

Northwest Regional Airport Authority

**Request for Proposal for the Operation
of On-Airport Rental Car Concessions at
Cherry Capital Airport**

Mandatory Pre-Proposal Meeting

April 11, 2023, at 1:00p.m. EST

**Cherry Capital Airport
Board Room
727 Fly Don't Drive
Traverse City, MI 49684**

**Proposals will not be accepted from bidders
who do not attend the mandatory pre-bid meeting**

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**NORTHWEST REGIONAL AIRPORT AUTHORITY
REQUEST FOR PROPOSAL
FOR THE OPERATION OF ON-AIRPORT
RENTAL CAR CONCESSIONS AT
CHERRY CAPITAL AIRPORT**

SECTION 1: INTRODUCTION

The Northwest Regional Airport Authority (hereinafter the “Authority”) is seeking competitive proposals from qualified rental car companies (hereinafter “RACs” or singularly “RAC”) interested in operating on-Airport rental car concessions at the Cherry Capital Airport in Traverse City Michigan (sometimes referred to herein as the “Airport”). The Authority will award up to five (5) on-Airport rental car concession agreements to qualified proposers. Although it is the Authority’s intent to award up to five (5) rental car privileges, an award to less than five (5) companies will not invalidate the process of awarding car rental privileges nor lessen the obligation of successful bidders to execute the Concession Agreement and Service Facility Lease. If the Authority awards less than five (5) rental car privileges, the Authority reserves the right to award the remaining amount of intended privileges up to five (5) on-Airport rental car concession agreements to qualified proposers during the term of this award, under the same terms and qualifications provided herein. Key deadlines for this Request for Proposals include the following: (*Please note that dates are subject to change.)

5 p.m.	March 24, 2023	Deadline for first submission of written questions/comments
1 p.m.	April 11, 2023	Mandatory Pre-Proposal Meeting <i>In-person attendance required</i>
	April 14, 2023	Issue Addendum (if required)
11 a.m.	April 24, 2023	Proposal submission deadline
	April 24 to April 26, 2023	Evaluation of Proposals
	April 26, 2023	Notice of Award
	May 1, 2023	Commencement of Contract

SECTION 2: THE RENTAL CAR CONCESSION

Key aspects of the on-airport rental car concession include the following:

A. Concession Agreement

The Concession Agreement grants concessionaires the right to operate a rental car concession at the airport on a nonexclusive basis. A draft of the Concession Agreement is attached as *Exhibit D*. Significant provisions include the following:

- 1) The Concession Agreement will be for a period of five (5) years. It grants the right to operate an on-Airport rental car concession and provides for the use of a counter, office space, auto storage, and the ready/return area at the Airport. In the event of a conflict between the Concession Agreement and the provisions of the Request for Proposal (“RFP”) documents, the Concession Agreement will prevail.
- 2) The concession fee shall be 10% of Gross Revenues generated at Cherry Capital Airport or the Minimum Annual Guarantee (hereinafter “MAG”), whichever is greater, and said fee shall apply at all RAC’s locations within 10 miles of the Cherry Capital Airport.
- 3) Gross Revenues do not include revenue generated from Local Customers who rent vehicles at off-Airport locations. Off-Airport locations are defined as any rental facility within 10 miles of Cherry Capital Airport that is not located on Airport property. Local Customers are defined as customers whose driver’s license reflect an address with one of the following U.S. Postal Service Zip Codes: 49611, 49612, 49615, 49616, 49617, 49618, 49620, 49621, 49622, 49628, 49629, 49630, 49633, 49635, 49636, 49637, 49640, 49643, 49646, 49648, 49649, 49650, 49653, 49654, 49659, 49664, 49666, 49670, 49676, 49680, 49682, 49683, 49684, 49685, 49686, 49690, 49696, 49727, 49729, 49730.
- 4) Gross Revenues do not include revenue generated from Non-Local Customers who rent vehicles at off-Airport locations and who sign an affidavit attesting to the fact that they did not arrive in Traverse City via the Cherry Capital Airport within the prior 48 hours. A Non-Local Customer is any customer whose driver’s license reflects an address with a U.S. Postal Service Zip Code other than: 49611, 49612, 49615, 49616, 49617, 49618, 49620, 49621, 49622, 49628, 49629, 49630, 49633, 49635, 49636, 49637, 49640, 49643, 49646, 49648, 49649, 49650, 49653, 49654, 49659, 49664, 49666, 49670, 49676, 49680, 49682, 49683, 49684, 49685, 49686, 49690, 49696, 49727, 49729, 49730.
- 5) Gross Revenues do include revenue from all customers, including Local Customers, who rent vehicles at a RAC’s Cherry Capital Airport location (“On Airport”).
- 6) Concessionaire shall provide a plan for keeping the Concession Premises open for business during such times as necessary to meet reasonable demands for vehicle rental services from potential Airport Customers, as determined by the CEO or designee. At a minimum, Concessionaire shall provide automobile rental service in the Cherry Capital Airport Terminal Building in such a manner to meet at least ninety percent (90%) of all scheduled air carrier flights between the hours of 7:00 a.m. and 12:00 midnight. Except in case of an emergency, customer service counters shall be staffed during all hours of operation. In the event that customer service counters cannot be

staffed because of an emergency, Concessionaire shall provide a self-service kiosk or information in a place visible to the public that provides the public with direct communication to staff or agents of Concessionaire who can provide services to potential Airport Customers.

- 7) Any effort to divert customers away from the RAC's On Airport location or any other RAC facility subject to the concession fee shall be considered a violation of the Concession Agreement and will be cause for termination of the offending RAC's Concession Agreement. Examples of efforts to divert customers away from the RAC's On-Airport location may include, but are not limited to the following: efforts to assist, or actual assistance given a customer of an RAC to modify or terminate a car rental agreement prior to the duration or term intended by the rental car customer, and which later results in the modification of a car rental agreement or entry of a new car rental agreement with the RAC at an off-Airport location; transporting or assisting in the transportation of a customer or potential customer of RAC, or otherwise encouraging a customer or potential customer that arrived in Traverse City via the Cherry Capital Airport, to an off-Airport location of the RAC for the intended purpose of entering a rental car agreement; encouraging or otherwise offering assistance to a customer or a potential customer to seek transportation from the Airport to the RAC's off-Airport location for the purposes of entering a rental car agreement.
- 8) Rental vehicles left in the Authority's paid parking lots will be subject to the then applicable parking rates which must be paid upon exit from the lot.
- 9) The Concession Agreement provided in *Exhibit D* is an example of form and language related to current agreements. The Authority reserves the right to modify language and terms in any Concession Agreement awarded from the Proposal.

B. Terminal Counter and Office Space

Each RAC will be provided counter and office space in the terminal. A diagram of the proposed counter area is attached as *Exhibit C*. Unless otherwise agreed by the selected RACs, counters will be selected based on first year MAG. In such an event, the RAC with the highest MAG will have first choice, the RAC with the second highest MAG will have second choice, etc. All ties will be resolved by drawing lots. Current counter and office space is **\$39.23** per square foot per annum. This rental fee shall be considered a base rental fee, and shall be adjusted to reflect an increase of two percent (2%) per annum based on the prior year's rental fee, effective **May 1** of each year during the term of the lease, or any extensions. The square footage of each counter and office space area is reflected in *Exhibit C*.

C. Ready/Return Spaces

Approximately 196 spaces will be available in the ready/return area. The fee per space will be determined by a formula allocating the square footage of the ready car lot divided by the number of ready car slots assigned, and multiplied by the Board's current ground rental rate, which will be assessed on a per ready/return space per month. The current rate is **\$12.95** for each space. This rental fee shall be considered a base rental fee, and shall be

adjusted to reflect an increase of two percent (2%) per annum based on the prior year's rental fee, effective **May 1** of each year during the term of the lease, or any extensions.

Unless otherwise agreed by the selected RACs, ready/return spaces will be allocated based on the proportion of first year MAG, subject to a minimum of 20 spaces. In other words, each RAC will receive the greater of 20 ready/return spaces or the number of ready/return spaces calculated by dividing the RAC's first year MAG by the combined first year MAGs of all RACs and then multiplying that figure by the number of available ready/return spaces.

For example, assume the combined first year MAG of all RACs granted an on-airport rental car concession is \$500,000. ABC RAC bid \$30,000, which represents 6% ($\$30,000/\$500,000 = 6\%$) of the combined first year MAGs. Based on its proportionate share of the combined first year MAG, ABC RAC would only receive 12 ready/return spaces (i.e. 6% of 196). Consequently, ABC RAC will receive the required minimum of 20 spaces. On the other hand, assume XYZ RAC proposed a first year MAG of \$100,000. XYZ RAC would receive 20% ($\$100,000/\$500,000 = 20\%$) of the available ready/return spaces. Note, however, that XYZ RAC will not receive 20% of the total ready/return spaces. Rather, XYZ RAC will receive 21% ($\$100,000/\$470,000 = 21\%$) of the spaces remaining after the RACs receiving the minimum number of spaces receive their allocation, and the share of MAG is recalculated for the companies eligible for the remaining spaces. In this case, assuming ABC RAC was the only company of five (5) receiving the minimum of 20 spaces, XYZ RAC will receive 40 spaces (i.e., remaining spaces = $196 - 100 (5 \times 20) = 21\%$ of $76 = 20$, plus base allocation of 20 spaces = 40 total).

The location of each individual RAC's ready/return spaces will be determined at a meeting at the Cherry Capital Airport once the On-Airport RACs are selected. Each RAC shall be responsible for providing snow removal and basic surface maintenance for each ready/return space allocated. The RACs will have an opportunity to reach a unanimous consensus regarding the location of each company's ready/return area. In the event the RACs cannot reach consensus, the Authority's Chief Executive Officer (hereinafter "CEO") or their designee shall have the absolute right to assign ready/return locations based upon the best interests of the Cherry Capital Airport and the traveling public. The CEO's decision shall be final.

Ready/return spaces will be reallocated at the conclusion of each contract year unless waived by the RACs. If reallocation occurs, it will be based on market share for the preceding contract year, subject to the minimum of 20 spaces as stated above. As with the initial allocation, the RACs will be given an opportunity to reach a unanimous consensus regarding the location of each company's ready/return spaces. In the event RACs cannot reach a unanimous consensus, the CEO or their designee shall have the absolute right to assign ready/return space locations based upon the best interests of the Cherry Capital Airport and the traveling public. The CEO's decision shall be final.

Upon 30 days notice, the CEO shall have the right to reclaim ready/return spaces when, in the CEO's sole discretion, it is in the best interests of the Cherry Capital Airport and the traveling public.

D. The Service Facility

RACs awarded On-Airport rental car concessions will be required to enter into a contract for the use of space in the 5.1± acre service facility. The Service Facility Lease Agreement is attached as *Exhibit E*. The rent will be determined by a formula allocating the square footage of the Service Facility multiplied by the Board's current ground rental rate, which will be assessed on a per square foot per annum basis. The current ground rental rate is **\$0.28** per square foot per annum. This rental fee shall be considered a base rental fee, and will be adjusted to reflect an increase of two percent (2%) per annum based on the prior year's rental fee, effective **May 1** of each year during the term of the lease, or any extensions. Exclusive use space in the service facility will be allocated based on the proportion of first year MAG, subject to a minimum square footage. Exclusive use space will be reallocated at the conclusion of each contract year unless waived by the RACs. Any reallocation will be based on market share for the preceding contract year, subject to the minimum square footage as stated above. Each RAC shall be responsible for the rent on its exclusive use space plus its share of the ground rent on the common use space. Rent for the common use areas will be allocated to each RAC based on the percentage of exclusive use space the RAC occupies in the service facility. For example, an RAC that occupies 20% of the exclusive use service facility area will be responsible for 20% of the ground rent on the common use areas.

The location of each individual RAC's service facility space will be determined at a meeting at Cherry Capital Airport once the On-Airport RACs are selected. The RACs will have an opportunity to reach a unanimous consensus regarding the location of each company's service facility space. In the event RACs cannot reach consensus, the CEO or their designee shall have the absolute right to assign service facility space based upon the best interests of the Cherry Capital Airport and the traveling public. The CEO's decision shall be final. The reallocation of service facility space at the conclusion of each contract year will be handled in the same manner.

Under the terms of the Service Facility Agreement, the RACs will be required to form a consortium for the operation and maintenance of the Service Facility, including the payment of all utilities and snowplowing related to the Service Facility. The RAC consortium will be responsible for all maintenance and upkeep of the service facility, the associated equipment, and buildings. This consortium must be formed within thirty (30) days of the awarding of this Agreement, and the terms and conditions of the consortium agreements shall be approved as to form by the Authority. In the event that the consortium is not formed for any reason within the timeline referenced herein, the Authority may create a consortium in the form of a Michigan co-partnership and each RAC shall automatically become a co-partner of said consortium in order to accept the award of a concession agreement. In the event that the form of the consortium is completed and administered by the Authority, the consortium shall reimburse the Authority all of its costs to complete the formation, including legal fees.

The Service Facility Lease Agreement shall include an addendum providing non-exclusive right to use a 6,000 gallon above-ground fuel tank system providing vehicle fuel for the rental cars. Use of the fuel farm is a mandatory requirement and a condition of the Service Facility Lease. The RAC shall pay as rental for the use of the fuel tank a monthly

volume-based fee, which shall be calculated each month by the following formula: number of gallons dispensed by the RAC x (times) average price of fuel + (plus) 12.5% administrative fee for operation + (plus) state and federal fuel taxes paid by the Northwest Regional Airport Authority.

E. The Minimum Annual Guarantee

Each interested RAC will be required to submit a proposed MAG for the first year of the Concession Agreement. The first year MAG must equal or exceed **\$100,000.00**. For years two through five it shall be seventy-five percent (75%) of either the Concession Fees paid during the prior year or the prior year's MAG, whichever is greater.

F. The Customer Facility Charge

Each RAC selected to operate an On-Airport rental car concession shall be required to collect a Customer Facility Charge (hereinafter "CFC") as required by an ordinance of the Northwest Regional Airport Authority, and any subsequent amendments. RACs are required to notify customers of the CFC when the customer makes their reservation. The rental agreement and invoice shall clearly identify the CFC in a manner approved by the CEO.

RACs shall remit CFC collections to the Board not later than the 15th day of each subsequent month. Under no circumstances are CFC collections to be viewed as RAC property. Rather, prior to remittance, CFC collections shall be held by the RAC as a bailee for the benefit of the Authority. All CFC collections held by the RAC shall be separately accounted for and considered the property of the Authority.

CFC collections remitted to the Northwest Regional Airport Authority shall be deposited into a separate account for use as directed by the CEO or their designee.

Collection of the CFC shall begin contemporaneous with the effective date of Concession Agreement. The CFC is applicable to all transactions subject to the Concession Fee under the Concession Agreement.

G. Dual Branding

Brand is a comprehensive term that includes all brand names and trademarks and shall be defined as an identifying mark, symbol, word, or combination of same that separate one firm's product or services from another firms. The Concessionaire shall be permitted to have more than one brand in its operation under this Agreement provided Concessionaire indicated such dual branding in its response to the Authority's Request for Proposal, and each brand is owned by the Concessionaire and the Concessionaire only. Any combination of two or more rental car concession operators' brands will not be permitted at the Airport.

SECTION 3: MANDATORY PRE-PROPOSAL MEETING

A Mandatory in-person Pre-Proposal Meeting will be held on **April 11, 2023, at 1 p.m.**, in the Authority's conference room located on the second floor of the airline terminal – 727 Fly Don't Drive, Traverse City, Michigan. RACs should announce their arrival and register prior to 1:00 p.m.

The purpose of the Pre-Proposal Meeting will be to discuss any questions interested RACs may have regarding the RFP. Interested RACs must attend this meeting in order to qualify and be eligible to submit a bid. Questions concerning the RFP should be brought to the Pre-Proposal Meeting or written questions can be emailed, mailed, or faxed to:

Mark H. Bishop
Chief Financial Officer
Cherry Capital Airport
727 Fly Don't Drive
Traverse City, MI 49686
Fax: (231) 947-4329
Email: mark.bishop@tvcairport.com

Proposals will not be accepted from bidders who do not attend the Mandatory Proposal Meeting.

SECTION 4: PROPOSAL SUBMISSION

A. Interested RACs Responsible for Reviewing RFP Documents

Interested RACs are responsible for reading and understanding the RFP documents. The failure to review or understand these documents shall not be grounds for relief from the responsibilities and obligations contained therein.

B. Contents of Proposal

Each proposal must include the following items:

- 1) Proposal Form – Each RAC must set forth its proposed MAG for contract year one on the proposal form that is attached as *Exhibit A*.
- 2) Information required pursuant to the Qualifications and Experience Questionnaire attached as *Exhibit B*.

C. Delivery of Proposal

- 1) Proposals must be delivered by hand, courier or mail in a sealed envelope or package. The front of the envelope or package must reflect the interested RAC's name and address and the notation "Proposal for Rental Car Concession." Proposals must be delivered to the following:

Mark H. Bishop
Chief Financial Officer
Cherry Capital Airport
Administrative Office
727 Fly Don't Drive
Traverse City, MI 49686

- 2) Proposals must be in the possession of the CFO no later than **11:00 a.m.**, Eastern Standard Time, **April 24, 2023**. The CFO shall have the discretion to reject proposals received after the specified time and date.
- 3) Proposals will be publicly opened on **April 24, 2023, at 11:00 a.m. (EST)** in the Authority's conference room within the airline terminal at Cherry Capital Airport. Each interested RAC's name and proposed MAG will be read aloud.
- 4) Upon written request, an interested RAC may withdraw its proposal prior to the public opening.

