and expense, a Certified Audited Statement of Gross Sales (Statement) within 60 calendar days of each of the following:
 - a. The end of each Agreement Year.
 - b. Assignment of the Agreement.
 - c. Expiration, termination, or cancellation of the Agreement.

2. The Statement must cover all business transacted by the Concessionaire under the Agreement for the prior Agreement Year or from the date of the last Statement submitted by the Concessionaire to the date of assignment, expiration, termination, or cancellation of the Agreement.
3. The Statement must be prepared by an independent certified public accountant (CPA) in accordance with generally accepted auditing standards and must follow the format of the sample Statement included in this Agreement as Exhibit D.
4. The Statement must include an opinion page stating the following:
 - a. To the best knowledge and belief of the CPA, all Gross Sales derived from the business conducted under this Agreement have been included in the Statement, and the schedules and calculations used to develop the Statement are true, accurate, and complete.
 - b. The CPA has reviewed the accounting procedures and controls the Concessionaire uses to report Gross Sales and payments made to the State.
 - c. The CPA has reviewed this Agreement, to include the definition of Gross Sales and Articles V (Fees and Payments) and VII(Books, Records, Audits, and Reports), and has performed such audit procedures as deemed necessary to determine whether or not the Concessionaire is in compliance with the financial terms of this Agreement.
5. If the CPA discovers any reportable internal control weaknesses that relate to the accounting systems and controls over Gross Sales, the CPA will prepare a management letter to the Concessionaire. The Concessionaire will submit a copy to the State along with the Statement.
6. If the Statement shows an underpayment by the Concessionaire, the Concessionaire will submit payment with the Statement.
7. The Statement must be prepared by an independent certified public accountant in accordance with generally accepted auditing standards. The Statement must be accompanied by an electronic file in current Microsoft Excel for Windows or other electronic file format acceptable to the State and a document signed by the CPA that includes an opinion paragraph stating the following:
 - a. Whether anything came to the CPA's attention indicating that all Gross Sales were not included; and

- b. the CPA has reviewed this Agreement, in particular Article V (Fees and Payments), Article VII (Books, Records, Audits, and Reports), and the definition of Gross Sales in Article I (Definitions), and has performed such audit procedures as deemed necessary to determine the Concessionaire's compliance with those provisions of this Agreement.
 8. The Concessionaire must sign the Statement to certify that, to the best of the Concessionaire's knowledge and belief, the information and calculations of Gross Sales as reported on the Statement are true, accurate, and complete and reported in accordance with the terms and conditions of this Agreement.
 9. If the CPA determines that there are reportable internal control weaknesses that relate to the accounting system and controls over Gross Sales reportable under this Agreement, the CPA will prepare a management letter to the Concessionaire. The Concessionaire must forward a copy of this letter to the State.
 10. If the Statement shows an underpayment by the Concessionaire, the Concessionaire will submit payment with the Statement.
- F. Preservation of Books and Records: The Concessionaire shall retain all books and records relating to its operations that are subject to Certified Activity Reporting under this Agreement. If the State does not specifically object to the contents of a report or statement furnished to it by the Concessionaire within six years from the date the report or statement is furnished to the State, or one year after completion of an audit conducted by the State, the contents of that report or statement will be deemed to be true and correct unless it can be established that the report or statement was fraudulently prepared. If the State makes an objection, the Concessionaire must preserve all books until the objection is resolved.
- G. Additional Supporting Data: The Concessionaire will furnish the State with other financial or statistical reports that the State may occasionally request regarding the concession. This section does not require the Concessionaire to submit data that is either confidential business information or trade secrets unless reasonably related to determining compliance with this Agreement, and the State provides for protection of such information from public disclosure. The Concessionaire shall provide all information requested by the State in a timely manner. If the State does not specify a deadline to submit requested information, the term "timely manner" shall mean "not more than thirty (30) days".

- H. Public Information: All books, figures, records, reports, statements, or similar items the Concessionaire submits to the State are public records and available for public inspection, except as may be provided under the previous section.

ARTICLE VIII: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

- A. State Policy: It is State of Alaska policy that Disadvantaged Business Enterprises have the maximum opportunity to participate in the performance of Airport concession contracts.
- B. Concessionaire's Obligation: The Concessionaire shall ensure that DBE have the maximum opportunity to participate in the performance of this Agreement.

This Agreement is subject to the requirements of the United States Department of Transportation's regulations, 49 CFR part 23, subpart F. The Concessionaire shall not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession subcontract or other arrangement covered by 49 CFR part 23, subpart F. In addition, the Concessionaire shall include the previous two sentences in any subsequent concession subcontract or other arrangement that it enters into and require those businesses to similarly include the same language in any further subcontracts.

The Concessionaire shall comply with all applicable laws and regulations that concern the fair and equitable treatment of DBE now in effect or which may subsequently take effect during this Agreement. The Concessionaire shall include a provision to this effect in any subcontract or other DBE participation arrangement the Concessionaire enters into under this Agreement.

- C. DBE Officer: The Concessionaire shall provide the State with written notification of the person responsible for developing, managing, and implementing the Concessionaire's DBE program.
- D. DBE Contracts: The Concessionaire shall submit a copy of any DBE subcontract, DBE partnership, or DBE joint venture contract to the State for consent. The State will not consent to any subcontract, DBE partnership, or DBE joint venture contract for DBE participation unless the Concessionaire uses a State of Alaska certified DBE. Any DBE subcontract, DBE partnership, or DBE joint venture contract must contain a provision that the Concessionaire retains the right to terminate that contract if the participant does not remain a State of Alaska certified DBE.
- E. DBE Commitment: The Concessionaire acknowledges that the State set a minimum DBE participation goal of zero percent (0%) of total Gross Revenues for this Agreement. Though there is no minimum DBE participation required of the Concessionaire, the State encourages the Bidder to utilize certified DBE

companies for the installation, construction, maintenance, and management of the Concession, and may require the Concessionaire to provide information that will enable the State to monitor DBE participation. The Concessionaire shall take all reasonable steps and make good faith efforts to ensure that any opportunities to do business with the Concessionaire are open to DBE participation to the satisfaction of the State.

To document good faith efforts, the Concessionaire shall demonstrate, to the satisfaction of the State, that it made all reasonable efforts to make any business relationship it enters into available to State of Alaska certified DBEs.

The State will use the following criteria to judge whether a Concessionaire demonstrated sufficient good faith efforts:

1. Solicited interest through written notification or personal contact, with adequate response time, to certified or potential DBE.
2. Placed advertisements, with adequate response time, in appropriate general circulation media, trade association publications, and DBE-focused media.
3. Maintained written records of negotiations with DBE, including specific reasons if a subcontract or joint venture contract was not possible.
4. Provided adequate information to certified or potential DBE about the requirements of the participation opportunity.
5. Offered DBEs assistance, if needed, in obtaining bonding or insurance.
6. Followed-up on initial solicitation for interest by contacting certified or potential DBE's to determine with certainty whether or not they were interested in the participation opportunity.