D. Eligibility Requirements and Evaluation Criteria

Interested RACS must demonstrate that they possess the knowledge, experience, skill, and personnel necessary to operate a first-class rental car concession, and that they are capable of performing the obligations under the Concession Agreement. Required qualifications include the following:

- 1) National reservations system;
- 2) The ability to acquire a fleet of automobiles adequate to provide efficient and courteous rent-a-car service consistent with existing rules, regulations, and ordinances of the Authority. All automobiles must be recent models or models of the immediately two preceding years.
- 3) The interested RAC must be current in all payments obligated to the Authority, if any.
- 4) Personnel working within the Cherry Capital Airport must wear appropriate business attire or company uniform while on duty.
- 5) Representative attendance at the Mandatory Pre-Proposal Meeting.

E. Proposal Guarantee

- 1) Interested RACs must submit with their proposal a proposal guarantee consisting of a five thousand dollar (\$5,000) bid bond, letter of credit, cashiers check, or money order payable to the Cherry Capital Airport.
- 2) The proposal guarantee will be returned without interest to RACs that are not awarded an on-airport concession.

- 3) A RAC awarded an on-airport concession will forfeit its proposal guarantee in the event it fails to enter into a Concession Agreement, a Service Facility Lease Agreement (and its addenda), and other documentation, as required.
- 4) The proposal guarantee will be returned to RACs that are selected for an On-Airport concession within ten (10) days once the following events occur: Execution of Concession Agreement and Service Facility Agreement and submission of other documents required by the selected RAC.

SECTION 5: REJECTION OF PROPOSALS

Any of the following causes may constitute sufficient reason for rejection of a proposal:

- 1) The failure to complete the proposal in accordance with the requirements of this Request for Proposals, including the requirement to provide a plan for keeping the Concession Premises open for business during such times as necessary to meet reasonable demands for vehicle rental services from potential Airport Customers as set forth in Section 2, A. 6.
- 2) Any conduct by the interested RAC or an associated individual that constitutes lawful grounds for rejecting the proposal.
- 3) Any participation in collusive proposing or bidding.
- 4) Failure to meet all evaluation/selection criteria.
- 5) The RAC or its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into agreement with any federal agency or department or any agency or political subdivision of the State of Michigan.
- 6) Default or termination of other contracts with the Authority.
- 7) Any outstanding monies due to the Authority not current as of April 24, 2023.

SECTION 6: AUTHORITY'S RESERVATION OF RIGHTS

- A. The Authority reserves the right to waive any irregularities (including those identified in Section 5A) in proposals received from interested RACs and to act in the best interest of the Cherry Capital Airport and the traveling public in selecting On-Airport RACs, which may include the following:
 - 1) Waive any informality in any bid or any proposal or procedure.
 - 2) Reject or cancel any or all proposals.
 - 3) Reissue the request for proposal with or without modification.
 - 4) Negotiate all bid elements with entities of its choice.

- 5) Any other option deemed by the Authority to be in the Authority's best interest.

SECTION 7: AWARD OF CONCESSION AGREEMENT

The Authority will award Concession Agreements to up to five (5) qualified RACs submitting the best proposals. Criteria to be used to judge the proposals shall include:

- A. The proposed MAG.
- B. Factors relating to the experience, management capability, financial qualifications, and services offered to the public. In addition, criteria will be evaluated against the Authority's obligations regarding certain agreements entered into with the Federal Aviation Administration, including those obligations described as "Sponsor Assurances" which guide and direct many of the activities conducted on the Airport. As a part of the Authority's agreements with the Federal Aviation Administration, consideration of the Authority's performance pursuant to 49 CFR, Part 23, Disadvantaged Business Enterprises (DBE), and 14 CFR, Part 152, Affirmative Action Employment Programs, may be additional factors relied upon by the Authority in the awarding of concession agreements.

SECTION 8: FAILURE TO EXECUTE CONCESSION AGREEMENT AND SUPPLY DOCUMENTATION

Any RAC selected for an On-Airport Concession that fails to deliver an executed Concession Agreement and Service Facility Lease Agreement, and other required documentation to the CEO within thirty (30) days after submitted by the Authority to the RAC will forfeit its proposal guarantee. This forfeiture represents liquidated damages and shall in no way be considered a penalty.

SECTION 9: RIGHTS RESERVED BY THE AUTHORITY

A. Right to Modify Proposal Documents

The Authority reserves the right to modify or amend any provision of these proposal documents, including the Concession Agreement and the Service Facility Agreement. Interested RACs are cautioned to rely solely on the contents of this RFP and subsequent written amendments in preparing their proposals. The Authority shall not be bound by any oral instructions, comments, or recommendations of any kind. The Authority reserves the right to award up to five (5) RAC concession agreements unless otherwise specified.

B. Right to Reject Any or All Proposals

The Authority reserves the right, in its sole discretion, to reject any and all proposals if it determines that such rejection is in the best interests of the Authority or the traveling public. The Authority further reserves the right to waive any formalities, waive any requirements or specifications, accept any proposal advantageous to it, and negotiate with the selected RACs changes, deletions or additions to the provisions of the Concession Agreement in the Authority's sole discretion.

C. Right to Cancel Award of Concession Agreements

The award of concessions pursuant to this RFP shall not become official until the Authority accepts and approves executed Concession and Service Facility Agreements. The Authority shall have the right to withdraw this RFP and cancel the award of concessions at any time prior to that action. In the event the RFP is withdrawn and the award of concessions canceled, RACs shall have no claim against the Authority or its officers, board members, employees or agents.

D. Ownership of Proposals

Proposals submitted pursuant to this RFP shall become the property of the Northwest Regional Airport Authority and will not be returned.

Anyone submitting a proposal should be aware that all proposals and information submitted may become subject to public inspection following award of the contract, except for information that is not subject to disclosure under applicable law. Each proposer should consider this possibility and, where trade secrets or other proprietary information may be involved, may choose to provide in lieu of such proprietary information, an explanation as to why such information is not provided in its proposal. However, those submitting proposals may be required to submit such required information before further consideration.

E. Multiple Proposals Prohibited

Multiple proposals will be rejected. Anyone submitting a proposal will be required to do business as the brand or brands listed on the proposer's response. Anyone submitting a proposal may only submit one proposal and may not participate in multiple structures or formats.

F. Conflict of Interest

Employees of companies who submit a successful proposal may not be involved with any other Airport-related business during the term of the lease and concession agreement, as an employee, owner, partner, consultant, etc., in a manner that could give rise to a conflict of interest. All determinations regarding potential conflicts of interest under the Lease and Concession Agreement for any affected employee or for any firm or person who submits a successful proposal shall be resolved by the CEO, whose decision shall be final.

G. Public Accommodation Laws

Any firm or person submitting a proposal shall comply fully with applicable laws and regulations governing nondiscrimination in public accommodations in commercial facilities including, without limitation, the requirements of the Americans with Disabilities Act and all regulations thereunder.

H. Airport Concessions Disadvantaged Business Enterprise Participation

The requirements of 49 CFR Part 23, Regulations of the U.S. Department of Transportation, apply to this concession. It is the policy of the Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal specification. Those requirements apply to all concession firms and suppliers, including those who qualify as an Airport Concession Disadvantaged Business Enterprise (ACDBE). An ACDBE's concession-specific goal of one percent (1%) of annual gross receipts has been established for this concession. If, during the term of this agreement, the Airport Board must modify this goal to remain in compliance with FAA Rules and Regulations, including 49 CFR Part 23, additional provisions will be added to the agreement.

I. Costs for Proposals

Each RAC shall be responsible for all costs incurred in preparing a response to this RFP. RACs selected for further negotiations, as well as the RACs ultimately selected to enter into a contractual agreement with the Authority, shall be responsible for all costs incurred by it in submitting a proposal or during negotiations.

J. Interpretation of a Proposal Document

If discrepancies or omissions are found by any prospective RAC or if there is doubt as to the meaning of any part of this Request for Proposals, a RAC may submit a written request for clarification or interpretation to the Authority at the address set out in Section 3 of this document. Any clarification or interpretation of the document will be made in writing by the Authority, as part of an addendum and will be posted to the Authority's website. The Authority is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner except by addendum.

EXHIBIT A

**PROPOSAL FOR
ON-AIRPORT RENTAL CAR CONCESSION AT
CHERRY CAPITAL AIRPORT**

TO: Kevin C. Klein
Chief Executive Officer
Cherry Capital Airport
727 Fly Don't Drive
Traverse City, MI 49686

Pursuant to the Request for Proposals ("RFP") for the privilege of operating a rental car concession at the Cherry Capital Airport, the undersigned hereby submits the following proposed Minimum Annual Guarantee ("MAG") for Contract Year One:

Contract Year One Minimum Annual Guarantee \$_____.

NOTE: The Contract Year One Minimum Annual Guarantee must equal or exceed **\$ 100,000**.

The MAG for years two (2) through five (5) shall be seventy-five percent (75%) of either the Concession Fees paid during the prior year or the prior year's MAG, whichever is greater.

In submitting this proposal the undersigned expressly acknowledges that they have read the RFP and any associated amendments and accepts and (insert company name) will comply with the requirements contained therein.

In submitting this proposal, the undersigned waives any and all claims against the Authority related to the Authority's selection of the successful RACs.

Dated: _____

By _____

Title _____

Company Name

Address for Notice Purposes:

Phone: _____

Fax: _____

EXHIBIT B

QUALIFICATIONS AND EXPERIENCE QUESTIONNAIRE

RACs interested in operating an on-Airport Rental Car Concession at Cherry Capital Airport must document their experience and qualifications for operating an on-airport rental car concession. Please note that for the purpose of this questionnaire, the term “the company” is intended to mean the business entity that will be responsible for operations at the Cherry Capital Airport. Please add additional sheets for responses, if necessary. Response should include the following:

1. Names and contact information for the local manager and principal officers of the company submitting the proposal.
2. A description of the company’s organizational structure (i.e. corporation, joint venture, partnership, etc) and the state in which the company is organized.
3. Provide your company plan for meeting the hours of operation requirement as outlined in Section.2.A.6.
4. A list of the three (3) largest airports (by rental car revenue) at which the company has conducted rental car operations for at least two years.
5. A list of airports within a 275-mile radius of the Cherry Capital Airport at which the company has conducted rental car operations in the last 10 years.
6. Information regarding the company’s national reservation system, including the access number.
7. A brief history of the company and its experience in operating and managing rental car concessions.
8. A description of any Disadvantaged Business Enterprise participation proposed as part of the management or operation of this rental car concession.
9. The company’s financial statement for the most recent two fiscal years. The accuracy of the financial statements must be attested to by either an independent auditor or an officer of the company.

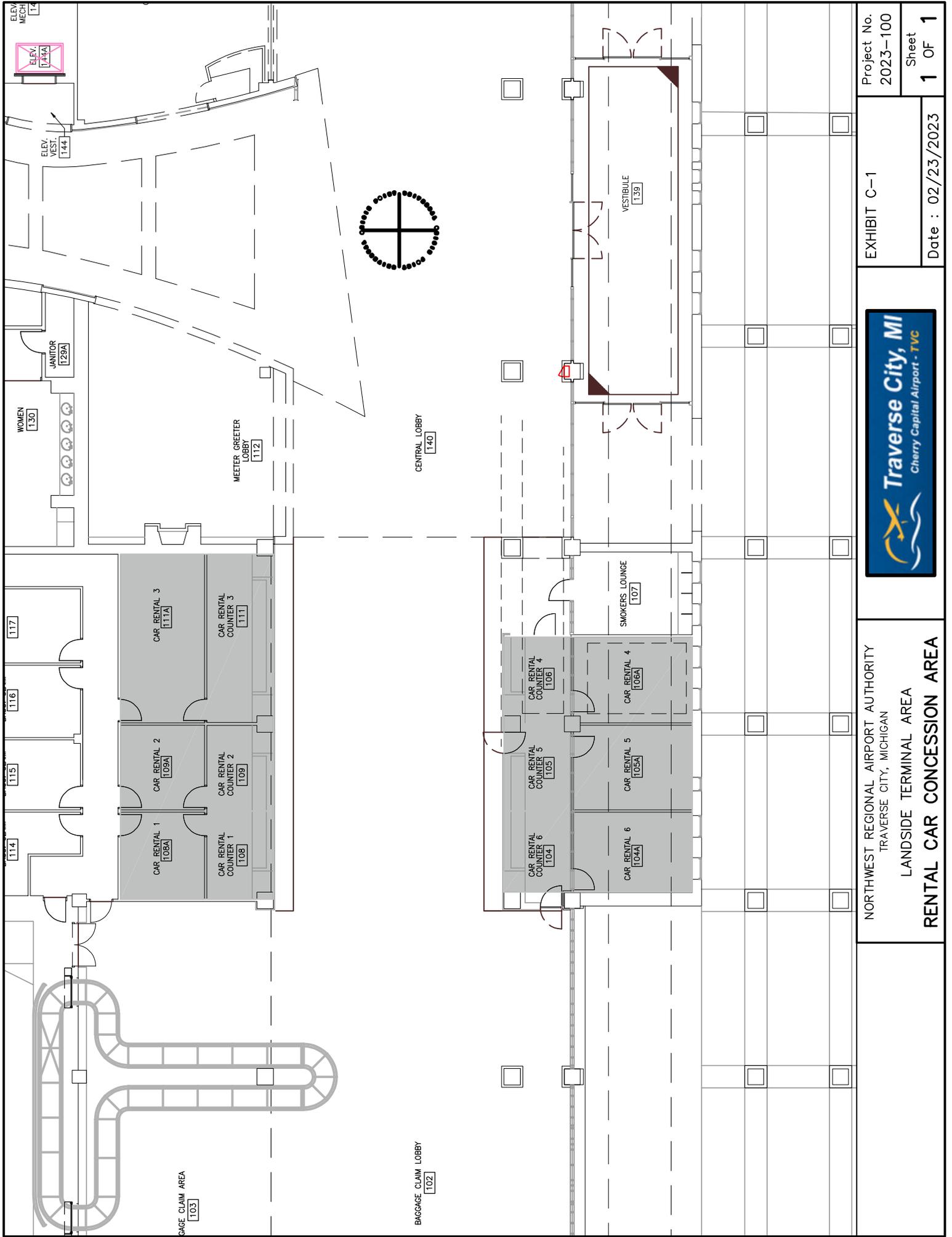
10. A description of the services that the company will provide at Cherry Capital Airport.

11. Whether the RAC or its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into agreement with any federal agency or department or any agency or political subdivision of the State of Michigan.

EXHIBIT C

COUNTER DIAGRAM

See next pages 1 and 2



Project No.
2023-100

Sheet
1 OF 1

EXHIBIT C-1

Date : 02/23/2023



NORTHWEST REGIONAL AIRPORT AUTHORITY
TRAVERSE CITY, MICHIGAN

LANDSIDE TERMINAL AREA
RENTAL CAR CONCESSION AREA

EXHIBIT C-2

Terminal Counter and Office Space

National/Alamo	Room #104	Counter	11.5' x 12'	138	Sq Feet	342	Ttl Sq Feet
	Room #104A	Office	17' x 12'	204	Sq Feet		
Enterprise	Room #105	Counter	11.5' x 12'	138	Sq Feet	342	Ttl Sq Feet
	Room #105A	Office	17' x 12'	204	Sq Feet		
Hertz	Room #106	Counter	11.5' x 12'	138	Sq Feet	342	Ttl Sq Feet
	Room #106A	Office	17' x 12'	204	Sq Feet		
Empty	Room #108	Counter	11.5' x 12'	138	Sq Feet	288	Ttl Sq Feet
	Room #108A	Office	12.5' x 12'	150	Sq Feet		
Empty	Room #109	Counter	11.5' x 12'	138	Sq Feet	288	Ttl Sq Feet
	Room #109A	Office	12.5' x 12'	150	Sq Feet		
Avis/Budget	Room #111	Counter	11.5' x 24'	276	Sq Feet	564	Ttl Sq Feet
	Room #111A	Office	12' x 24'	288	Sq Feet		

EXHIBIT D

RENTAL CAR CONCESSION AGREEMENT

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT ("Agreement"), by and between the **Northwest Regional Airport Authority** (hereafter the "**Authority**") and _____ (hereafter the "**Concessionaire**"), doing business under rental car brand(s) _____.

WITNESSETH

WHEREAS, the Authority has jurisdiction and control over certain premises located at the CHERRY CAPITAL AIRPORT (the "Airport") situated in the City of Traverse City, State of Michigan; and

WHEREAS, the Airport provides an opportunity for a customer base for motor vehicle rental businesses and, as such, motor vehicle rental businesses may benefit from the existence of the entire Airport facility; and

WHEREAS, Concessionaire desires to lease certain premises at the CHERRY CAPITAL AIRPORT for the purpose of carrying on a motor vehicle rental business located on the hereinafter described premises, subject to certain rights, licenses and privileges, and the Authority is willing to lease such premises and has authority to lease said premises and grant certain rights, licenses and privileges with respect thereto to Concessionaire,

NOW, THEREFORE, for and in consideration of the rents, covenants and agreements herein contained, the Authority and Concessionaire agree as follows:

1. DEFINITIONS

- A. **GROSS REVENUE**: GROSS REVENUE shall mean all revenue billed or received from all vehicle rental and related transactions subject to the Concession Fee under the terms of this Agreement, including all revenue billed or received for the rental of the vehicle and for any and all other services, accessories, and products of any form. This includes, but is not limited to the following:
1. Time and Mileage
 2. Rental Charges
 3. Insurance Charges including (but not limited to) the following:
 - a) Collision Damage Waiver (CDW)
 - b) Loss Damage Waiver (LDW)
 - c) Personal Accident Insurance (PAI)
 - d) Personal Effects Coverage (PEC) or Cargo

- e) Life Insurance
 - f) Supplemental Liability Insurance
 - g) Safe Trip Insurance
 - h) Extended Protection
 - i) Other Insurance Offered Now or in the Future
4. Additional fees Charged to Customers including (but not limited to) fees charged for the following:
- a) Additional Driver(s)
 - b) Underage Driver(s)
 - c) Upgrade of Vehicle
 - d) Exchanges
 - e) Fuel Charges
 - f) Petroleum Products (other than fuel)
 - g) Intercity Fees (Drop Charges)
 - h) Facility Charges other than Customer Facility Charge (CFC)
 - i) Transportation Charges or Valet Parking
 - j) Late Fees (For Vehicle Not Returned On Time)
 - k) Other Charges Considered Now or in the Future
5. Equipment Charges including (but not limited to) charges for the following:
- a) Child Restraint Seats
 - b) Cellular Phone Fees (including revenue from use)
 - c) Car racks for Recreational Gear (i.e. ski & bike racks, etc.)
 - d) Recreational Gear, including (but not limited to)

- i) Bikes
 - ii) Skiing Equipment
 - iii) Boating Equipment
 - iv) Fishing Tackle
 - v) Golf Clubs
 - e) Tire Chains
 - f) Portable Personal Computers
 - g) Portable Facsimile Machines
 - h) Navigation Systems
 - i) All other equipment offered now or in the future
6. Office Service or Fees including (but not limited to) the following:
- a) Fax Transmittals
 - b) Photocopying
 - c) Maps
 - d) Other services offered now or in the future

Gross Revenue shall also include the value of coupons and vouchers purchased by travel agents, businesses, and tour companies, either in advance, or invoiced after use, even if the rental charges are not shown on the actual closing Rental Agreement. The risk of collection of the extension of credit by Concessionaire shall be borne solely by the Concessionaire and shall not affect the computation of "Gross Revenue".

The only sums that may be excluded from Gross Revenue are the following:

1. The amount of any federal, state, or municipal sales or other similar taxes separately stated on the Rental Agreement and collected from a customer of Concessionaire, now or hereinafter levied or imposed.
2. Any Sums received by Concessionaire as compensation for damage to vehicles or other property of Concessionaire, or for loss, conversion, or abandonment of such vehicles or other property.

3. Amounts collected from customers for vehicles dropped off at the Airport which were originally rented at a location not associated with the Cherry Capital Airport and to which Concessionaire pays a concession fee.
4. Amounts collected from customers for Leased Vehicles (as defined herein).
5. Customer Facility Charges collected pursuant to Northwest Regional Airport Authority Ordinance and any subsequent amendments.

All exclusions shall be segregated as separate accounts in the Concessionaire's General Ledger.

If, and to the extent that, Concessionaire provides any of the goods or services through the use of authorized subcontractors, all revenue received or derived by such subcontractors on account of such goods or services, shall be deemed included in Gross Revenue (regardless of what portion, if any, of such revenue is received or retained by Concessionaire).

Gross Revenue shall not be reduced by reason of any commission or other amount paid out or rebated by the Concessionaire to travel agents or others with respect to any such rental. The Concessionaire shall not allocate receipts to any other location, regardless of which city or location owns the vehicle, or where the vehicle is ultimately returned, unless otherwise provided for herein.

There shall be no deduction from Gross Revenue allowed for the payment of franchise fees or taxes, or taxes levied on concession activities, facilities, equipment, or real or personal property of the Concessionaire.

There shall be no deduction from Gross Revenue allowed for bank charges or uncollected or uncollectible credit accounts or charges made by collection agencies. Bad debt losses shall not be deducted from Gross Revenue. In addition, 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 is made, regardless of the time when the Concessionaire receives payment (whether full or partial).

In no event shall the Concessionaire's Gross Revenue from any rental be negative in any revenue category for purposes of this Agreement.

- B. **RENTAL OFFICE**: shall mean a business location for the rental of vehicles.
- C. **OFF-AIRPORT LOCATION**: means any location within ten (10) miles of CHERRY CAPITAL AIRPORT that is operated by Concessionaire, or which is partly or wholly owned by Concessionaire or any of Concessionaire's stockholders, owners or security holders, their spouses or family, directly or indirectly at which vehicles are rented or returned.

- D. **LEASED VEHICLES**: means any vehicles rented or transferred in any way for financial consideration to one customer for a continuous period of six (6) months or more, and in which the customer assumes the cost for insurance and other expenses incidental to long term use or control of a vehicle.

- E. **AFFILIATED BUSINESS ENTITY**: means any rent-a-car or automobile leasing entity which is operated by Concessionaire, or which is partly or wholly owned by the Concessionaire or any of Concessionaire's stockholders, owners or security holders, their spouses or family, directly or indirectly, and which is operated within ten (10) miles of CHERRY CAPITAL AIRPORT. Affiliated Business Entity shall not include any publicly held corporation which is engaged in the rent-a-car or automobile leasing business so long as the Concessionaire, or any of Concessionaire's stockholders, or their spouses or family, do not maintain a controlling interest in said public corporation.

- F. **CONTRACT YEAR**: means an annual period of time measured by the calendar year during the term of this Agreement.

2. **FEE.** For the right to operate its business at the Airport, Concessioner shall pay the Concession Fee or the Minimum Annual Guarantee Fee (MAG), whichever is greater, as set forth below:

A. MINIMUM ANNUAL GUARANTEE FEE

Concessionaire will pay Authority a Minimum Annual Guarantee for the right to operate its business at the Cherry Capital Airport (hereinafter "MAG"). During Contract Year 1, Concessionaire's MAG shall be \$_____. In Contract Years 2 through 5, Concessionaire's MAG will be 75% of either the concession fees paid during the prior year or the prior year's MAG, whichever is greater.

B. CONCESSION FEE

Concessionaire shall pay the Authority a Concession Fee of 10% of GROSS REVENUES or its MAG, whichever is greater. The Concession Fee shall be payable on a monthly basis. Each monthly payment must equal 10% of the Concessionaire's GROSS REVENUES for the preceding month or the percentage of Concessionaire's MAG allocated monthly as indicated below, whichever is greater.

MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR
6%	10%	20%	25%	10%	5%	4%	4%	4%	4%	4%	4%

Notwithstanding the monthly allocations above, Concessionaire may opt to pay its minimum monthly payment in twelve (12) equal payments by providing written notice to the Authority on or before June 1, 2023.

If, at the conclusion of a Contract Year, Concessionaire's total payments exceed 10% of Concessionaire's GROSS REVENUE and its MAG for the contract year, the Authority shall refund the excess upon the request of Concessionaire. The request for a refund must be made in writing within 60 days of the conclusion of the contract year to which the request applies. For example:

Assume ABC RAC has a MAG of \$12,000. This means that ABC RAC's minimum monthly payments are as follows (unless equal monthly payments are elected as provided above):

MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR
\$720	\$1,200	\$2,400	\$3,000	\$1,200	\$600	\$480	\$480	\$480	\$480	\$480	\$480

During the first month of the Contract Year, ABC only generates GROSS REVENUES of \$2,000. Ten percent of the first month's GROSS REVENUES is only \$200 (i.e. $\$2,000 \times 10\% = \200). Thus, ABC RAC is required to make its minimum monthly payment for May of \$720. During the next 11 months of a contract year, ABC RAC reports GROSS REVENUES of \$30,000 per month and makes monthly payments of \$3,000 per month (i.e. $\$30,000 \times 10\% = \$3,000$).

For the Contract Year, ABC paid \$33,720 in concession fees and reported GROSS REVENUES of \$332,000. Since ABC's payments exceed both its MAG and 10% of its GROSS REVENUES, it is entitled to a refund of \$520 (i.e., $\$33,720 - (\$332,000 \times 10\%) = \$520$) provided it requests the refund in writing within 60 days of the conclusion of the contract year.

For mutual accounting purposes and to assist the ease of any audit necessary to ensure compliance with this Agreement, RAC shall list this fee on its customer invoices as a separate item charge and refer to it as an "Airport Concession Fee."

4. **SUSPENSION OF MAG**

If during any three (3) month period of a Contract Year, the number of deplaned passengers at the Cherry Capital Airport falls below a threshold of eighty percent (80%) of the number of deplaned passengers at the Cherry Capital Airport during the same three (3) month period of the immediately preceding Contract Year or the first Contract Year of the term, then Concessionaire's MAG shall be abated for the period of time the condition continues to exist commencing in the first month immediately following the three (3) month period the number of deplaned passengers falls below a threshold of eighty percent (80%) of the number of deplaned passengers at the Cherry Capital Airport. In the event that such a reduction of deplaned passengers does occur at the Cherry Capital Airport, and the MAG is abated, then the Authority, on the first month immediately following the three (3) month period, shall calculate the number of deplaned passengers on a rolling three (3) month cycle. Should the number of deplaned passengers within a rolling three (3) month cycle increase so that the overall number of deplaned passengers at the Cherry Capital Airport for the rolling three (3) month cycle exceed eighty percent (80%) of the number of deplaned

passengers at the Cherry Capital Airport during the comparable rolling three (3) month cycle of the immediately preceding Contract Year or the first Contract Year of the term, then the MAG shall no longer be abated and shall be reinstated in the first month immediately following the rolling three (3) month period in which the number of deplaned passengers exceed eighty (80%) of the number of deplaned passengers at the Cherry Capital Airport of the immediately preceding Contract Year or the first Contract Year of the term.

5. TRANSACTIONS SUBJECT TO THE CONCESSION FEE

Subject to the exceptions enumerated below, the concession fee shall apply to all vehicle rental transactions and other related transactions that occur at the Cherry Capital Airport and/or any OFF-AIRPORT LOCATION. The following transactions shall not be subject to the concession fee:

- A. Transactions involving Local Customers who rent vehicles at Off-Airport Locations. Local Customers are defined as customers whose driver's license reflect an address with one of the following U.S. Postal Service Zip Codes: 49611, 49612, 49615, 49616, 49617, 49618, 49620, 49621, 49622, 49628, 49629, 49630, 49633, 49635, 49636, 49637, 49640, 49643, 49646, 49648, 49649, 49650, 49653, 49654, 49659, 49664, 49666, 49670, 49676, 49680, 49682, 49683, 49684, 49685, 49686, 49690, 49696, 49727, 49729, 49730.
- B. Transactions involving Non-Local Customers who rent vehicles at Off-Airport Locations and who sign an affidavit attesting to the fact that they did not arrive in Traverse City via the Cherry Capital Airport within the prior 48 hours. A Non-Local Customer is any customer whose driver's license reflects an address with a U.S. Postal Service Zip Code other than: 49611, 49612, 49615, 49616, 49617, 49618, 49620, 49621, 49622, 49628, 49629, 49630, 49633, 49635, 49636, 49637, 49640, 49643, 49646, 49648, 49649, 49650, 49653, 49654, 49659, 49664, 49666, 49670, 49676, 49680, 49682, 49683, 49684, 49685, 49686, 49690, 49696, 49727, 49729, 49730.

Confirming documentation required by this paragraph shall be sufficient if the rental car form contains the following language:

By initialing here, I acknowledge that I have not flown into Cherry Capital Airport in the past 48 hours. _____ (initial)

NOTE: ALL TRANSACTIONS THAT OCCUR AT THE CHERRY CAPITAL AIRPORT ARE SUBJECT TO THE CONCESSION FEE.

Any effort to divert customers away from the Cherry Capital Airport or any other facility subject to the concession fee shall be considered a violation of the Concession Agreement and will be cause for termination of the offending RAC's Concession Agreement. Examples of efforts to divert customers away from the Cherry Capital Airport may include,

but will not be limited to the following: efforts to assist, or actual assistance given a customer of an RAC to modify or terminate a car rental agreement prior to the duration or term intended by the rental car customer, and which later results in the modification of a car rental agreement or entry of a new car rental agreement with the RAC in an off-airport location; transporting or assisting in the transportation of a customer or potential customer of RAC, or otherwise encouraging a customer or potential customer that arrived in Traverse City via the Cherry Capital Airport, to an off-airport location of the RAC for the intended purpose of entering a rental car agreement; encouraging or otherwise offering assistance to a customer or a potential customer to seek transportation from the airport to RAC's off-airport location for the purposes of entering a rental car agreement.

6. PAYMENT OF CONCESSION FEE

Concession fees are due and payable within fifteen (15) days of the last day of each month. The payment must be accompanied by a complete and accurate accounting of all business from the preceding month on company letterhead in the format attached and affixed hereto and hereafter incorporated by reference as *Exhibit A*. This letter shall be signed by an authorized representative of the RAC indicating the information being reported is a true and accurate statement of gross revenues received from its activities for the period being reported. Any modification to this reporting format requirement shall only be allowed upon the consent of the Chief Executive Officer.

7. OFF-AIRPORT LOCATIONS

Concessionaire shall provide The Authority with a comprehensive list of all locations within ten miles (10) miles of CHERRY CAPITAL AIRPORT that are operated by Concessionaire, or which are partly or wholly owned by Concessionaire or any of Concessionaire's stockholders, owners or security holders, their spouses or family, directly or indirectly at which vehicles are rented or returned. For each location, Concessionaire shall provide the address, phone number and its distance from the CHERRY CAPITAL AIRPORT. Distance shall be calculated based on a straight line to the CHERRY CAPITAL AIRPORT.

Locations that are within ten (10) miles of the CHERRY CAPITAL AIRPORT, as determined by The Authority, shall be considered OFF-AIRPORT LOCATIONS as defined in this Concession Agreement.

Concessionaire has an on-going duty to notify The Authority, in writing, in the event Concessionaire opens a new location as described above within ten (10) miles of the Cherry Capital Airport.

8. CUSTOMER FACILITY CHARGE

Concessionaire shall be required to collect a Customer Facility Charge (hereinafter "CFC") as required by ordinance of the Northwest Regional Airport Authority, and any subsequent amendments. Concessionaire is required to notify customers of the CFC when the customer

makes their reservation. The rental agreement and invoice shall clearly identify the CFC in a manner approved by the Chief Executive Officer.

Concessionaire shall remit CFC collections to the Cherry Capital Airport on the 15th day of each subsequent month. Under no circumstances are CFC collections to be viewed as Concessionaire's property. Rather, prior to remittance, CFC collections shall be held by Concessionaire as a bailee for the benefit of the Authority. All CFC collections held by Concessionaire shall be separately accounted for and considered the property of the Authority.

CFC collections remitted to the Authority shall be deposited into a separate account for use as directed by the Authority or its designee.

9. **PREMISES LEASED**

The Authority hereby agrees to lease to the Concessionaire the following described premises (hereafter sometimes referred to as "Concession Premises" or "Leasehold"), being a part of the CHERRY CAPITAL AIRPORT, located in the City of Traverse City, State of Michigan, to-wit:

a. **Counter and Office Space**

The sales counter and office space identified in *Exhibit B* attached hereto and stipulated and agreed to by the parties to be correct and by reference made a part hereof.

b. **Ready/Return Area**

Spaces in the ready/return lot located adjacent to the Terminal Building shall be allocated based upon the first year MAG of all on-airport rental car Concessionaires under agreement with the Authority (as defined in paragraph 2 herein), subject to Concessionaire receiving not less than twenty (20) ready/return lot parking spaces. The location of the spaces will be identified in *Exhibit C* which will be attached hereto and incorporated by reference and made a part of this Agreement prior to its effective date. Concessionaire shall be responsible for providing snow removal and basic surface maintenance for each ready/return space allocated.

Ready/return spaces will be reallocated at the conclusion of each contract year unless waived by all RACs affected. Any reallocation will be based on market share for the preceding contract year, subject to a minimum allocation of 20 spaces. The rental car concessionaires will be given an opportunity to reach unanimous consensus regarding location of each company's ready/return spaces. In the event RACs cannot reach a unanimous consensus, the Chief Executive Officer of the Cherry Capital Airport (hereinafter "the CEO") or his designee shall have the absolute right to assign ready/return space locations based upon the best interests

of the Cherry Capital Airport and the traveling public. The CEO's decision shall be final.

It is understood and agreed that upon 30 days notice, the CEO shall have the right to reclaim ready/return spaces when, in their sole discretion, it is in the best interests of the Cherry Capital Airport and the traveling public.

In addition to the Concession Premises, Concessionaire shall have the privilege of using, for the term of this Agreement, or any extension thereof, in common with others and the public, the CHERRY CAPITAL AIRPORT, subject to the charges, rules and regulations governing such airport issued by the Federal and State Aeronautical Agencies and by the local governing authority, it being expressly understood and agreed that this privilege covers the entire period of the lease and extensions thereof as hereinafter set forth.