Any DBE subcontract or DBE joint venture contract is subject to the consent of the State as required under Article XX (Assignment or Subcontract).

- F. Compliance Review: The State may at any time examine whether a DBE participant is performing a commercially useful function as defined in 49 CFR Part 23.47(d). The State will periodically, and at least annually, review the Concessionaire's progress in meeting the State's DBE participation goal under this Agreement. At the State's request, the Concessionaire shall provide any records needed to verify the performance of a commercially useful function or the percentage of Gross Revenues derived from DBE participation.
- G. Remedies: If the Concessionaire fails to comply with its commitment to provide maximum opportunity for DBE participation, or show its good-faith efforts to do

so to the satisfaction of the State, the State may impose one or more of the following penalties: cancellation of this Agreement as provided in Article XVII (Cancellation by State) herein, or disqualification of the Concessionaire from participation in future state concession agreements.

ARTICLE IX: PERSONNEL

The Concessionaire will maintain an adequate staff with the experience necessary to meet the provisions of this Agreement.

- A. **Manager:** The Concessionaire will select and properly train a manager responsible for the general day-to-day operations under this Agreement. This manager must reside in the Fairbanks area and be ordinarily available during regular business hours. At all times during the manager's absence, a responsible subordinate must be in charge and available.
- B. **Other Personnel:** The Concessionaire's personnel will meet the standards set forth in this Agreement and will conduct the Concessionaire's operations in accordance with the manner set forth in Article X (Service and Operations).

ARTICLE X: SERVICE AND OPERATION

- A. **Service Quality:** The Concessionaire's operation under this Agreement is a service to the traveling public and other users of the Airport. The Concessionaire will take all reasonable measures to maintain, develop, and increase its business within and from the Terminal. Accordingly, the Concessionaire will conduct all business authorized under this Agreement in a first-class, businesslike manner and provide service that is prompt, efficient, courteous, of the highest quality, and on a nondiscriminatory basis to all users of the Airport.
- B. **Orderly Operation:** The Concessionaire will conduct all business in a quiet, orderly, and courteous manner so as not to annoy, disturb, or offend Customers, the public, or tenants of the Airport.
- C. **Hours of Operation:** The Concession shall be open for business, have Rental Cars for rent, and accept Rental Car returns seven days per week consistent with hours of scheduled air carrier operations.
- D. **Child Safety Seats:** The Concessionaire will, at a Customer's request, rent a child safety seat to the Customer. Any fee charged for rental of a child safety seat must be charged on a fair and reasonable basis. The seat must be fully compatible with the Rental Car the Customer is renting and must conform to all applicable U.S. Federal Motor Vehicle Safety Standards.
- E. **Inspection:** The State may inspect the Premises and the Ready-Return Spaces at reasonable intervals during the Concessionaire's regular business hours, or at

any time in case of an emergency. The State may require the Concessionaire to perform repairs to the Premises and the Ready-Return Spaces at the Concessionaire's own expense.

- F. Janitorial and Cleaning Services: The Concessionaire will provide, at its own expense, the day-to-day janitorial and cleaning services and supplies necessary to maintain the Premises and the Ready-Return Spaces except for those services provided by the State under Article XII (State Services) herein. The Concessionaire will keep the Premises and the Ready-Return Spaces in a safe, clean, orderly, and inviting condition at all times, satisfactory to the State.
- G. Trash, Garbage, and Refuse: The Concessionaire will provide for the adequate sanitary handling and removal of all trash, garbage, and other refuse caused as a result of the Concessionaire's operations except for those services provided by the State under Article XII (State Services) herein. The Concessionaire will provide and use suitably covered or sealed receptacles for all garbage, trash, and other refuse from its operations inside the Terminal. Stacking of boxes, cartons, barrels, or similar items is prohibited. For its operations outside of the Terminal, the Concessionaire will either place any garbage, trash, and other refuse in containers provided by the State or will remove same from the Airport. The Concessionaire will take all reasonable steps to keep its Ready-Return Spaces free from trash and other refuse.
- H. Snow Removal: Although the State will remove snow from the Ready-Return Spaces as stated under Article XII (State Services) herein, the Concessionaire may, at its own expense, contract with the Parking Operator to remove snow from the Ready-Return Spaces with the prior verbal approval of the State.
- I. Maintenance of Rental Cars: The Concessionaire will at all times maintain its Rental Cars in good operation; free from known mechanical defects; and in a safe, clean, neat, and attractive condition, inside and out. The Concessionaire will not fuel, clean, or perform maintenance on any Rental Car within the Rental Return Parking Lot or on any other Airport property, except on Airport property that is exclusively leased by the Concessionaire under a separate agreement.
- J. Customer Parking of Rental Cars: The Concessionaire will make reasonable efforts to inform its Customers of the proper location for returning Rental Cars to the Airport. The Concessionaire acknowledges that its Customers may park Rental Cars improperly on the Airport and that the State has the right to cite improperly parked Rental Cars to protect and preserve the orderly flow of traffic at the Airport. The Concessionaire will promptly remove any of its improperly parked Rental Cars or be subject to paying the charge for any citation given.

The Concessionaire acknowledges that if any of the Concessionaire's Rental Cars are parked in the public parking lot, the Parking Operator will have the right to hold the Rental Cars until payment of the appropriate charges.

- K. Driving Practices of Concessionaire's Employees: The Concessionaire will closely control and supervise the driving practices of its employees. The Concessionaire will not allow fast, reckless, or unsafe driving by its employees. The Concessionaire will ensure that its employees comply with all speed limits on Airport roads and roads leading to and from the Airport. The Concessionaire will take all steps necessary to correct specific instances of such violations.
- L. Security: The Concessionaire will adhere to any applicable responsibility of the State's Airport Security Program required by federal regulations and the State. The Concessionaire will procure any required identification badges necessary to access the Premises and the Ready-Return Spaces or the Concessionaire's operations authorized under this Agreement.