10. **TERM**

Subject to the terms and conditions of this Agreement, the term of this Agreement shall be from May 1, 2023, through April 30, 2028. At the conclusion of the term, the Authority shall have the right to extend this lease on a month-to-month basis. The Authority shall have the right to terminate such a holdover on 30 days notice.

11. **RENTAL FEES**

For rental of the counter and office space indicated above, the Concessionaire shall pay to Northwest Regional Airport Authority the sum of Thirty-Nine and 23/100ths Dollars (\$39.23) per square foot per annum for the ___ square feet of rental space. The counter and office space rent shall be paid in twelve (12) equal installments of _____ and ___/100ths Dollars (\$_____), and payable on the effective date of this Concession Agreement and on the first day of each and every month thereafter.

For the rental of ready/return spaces, Concessionaire shall pay Twelve and 95/100ths Dollars (\$12.95) per space per month. The ready/return rent shall be paid in twelve (12) equal installments of due and payable on the effective date of this Concession Agreement and on the first day of each and every month thereafter.

The rental fees referred to above shall be considered base rental fees and shall be adjusted to reflect an increase of two percent (2%) per annum based upon the prior year's rental fees, effective May 1 of each year during the term of this lease, or any extensions.

All fees represented above are due and payable within fifteen (15) days of the last day of each month. The Authority hereby agrees that no late payment service fees will be assessed if payments are received by the fifteenth (15th) day of the subsequent month.

12. **RECORD KEEPING**

The Concessionaire shall keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all business activities of whatever nature conducted by the Concessionaire for a period of not less than thirty-six (36) months following the close of its fiscal year. The records must be supported by source documents such as rental agreements, sales slips, cash register tapes, purchase invoices, or other pertinent documents. The rental agreement shall clearly identify all business conducted at the CHERRY CAPITAL AIRPORT and OFF-AIRPORT LOCATIONS, otherwise defined in GROSS REVENUE.

Within ninety (90) days after the end of each fiscal year of the Concessionaire, the Concessionaire shall, at its own expense, submit to the Authority a gross revenue statement reflecting Gross Revenue as defined herein which was received during the preceding fiscal year. A certified public accountant or an officer of the corporation must attest that the revenue statement submitted is an accurate representation of the Concessionaire's records or those of Concessionaire's sub-lessees, permittees, licensees, concessionaires, agents, or any affiliated business entity of the Concessionaire, as reported to the United States of America for income tax purposes.

The Concessionaire agrees the Authority shall have the right to examine all records relating to the Concessionaire's automobile rental related activities at the Airport, as well as those of any Affiliated Business Entity of the Concessionaire. Said records shall be delivered to the Chief Executive Officer's office for review during regular business hours within five (5) working days of the Authority's written request, and such records shall be maintained in a form and manner acceptable to the Authority; provided, however, that if the Concessionaire maintains its records in the form and manner required by its national franchisor, if any, such form and manner will be presumed approved by the Authority. The Authority shall be entitled to demand an audit of the business records by its staff. If the results of said audit are not satisfactory to the Authority, then the Authority shall have the right to demand a formal independent audit of the business records of the Concessionaire (and of any Affiliated Business Entity of the Concessionaire) to determine the activity of the Concessionaire or its Affiliated Business Entities and the correct fees payable thereon under the terms of this Agreement. It is hereby agreed and understood by the parties to this Agreement that the cost of such audit shall be borne equally by the Concessionaire and the Authority. Any formal audit required by the Authority shall be conducted by an independent auditor selected by the Authority at a scheduled meeting of the Northwest Regional Airport Authority and shall not be conducted more frequently than once each calendar year. Any formal audit shall consist of a review of not less than three months of Concessionaire's operations. In the event that any such formal audit establishes a deviation from the reported revenues received by the Concessionaire in an amount greater than five (5%) percent than reported by the Concessionaire, Concessionaire shall be liable for the entire cost of the audit and the Authority, at its option, may terminate this Agreement.

13. **SERVICE CHARGE/COLLECTION FEE**

Concessionaire agrees to pay the Authority a service charge/collection fee of one and one-half (1.5%) percent per month on all payments called for under this Agreement which are overdue. A payment shall be considered overdue if not paid within thirty (30) days of the date of invoicing by the Authority, or within thirty (30) days of the date payments called for under this Agreement become due. Said service charge/collection fee shall be paid to the Authority at the time of payment of the past due charge. This charge is deemed to cover the Authority's administrative costs resulting from Concessionaire's delinquency.

14. **PURPOSES FOR WHICH CONCESSION PREMISES ARE TO BE USED**

The Concession Premises are to be used by Concessionaire for the following purposes only, and for no other purpose whatsoever, unless agreed to in writing by the Authority: carrying on a motor vehicle rental business, including related functions common and necessary to such purpose so long as such related functions are a part of automobile rental agreements in place at sixty percent (60%) or more of all Small Hub airports in the United States, as defined by the American Association of Airport Executives.

No portion of the Concession Premises shall be used for a purpose which may interfere with the proper use of the Airport by others or which may be objectionable to the MICHIGAN DEPARTMENT OF TRANSPORTATION acting through its BUREAU OF AERONAUTICS. Further violations by Concessionaire, after thirty (30) days written notice, shall be considered a breach of the conditions of the Lease by Concessionaire, at the option of the Authority.

15. **LEASED IMPROVEMENTS**

The Concessionaire, may at its option, improve the area described herein with fixtures and appurtenances provided, however, that prior to such improvements, written approval for the same has been obtained from the Authority. All improvements shall become the property of the Authority at the termination of this Agreement and shall not be removed. Trade fixtures shall not be considered as improvements. Concessionaire shall not have the privilege or duty of removal of any alterations, additions, buildings, or improvements constructed by the Concessionaire at any time during the term of this Agreement or the extension thereof, and there shall be no removal of improvements by Concessionaire either during or after the termination of this Agreement or its amendment or after the extension of either.

16. **MAINTENANCE OF PREMISES**

Concessionaire agrees that it will, at its own expense, during the continuance of this Agreement or any extension thereof, keep maintain and repair the Concession Premises and the fixtures, equipment, improvements, and appurtenances thereon in a clean, safe,

neat, orderly, sanitary, and presentable condition, and free and clear of all trash, rubbish, debris, rodents, insects, and other pests.

17. INSPECTION OF PREMISES

The Authority, or its designated representative, shall have the right to enter upon the Concession Premises at all reasonable times for the purpose of inspection of any portion thereof, or for the purpose of making changes or alterations required by any existing or subsequent law.

18. HOURS OF OPERATION

Concessionaire shall keep the Concession Premises open for business during such times necessary to meet reasonable demands for vehicle rental services from potential Airport Customers, as determined by the CEO or designee. At a minimum, Concessionaire shall provide automobile rental service in the Cherry Capital Airport Terminal Building in such a manner to meet at least ninety percent (90%) of all scheduled air carrier flights between the hours of 7:00 a.m. and 12:00 midnight.

Except in case of an emergency, customer service counters shall be staffed during all hours of operation. In the event that customer service counters cannot be staffed because of an emergency, Concessionaire shall provide a self-service kiosk or information in a place visible to the public that provides the public with direct communication to staff or agents of Concessionaire who can provide services to potential Airport Customers.

In the event of a violation of this paragraph, liquidated damages in the amounts set forth below shall be charged to the Concessionaire and paid within 30 days of receipt of notice of such charge:

1st Violation: Written Warning.

2nd Violation: \$500.00 per incident.

3rd or further Violation: \$2,000.00 per incident.

Concessionaire acknowledges and agrees that the damages that would be incurred by the Authority for a violation of this paragraph are difficult to quantify and are not readily ascertainable. Concessionaire acknowledges and agrees that the liquidated damages are fair and reasonable and waives any and all legal defenses to the validity of the liquidated damages. The imposition of liquidated damages shall not operate to limit or otherwise affect the Authority's rights under this Agreement for Concessionaire's breach of this Agreement or limit the Authority's damages for a breach of this Agreement.

19. EMPLOYEE STANDARDS

Concessionaire shall at all times recruit and retain a sufficient number of qualified, competent, and experienced employees at the Airport to conduct its operations. Concessionaire's employees shall be clean, professional, courteous, efficient, and neat in

appearance. All employees shall be appropriately and professionally attired and must wear Concessionaire's identification name tag at all times. Concessionaire's identification name tag shall clearly display the name of Concessionaire and the name of the employee. Concessionaire's employees shall not use improper language or act in a loud, boisterous, or otherwise improper manner, and must comply with all Airport regulations (including security and NRAA Regulations). The Airport CEO or designee shall be the sole judge as to whether the conduct or actions of any employee is objectionable pursuant to this section, and if so judged, Concessionaire shall take all steps necessary to eliminate the conditions that have occasioned such judgment. Concessionaire and its employees shall maintain a friendly, cooperative (although competitive) relationship with the Concessionaires, and shall not engage in open or public disputes, disagreements, or conflicts that may deteriorate the quality of the vehicle rental services or be incompatible to the best interests of the public or the Airport.

Airport Issued Identification Media, Public Area Business Purpose Media, and Emergency Response Training. All employees, agents, representatives, contractors, and subcontractors of Concessionaire shall obtain any Airport Issued Identification Media or Public Area Business Purpose Media, and complete any emergency response training, required by the Airport

20. FACILITIES AND OPERATIONS

The rental car services provided by the Concessionaire shall consist of recent model automobiles (which shall be defined as vehicles manufactured within four (4) model years of the existing model year) and sufficient personnel to adequately serve the demand for such services at the CHERRY CAPITAL AIRPORT. The Concessionaire will be required to obtain, at its expense, all licenses and permits necessary for its operation under the terms of this Agreement. All operations shall be in strict conformity at all times with all pertinent federal, state and local laws and regulations, and ordinances established by the Authority. This Agreement shall be nonexclusive, and the Authority hereby reserves the right to enter into agreements or permits with other individuals, firms, or corporations engaging in automobile rental business both on and off Airport. The Authority hereby agrees that any such contract shall be in accordance with the Policies and Ordinances of the Airport Authority, and as amended.

21. AGENTS IN CHARGE

The Concessionaire shall designate an individual or individuals in charge of its operation and keep their name and address on file with the Chief Executive Officer, together with a telephone number at which the individual(s) can be reached within a reasonable time. The Airport management will mutually furnish the Concessionaire with appropriate numbers for contact after normal hours of operation.

If the Authority receives and forwards to Concessionaire any complaint concerning Concessionaire's operations, Concessionaire shall promptly respond to the complaining person in writing, copying the Airport administration office, within five (5) days after

receipt, and shall make a good faith attempt to resolve the cause of the complaint.

22. **COMPLIANCE WITH FEDERAL AVIATION ACT**

The Concessionaire also agrees to comply with all required provisions of the Federal Aviation Act of 1958, P.L. 85 726 85th Congress, and as amended, specifically being, but not limited to the following:

- (1) Concessionaire agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users therefore and to charge fair, reasonable and not unjustly discriminatory prices for each unit of service; PROVIDED, that Concessionaire may make reasonable and nondiscriminatory discounts, rebate or other similar types of price reductions to volume purchasers.
- (2) The Concessionaire for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (i) no person on the grounds of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, or gender identity shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (ii) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) that the Concessionaire shall use the Concession Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and said regulations as may be amended. Concessionaire shall include the foregoing or similar language in its contracts with any subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26
- (3) It is understood and agreed that the Authority, in securing Federal aid for the development of the airport, has entered into certain agreements with the Federal Aviation Administration of the Federal Government, and in such agreements has undertaken certain obligations described as “sponsor assurances,” and that a copy of said assurances shall be considered a part of this Agreement. In the event that any part or parts of such assurances shall be inconsistent with or in conflict with any of the terms of this Agreement, the provision of such assurances shall be considered as if specifically set forth in this Agreement. A copy of said assurances will be provided by the Chief Executive Officer upon written request. It is further understood that anything in this Agreement to the contrary notwithstanding, the undertaking or enforcement by the Authority of any of the obligations assumed by

it under such assurances shall not be grounds for cancellation of this Agreement by Concessionaire.

- (4) Concessionaire hereby acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprises (DBE), and 14 CFR, Part 152, Affirmative Action Employment Programs, may be applicable to the activities of Concessionaire under the terms of this Agreement, unless exempted by said regulations, and hereby agrees, if such provisions are applicable to comply with all requirements of the Authority, the Federal Aviation Administration, and the U.S. Department of Transportation, in reference thereto. These requirements may include but not be limited to the compliance with DBE or Employment Affirmative Action participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submission of various reports, and including, if directed by the Authority, the contracting of specified percentages of goods and services contracts to minority business enterprises. An ACDBE's concession-specific goal of one percent (1%) of annual gross receipts has been established for this concession.

In the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to take such action as the United States Government may direct to enforce this covenant, including, if so directed, the right to terminate this Agreement and proceed as if said Agreement had never been made or issued.

23. **14 CFR PART 382**

Concessionaire shall conduct all business associated with providing services to Airport passengers in accordance with the terms and provisions of 14 CFR Part 382 "Nondiscrimination on the Basis of Disability in Air Travel."

24. **CONDITIONS UPON USE OF AIRPORT PREMISES**

- (1) No signs or advertising matter shall be painted, posted or displayed upon any portion of the Airport, or any of Concessionaire's vehicles or courtesy vehicles, prior to submission of matter and size for approval of the Authority. A copy of the Authority's Signage Limitations within Leasehold Area is attached as *Exhibit D* and incorporated herein by reference.
- (2) Concessionaire further agrees that all federal, state and local laws and ordinances will be observed, including those of the federal, state and local aeronautical authorities and the local governing airport authority.
- (3) The operations of the Concessionaire, its employees, invitees, and those doing business with it, shall be conducted in an orderly and proper manner and so as not to annoy, disturb, or be offensive to others at the CHERRY CAPITAL AIRPORT.

- (4) All rules and regulations of the State and local Fire Marshal shall be complied with by the Concessionaire in the conduct of its operation at the CHERRY CAPITAL AIRPORT.
- (5) The Authority reserves the right to further develop and improve the landing area or the facilities of the CHERRY CAPITAL AIRPORT, including the Concession Premises herein demised, regardless of the desires or views of the Concessionaire in this regard, without interference or hindrance and free from any liability to the Concessionaire. The Authority hereby agrees to take all reasonable steps to minimize such losses or inconveniences to the Concessionaire.
- (6) All provisions of this Agreement shall be subordinate to the rights of the United States of America to lease the CHERRY CAPITAL AIRPORT, or any part thereof, during time of war or national emergency, for military or naval use, and any provisions of this Agreement inconsistent with the provisions of any lease to the United States of America shall be suspended thereby.
- (7) In the event that the Authority has Concessionaire's space separately metered for utilities, the Concessionaire shall be responsible for all consumable utility costs used by the Concessionaire in the conduct of its operations.
- (8) Concessionaire shall promptly comply will all rules and regulations implemented by the Transportation Security Administration.

25. **INSURANCE AND INDEMNIFICATION**

- (1) Concessionaire shall maintain insurance in companies authorized to do business in the State of Michigan for the protection of the Authority and naming it as an additional insured, against claims, losses, costs, or expenses arising out of injuries or deaths of persons, except employees of the Concessionaire otherwise insured through Worker's Compensation Insurance; and also as to damage to property from the negligence of the Concessionaire or any of its agents or employees growing out of the use of the Airport or the Concession Premises by Concessionaire; and such policies are to provide for a liability limit on account of each accident resulting in the bodily injury or death to one person of not less than One Million (\$1,000,000) Dollars, a liability limit on account of each accident resulting in bodily injury or death to more than one person of not less than One Million (\$1,000,000) Dollars, and a liability limit for each accident resulting in property damage of not less than One Million (\$1,000,000) Dollars. Provided, however, that the above insurance requirements shall apply to Concessionaire's operations at the Airport and shall not apply to specific vehicle coverage for the automobiles leased by the Concessionaire. If, by reason of changed economic conditions, the insurance amounts referred to above become inadequate, Concessionaire agrees to increase the amounts of such insurance promptly upon the Authority's reasonable request; but in no event shall such coverage be required to increase more than fifty (50%) percent during the term of this Agreement. Concessionaire shall further maintain

such other insurance and in such amounts as may from time to time be reasonably required by the Authority against other insurable hazards which at the time are commonly insured against in the case of businesses similarly situated; provided, however, that the Authority shall not request additional insurance coverage unless that form of insurance is available and in use by automobile rental businesses at sixty (60%) percent or more of all Small Hub airports in the United States, as defined by the American Association of Airport Executives, or unless said insurance coverage is required by state or federal rules or regulations.

Concessionaire shall furnish evidence to the Authority of the continuance of said policies by depositing a certificate of insurance with the Authority. Said policies shall be so worded as to insure ten (10) days notice of cancellation to the Authority. Concessionaire further agrees that a waiver of subrogation clause shall be incorporated into and made a part of said insurance policies to the extent it can be accomplished without prejudice to the Concessionaire's rights.

Concessionaire shall furnish to the Authority satisfactory evidence that it carries Worker's Compensation Insurance in accordance with the laws of the State of Michigan.

- (2) Concessionaire shall indemnify, hold harmless, and defend the Authority and all of the Authority's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Concessionaire, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, Concessionaire shall, upon written notice from the Authority, defend each Indemnified Party against each such Claim by counsel satisfactory to the Authority or, at the Authority's option, pay for an attorney selected by General Counsel for the Authority to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the CEO and General Counsel for the Authority, any sums due Concessionaire under this Agreement may be retained by the Authority until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by the Authority. This provision shall not be intended to waive the defense of governmental immunity that may be asserted by the Authority in any action against an Indemnified Party.