The Concessionaire shall coordinate any Airport security matter with the State and shall follow all applicable requirements of the State's Airport Security Program, Airport Certification Manual, and Airport Emergency Program, including all provisions that are regulated under 49 CFR part 1540 (civil aviation security), 49 CFR Part 1542 (airport security) and 14 CFR Part 139 (airport certification and operation) and any other applicable federal regulation. Any fine that results from a violation of the State's Airport Security Program, Airport Certification Manual, Airport Emergency Program, or any applicable federal regulation caused by the Concessionaire or by any of the Concessionaire's agents or personnel, including any officer or employee, or anyone else acting by, on behalf of, or under the authority of the Concessionaire, or by any of the Concessionaire's contractors, sub-concessionaires, or guests, including any vendor or customer, whether on or off the Premises, will, as between the State and the Concessionaire, be the sole responsibility of the Concessionaire. The State may, with or without notice to the Concessionaire and without diminishing the Concessionaire's responsibility, pay fines to the FAA or the Transportation Security Administration (TSA) on the Concessionaire's behalf to meet FAA or TSA deadlines. Within thirty (30) days after receipt of written notice from the State, the Concessionaire shall reimburse the State for any such fines paid by the State.

The Concessionaire will ensure its employees are made aware of restricted-access and tower-controlled areas on the Airport as shown on Exhibit E so they do not make or cause incursions into these areas.

- M. Smoking: Neither the Concessionaire nor its employees may smoke in the Terminal.
- N. Solicitation: The Concessionaire will prohibit its agents and employees from soliciting Customers outside of its assigned Premises. The State will be the sole judge as to whether the conduct of the Concessionaire's representative in the solicitation of business constitutes a violation of this paragraph. On notice from

the State, the Concessionaire will take all lawful steps necessary to remedy the complaint.

- O. Complaints, Questions, or Concerns: The State will forward to the Concessionaire any complaints, questions, or concerns regarding the Concessionaire's operations. The State reserves the right to address and resolve any problems arising out of the Concessionaire's operations.
- P. Signs: The Concessionaire will request the State's advance written approval through the State's building permit process as stated in Section C of Article XI (Maintenance, Construction, and Ownership) before installation of any signage. The design and location of any sign must be approved by the Airport Manager prior to installation. The Concessionaire will, at its own expense, provide and install a business logo sign that fits the parameters specified by the Airport Manager or the Airport Manager's Representative.
- Q. Hazardous Substances
1. The Concessionaire will comply with all instructions of the State with regard to environmental concerns and requirements, regardless of whether based on specific law, regulation, or order of any governmental authority.
 2. All Hazardous Substances must be managed and disposed of in accordance with all Environmental Law and in a manner acceptable to the Alaska Department of Environmental Conservation, the U.S. Environmental Protection Agency, or any agency that may have authority over Hazardous Substances, and in compliance with the provisions of this Agreement. The Concessionaire agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling Hazardous Substances in accordance with all Environmental Law, the National Fire Code, and all other applicable local, state, and federal laws.
 3. If the Concessionaire, its agents, contractors, employees, guests, subconcessionaires, or Customers spill fuel, or if the presence of Hazardous Substances on the Airport arising from or connected with the Concessionaire's operations on the Airport results in the contamination of Airport property, the Concessionaire shall immediately notify the State and all applicable local, state, and federal agencies with jurisdiction and promptly take all actions, at the Concessionaire's sole expense, necessary to remediate the contamination and restore the area.
 4. Contamination remediation and restoration of the affected property must comply with all Environmental Law and other local, state, and federal laws, must not adversely impact the maintenance, operations, and future

development of the Airport as determined by the State, and must be consistent with the Airport master plan and reasonable airport planning. The Concessionaire will forward copies of any written spill reports and reports regarding action taken to the State as soon as they are available.

R. Activities on Airport

1. The Concessionaire shall assume full control and sole responsibility for the activities of the Concessionaire, the Concessionaire's personnel, employees, and agents on the Airport, and the Concessionaire's contractors, guests, and sublessees on the Premises.
2. The Concessionaire shall coordinate the Concessionaire's activities on the Airport with the Airport Manager and abide by the Airport Manager's decisions and directives regarding snow removal, maintenance, and general use of the Airport by the Concessionaire and the Concessionaire's personnel, employees, agents, contractors, and guests.
3. The Concessionaire shall perform all operations authorized by the State in a manner that ensures the safety of people and the Airport, the protection of public health and environment, and the safety and integrity of the Premises.
4. The Concessionaire shall immediately notify the Airport Manager of any condition, problem, malfunction, or other occurrence that threatens the safety of people or the airport, harm to public health or the environment, or the safety or integrity of the Premises.

ARTICLE XI: MAINTENANCE, CONSTRUCTION, AND OWNERSHIP

A. Maintenance

1. The Concessionaire will maintain the Premises in good repair and appearance and in a safe condition at all times. The Concessionaire will do or cause to be done without delay all those things that, in the determination of the State, are necessary in the interest of safety or to maintain the Premises in good repair and appearance.
2. At its own expense, the Concessionaire will maintain the Premises and make necessary repairs, structural or otherwise, including, but not limited to, doors, entrances, signs, floor coverings, interior walls, ceiling, counters, and cupboards. The Concessionaire will repair and paint the walls, at its own expense, periodically as determined by the State.
3. The Concessionaire will pay for damage to the facilities of any other Airport tenant or the State caused by the Concessionaire's lack of

adequate maintenance for any equipment, fixture, or system installed by the Concessionaire.

4. The State may perform any maintenance or repair the Concessionaire is obligated to perform but, following reasonable notice, has failed to do. The State will bill the Concessionaire for the cost of all labor and materials required to complete such work. The Concessionaire will pay the fees due the State within 30 calendar days of the date on the invoice.

B. General Construction Requirements: Any alteration, construction, or improvement performed by the Concessionaire will be neat, presentable, and compatible with the architecture of the Terminal, as determined by the State, and performed at no cost to the State. The Concessionaire will deliver detailed as-built drawings to the State within 30 days after completion of any permanent improvement. The as-built drawings must show the location and dimensions of any permanent improvements made by the Concessionaire.

C. Building Permit Process: The Concessionaire may not make repairs nor alter the Premises or the Ready-Return Spaces without first obtaining the State's prior written consent through the building permit process. The Concessionaire will complete a Terminal Building Permit Application form obtained from the State. Repairing and altering the Premises and the Ready-Return Spaces include, but are not limited to, the following:

1. Installation of carpet;
2. Installation or change of a lock;
3. Installation of an antenna;
4. Installation or repair of counters or shelving;
5. Installation of a sign or poster in the public-view area;
6. Installation or change of a telephone or data circuit;
7. Installation or change of the wall covering, wallpaper, or paint;
8. Electrical work; and
9. Any other repair or alteration that the State deems necessary to be approved through the building permit process.

The State may withhold its approval if the Concessionaire is behind on any obligation under this Agreement. The Concessionaire will make all repairs and alterations to the Premises and the Ready-Return Spaces at its own expense. The State has the right to approve the final repair or alteration.

D. Ownership: On expiration, cancellation, or termination of this Agreement, title to any structural or other improvements that the Concessionaire cannot, in the State's determination, remove without damage to the Premises or the Ready-Return Spaces, vests in the State. The Concessionaire retains title to all removable improvements except as specified in Section D of Article XVII (Cancellation by State), herein.

- E. Abandoned Property: Title to property abandoned by the Concessionaire on the Premises automatically vests in the State unless the property is contaminated with any Hazardous Substance or rejected by the department by a written notice to the Concessionaire or the property's automatic vesting would violate a statute or regulation.

ARTICLE XII: STATE SERVICES

- A. State Services: The State will perform the following services:
1. Maintain the structure of the Terminal, the roof, and exterior walls.
 2. Provide standard lighting, space heating and cooling, air ventilation, and electricity in the Premises and lighting in the Ready-Return Spaces.
 3. Wash the outside surface of all exterior Terminal windows as well as clean and maintain the public areas in the Terminal.
 4. Maintain the Terminal's electrical, public address, plumbing, air conditioning, and heating systems in good condition and repair. However, the State may refuse to maintain any system installed by the Concessionaire and may charge the Concessionaire for any repair necessary due to negligence by the Concessionaire during any such installation or as the result of any such installation.
 5. Provide electricity to the electrical outlets at the Ready-Return Spaces seasonally, with such electricity to be cycled on and off at a schedule to be determined by the State.
 6. Vacuum behind the ticket counter only.
 7. Empty only those trash receptacles located behind the ticket counter.
 8. Remove snow from the Ready-Return Spaces and the adjoining driveways in as timely a manner as possible.
- B. Repairs and Alterations: The State may make any repair or alteration necessary for the proper functioning of the Terminal or the Ready-Return Spaces without liability to the Concessionaire for any damages. The State will, except in the case of an emergency, make a reasonable effort to coordinate any repair or alteration on the Premises with the Concessionaire to minimize interference with the Concessionaire's activities on the Premises.
- C. Hold Harmless: The Concessionaire will waive any claim and hold the State harmless for damages from any failure or interruption of utility or other service

furnished by the State including, but not limited to, failure or interruption of electrical energy, space heating or cooling, or any public or passenger convenience.

ARTICLE XIII: ADDITION OR REDUCTION IN TERMINAL SPACE

- A. Addition in Space: If the Concessionaire requests additional space in the Terminal at a location separate from the Premises and the State determines such space is available and warranted, the additional space will be leased subject to public notice and other requirements of law relating to the leasing of State Airport Terminal space. The Concessionaire will lease the additional space under a separate agreement at the then-current Terminal rate at the Airport. However, the term of any such separate agreement will not exceed the term of this Agreement.
- B. Reduction in Space: If the Concessionaire determines that the use of any portion of the space included in the Premises and the Ready-Return Spaces is not economically feasible for the operation of the concession, the Concessionaire may, at the discretion of the State, reduce the space at the location. However, the Concessionaire first must be able to demonstrate to the State's satisfaction that discontinuance of a portion of the space is in the State's best interest. The State may require the Concessionaire to provide financial, statistical, and other data to support the Concessionaire's request for space reduction. Although the State may agree to reduce the space, the fees will remain the same.

ARTICLE XIV: STATE-DIRECTED RELOCATION

The Concessionaire acknowledges and agrees that the State may require the relocation of the Premises and/or the Ready-Return Spaces, in whole or in part, if the State determines that relocation is necessary to meet the needs of the traveling public at the Airport.

Upon a determination by the State that relocation is required, the following shall apply:

- A. State Responsibilities: The State, at its sole expense, will provide the new location with interior permanent improvements including, but not limited to, floors, ceiling, carpeting, lighting, electricity, wall finishes, heating and cooling, ventilation, and permanent fixtures similar in type and quality to those in the Premises, and paved parking with lighting and electricity for the Ready-Return Spaces.

- B. Concessionaire Responsibilities: The Concessionaire, at its sole expense, will do the following:
1. Remove all nonpermanent fixtures, furnishings, and equipment from the former Office-Counter Space, leaving the space in a neat, clean, and presentable condition to the satisfaction of the State.
 2. Provide any additional fixtures, furnishings, and equipment that the Concessionaire finds necessary or desirable to fully use the new Office-Counter Space.
 3. Vacate and surrender the former Office-Counter Space to the State when the new space is completed.
 4. Remove the Concessionaire's signs from Ready-Return Spaces formerly rented to the Concessionaire and provide and install signs at any new Ready-Return Spaces that are rented to the Concessionaire.

The State and the Concessionaire will perform their respective obligations under this Article in an expeditious manner, excluding delays that are beyond the control of the respective parties. The new Office-Counter Space will have a floor area similar in size to the space being vacated by the Concessionaire. The State will make every reasonable effort to ensure that the new space will provide access and exposure to passenger traffic similar to that of the former space. However, the State will not be responsible for any financial losses that the Concessionaire may incur due to relocation under this Article unless the losses are the result of a breach by the State of its obligations under this Article.

ARTICLE XV: LAWS AND TAXES

This Agreement is subject to all state laws and regulations, including those relating to leasing facilities and granting privileges at State Airports.

- A. Laws: At no expense to the State, the Concessionaire will conduct any activity or business authorized under this Agreement in compliance with all federal, state, and local laws, ordinances, regulations, and Airport rules that are either now or in the future in force that may apply to the business authorized under this Agreement, or to the use, care, operation, maintenance, and protection of the Airport, including matters of health, safety, sanitation, and pollution. The State is not liable to the Concessionaire for any diminution or deprivation of the Concessionaire's rights due to the exercise of any authority, nor is the Concessionaire entitled to terminate the whole or any portion of this Agreement by reason of the State's exercise of any authority.

The Concessionaire shall comply with applicable requirements imposed on the State by federal law to ensure that eligibility for federal money or for participation

in a federal aviation program by the State is not jeopardized and with all applicable orders issued by the Airport Manager.

- B. Taxes: The Concessionaire will obtain all necessary licenses and permits, pay all taxes lawfully imposed on its business, and pay any other fee or charge assessed under any applicable public statute, regulation, or ordinance.
- C. Disputes: In any dispute between the parties, the laws of the State of Alaska will govern and any lawsuit must be brought in the State courts of Alaska.
- D. Claims: The Concessionaire will notify the State of any claim, demand, or lawsuit arising out of the rights granted to the Concessionaire under this Agreement. At the State's request, the Concessionaire will cooperate and assist in the investigation and litigation of any claim, demand, or lawsuit that affects the rights granted the Concessionaire under this Agreement.