26. **JANITORIAL**

The Concessionaire shall furnish janitorial service on its own behalf for the counter space and office area portions of the Concession Premises. Concessionaire shall also be responsible for the snow removal and general cleanliness of its ready car lot.

27. **TERMINAL MODIFICATION**

It being expressly understood and agreed that Concessionaire's trade will be enhanced by a favorable location, all to the benefit of the Authority under the terms and conditions hereof, it is therefore agreed that, notwithstanding the Concession Premises as defined herein, the Authority reserves the right to proceed with a terminal modification or renovation to facilitate the overall enhancement of operations at the CHERRY CAPITAL AIRPORT. If the Authority determines that such modification or renovation necessitates Concessionaire's relocation within the terminal building, or other terminal location established for commercial air service facilities, the Authority covenants and agrees to provide the Concessionaire an area in a terminal building which is in a location that provides it with at least comparable competitive position with other similar organizations within the building, and further agrees that it will use its best efforts to relocate Concessionaire no more than necessary to accommodate any terminal modification. In the event a relocation is contemplated herein, the parties hereto agree that the Authority may adjust the base rental rates set forth above to reflect the square footage utilized by Concessionaire and the rate shall be assessed on said square footage comparable to then existing square foot rental rates imposed by the Authority for other similar Concessionaires in the terminal building. It is hereby agreed by the parties that, if the rental rate or the amount of square footage is not satisfactory to the Concessionaire, it shall have a period of sixty (60) days after written notification of such square footage, location, and rental rate, in which to cancel this Concessionaire Agreement. The Authority further reserves the right to relocate Concessionaire's ready/return area in the event such relocation is in the best interest in the Cherry Capital Airport and the traveling public and agrees that any such relocation will assure Concessionaire of not less than twenty (20) ready car spaces.

28. **DEFAULT, TERMINATION, CANCELLATION, FORFEITURE**

The following shall constitute Concessionaire's default under this Concession Agreement ("Event of Default"):

(a) failure to pay when due any rent or additional rent due on the day the same shall be due, and such failure remains uncured for seven (7) days following Authority providing Concessionaire with written notice;

(b) subject to (c) failure to perform any of the terms and conditions under this Concession Agreement, other than payment of rent or additional rent, and such failure remains uncured for thirty (30) days following Authority providing Concessionaire with written notice or in the case of any obligation that cannot be cured with due diligence and good faith within thirty (30) days, Concessionaire fails promptly, with due diligence and in good faith to begin to cure the default within thirty (30) days after such notice or having

begun to cure the default in a timely manner, Concessionaire thereafter fails to diligently prosecute the cure to completion;

(c) failure to comply with paragraph 18 after a third violation;

(d) any financial report or statement, certificate, representation or warranty at any time furnished or made by or on behalf of Concessionaire of any of Concessionaire's obligations hereunder, including, without limitation, any representation or warranty made by Concessionaire herein, proves to have been false or misleading in any material respect at the time as of which the facts therein set forth were stated or certified, or any such financial report or statement has omitted any material contingent or unliquidated liability or claim against Concessionaire or any such guarantor;

(e) Concessionaire shall be in breach of or in default in the performance of any obligation owing to the Authority, whether or not related to this Agreement and howsoever arising, whether by operation of law or otherwise, present or future, contracted for or acquired, and whether joint, several, absolute, contingent, secured, unsecured, matured or unmatured;

(f) the Authority has elected to cure Concessionaire's default under this Concession Agreement and Concessionaire has failed to pay Authority the cost and expenses incurred to cure such default within thirty (30) days after written demand;

(g) Concessionaire has attempted to transfer the Concession Premises or take other actions requiring Authority's consent without receiving such consent;

(h) Concessionaire shall cease doing business as a going concern, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a petition commencing a voluntary case under any chapter of the Bankruptcy Code, II USC 101 et seq. and as amended;

(i) an order for relief against Concessionaire or any guarantor of any of Concessionaire's obligations hereunder shall have been entered under any chapter of the Bankruptcy Code, or a decree or order by a court having jurisdiction in the premises shall have been entered approving as properly filed a petition seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief against Concessionaire or any guarantor of any of Concessionaire's obligations hereunder under any present or future statute, law, rule or regulation or within thirty (30) days after the appointment without Concessionaire's or such guarantor's consent or acquiescence of any trustee, receiver, custodian or other similar official for it or such guarantor of all or any substantial part of its or such guarantor's assets and properties, such appointment shall not be vacated

(j) Concessionaire has committed waste, which shall include the failure to pay taxes (if any), hazard insurance premiums, and persistent failure to maintain and repair the Concession Premises or reimburse Authority for same;

(k) Suspension or revocation of Concessionaire's operations by a governmental unit or agency having jurisdiction over the Concession Premises or the business as being conducted thereon; or

(l) Concessionaire has abandoned or vacated the Concession Premises.

In the event of Concessionaire's default, Authority shall, in addition to all of its other remedies under this Concession Agreement, or as permitted in law or equity, have the right to

- (i) immediately terminate Concessionaire's rights hereunder and require Concessionaire, at its expense, promptly to return all or any portion of the Concession Premises and improvements to the possession of the Authority or, with or without process of law, directly or indirectly, or acting through agents, without liability to Concessionaire, enter upon the Concession Premises and take immediate possession of all or any portion of the Concession Premises and improvements, and thenceforth hold, possess and enjoy the same free from any right of the Concessionaire to their possession and use for any purpose whatsoever, in which event Concessionaire hereby expressly waives all further rights to possession and all claims for injuries suffered through or caused by any such repossession;
- (ii) without terminating this Concession Agreement, relet the Concession Premises or any part of it on such terms and conditions as Authority deems advisable in its sole discretion;
- (iii) sue for and seek to recover from Concessionaire all rental, fees and other sums then past due pursuant to the terms and provisions of this Agreement; or
- (iv) declare immediately due and payable, and sue for and seek to recover, all payments of rental, fees and other sums whether or not accrued, and all other amounts payable hereunder subject to the Authority's duty to mitigate its damages, provided, however, that upon the occurrence of any of the events specified in subparagraphs (g) and (h) above, Concessionaire's rights under this Agreement shall automatically be terminated, and Concessionaire shall, at its expense, promptly return the Leasehold to the Authority pursuant to subparagraph (i), and all sums as specified in this subparagraph (iii) shall immediately be due and payable, all without further act or deed on the part of the Authority and without notice to Concessionaire.

The proceeds of any reletting as set forth in (ii) shall be applied: (a) first, to the payment of any indebtedness due from Concessionaire to Authority other than rent or additional rent; (b) second, to the payment of any reasonable cost of reletting including, without limitation, the cost of any reasonable alterations and repairs to the Concession Premises, brokerage fees and expenses, advertising expenses, inspection fees, and attorney fees; (c) third, to the payment of rent and additional rent due and unpaid under this Concession Agreement; (d) fourth, to any other damages, costs, and expenses incurred by Authority as a result of Concessionaire's breach; and (e) the residue, if any, shall be held by Authority and applied in payment of future rent and additional rent as the same may become due and payable. Should the proceeds of such reletting arising any month be less than the monthly installments of rent or additional rent required under this Concession Agreement, then Concessionaire shall during such month pay such deficiency to Authority upon demand. No re-entry or taking possession of the Concession Premises by Authority shall be construed as an election on its part to terminate this Concession Agreement unless written notice of such intention is given to the Concessionaire. In the event Authority elects to terminate this Concession Agreement, then as set forth in (iii), the Authority shall have the right to accelerate all of the rent and additional rent due for the balance of the term, and Concessionaire shall forthwith pay to Authority upon demand, as liquidated damages, the

deficiency between the amount of the accelerated rent and the proceeds of reletting, if any, for what would have otherwise constituted the balance of the term or the reasonable rental value of the Concession Premises for such balance of the term if the Concession Premises are not relet by Authority within thirty (30) days following Concessionaire's default. In computing such liquidated damages there shall be added to such deficiency any expenses incurred in connection with obtaining possession of the Concession Premises and reletting the Concession Premises, whether such reletting is successful or not, which expenses include, but are not limited to, attorney fees, brokerage fees and expenses, advertising expenses, inspection fees, and reasonable alterations and repairs to the Concession Premises.

Whether or not Authority terminates the Concession Agreement because of Concessionaire's default, Authority shall have no liability or responsibility in any way whatsoever for its failure to relet the Concession Premises or, in the event of reletting, for failure to collect rent under such reletting. The failure of Authority to relet the Concession Premises or any part of it, shall not release or affect Concessionaire's liability or damages. All rights and remedies of the Authority shall be cumulative and in addition to any other rights or remedies allowed by law or equity and may be exercised separately or jointly without constituting an election of remedies.

Should this Concession Agreement be terminated, cancelled or forfeited due to a default or breach by the Concessionaire or by its terms, the Concessionaire shall peaceably give up to Authority the Concession Premises in as good condition as at the beginning of the term hereof, reasonable use and wear thereof and damage by the elements excepted. Disposition of improvements, additions, or other construction made thereon by Concessionaire shall become the property of the Authority, except as provided herein. All equipment and trade fixtures shall remain the property of Concessionaire.

Concessionaire shall cooperatively work with the Authority to transition the Concession Premises, and shall comply with all requests from the Authority regarding such transition, including, but not limited to, any deadlines and meeting requests. Any disputes regarding the aforementioned transition shall be resolved by the CEO in the CEO's sole discretion.

29. **INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP**

Neither this Agreement or any ancillary agreement connected with this Agreement nor any rights or privileges under this Agreement or any ancillary agreement shall be an asset of Concessionaire in any bankruptcy, insolvency, or reorganization proceeding. If the Authority is not permitted to terminate this Agreement because of the provisions of any Applicable Laws, including, but not limited to, the United States Bankruptcy Code, Concessionaire or any trustee for it shall, within fifteen (15) Days, upon request by the Authority to the applicable court of administrative body, assume or reject this Agreement, provided, however, that Concessionaire may not assume this Agreement unless all Events of Default have been cured, the Authority shall have been compensated for any monetary loss resulting from such Events of Default, and the Authority shall be provided with

adequate assurance of full and timely performance of all provisions, terms, and conditions of this Agreement on the part of Concessionaire to be performed.

Notwithstanding the foregoing, to the greatest extent permitted under applicable law, upon the filing by or against Concessionaire of any proceeding under federal bankruptcy laws, if there has been an Event of Default within the six (6) months preceding such filing, Authority shall have the right to immediately terminate this Agreement, in addition to other remedies provided under provisions of any Applicable Laws, including, but not limited to, the United States Bankruptcy Code. Such termination shall be by written notice to Concessionaire within sixty (60) Days after the date of Concessionaire's initial filing in bankruptcy court.

30. FAIR EMPLOYMENT PRACTICES

The Concessionaire, pursuant to the requirements of Section 4 of Act No. 251, Public Acts of the State of Michigan of 1955 and as amended, and the Federal Civil Rights Act of 1964, Public Law 88-352, Title VI and as amended, agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement with respect to hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment because of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, ancestry, or gender identity. The Concessionaire further agrees that every subcontract entered into for the performance of this Agreement will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. Breach of this covenant will be regarded as a material breach of the Agreement.

31. TAXES

The Concessionaire shall pay when due all taxes and assessments levied on the Concession Premises during the term of this Agreement.

32. SUCCESSORS AND ASSIGNS

The covenants, conditions, and agreements made and entered into by the parties hereto, are hereby declared binding upon the successors and assigns of the Authority, and upon their heirs, administrators, executors, and assigns of the Concessionaire.

33. TRANSFER OF INTEREST

Concessionaire shall not assign or transfer this Agreement, nor sublet any of the Airport premises, including the buildings or improvements thereof, except as herein provided, without the written consent and approval of the Authority, which consent shall not be unreasonably withheld.

No transfer of corporate stock or of beneficial interests or of ownership in Concessionaire, other than between presently existing shareholders (and excepting transfers in publicly held

companies), shall be made without prior written notice to the Authority so long as this Agreement is in effect.

Any transfer of corporate control or of fifty (50%) percent or more of the outstanding voting stock of Concessionaire shall be construed to be an assignment of this Agreement.

34. **WASTE MATERIALS**

No rubbish, waste material, garbage or other trash shall be placed or stored on the Concession Premises in other than approved containers.

35. **SALE OF RENTAL VEHICLES**

The Authority hereby acknowledges that the Concessionaire may, from time to time during the course of this Concession Agreement, dispose of rental vehicles rented or delivered by Concessionaire to customers from the Airport location. The Concessionaire hereby agrees that selling or disposing of vehicles from the Airport location shall not constitute a primary activity of Concessionaire's business. The Concessionaire further agrees that any sale or disposition of vehicles shall be restricted to lease or rental vehicles which were utilized in its business operation of renting or delivering vehicles to customers specifically from its location at the CHERRY CAPITAL AIRPORT. No signs or advertising matter shall be painted, posted or displayed in connection with the sale of vehicles from Airport property without the prior approval and written consent of the Authority. The Authority hereby reserves the right to terminate the opportunity of the Concessionaire to sell or dispose of vehicles from Airport property if, in the opinion of the Authority, said sale or disposition constitutes a primary activity in the conduct of Concessionaire's business at the Airport and not conducted in accordance with this paragraph.

The parties hereby agree that all vehicles sold by Concessionaire at the CHERRY CAPITAL AIRPORT shall be titled in the name of Concessionaire for at least thirty (30) days prior to sale. In the event that Concessionaire has increased its rental vehicle fleet to accommodate car rental and lease business at the CHERRY CAPITAL AIRPORT, the Concessionaire shall be entitled to request an exception to the thirty (30) day title requirement from The Director. Any such request shall be in writing and received by The Director prior to the date of the sale. The Authority hereby agrees that its consent to such a request will not be unreasonably withheld. Compliance with this Agreement shall constitute prima facie evidence that Concessionaire's sale of rental vehicles is not a primary activity in the conduct of its business at the CHERRY CAPITAL AIRPORT. To insure compliance with the above, the Authority shall be entitled to request verification that all vehicles offered to be sold or sold at the CHERRY CAPITAL AIRPORT by Concessionaire within any thirty (30) day period of time have been properly titled in compliance with this Agreement. The Authority hereby agrees to limit any such request to occur not more than three (3) times in any calendar year in which this Agreement remains in force. Proceeds of any authorized sale of a vehicle will not be subject to concession fees under this Agreement.

36. **USE OF AIRPORT FACILITIES**

Notwithstanding any other provision of this Concession Agreement, any use of public Airport facilities by the Concessionaire, its employees or customers, for which the Authority imposes user charges or fees, shall be charged to Concessionaire and paid to Authority in the standard rate and charges as use occurs.

37. **NOTICES**

Notices required under this Agreement shall be deemed proper if duly sent by United States First Class mail and addressed to the parties at the following address:

AUTHORITY:

Kevin C. Klein, AAE
Chief Executive Officer
Cherry Capital Airport
727 Fly Don't Drive
Traverse City, MI 49686

CONCESSIONAIRE:

Each party will be responsible to provide notice of any change in the above address in writing to the other party.

38. **WAIVER OF BREACH**

The waiver by the Authority of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach of the same or different provision hereof.

39. **TIME OF THE ESSENCE**

Time is expressly declared to be of the essence of this Agreement.

40. **LANDING AREA**

Authority reserves the right, but shall not be obligated to Concessionaire, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.

41. **ANCILLARY USE**

The parties hereby acknowledge that they have additional leases or agreements in existence relative to the occupancy and use of other property at the CHERRY CAPITAL AIRPORT related to the purpose for which the Premises are to be used. In the event that the Concessionaire defaults in any other lease or agreement with the Authority, or otherwise prematurely terminates any other lease or agreement which it has with the Authority, said default shall constitute a default of this Concession Agreement and the Concessionaire shall be subject to the terms and conditions outlined in this Agreement.

42. **ENVIRONMENTAL INDEMNIFICATION**

Concessionaire represents and warrants that it has obtained, and at all times shall maintain in full force and effect, such governmental approvals, rulings, permits and licenses, and has taken all other action, as may be necessary to comply with all environmental, ecological and other governmental requirements, statutes, regulations, permits, or judicial or administrative orders, or any contracts relating to the Concession Premises and its operation, including without limitation those relating to the use on the premises of any hazardous substance or waste as defined in any law of the United States or the State of Michigan, and Concessionaire represents that it has not received any notice of any violation of any of the foregoing. Concessionaire shall not possess, use, generate, release, emit, discharge, store, dispose, or transport any hazardous materials, on, under, in, above, to, or from the facilities that are the subject of this Agreement other than in strict compliance with all environmental laws, and Concessionaire will not engage in any such activity or in the operation of a hazardous waste facility on the premises. Concessionaire agrees that if there shall exist a breach or default of any of the foregoing representations, warranties, agreements or covenants, or if any of such representations or warranties shall at any time no longer be true and correct as to such time, then Concessionaire shall take all actions necessary to cure any such breach or default and to make all such representations and warranties true and correct as of such time.