ARTICLE XVI: INDEMNIFICATION AND INSURANCE

A. Indemnification:

- 1. As to any amount paid to others for personal injury or property damage arising directly or indirectly from the Concessionaire's use or occupancy of the Premises, exercise of the privileges granted in this Agreement, or operations and activity on the Airport and with respect to which an act or omission of the State is a legal cause, the State and the Concessionaire shall reimburse each other according to the principles of comparative fault.
- 2. As to any and all liabilities, losses, suits, administrative actions, claims, awards, judgments, fines, demands, damages, injunctive relief, penalties, or other obligations of any nature or kind arising directly or indirectly from the Concessionaire's use or occupancy of the Premises, exercise of the privileges granted in this Agreement, or operations and activity on the Airport other than as described in Paragraph 1. of this section,
 - a. the Concessionaire will indemnify, save harmless, and defend the State, its officers, agents, and employees from and against, to the full extent of the loss or obligation, property damage, personal injury, death, violation of any regulation or grant agreement, or any other injury or harm, including attorney fees, consultant fees, expert fees, or other costs and expenses directly or indirectly arising from, connected to, or on account of this Agreement as it relates to the Concessionaire, the Concessionaire's activities at or relating to the Airport, or any act or omission by the Concessionaire, or by any of its officers, employees, agents, contractors, or subcontractees;

- b. however, notwithstanding (a) of this paragraph, if more than sixty (60) percent of the legal cause of the loss or obligation is due to the State's negligence or willful misconduct, the loss or obligation is to be apportioned between the State and the Concessionaire according to comparative fault.
3. As to any liability to a third party or other loss or obligation that is subject to apportionment according to comparative fault under this section, the State and the Concessionaire shall seek in good faith to achieve agreement to an apportionment of fault as between themselves without or independent of litigation. This apportionment of liability or loss between the State and the Concessionaire shall not be construed to affect the rights of any person who is not a party to this Agreement.
4. The Concessionaire shall give the State prompt notice of any suit, claim, action, or other matter affecting the State to which any portion of this section may apply, together with a copy of any letter by an attorney on behalf of a complainant, any complaint filed in court, and any notice or complaint by any regulatory agency. The Concessionaire shall also use counsel acceptable to the State and the Alaska Department of Law in carrying out its defense obligations under paragraph (2)(a) of this section. The State shall also have the right, at its option, to participate cooperatively in the defense of and settlement negotiations regarding any such matter without relieving the Concessionaire of any of its obligations under this provision. These indemnity obligations are in addition to, and not limited by, the Concessionaire's obligation to provide insurance, and shall survive the expiration or cancellation of this Agreement.

B. Insurance

1. The Concessionaire will, throughout the term of this Agreement and at its own expense, secure and keep in force adequate insurance, as stated below, to protect the State and the Concessionaire. Where specific limits are stated, they are the minimum acceptable limits. If the Concessionaire's insurance policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.
 - a. Comprehensive general liability insurance with coverage limits not less than \$1 million combined single limit per occurrence where generally applicable, including in-Terminal operations, independent contractors, products, and completed operations, broad-form property damage, blanket contractual, and personal injury endorsements.
 - b. Worker's compensation insurance with coverage for all employees engaged in work under this Agreement as required by

AS 23.30.045. The Concessionaire is responsible for worker's compensation insurance for any subcontractor who directly or indirectly provides services under this Agreement.

- c. Comprehensive automobile liability insurance covering all owned, hired, and non-owned Rental Cars with coverage limits not less than \$1 million combined single limit per occurrence.
 2. All insurance required by this Article must meet the following requirements:
 - a. Name the State as an additional insured for comprehensive general liability insurance.
 - b. Provide the State notification at least 30 calendar days before any termination, cancellation, or material change in insurance coverage.
 - c. Include a waiver of subrogation for worker's compensation insurance and automobile liability insurance so that the insurer waives all rights of subrogation against the State for payments made under the policy.
 3. The State and Concessionaire agree that the provisions of this Article are not intended to create a third-party benefit nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage under the terms or provisions of this Agreement.
 4. The Concessionaire agrees that if the Concessionaire's insurance coverage for the Premises or the Concessionaire's operations and activities lapses or is cancelled, the State has the right to halt the Concessionaire's operations and activities immediately upon written notice. The Concessionaire's operations and activities must remain halted until the State receives evidence that the Concessionaire has obtained current insurance coverage meeting the requirements of this Agreement. The State's halting of the Concessionaire's operations and activities is not a waiver or relinquishment of any provision of this Agreement.
 5. The State may revise the terms of these insurance requirements on written notice to the Concessionaire. The State will base any such revision on reasonable grounds.
- C. Evidence of Insurance Coverage: The Concessionaire will submit to the State proof of continuous insurance coverage in the form of insurance policies, certificates, endorsements, or a combination thereof, and signed by a person

authorized by the insurer to bind coverage on its behalf. The Concessionaire must submit evidence of insurance coverage by **October 1, 2016**. The effective date of the insurance will be no later than **October 1, 2016**.

- D. Obligations: The indemnification and insurance-coverage requirements stated in Sections A and B above do not relieve the Concessionaire of any other obligation under this Agreement.
- E. Increase or Revision: The State may increase the amount or revise the type of required insurance on written demand. The State will base any increase or revision on reasonable and justifiable grounds, subject to availability in the marketplace. Within 30 calendar days of the written demand, the Concessionaire will submit to the State evidence of insurance coverage that meets the requirements of the State.

ARTICLE XVII: CANCELLATION BY STATE

- A. Breach of Agreement: The State may cancel this Agreement and recover possession of the Premises and the Ready-Return Spaces by giving the Concessionaire 30 calendar days' advance written notice from the postmark date of such written notice, if any of the following events occur and the breach is not cured within the above-specified 30 days:
1. The Concessionaire fails to pay, when due, any rent, fee, penalty, or other charge due under this Agreement.
 2. A check for any payment to the State is returned for insufficient funds.
 3. The Concessionaire uses the Premises or the Ready-Return Spaces for purposes not authorized under this Agreement.
 4. A petition in bankruptcy is filed by or against the Concessionaire.
 5. A court enters a judgment of insolvency against the Concessionaire.
 6. A trustee or receiver is appointed for the Concessionaire's assets in a proceeding brought by or against the Concessionaire.
 7. A lien is filed against the Premises or the Ready-Return Spaces because of any act or omission of the Concessionaire and the lien is not removed, enjoined, or a bond of satisfaction of the lien is not posted within 60 calendar days.
 8. The Concessionaire fails to operate the business authorized under this Agreement on a continuous basis without the State's prior written approval.

9. The Concessionaire does not meet the State's DBE goal without adequately documenting to the State's satisfaction its good faith efforts to do so.
10. The cessation or deterioration of any service for any period that, in the determination of the State, materially and adversely affects the service the Concessionaire is required to perform under this Agreement.
11. The Concessionaire fails to perform any provision or covenant under this Agreement.