Concessionaire further agrees to defend, indemnify and hold the Authority harmless against any cost or expense of any type or nature related to or arising from any such breach or default, including without limitation removal or remedial action incurred as a result of any order of the United States Government or any of its agencies, the State of Michigan or any of its agencies, any local governmental unit, or any court or administrative agency resulting from or claimed to have resulted or arisen from hazardous materials being on the premises leased by Concessionaire, or the noncompliance of the premises or Concessionaire with any existing regulation, law, rule or ordinance pertaining to environmental matters, which indemnity shall include but not be limited to the costs of defense incurred by the Authority, court costs, expenses, attorney fees, judgments and awards, expenses of investigation and any other related expense which may arise from or be claimed to have arisen from any environmental claim of any type or nature pertaining to Concessionaire's use or occupancy of the premises leased. Concessionaire's above-mentioned agreement to indemnify the Authority extends only to those conditions which

came into existence on or after the effective date of this Agreement and for which Concessionaire is responsible.

43. **CHANGES IN SECURITY AND SAFETY REQUIREMENTS**

In the event that the Federal Aviation Administration or the Transportation Security Administration or its designee or assignee, or any other governmental agency, shall require the expenditure of additional funds in excess of available state and federal funding to the Leasehold for such purposes as, but not limited to, security, safety equipment, public safety, or public health, the Authority shall have the right to revise the rental fees as herein set forth to cover said expenditure of additional funds. Prior to imposition of a rental fee increase, the Authority shall attempt to negotiate an amortization schedule for said increase(s). If the parties fail to reach an agreement on the increase in fee, and the Concessionaire remains unsatisfied with the fee as adjusted by the Authority, the Concessionaire shall be entitled to terminate this Agreement within thirty (30) days after imposition of such increase. Further, if Concessionaire has control of an area accessing the air operations areas or otherwise restricted area of the airport as designated in the CHERRY CAPITAL AIRPORT Security Plan (the relevant portions of which are available for review at the Airport Administration Office) Concessionaire shall be responsible for enforcement of all security measures imposed for said access point following written notice from the Authority of security measures to be imposed. Any fine or penalty imposed by federal or state authorities related to a breach of security for an access area under Concessionaire's control shall be the responsibility of the Concessionaire.

44. **MULTIPLE BRANDING**

Brand is a comprehensive term that includes all brand names and trademarks and shall be defined as an identifying mark, symbol, word, or combination of same that separate one Concessionaire's product or services from another Concessionaire. Concessionaire shall be permitted to have more than one brand in its operation under this Agreement, provided Concessionaire indicated such multiple branding on the effective date of this Concession Agreement, and such brand is owned by the Concessionaire and the Concessionaire only.

Two or more Concessionaires operating at the Airport shall not be allowed to combine or otherwise share a brand or brands.

45. **FORCE MAJEURE**

Neither The Authority nor Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, war, or any other circumstances for which it is not responsible or which is not in its control. However, the parties agree that suspension of Concessionaire's obligation with respect to the MAG during any Force Majeure event shall be solely as set forth in paragraph 4. The parties agree the COVID-19 Pandemic is not a Force Majeure event.

46. **SEVERABILITY**

If any word, phrase, clause, paragraph, section or other part of this lease is ever held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this lease shall remain in effect.

47. **TERMINATION**

The Authority shall have the right to terminate this Concession Agreement upon 12 months written notice. Notwithstanding anything to the contrary contained herein, the Authority reserves the right to terminate this Agreement on or before May 1, 2023 in the event that Concessionaire has not negotiated and executed a Service Facility Agreement with the Authority under terms and conditions as identified in the Northwest Regional Airport Authority Request for Proposal for the operation of on-airport rental car concessions at the Cherry Capital Airport, together with confirmation satisfactory to the Authority that Concessionaire has effectively participated in a consortium pursuant to the administration and maintenance of the service facility identified in the Service Facility lease executed contemporaneously with this Agreement.

48. **AMBIGUITY**

Any ambiguities in this Agreement shall not be construed for or against any party on the basis that such party did or did not author the same.

49. **GOVERNING LAW**

This lease shall be governed solely by the laws of Michigan.

50. **JURISDICTION & VENUE**

The Authority and Concessionaire agree that jurisdiction and venue over disputes regarding this lease shall be limited to Grand Traverse County, Michigan.

51. **COUNTERPARTS & MULTIPLE ORIGINALS**

This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

52. **USE OF AIRPORT LOGO**

Concessionaire shall not use the Airport's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of the Authority.

53. **SUSPENSION AND DEBARMENT**

Concessionaire certifies, by entering into the Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into the Agreement by any federal agency or department or any agency or political subdivision of the State of Michigan. The term “principal” for purposes of the Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Concessionaire.

54. **BAN ON TEXTING WHILE DRIVING**

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, all text messaging while driving when Concessionaire is performing any work for, or on behalf of, the Federal government, including, but not limited to, work relating to the CARES Act and CRRSA Grant Agreements, is expressly prohibited.

55. **FREEDOM OF INFORMATION ACT**

Concessionaire acknowledges that the Authority may be required from time to time to release records in its possession by law. The Concessionaire hereby gives permission to the Authority to release any records or materials received by the Authority as it may be requested to do so as permitted by the Freedom of Information Act, MCL 15.231 et seq.

56. **DIGITAL SIGNATURES**

The parties hereto acknowledge and agree under the Uniform Electronic Transactions Act, MCL 450.832, et seq. that this Agreement may be executed with the electronic signature of any person authorized and required to sign on behalf of the parties hereto.

57. **THIRD PARTY BENEFICIARIES**

This Agreement confers no rights or remedies on any third party, other than the parties to this Agreement and their respective successors and permitted assigns.

****Signature Page to Follow****

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the _____ day of _____, 20____,

In the presence of:

**NORTHWEST REGIONAL
AIRPORT AUTHORITY**

By: _____
Steve Plamondon - Chairman

By: _____
Kevin C. Klein – Recording Secretary

In the presence of:

RAC COMPANY

By: _____

Its: _____

EXHIBIT A

CONCESSION FEE REPORTING FORM

RAC LETTERHEAD

Month xx, 20xx

Northwest Regional Airport Authority
Cherry Capital Airport
727 Fly Don't Drive
Traverse City, MI 49686

Re: Car Rental Concessions

To Whom It May Concern:

Gross Revenue from passenger rental car operations at the Cherry Capital Airport for the month of _____ was \$_____.

Concession amount to be paid is the greater of:

10% of Gross Revenue \$ xx,xxx.xx

or

Minimum Monthly Guarantee \$ xx,xxx.xx

Concession Due: \$ **xx,xxx.xx**

The above figures reflect a true and correct statement of Gross Revenues received from rental operations for the month indicated.

Printed Name & Position
RAC Company Name

EXHIBIT B

SALES COUNTER AND OFFICE SPACE

To be supplied with awarded agreements

EXHIBIT C

READY CAR AND SERVICE LOT ALLOCATIONS

To be supplied prior to May 1, 2023

EXHIBIT D

SIGNAGE LIMITATIONS WITHIN LEASEHOLD AREA

Concessionaire shall be permitted to display the following signs in the sizes and descriptions established as follows:

- A. The back wall of the leasehold space may display a sign bearing Concessionaire's logo. The sign, at the option of the Concessionaire, may be backlit or otherwise illuminated. The sign shall contain dimensions no greater than six feet by three feet.
- B. The Concessionaire may display a freestanding sign on its counter indicating that vehicles are currently available. If displayed, this sign shall contain dimensions no greater than 12 inches by 14 inches.
- C. The Concessionaire may post a sign within its leasehold space stating the hours of operation. If posted, the dimensions of this sign shall be no greater than 12 inches by 14 inches.
- D. The Concessionaire may post a freestanding sign on its counter defining and/or designating customer queuing for counter access. The dimensions of such a sign shall be no greater than 12 inches by 14 inches.

In addition, the Northwest Regional Airport Authority will provide graphics on any two walls designated by Concessionaire within its leasehold area identifying the Concessionaire's affiliated franchise. The dimensions for these graphics will be not greater than 5 inches by 18 inches, and colors utilized shall be at the discretion of the Northwestern Regional Airport Commission. Further, the Northwest Regional Airport Authority will provide an after-hours express key slot within the Airport terminal at a location to be determined by the Airport CEO.

EXHIBIT E

**SERVICE FACILITY LEASE AGREEMENT
AND FUEL TANK ADDENDUM**

SERVICE FACILITY LEASE AGREEMENT

This Lease Agreement (“Lease”) is entered into by and between the **Northwest Regional Airport Authority** (hereafter “Authority”) and _____ (hereafter “_____” or “RAC”) on May 1, 2023.

WITNESSETH

WHEREAS, the Authority is the owner of the rental car service facility and the land depicted on *Exhibit A* (hereinafter the “Service Facility”), and

WHEREAS, the Service Facility consists of exclusive use area for the storage of rental vehicles in connection with a non-exclusive on-airport rental car concessionaires (the “Concessionaires”) and a common use car wash area for the Concessionaires, and

WHEREAS, RAC has entered into a concession agreement with the Authority to operate a non-exclusive on-airport rental car concession (hereinafter the “Concession Agreement”) at Cherry Capital Regional Airport (hereinafter “Airport”), and

WHEREAS, RAC desires to enter a use agreement for a portion of the Service Facility to clean, fuel and store vehicles rented at the Airport pursuant to the Concession Agreement;

THEREFORE, the parties to this Lease understand and agree to the following:

1. **Term**

The term of this Lease shall run concurrent with its Concession Agreement with the Authority.

2. **Facilities**

a. **Vehicle Storage Area/Maintenance Area**

The RAC shall have the exclusive right to use the vehicle storage area and the maintenance area identified in *Exhibit A* (the “Exclusive Use Areas”); provided, however, that RAC agrees that this area will be used to store or service vehicles either rented or in use by it at the Cherry Capital Airport only and shall not be used to store or service vehicles that are not routinely rented by air travelers, or utilized by the RAC in performing duties called for in this Lease and the related Concession Agreement. It is further agreed that the maintenance area shall be used exclusively for maintaining the vehicles associated with RAC’s business at the Cherry Capital Airport, and shall be operated in compliance with all federal, state, county, and municipal statutes, regulations, and ordinances, including regulations and ordinances imposed by the Authority or its designee, at the sole effort and expense of the RAC. This shall include compliance with all regulations

regarding the regular inspection and maintenance of the mechanical systems, including but not limited to the boiler system, the compressor system, the heating and air conditioning system, and the plumbing system, including the back flow preventers (the “Exclusive Use Facilities”).

b. Common Areas

RAC shall have the non-exclusive right to use the common areas identified in *Exhibit A* (the “Common Areas”) in cooperation with other on airport RACs operating at the Cherry Capital Airport under written concession agreements with the Authority. All RACs with written concession agreements with the Authority that permit the use of areas designated in *Exhibit A* shall be jointly and severally responsible, both financially and otherwise, for operating and maintaining the facilities, structures, and associated equipment in use on said common areas (“Common Area Facilities”). It is understood and agreed that the Common Area Facilities shall be maintained and operated in compliance with all federal, state, county and municipal statutes, regulations, and ordinances, including regulations imposed by the Authority or its designee, and further including compliance with all regulations regarding the regular inspection and maintenance of the mechanical systems, including but not limited to the boiler system, the compressor system, the heating and air conditioning system, and the plumbing system, including the back flow preventers. As a condition of this Lease, RAC shall execute the Fuel Tank Lease attached hereto and incorporated herein as an addendum to this Lease, which establishes terms and conditions for non-exclusive use of a 6,000 gallon above ground automotive fuel facility.

c. By entering into this Lease, RAC expressly acknowledges that the Exclusive Use Areas and Exclusive Use Facilities are in good working order and free of defect.

d. At the conclusion of this Lease, RAC shall surrender the Common Area, Common Area Facilities, Exclusive Use Areas, and Exclusive Use Facilities in the same condition as existed at the inception of this Lease reasonable wear and tear excepted.

3. Consideration

In consideration for use of the Areas and Facilities as herein described, RAC shall pay the Authority ground rent on its Exclusive Use Area plus its share of the ground rent on the Common Use Areas, including the Fuel Tank Lease incorporated as an Addendum to this Lease. Rent for the Common Use Areas (excepting the Fuel Tank Lease) will be allocated to each RAC based on the percentage of Exclusive Use Area the RAC occupies in the service facility. In the first contract year of this Lease, RAC shall occupy 899 square feet of Exclusive Use Area in the maintenance

building and _____ square feet of Exclusive Use Area in the auto storage area. The facility leasehold currently allocates 39,919 square feet to Common Use Area.

The rent shall be calculated by multiplying RAC's Exclusive Use Area plus its proportionate share of the Common Use Area times the Authority's ground rental rate of **\$ 0.28** per square foot per annum. The rental fees referred to above shall be considered base rental fees and shall be adjusted to reflect an increase of two percent (2%) per annum based upon the prior year's rental fees effective May 1st of each year during the term of this lease, or any extensions.

All fees represented above are due and payable within fifteen (15) days of the last day of each month. The Authority hereby agrees that no late payment fee will be assessed if payments are received within fifteen (15) days of the last day of each month. However, RAC agrees to pay the Authority a service charge/collection fee of one and one-half (1.5%) percent per month on all payments called for under this Lease which are overdue. A payment shall be considered overdue if not paid within thirty (30) days of the date of invoicing by the Authority, or within thirty (30) days of the date payments called for under this Lease become due. Said service charge/collection fee shall be paid to the Authority at the time of payment of the past due charge. This charge is deemed to cover the Authority's administrative costs resulting from RAC's delinquency.

With the exception of the assigned maintenance area, Exclusive Use Area will be allocated at the end of each contract year unless waived by all participating RACs. The reallocation shall be based on market share of all RACs leasing the Service Facility for the preceding contract year, subject to the minimum of 11,705 square feet.

For the purpose of this provision, Exclusive Use Area shall be defined as that portion of the service facility on which RAC has the exclusive right to park, wash, and service vehicles.

For the purpose of this provision, Common Use Area shall be defined as all land on which the service facility sits that is not allocated as Exclusive Use Area.

4. **Environmental**

- a. RAC shall comply with all applicable Federal, state, and local statutes, ordinances, regulations, rules, policies, codes or guidelines (now in effect or which may be amended or instituted during the term of this Lease) that govern hazardous materials or relate to the protection of human health, safety and/or the environment (hereinafter collectively referred to as "Environmental Laws"). This includes, but is not limited to:

- i) The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.;
 - ii) The Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.;
 - iii) The Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.;
 - iv) The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99 499, 100 Stat. 1613;
 - v) The Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.;
 - vi) The Clean Air Act as amended, 42 U.S.C. Section 7401 et seq.;
 - vii) The Clean Water Act, 33 U.S.C. Section 1251, et seq.;
 - viii) The Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.;
 - ix) The Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.;
 - x) All statutory requirements established to be applicable to the facilities by the State of Michigan.
- b. RAC shall be liable for any fines or penalties levied by the Michigan Department of Environment, Great Lakes, and Energy (hereinafter "EGLE"), the Environmental Protection Agency (hereinafter the "EPA"), or any other governmental agency arising out of RAC's failure to comply with the Environmental Laws or other regulations.
 - c. RAC shall not possess, use, generate, release, emit, discharge, store, dispose or transport any hazardous materials on, under, in, above, to or from the facilities that are the subject of this Lease other than in strict compliance with all Environmental Laws.
 - d. RAC shall not utilize or install a fire suppression system utilizing or containing per- and polyfluoroalkyl substances (PFAS).

5. **Indemnity**

RAC agrees, to the fullest extent allowed by Michigan law, that, except where any claim, demand, or liability arises from sole negligence of the Authority, it shall

defend, hold harmless, and indemnify the Authority, its officers, agents, and employees from any and all claims, actions, liabilities, damages, losses, cost or expenses fines or penalties in any way related to or arising out of the use, operation or maintenance of the property and facilities that are the subject of this Lease, including, but not limited to, attorney and consultant fees, court costs, and litigation expense incurred as a result of or related to the following:

- a. Any investigation, monitoring, cleanup, containment, removal, storage or restoration work arising out of or in any way related to the use of the Service Facility and required pursuant to Environmental Laws;
- b. Any fines or penalties assessed by state or local agencies charged with inspecting the maintenance, operation, and testing of any of the mechanical systems of the Service Facility;
- c. Any claims for personal injury or property damage arising out of or in any way related to the use of the Service Facility;
- d. Any other claim arising out of or in any way related to the use of the Service Facility.

This provision shall survive termination of this Lease. This provision is not intended to waive the defense of governmental immunity that may be asserted by the Authority in connection with any claim against it.

6. **Right of Entry**

The Authority or its designee shall have the right to enter upon any portion of the Service Facility at any time provided, however, that all reasonable efforts shall be made to minimize interference with RAC's business operations.

7. **Assignment and Subletting**

RAC shall not assign or transfer its interest in this Lease, nor sublet any of the Airport premises, including buildings or improvements incorporated within the scope of this Lease, except as herein provided, without the written consent and approval of the Authority, which consent shall not be unreasonably withheld. No transfer of corporate stock or beneficial interest of ownership in RAC, other than between presently existing shareholders (and excepting transfers occurring in publicly traded entities) shall be made without prior written notice to the Authority so long as this Lease remains in effect. Any transfer of corporate control of 50% or more of the outstanding voting stock of Concessionaire shall be construed to be an assignment of this Lease.

8. **Approved Use**

The subject property shall be used by RAC solely to service vehicles for rental at Cherry Capital Airport pursuant to the rental car Concession Agreement between RAC and the Authority the terms of which are incorporated herein by reference.