A cancellation notice issued by the State under this Article is stayed if, within the 30-day notice period, the Concessionaire begins and continues expeditious action to cure the breach in the case of a breach that is not reasonably curable within 30 calendar days. The determination of "expeditious action" and "not reasonably curable" is at the State's sole discretion.

The Concessionaire will not construe any waiver by the State of any default on the part of the Concessionaire in the performance of any provision, covenant, or condition to be performed, kept, or observed by the Concessionaire as a waiver by the State at any time thereafter of any other default or subsequent default in performance of any provision, covenant, or condition of this Agreement. After a State waiver of default in one or more instances, the State is not required to provide notice to the Concessionaire to restore or revive as time is of the essence under this Agreement. The waiver of any right or obligation under this Agreement is not effective nor binding on the Concessionaire unless it is in writing and signed on behalf of the State.

- B. State's Right of Reentry: As an additional remedy, on giving written notice of cancellation or termination, the State has the right to reenter any part of the Premises or the Ready-Return Spaces on the effective date of cancellation or termination without further notice of any kind, remove any persons or property, and regain and resume possession with or without the institution of summary or legal proceedings or otherwise. Any reentry, however, will not in any manner affect, alter, or diminish any obligation of the Concessionaire under this Agreement.
- C. Additional Rights of the State: On termination or cancellation of this Agreement or on reentry, the State may regain or resume possession of the Premises and the Ready-Return Spaces, may occupy the Premises and the Ready-Return Spaces, and may permit any person, firm, or corporation to enter on and use the Premises and the Ready-Return Spaces. Others may occupy any part of the Premises and the Ready-Return Spaces or the entire Premises or a part of the Premises together with other space for the time remaining under this Agreement, and on terms and conditions the same as those set forth under this Agreement.

The State also has the right to repair or to make any structural or other change in the Premises and the Ready-Return Spaces that is necessary, in the State's sole judgment, to maintain the suitability of the Premises and the Ready-Return Spaces for the uses and purposes similar to those granted under this Agreement without affecting, altering, or diminishing the obligations of the Concessionaire under this Agreement. The State will charge, and the Concessionaire will pay to the State, the cost of these repairs.

- D. Ownership of Equipment and Improvements: If the State cancels this Agreement due to a Concessionaire default, all of the Concessionaire's title and interest in furnishings, fixtures, equipment, and improvements the Concessionaire has installed on the Premises and in the Ready-Return Spaces vests in the State. The State may dispose of the items as it deems fit. The Concessionaire will reimburse the State for any cost the State incurs in removing and disposing of such items.
- E. Survival of Concessionaire's Obligations: If the State cancels or terminates this Agreement, all of the Concessionaire's obligations under this Agreement will survive in full force for the entire term of this Agreement. Subject to the State's obligation to mitigate damages, the fees and charges become due and payable to the State to the same extent, and at the same time, and in the same manner as if no termination or cancellation had occurred. The State may maintain separate actions to recover any moneys then due, or at its option and at any time may sue to recover the full deficiency. The amount of damages for the time subsequent to termination or cancellation will be the sum of the following:
1. The cumulative total of the Concessionaire's MINIMUM ANNUAL GUARANTEE obligation and Ready-Return Space fees, minus the amount paid before the effective date of cancellation.
 2. Title to all furnishings, fixtures, equipment, and improvements as provided in Section D of this Article.

The Concessionaire acknowledges that the damages specified in this Article do not affect the State's right to damages if termination or cancellation occurs before the Concessionaire receives any Gross Sales under this Agreement.

- F. Waiver of Redemption and Damages: The Concessionaire waives any right of redemption granted by or under any present or future law or statute if the Concessionaire is dispossessed for any cause, or if the State obtains or retains possession of the Premises and the Ready-Return Spaces in any lawful manner. The Concessionaire acknowledges that if it is necessary for the State to gain possession of the Premises and the Ready-Return Spaces, the total amount of damages to which the Concessionaire is entitled is the sum of one dollar (\$1). The Concessionaire also acknowledges that this provision may be filed in any action as its stipulation fixing the amount of damages to which it is entitled.

- G. Surrender of Possession: The Concessionaire will yield possession of the Premises and the Ready-Return Spaces to the State on the date of the termination, cancellation, or expiration of this Agreement promptly, peaceably, quietly, and in as good order and condition as the same now or later improved by the Concessionaire or the State, reasonable use and wear-and-tear excepted.

ARTICLE XVIII: CANCELLATION BY CONCESSIONAIRE

The Concessionaire may cancel this Agreement by giving the State 60 calendar days' advance written notice if any of the following events occur:

- A. The permanent abandonment of the Airport by all passenger airlines or the removal of all passenger airline service from the Airport for a period of at least 90 consecutive days.
- B. The lawful assumption by the United States government, or its authorized agent, of the operation, control, or use of the Airport, or any substantial part of the Airport, that restricts the Concessionaire from operating its business under this Agreement for a period of at least 90 consecutive days.
- C. A court of competent jurisdiction issues an injunction that prevents or restrains the use of the Airport by all airlines, provided the injunction remains in force for at least 90 consecutive days.

ARTICLE XIX: TRANSITION AT END OF TERM

- A. Subsequent Agreement Award: The Concessionaire acknowledges that on the expiration, cancellation, or termination of this Agreement, the State may award any subsequent In-Terminal Rental-Car Concession agreement by any legal means then available to the State
- B. Transition Schedule at Expiration or Cancellation of Agreement by Concessionaire
1. The Concessionaire understands that it is neither practical nor possible for the State to predict the exact transition schedule and procedure to best serve the needs of the traveling public and the State at the expiration of this Agreement under Article II (Term) or Concessionaire cancellation of this Agreement under Article XVIII (Cancellation by Concessionaire).
 2. Therefore, the Concessionaire will provide the State with a written notice of its transition plan for the State's approval at least 30 calendar days before turning the Premises and the Ready-Return Spaces over to a succeeding concessionaire. The Concessionaire will diligently execute its transition plans as approved by the State, abide by the time schedule

approved by the State, and cooperate with the State and the succeeding concessionaire in carrying out the transition plan. Should a dispute arise between the Concessionaire and the succeeding concessionaire during the transition period, the Concessionaire will abide by the decision of the State.

3. At the expiration of this Agreement under Article II (Term), or if the Concessionaire cancels this Agreement under Article XVIII (Cancellation by Concessionaire), the Concessionaire will either remove its personal property, furnishings, equipment, and fixtures from the Premises and the Ready-Return Spaces or, with prior approval from the State, negotiate a sale with the succeeding concessionaire. If the Concessionaire neither removes nor sells its personal property, furnishings, equipment, and fixtures within three calendar days after this Agreement expires or the Concessionaire cancels this Agreement, the State will remove, sell, or destroy the personal property, furnishings, equipment, and fixtures as it deems fit. The Concessionaire will reimburse the State for any cost the State incurs in such removal and disposal within 30 calendar days of the billing date.

- C. Vacation of Premises: The Concessionaire shall peaceably and quietly vacate the Premises and return possession to the State at the expiration, cancellation, or termination of this Agreement. The Concessionaire shall, after the expiration, cancellation, or termination of this Agreement and subject to any duty the State may have to mitigate damages, continue to pay rent to the State and to abide by all other obligations of this Agreement, including maintenance of the Premises and provision of evidence of insurance coverage for the Premises, through the date on which the Concessionaire relinquishes possession of and completely vacates the Premises, having, at the Concessionaire's expense and without cost to the State, remediated, consistent with applicable law, any environmental contamination the Concessionaire caused, materially contributed to, or assumed under an assignment; removed or otherwise disposed of any Concessionaire-owned permanent or removable improvements and personal property, as applicable; and restored the Premises to a neat and clean physical condition acceptable to the State.

ARTICLE XX: ASSIGNMENT OR SUBLETTING

- A. Prohibition: The Concessionaire will not mortgage, hypothecate, nor otherwise encumber or assign this Agreement or any interest herein, without the advance written consent of the State. Any attempted assignment, mortgage, hypothecation, or encumbrance of the concession rights or other violation of this Article is void and will confer no right, title, or interest in or to this Agreement on any assignee, mortgagee, encumbrancer, pledgee, lienholder, subtenant, successor, or purchaser.

The Concessionaire will not sublet the Premises or the Ready-Return Spaces or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, agents and employees of the Concessionaire excepted, to occupy or use the Premises or the Ready-Return Spaces or any portion thereof without first obtaining the written consent of the State. A consent by the State to one assignment, subletting, occupancy, or use by another party will not be deemed to be a consent to any subsequent assignment, subletting, occupancy, or use by another person or entity. Any such assignment, subletting, occupancy, or use by another person or entity without such consent by the State will be void and will, at the option of the State, terminate this Agreement. This Agreement will not, nor will any interest herein, be assignable as to the interest of the Concessionaire by operation of law without the written consent of the State. The State agrees that it will not unreasonably withhold its consent required hereunder.

The Concessionaire shall keep the Premises free of all liens other than by assignment for security purposes as approved in writing by the State and to pay any cost for labor and materials arising out of any construction or improvements by the Concessionaires on the Premises.

- B. Approval Process: The Concessionaire will submit three copies of any proposed assignment, subcontract, or sublease to the State for advance written approval. Each copy must bear original notarized signatures of all parties. All covenants and provisions of this Agreement extend to and bind the legal representatives, successors, and assignees of the parties. The State will, after careful review, approve or disapprove the request and will so inform the Concessionaire in writing.
- C. Merger, Consolidation, or Reorganization: The State will not unreasonably withhold its consent to an assignment of this Agreement by the Concessionaire to a corporation that results from a merger, consolidation, or reorganization of the Concessionaire to a corporation that purchases all or substantially all of the assets of the Concessionaire or to any corporation that controls or is controlled by or is under common control with the Concessionaire. For purposes of this Section, "control" of any corporation is deemed vested in the person or persons owning more than 50 percent of the voting power for electing the board of directors of the corporation.

ARTICLE XXI: GENERAL COVENANTS

- A. Execution by State: This Agreement is not effective until signed by the Commissioner of the Department of Transportation and Public Facilities or the Commissioner's designated representative.
- B. Approval by State: The State may not unreasonably withhold any approval required under this Agreement.

- C. Notices: Any notice required under this Lease must be hand-delivered or sent in such a way as to confirm receipt to the appropriate party at the address set out on page one of this Agreement or to any other address that the parties subsequently designate in writing by first class or higher priority service via the United States Postal Service, by a comparable level of delivery service via a nationally recognized private carrier of correspondence and other communications, or by electronic transmission. Unless otherwise agreed to in writing, the Concessionaire shall supply the State as promptly as possible, and in any event within fifteen (15) business days after the Concessionaire first receives or sends the same, a copy of any claim, report, complaint, notice, lien, warning, or asserted violation relating in any way to the Premises or the Concessionaire's use of the Airport.
- D. Modification: The Concessionaire acknowledges that the State may make any modification to this Agreement necessary to meet the revised requirements of federal or state grants, to operate the Airport, or to conform to the requirements of any revenue bond covenant to which the State of Alaska is a party and may do so without formal amendment. However, a modification may neither reduce the rights and privileges granted the Concessionaire under this Agreement nor cause the Concessionaire financial loss. The Concessionaire shall be notified of any such modification.
- E. Interrelationship of Provisions: All provisions of this Agreement and the associated bid documents, including the Invitation to Bid, the Instructions to Bidders, the Bid Questionnaire, the Bidder's Affidavit, the Bid Submittal form, the bid specifications, any addenda, and the required bid deposit are essential parts of this Agreement and are intended to be cooperative, to provide for the use of the Airport, and to describe the respective rights and obligations of the parties to this Agreement. Each party will fully perform all provisions of this Agreement and the associated bid documents. In case of a discrepancy, computed dimensions govern over scaled dimensions unless obviously incorrect.
- F. Validity of Parts: If a court of competent jurisdiction declares any part of this Agreement invalid, the remaining parts continue in full force.
- G. Radio Interference: At the State's request, the Concessionaire will discontinue the use of any machine or device that interferes with any government-operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.
- H. Nondiscrimination: The Concessionaire may not discriminate on the grounds of race, creed, color, religion, national origin, ancestry, age, sex, or disability against any Customer, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or State law. The

Concessionaire recognizes the right of the State to take any action necessary to enforce this covenant, including actions required by any federal or State law.

- I. Affirmative Action: The Concessionaire will undertake any affirmative action program required by 14 CFR, Part 152, Subpart E, to insure that no person will be excluded from participating in any employment activity covered by 14 CFR, Part 152, Subpart E, on the grounds of race, creed, color, national origin, ancestry, age, sex, or disability. The Concessionaire may not exclude any person on these grounds from participating in or receiving the services or benefits of any program or activity covered by the subpart. The Concessionaire further understands that it will require its covered suborganizations to provide assurances to the State that they will also undertake affirmative action programs and require assurances from their suborganizations, as required by 14 CFR, Part 152, Subpart E.
- J. National Emergency: If the federal government declares a national emergency, the Concessionaire may not hold the State liable for its inability to perform any part of this Agreement resulting from the national emergency.
- K. No Waiver: The State's failure to insist in any one or more instances on the strict performance by the Concessionaire of any provision or Article in this Agreement is not a waiver nor relinquishment for the future, but the provision or Article will continue in full force. A State waiver of any provision or Article in this Agreement cannot be enforced nor relied on unless the waiver is in writing and signed on behalf of the State.
- L. Disasters: If, in the determination of the State, a fire, flood, earthquake or other disaster damages the Airport so extensively as to render it untenable, either party may elect to terminate this Agreement on 30 calendar days' written notice to the other party. If this Agreement is terminated because of a disaster, the State will prorate the fees payable under this Agreement up to the time the Airport becomes untenable.
- M. Condemnation: If, during the term of this Agreement, all or a portion of the Premises is taken by negotiation, court action, or otherwise by any entity or person vested with the power of eminent domain, including the State, the provisions of 17 AAC 42.255, as amended and as applicable, will govern.
- N. Quiet Enjoyment: The State covenants that it has full, unencumbered title to the Airport; that it has the right and lawful authority to execute this Agreement; and that the Concessionaire will have, hold, and enjoy peaceful and uninterrupted use of the Airport, subject to the terms and conditions stated in this agreement.
- O. Captions: The captions of the Articles and Sections of this Agreement are for convenience only and do not necessarily define, limit, describe, or construe the