9. **Conditions Upon Use of The Premises**

- a. No signs or advertising matter shall be painted, posted or displayed upon any portion of the subject premises, including buildings and structures, prior to submission of subject matter and size for approval, nor without written consent of the Authority.
- b. RAC shall not consent to any unlawful use of the premises, nor permit any such unlawful use thereof.
- c. RAC further agrees that all federal, state and local laws will be observed, including the rules and regulations of the federal, state, and local aeronautical authorities and the local governing airport commission.
- d. The operations of RAC, its employees, invitees and those doing business with it, shall be conducted in an orderly and proper manner and so as not to annoy, disturb or be offensive to others at the Cherry Capital Airport. The Airport CEO or designee shall be the sole judge as to whether the conduct or actions of any employee is objectionable pursuant to this section, and if so judged, RAC shall take all steps necessary to eliminate the conditions that have occasioned such judgment.
- e. All rules and regulations of the State Fire Marshal, the State Bureau of Construction Codes and Fire Safety, the State Department of Consumer and Industry Services, and the Michigan Department of Environmental Quality shall be complied with by RAC in the conduct of its operation on the subject premises.
- f. The Authority reserves the right to further develop and improve the landing area or the facilities of the Cherry Capital Airport, including the premises herein demised, regardless of the desires or views of RAC in this regard, without interference or hindrances and free from any liability to RAC. The Authority agrees to take all reasonable steps to minimize such losses or inconveniences to RAC.
- g. This Lease shall be subordinate to the provisions of any existing or future agreement between the Authority and the United States of America relative to the operation or maintenance of the Airport, the execution of which has

been, or may be, required as a condition precedent to the expenditure of federal funds for the development of the Airport.

- h. All provisions of this Lease shall be subordinate to the rights of the United States of America to lease the Airport, or any part thereof, during time of war or national emergency, for military or naval use, and any provisions of this Lease inconsistent with the provisions of any lease to the United States of America shall be suspended thereby.
- i. RAC shall maintain insurance in companies authorized to do business in the State of Michigan for the protection of the Authority and naming it as an additional insured against claims, losses, costs or expenses arising out of injuries or deaths of persons whether or not employed by RAC; or against claims, losses, costs or expenses arising from damage to property, whether resulting from the acts or omissions, negligence or otherwise of RAC or any of its agents, employees, patrons or other persons, and growing out of the use of the said airport premises by RAC. Such policies shall provide for a liability limit on account of each accident resulting in the bodily injury or death to one person of not less than One Million (\$1,000,000) Dollars; a liability limit on account of each accident resulting in bodily injury or death to more than one person of not less than One Million (\$1,000,000) Dollars; and a liability limit for each accident resulting in property damage of not less than One Million (\$1,000,000) Dollars. If by reason of changed economic conditions the insurance amounts referred to above become inadequate, RAC agrees to increase the amounts of such insurance promptly upon the Authority's request. RAC shall further maintain such other insurance and in such amounts as may from time to time be reasonably required by the Authority against other insurable hazards which at the time are commonly insured against in the case of premises similarly situated.
- j. RAC shall furnish evidence to the Authority of the continuance of said policies by depositing a certificate of insurance with the Authority which policy shall include an endorsement naming the Authority as an additional insured. Said policies shall be so worded as to assure ten (10) day notice of cancellation to the Authority. Said policies shall also be subject to the approval of the Authority. RAC further agrees that a waiver of subrogation clause shall be incorporated into and made a part of said insurance policies to the extent it can be accomplished without prejudice to RAC's rights.
- k. RAC shall furnish to the Authority satisfactory evidence that it carries Worker's Compensation Insurance in accordance with the laws of the State of Michigan.

10. **Dispute Resolution**

The CEO or their designee shall have authority to resolve any dispute between the RACs operating under written lease agreements with the Authority regarding the proper use and maintenance of the Service Facility, including the Common Use car wash area. This shall not, however, relieve RAC of its duty to properly maintain the subject property, including the Common Use car wash area.

11. **Force Majeure**

Neither the Authority nor RAC shall be deemed in violation of this Lease if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, war, or any other circumstances for which it is not responsible or which is not in its control. The COVID-19 Pandemic is not a force majeure event.

12. **Severability**

If any word, phrase, clause, paragraph, section, or other part of this Lease is ever held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Lease shall remain in effect.

13. **Termination**

The Authority shall have the right to terminate this Lease for any reason upon thirty days (30) written notice.

14. **Holdover**

At the conclusion of the term of this Lease, the Authority shall have the right to extend this Lease on a month-to-month basis. The Authority shall have the right to terminate such a holdover on 30 days notice.

15. **Ambiguity**

Any ambiguities in this Lease shall not be construed for or against any party on the basis that such party did or did not author the same.

16. **Taxes**

RAC shall pay when due all taxes and assessments levied on the Exclusive Use Area and shall be jointly and severally responsible along with other on airport RACs operating at the Cherry Capital Airport under written concession lease

agreements with the Authority for the payment of all taxes and assessments levied on the Common Use Area by any governmental agency during the term of this Lease.

17. **Governing Law**

This Lease shall be governed solely by the laws of Michigan.

18. **Jurisdiction & Venue**

The Authority and RAC agree that jurisdiction and venue over disputes regarding this Lease shall be limited to the Circuit Court of Grand Traverse County, Michigan.

19. **Default, Termination, Cancellation, Forfeiture**

The following shall constitute Lessee's default under this Lease: (a) failure to pay when due any rent or additional rent due on the day the same shall be due, and such failure remains uncured for seven (7) days following Authority providing RAC with written notice; (b) failure to perform any of the terms and conditions under this Lease, other than payment of rent or additional rent, and such failure remains uncured for thirty (30) days following Lessor providing Lessee with written notice; (c) Authority has elected to cure Lessee's default under this Lease and Lessee has failed to pay Authority the cost and expenses incurred to cure such default within thirty (30) days after written demand; (d) Lessee has attempted to transfer the Lease premises or take other actions requiring Authority's consent without receiving such consent; (e) an event of bankruptcy or insolvency has occurred; (f) Lessee has committed waste, which shall include the failure to pay taxes (if any), hazard insurance premiums, and persistent failure to maintain and repair the leasehold premises or reimburse Authority for same; or (g) Lessee has abandoned or vacated the leasehold premises.

In the event of Lessee's default, the Authority shall, in addition to all of its other remedies under this Lease, or as permitted in law or equity, have the right to reenter the leasehold premises, with or without process of law, using force as may be necessary to remove the persons and property. Upon such default, the Authority, at its option, may either terminate this Lease, or without terminating this Lease, relet the leasehold premises or any part of it on such terms and conditions as the Authority deems advisable in its sole discretion. The proceeds of such reletting shall be applied: (a) first, to the payment of any indebtedness due from Lessee to Authority other than rent or additional rent; (b) second, to the payment of any reasonable cost of reletting including, without limitation, the cost of any reasonable alterations and repairs to the leasehold premises, brokerage fees and expenses, advertising expenses, inspection fees, and attorney fees; (c) third, to the payment of rent and additional rent due and unpaid under this Lease; (d) fourth, to any other damages, costs, and expenses incurred by Authority as a result of Lessee's breach;

and (e) the residue, if any, shall be held by Authority and applied in payment of future rent and additional rent as the same may become due and payable. Should the proceeds of such reletting arising any month be less than the monthly installments of rent or additional rent required under this Lease, then Lessee shall during such month pay such deficiency to Authority upon demand. No reentry or taking possession of the leased premises by Authority shall be construed as an election on its part to terminate this Lease unless written notice of such intention is given to the Lessee. In the event Authority elects to terminate this Lease, then Authority shall have the right to accelerate all of the rent and additional rent due for the balance of the Lease term, and Lessee shall forthwith pay to Authority upon demand, as liquidated damages, the deficiency between the amount of the accelerated rent and the proceeds of reletting, if any, for what would have otherwise constituted the balance of the Lease term or the reasonable rental value of the leased premises for such balance of the Lease term if the leased premises are not relet by Authority within thirty (30) days following Lessee's default. In computing such liquidated damages there shall be added to such deficiency any expenses incurred in connection with obtaining possession of the leasehold premises and reletting the leasehold premises, whether such reletting is successful or not, which expenses include, but are not limited to, attorney fees, brokerage fees and expenses, advertising expenses, inspection fees, and reasonable alterations and repairs to the leasehold premises.

Whether or not Authority terminates the Lease because of Lessee's default, Authority shall have no liability or responsibility in any way whatsoever for its failure to relet the leasehold premises or, in the event of reletting, for failure to collect rent under such reletting. The failure of Authority to relet the leasehold premises or any part of it, shall not release or affect Lessee's liability or damages. All rights and remedies of the Authority shall be cumulative and in addition to any other rights or remedies allowed by law or equity and may be exercised separately or jointly without constituting an election of remedies.

Should this Lease be terminated, cancelled or forfeited due to a default or breach by the Lessee or otherwise terminated by its terms, the Lessee shall peaceably give up to Authority the leased premises in as good condition as at the beginning of the term hereof, reasonable use and wear thereof and damage by the elements excepted. Disposition of improvements, additions, or other construction made thereon by Lessee shall become the property of the Authority, except as provided herein. All equipment and trade fixtures shall remain the property of Lessee.

20. **Ancillary Use**

The parties hereby acknowledge that they have and shall have during this term of this Lease additional leases or agreements in existence relative to the occupancy and use of other property at the Cherry Capital Airport. In the event that of the termination of such leases or agreements or RAC defaults in any other lease, operating agreement, or concession agreement with the Authority said default or

termination shall constitute a default of this Service Facility Lease and the RAC shall be subject to the terms and conditions outlined in Paragraph 19 of this Lease.

21. **Collaboration**

In addition to the conditions referenced above, each RAC located on the Cherry Capital Airport shall participate in the formation of a consortium in the form of an independent legal entity which will be responsible for the operation and maintenance of the Service Facility (the “RAC Consortium”) . In the event RAC does not continue to participate in the RAC Consortium as approved by the Authority, or if the RAC Consortium ceases to exist or is not maintained in good standing by the RAC, this failure shall constitute a default under the terms of this Lease as well as the Concession Agreement awarding the right to operate a rental car agreement at the Cherry Capital Airport. Operation and maintenance costs in the Service Facility will be allocated based upon the first year Minimum Annual Guarantee of all on-airport rental car concessionaires under agreement with the Authority as defined in paragraph 2 of the RAC’s Concession Agreement with the Authority.

22. **Operation and Maintenance**

The RAC Consortium shall be responsible, at its sole effort and expense, for the operation, cleaning, and maintenance of the Service Facility, including payment of all utilities related to the Service Facility. This shall include maintaining, cleaning, and repairing the fixtures, equipment, improvements, and appurtenances in the Service Facility in a clean, safe, neat, orderly, sanitary, and presentable condition, and free and clear of all trash, rubbish, debris, rodents, insects, and other pests, snow removal, at the sole effort and expense of the RAC. This shall include compliance with all regulations regarding the regular inspection and maintenance of the mechanical systems, including but not limited to the boiler system, fire system, the compressor system, the heating and air conditioning system, and the plumbing system, including the back flow preventers. In the event the Authority incurs any cost for noncompliance by any RAC with any obligation for operation, cleaning, and maintenance as provided herein, the Authority shall assess an administrative fee equal to fifteen (15%) percent of the cost for noncompliance and will charge RAC its proportionate allocation in the same manner as the ready/return area is allocated in paragraph 9(b) of the RAC’s Concession Agreement with the Authority. Allocations shall be billed as provided for under paragraph 3 of this Lease.

The Authority shall have the discretion, however, to use CFC (as that term is defined in the Concession Agreement collections to pay extraordinary costs as determined necessary by the Authority. The Authority reserves the right to request proof of compliance with this paragraph from the RAC Consortium.

23. **Miscellaneous Provisions**

- a. Failure by the Authority to insist upon the strict performance by the RAC of any of the terms or conditions herein contained shall not constitute a waiver of Authority's right to thereafter enforce any such term or condition, but the same shall continue in full force and effect. The exercise of any right to terminate arising under this Lease shall not operate to deprive the Authority of any co existing right to seek damages or other remedies arising from the default of the RAC.
- b. The acceptance of rents or fees or the continued performance by the Authority of its obligations under this Lease after a default by the RAC in its performance of any of its obligations under this Lease shall not be deemed a waiver of the Authority's right to terminate this Lease for such default other than a default in the payment of rents or fees which are subsequently accepted by the Authority.
- c. This Lease is made for the sole and exclusive benefit of the Authority and the RAC, their successors and assigns, and is not made for the benefit of any third party.
- d. In the event of ambiguity in any of the terms of this Lease, it shall not be construed for or against any party on the basis that such party did or did not author the same.
- e. If the building on the leasehold premises shall be destroyed to the extent of more than one half of its value, the Authority may, at its option, terminate this Lease immediately by written notice to Lessee.
- f. This Lease may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- g. The parties hereto acknowledge and agree under the Uniform Electronic Transactions Act, MCL 450.832, et seq. that this Lease may be executed with the electronic signature of any person authorized and required to sign on behalf of the parties hereto.

****Signature Page to Follow****

IN WITNESS WHEREOF, the Authority and RAC have executed this Lease on the first day written above .

**NORTHWEST REGIONAL
AIRPORT AUTHORITY**

By: _____
Steve Plamondon, Chairman

Date: _____

By: _____
Kevin C. Klein, Recording Secretary

Date: _____

RAC

By: _____

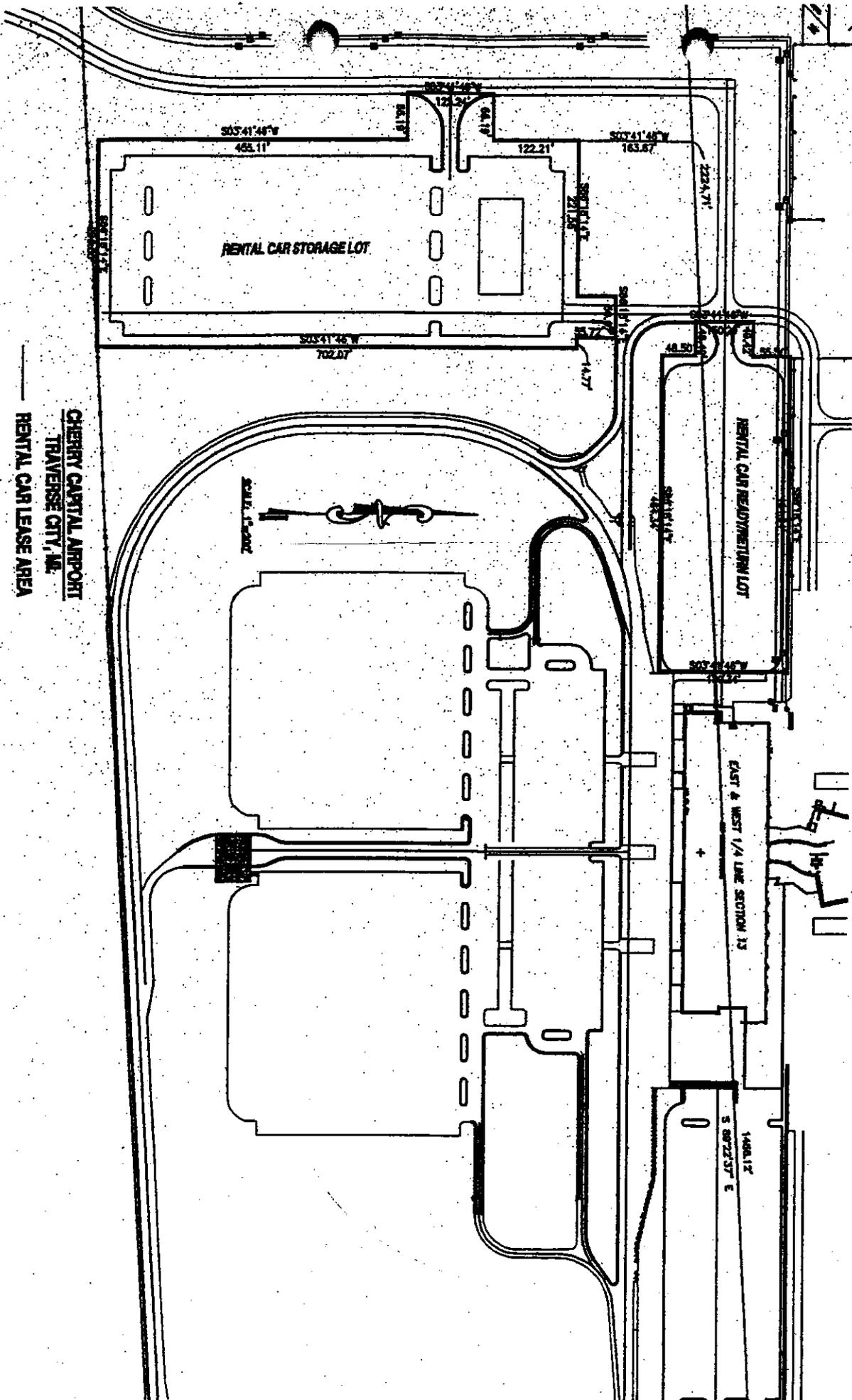
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By: _____