contents of any Article or Section. The use of the singular or plural form of words is intended to include both the singular and plural, as appropriate.

- P. Entire Agreement: This Agreement, including any amendments, constitutes the entire Agreement between the parties. No modification or amendment of this Agreement is effective unless in writing and bearing notarized signatures of both parties, except as stated in Section D above or otherwise authorized under this Agreement.
- Q. Force Majeure: Neither the State nor the Concessionaire is in violation of this Agreement for nonperformance to the extent that performance is prevented by reason of strike, boycott, labor dispute, embargo, shortage of energy or materials, an act of God, an act of the public enemy, an act of superior governmental authority, weather conditions, riot, rebellion, sabotage, or any other circumstance for which the obligated party is not responsible and which is beyond its control. This provision does not, however, excuse the Concessionaire's obligation to pay fees accrued before, or continuing to accrue on business transacted before or in spite of, an event or condition listed in this provision.
- R. Costs and Fees Incurred to Enforce Agreement: The Concessionaire shall pay, within 30 days of the billing date, any cost or damage that the State incurs due to any failure of the Concessionaire to comply with a provision of this Agreement, including a cost, to include legal and administrative costs, to correct a violation that creates an imminent threat to public health or safety. Such costs and damages shall include any expense incurred by the State to correct a violation of a term of this Agreement, as well as all reasonable actual expenses, costs, and attorney fees the State may incur, with or without formal action, to enforce, defend, or protect this Agreement or the State's rights under this Agreement, including any expense incurred with respect to environmental compliance or bankruptcy. Any amount payable under this section will be subject to Article V (FEES and PAYMENTS) and will be subject to default for nonpayment under Article XVII (CANCELLATION BY STATE). All remedies of the State under this Agreement are cumulative and in addition to any and all other remedies available at law or equity. The protest and appeal procedures of 17 AAC 42.910 and 42.920 constitute the sole procedures for review of a decision by or action of the State with respect to this Agreement.

EXHIBIT A – OFFICE-COUNTER SPACE

EXHIBIT B – READY-RETURN SPACES

**EXHIBIT C
CERTIFIED ACTIVITY REPORT
IN-TERMINAL RENTAL-CAR CONCESSION AGREEMENT ADA-@ (SA-90807)**

For the month of _____, 20__

The Concessionaire pays on a monthly basis a concession fee equal to the greater of ten percent of Gross Sales or one-twelfth of the MINIMUM ANNUAL GUARANTEE (MAG).

*During any Agreement Year, if Concessionaire's cumulative Concession Fee payments, excluding Ready-Return Space fees, equal the MAG, Concessionaire will pay only the percentage fee and the Ready-Return Space fees for the remainder of that Agreement Year, beginning the month after the MAG is met. The MAG is \$_____.

	<u>Gross Sales</u>	<u>10% Fee Calculated</u>	or	<u>1/12 of MAG</u>	<u>Cumulative YTD Concession Fees</u>	<u>Concession Fee Due This Month</u>
July	_____.	_____.	or	_____.	_____.	_____.
August	_____.	_____.	or	_____.	_____.	_____.
September	_____.	_____.	or	_____.	_____.	_____.
October	_____.	_____.	or	_____.	_____.	_____.
November	_____.	_____.	or	_____.	_____.	_____.
December	_____.	_____.	or	_____.	_____.	_____.
January	_____.	_____.	or	_____.	_____.	_____.
February	_____.	_____.	or	_____.	_____.	_____.
March	_____.	_____.	or	_____.	_____.	_____.
April	_____.	_____.	or	_____.	_____.	_____.
May	_____.	_____.	or	_____.	_____.	_____.
June	_____.	_____.	or	_____.	_____.	_____.

Plus: Ready-Return Space Fees Due this Month: _____ spaces x \$50/month + \$_____

**EXHIBIT C
CERTIFIED ACTIVITY REPORT
IN-TERMINAL RENTAL-CAR CONCESSION AGREEMENT ADA-@ (SA-90807)**

TOTAL FEES DUE THIS MONTH: = \$ _____

Other Information:

- 1. Gross Sales Attributed to a DBE: \$ _____
- 2. Gross Sales earned from Valet Parking Transactions: \$ _____
- 3. Number of Valet-Parking Transactions: _____

Certification: I hereby certify that the above is a true statement from the records of

Signature: _____

Date Prepared: _____

Title: _____

This report and payment are due by the 20th day of each month for the previous month's activity.

EXHIBIT D: SAMPLE CERTIFIED AUDITED STATEMENT OF GROSS SALES

EXHIBIT E: RESTRICTED ACCESS AND TOWER-CONTROLLED AREAS

IN WITNESS WHEREOF, the parties have set their hands the day and year stated in the acknowledgments below.

(Corporate Seal) _____(entity)

_____ (dba entity)

Signature

Title

STATE OF _____)
) ss.
)

(Judicial District or County)

THIS IS TO CERTIFY that on this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____ known to me to be (an) officer(s) of the above mentioned corporation who executed the foregoing instrument, and he/she/they acknowledged to me that he/she/they signed the same for and on behalf of said corporation, and that he/she/they is/are fully authorized by said corporation so to do; and that the corporate seal affixed to said instrument is the corporate seal of said corporation.

Notary Public in and for: _____
My Commission Expires: _____

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

STATE OF ALASKA)
) ss.
FOURTH JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, known to me and to me known to be the _____, Fairbanks International Airport, and who acknowledged before me that the foregoing instrument was freely and voluntarily executed on behalf of the State of Alaska, Department of Transportation and Public Facilities, Fairbanks International Airport, for the uses and purposes set forth and with full authority of the State of Alaska so to do.

Notary Public in and for Alaska
My Commission Expires: _____