Date: _____

EXHIBIT A

VEHICLE STORAGE & MAINTENANCE AREA



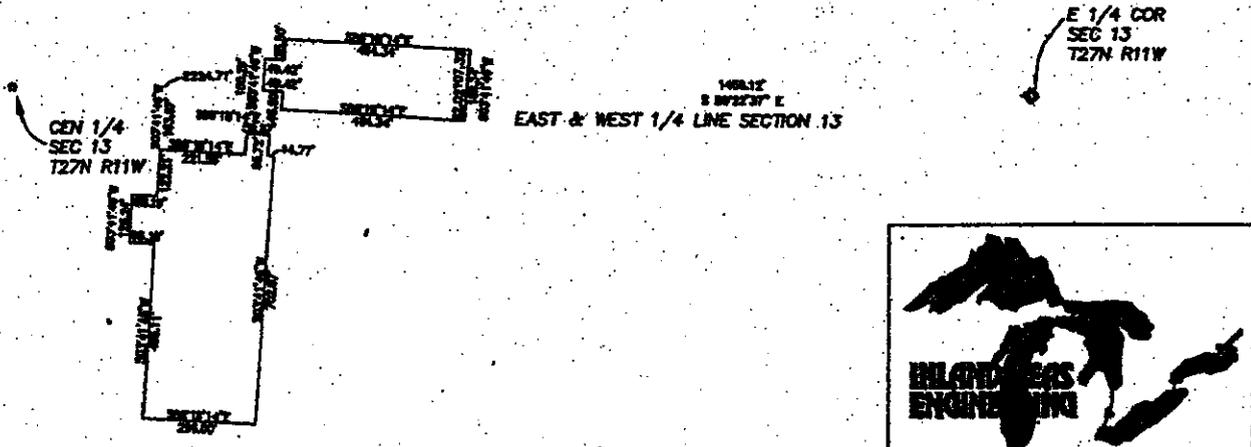
CHERRY CAPITAL AIRPORT
 TRAVERSE CITY, MI.
 RENTAL CAR LEASE AREA

RENTAL CAR READY LOT

Part of the E 1/2 of Section 13, T27N, R11W, Garfield Township, Grand Traverse County, Michigan, described as follows: Beginning at a point on the E & W 1/4 Line of Said Section 13 which is N 89°22'37" W, 1458.12 feet from the E 1/4 Corner; thence S 03°41'46" W, 82.02 feet; thence N 86°18'14" W, 464.34 feet; thence N 03°41'46" E, 48.50 feet; thence N 86°18'14" W, 49.42 feet; thence N 03°41'46" E, 150.29 feet; thence S 86°18'14" E, 49.42 feet; thence N 03°41'46" E, 55.50 feet; thence S 86°18'14" E, 464.34 feet; thence S 03°41'46" W, 107.32 feet to the Point of Beginning. Containing 2.115 acres.

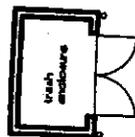
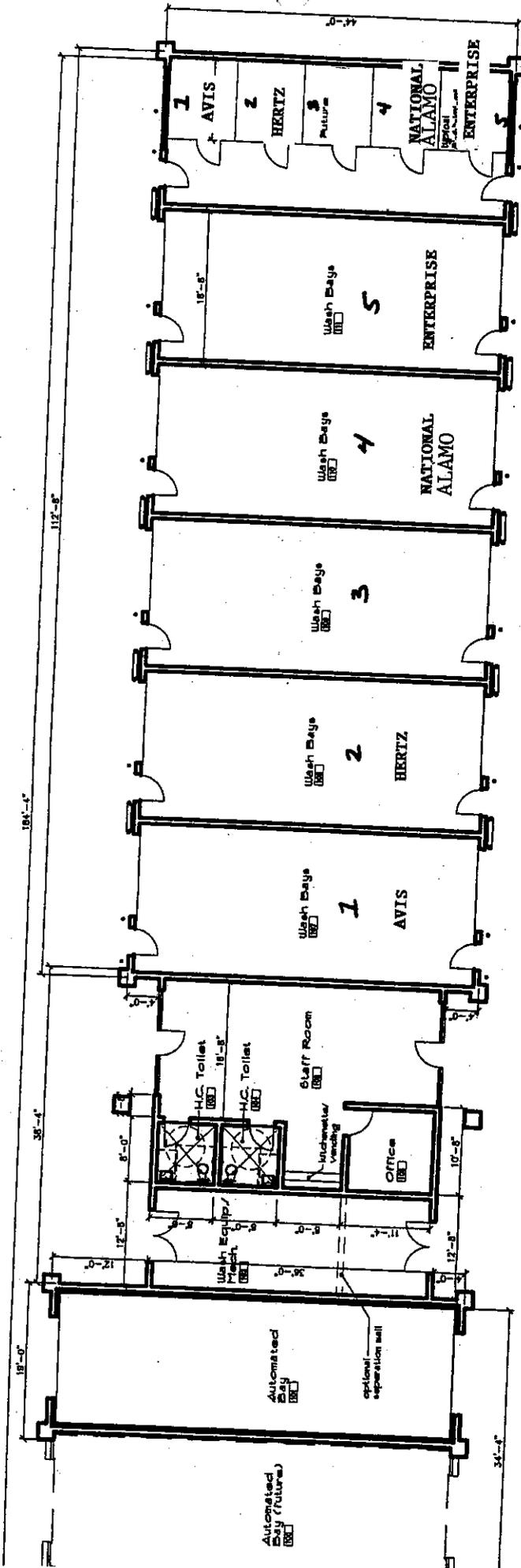
RENTAL CAR SERVICE AREA

Part of the SE 1/4 of Section 13, T27N, R11W, Garfield Township, Grand Traverse County, Michigan, described as follows: Beginning at a point which is N 89°22'37" W, 2224.71 feet along the E. & W 1/4 Line of said Section 13, and S 03°41'46" W, 163.67 feet from the E 1/4 corner of said Section 13; thence S 86°18'14" E, 221.56 feet; thence N 03°41'46" E, 55.72 feet; thence S 86°18'14" E, 59.67 feet; thence S 03°41'46" W, 55.72 feet; thence S 86°18'14" E, 14.77 feet; thence S 03°41'46" W, 1702.07 feet; thence N 86°18'14" W, 296.00 feet; thence N 03°41'46" E, 455.11 feet; thence N 86°18'14" W, 66.19 feet; thence N 03°41'46" E, 125.24 feet; thence S 86°18'14" E, 66.19 feet; thence N 03°41'46" E, 121.72 feet to the Point of Beginning. Containing 5.039 acres.



INLAND SEAS ENGINEERING, INC.
 Traverse City, MI
 231-933-4041
 Flushing, MI
 810-487-0555

SCALE :	500'	DRAWN BY :	SKS
DATE :	7-1-04	CHECKED BY :	JAL
PROJECT # :	02104028		
DRAWING :	LOTDESC		



ADDENDUM A

FUEL TANK LEASE

FUEL TANK LEASE

ADDENDUM TO SERVICE FACILITY LEASE AGREEMENT

THIS FUEL TANK LEASE agreement (the “Agreement”) is entered into this 1st day of May 2023, by and between the **Northwest Regional Airport Authority** (“Authority”), and _____ (“RAC”). This Agreement is an addendum to a Service Facility Lease Agreement dated May 1, 2023, which RAC has entered into with the Authority, attached hereto and incorporated herein by reference.

WITNESSETH:

WHEREAS, in addition to the Service Facility Lease Agreement, the RAC has entered a Concession Agreement with the Authority, with effective dates of May 1, 2023, which contain the terms and conditions of RACs operations and use of premises at the Cherry Capital Airport ; and

WHEREAS, the Authority has installed a 6,000-gallon, above-ground tank system for the purpose of dispensing automobile fuel (hereafter referred to as “Fuel Tank”); and

WHEREAS, RAC desires to utilize said Fuel Tank for the fueling of vehicles for its business, subject to certain rights, licenses, and privileges, and the Authority is willing to lease said Fuel Tank, and has the authority to lease said Fuel Tank and grant certain rights, licenses, and privileges with respect thereto to RAC.

NOW, THEREFORE, for and in consideration of the rents, covenants, and agreements herein contained, the Authority and the RAC agree as follows:

1. **Leasehold Location.** The Authority hereby agrees to lease to the RAC, on a non-exclusive basis, use, access and participation in the operation of the Fuel Tank located at the Cherry Capital Airport as depicted on *Exhibit 1*, which is attached hereto and incorporated herein by reference, and agreed upon by the parties to represent an accurate depiction of this portion of the Service Facility leasehold. This leasehold is referenced in paragraph 2 of the Service Facility Lease Agreement between the RAC and the Authority, which is incorporated herein by reference, and all terms and conditions governing enforcement of leasehold interests contained in said Lease Agreement shall be considered a part of this Agreement. Further, by execution of this separate Fuel Tank Lease Addendum to said Service Facility Lease, the RAC agrees that the term of use for the Fuel Tank leasehold premises shall run concurrent with both its **Service Facility Lease Agreement** and its **Concession Agreement**, and a default in the

terms and conditions of any of said agreements shall constitute a default in the terms and conditions of all of RAC's agreements with the Authority.

2. **Operation of Fuel Tank.** The RAC acknowledges that the Authority has purchased and installed a Fuel Tank for the purpose of dispensing automobile fuel for use by all rental car companies operating at the Cherry Capital Airport under the terms and conditions of an on-airport rental car business . The RAC acknowledges that the Fuel Tank is to be used by it for fueling all of its vehicles leased at the Cherry Capital Airport, as well as other on-airport rental car companies operating under written agreements with the Authority, and shall be used only for the fueling of vehicles associated with its business at the Cherry Capital Airport, and for no other use unless otherwise agreed to in writing by the Authority. The RAC acknowledges that it has non-exclusive use of the Fuel Tank, that its use is mandated as a condition of its Service Facility Lease, and that every other on-airport rental car company operating at the Cherry Capital Airport shall also have a non-exclusive use of the Fuel Tank. RAC acknowledges that it shall be jointly and severally responsible, with the Authority and all other rental car companies permitted to use the Fuel Tank, for the control and operation of the Fuel Tank, and shall abide by all rules and regulations established for use of said Fuel Tank by the Authority. In addition, the Authority reserves the right to enter into additional leases for use of the Fuel Tank as provided in paragraph 10 of this Addendum. The Authority further reserves to itself the right to use of the Fuel Tank for the purpose of fueling vehicles in connection with its own business.

3. **Rentals.** The RAC shall pay to the Authority as rental for the lease of the Fuel Tank:

A monthly volume-based fee, which shall be calculated each month by the following formula:

Number of gallons dispensed by the RAC
x (times) average price of fuel
+ 12.5% administrative fee for operation
+ state and federal fuel taxes paid by Authority.

“Average price of fuel” shall mean the total price paid for automobile fuel by the Authority to fill the Fuel Tank in the immediately preceding month, divided by the number of gallons purchased by the Authority in the immediately preceding month.

The parties agree that the 12.5% administrative fee fairly and reasonably compensates the Authority for administrative costs incurred by the Authority under this Agreement,

including but not limited to, insurance, environmental compliance, account management, and other administrative services.

The RAC agrees to pay a service charge/collection fee of one and one-half (1 1/2%) percent per month on all overdue payments called for under this Agreement. A payment shall be considered overdue if not paid within 30 days of the date of invoicing or within 30 days of the date payments called for under this Agreement become due. Said service charge/collection fee shall be paid to the Authority at the time of payment of the past due charge. This charge is deemed to cover the Authority's administrative costs resulting from Concessionaire's delinquency.

Notwithstanding anything in this Agreement to the contrary, all amounts payable by RAC to, or on behalf of, the Authority under this Agreement, whether or not expressly denominated as rent, shall constitute rent for the purposes of the Bankruptcy Code, 11 USC §502(b)(7), and as amended.

4. **Suspected Petroleum Release.** In the event that RAC suspects or discovers evidence of a potential petroleum release coming from the Fuel Tank referenced herein, that information must be communicated immediately to the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and Airport administration offices in writing. In such an event, the written communication shall include:

- a. The name, address and phone number of the person reporting the release;
- b. The date and time the release was discovered;
- c. The general location of the release.

The Authority may also report the suspected release to EGLE. The RAC shall assist the Authority in the preparation and filing of all follow-up reports related to any reported release.

5. **EGLE Requirements.** The Authority shall be responsible for registering the Fuel Tank with EGLE. The RAC shall cooperate with the Authority to maintain the Fuel Tank in compliance with all federal, state, and local statutes, regulations, and ordinances, including, but not limited to, the installation and maintenance of spill prevention, overfill, and release protection equipment. The RAC shall comply with the Authority's Spill Prevention Control and Counter (SPCC) Plan, including attendance at any mandatory training.

6. **Insurance.** The RAC shall obtain and maintain third party pollution liability insurance for its use of the Fuel Tank in the amount of two million (\$2,000,000) dollars for each loss, each corrective action, and each confirmed release, subject to a two million (\$2,000,000) dollar

aggregate limit. The policy shall include and endorsement naming the Authority as an additional insured on said policy.

7. **Improvements.** Upon termination of this Agreement, all improvements shall be the property of the Authority.

8. **Indemnification.** RAC agrees to defend, indemnify and hold harmless any individual or entity, including the Authority, from liability for any damage arising out of the RAC's or any employee, contractor, or other individual acting on RAC's behalf use, operation or control of the Fuel Tank. The Authority agrees to defend, indemnify and hold harmless RAC from liability for any damage arising out of the Authority's use, operation, or control of the Fuel Tank that the Authority, or any employee or individual acting on the Authority's behalf, may cause to the extent of and up to the limits of the Authority's insurance coverage for such claims or liabilities. This provision shall survive termination of this Agreement. This provision is not intended to waive the defense of governmental immunity that may be asserted by the Authority in an action against it.

9. **Environmental Indemnification.**

a. **By RAC.** RAC agrees to defend, indemnify and hold the Authority harmless from and against any cost or expense of any type or nature related to or arising from any environmental claim, liability or damages, including without limitation removal or remedial action incurred as a result of any order of the United States Government or any agency, the State of Michigan or any state agency, any local governmental unit, or any court or administrative agency resulting from or claimed to have resulted or arisen from RAC, its employees, contractors, guests, licensees, or invitees use, operation, or control of the Fuel Tank or the noncompliance of RAC, its employees, contractors, guests, licensees, or invitees with any existing regulation, law, rule or ordinance pertaining to environmental matters, which indemnity shall include but not be limited to the costs of defense incurred by the Authority, court costs, expenses, attorney fees, judgments and awards, expenses of investigation and any other related expense which may arise from or be claimed to have arisen from any environmental claim or any type or nature.

b. **By the Authority.** The Authority agrees to defend, indemnify and hold the Authority harmless from and against any cost or expense of any type or nature related to or arising from any environmental claim, liability or damages, including without limitation removal or remedial action incurred as a result of any order of the United States Government

or any agency, the State of Michigan or any state agency, any local governmental unit, or any court or administrative agency resulting from or claimed to have resulted or arisen from the Authority, its employees, contractors, guests, licensees, or invitees use, operation, or control of the Fuel Tank or the noncompliance by the Authority, its employees, contractors, guests, licensees, or invitees with any existing regulation, law, rule or ordinance pertaining to environmental matters, which indemnity shall include but not be limited to the costs of defense incurred by the Authority, court costs, expenses, attorney fees, judgments and awards, expenses of investigation and any other related expense which may arise from or be claimed to have arisen from any environmental claim or any type or nature up to and to the extent of its insurance coverage for any such environmental claim.

c. Other. In the event that it cannot be determined who is responsible for an environmental claim, liability, damage, or enforcement action, the Authority shall be responsible for the claim, liability, damage, or enforcement action up to the extent of its insurance coverage. RAC shall be responsible for any costs, expenses, or damages that exceed the Authority's insurance coverage or the Authority may utilize CFCs for any costs, expenses, or damages that exceed the Authority's insurance coverage in the Authority's sole discretion.

This paragraph shall survive the termination of this Agreement and is not intended to waive the defense of governmental immunity that may be asserted by the Authority in an action against it.

10. Maintenance. The Authority shall be responsible for the maintenance of the Fuel Tank. This shall include compliance with all regulations regarding the regular inspection and maintenance of the Fuel Tank. The Authority shall have the discretion, however, to use CFC (as that term is defined in Concession Agreement with the Authority) collections to pay extraordinary costs as determined necessary by the Authority.

The RAC shall be jointly and severally responsible with the other on-airport rental car companies granted non-exclusive use of the Fuel Tank for keeping the Fuel Tank and the immediate area in a neat and clean condition and keeping the area plowed of snow.

11. New Entrants. If, consistent with its contractual obligations with the RAC, the Authority enters into a concession agreement with another rental car company to do business on-airport, then the Authority may permit the new entrant use of the Fuel Tank. All new entrants

shall be subject to the same terms and conditions as the RAC and shall have the same right and opportunity for use of the Fuel Tank.

12. **Access.** The Authority shall at all times maintain a current key or security code to access the Fuel Tank in its capacity as fuel supplier, landlord, and operator of the Cherry Capital Airport, and shall retain the right to inspect the Fuel Tank area as identified in Exhibit A of the Service Facility lease for compliance with this Agreement.

**Northwest Regional
Airport Authority**

By: _____
Steve Plamondon, Chairman

By: _____

By: _____
Kevin C. Klein, Recording Secretary

Its: _____

Date: _____

Date: _____