CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Aviation

AGENDA DATE: December 1, 2009

CONTACT PERSON PHONE: Monica Lombrana, A.A.E. -780-4793
Terrence Freiburg, Purchasing Manager, 541-4313

DISTRICT(S) AFFECTED: All

SUBJECT:

Award solicitation 2010-082R - Vehicle Rental Concessionaire to Simply Wheelz LLC dba Advantage Rent a Car for the operation of a Vehicle Rental Concession at El Paso International Airport.

BACKGROUND / DISCUSSION:

Solicitations were issued and awarded in 2006 to seven (7) vehicle rental companies for Vehicle Rental Concessions at EPIA. Southwest-Tex Leasing Co. Inc, dba Advantage Rent-A-Car was one of the companies awarded the bid. Southwest-Tex has claimed bankruptcy and has ceased operations at EPIA. In order to fill the void, an RFP was issued to solicit offers for the space previously occupied by Advantage Rent-A-Car. The Minimum Annual Guarantee (MAG) for this solicitation was set at the amount previously bid by Southwest-Tex.

For this solicitation, one (1) offer was received from Simply Wheelz LLC dba Advantage Rent A Car. Per the response from Simply Wheelz, Advantage Rent A Car is now a wholly owned subsidiary of the Hertz Corporation, purchased earlier this year.

Simply Wheelz proposed a MAG of $342,545.00 and will pay the greater of the MAG or 10% of gross receipts. The concession will be operated under the brand of Advantage Rent A Car. The effective date of the agreement will be December 15, 2009.

The Department of Aviation recommends approval of the award of this solicitation and authorization is requested for the City Attorney's Office to review and the City Manager to execute the related contract documents.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/ A - Revenue Generating

BOARD / COMMISSION ACTION:

N/A

**********REQUIRED AUTHORIZATION**********

DEPARTMENT HEAD: _____

Monica Lombraña, A.A.E., Director of Aviation

Information copy to appropriate Deputy City Manager

PROJECT FORM

DATE: November 20, 2009

PROJECT: Vehicle Rental Concessionaire
SOLICITATION NO: 2010-082R DEPARTMENT: Department of Aviation
BUDGET NO: Revenue Contract
FUNDING SOURCE: Revenue Contract
REPRESENTATIVE DISTRICT(S): ALL

****

RECOMMENDATION: VENDOR: Simply Wheelz LLC DBA Advantage Rent a Car
Park Ridge, NJ
AMOUNT: $185,546.00

Award Solicitation No. 2010-082R (Vehicle Rental Concessionaire) to Simply Wheelz LLC DBA Advantage Rent a Car with an effective date of December 15, 2009. This is a revenue-generating contract. The Minimum Annual Guarantee of $342,545.00 will be prorated for the initial period.

This contract is for the operation of nonexclusive Vehicle Rental Concession at the El Paso International Airport, and is for the period beginning December 15, 2009, and extending through June 30, 2010. The City has the option, exercisable in its sole and absolute discretion, to extend the term for an additional one (1) year period. Simply Wheelz will pay the greater of the 10% of their gross receipts or the Minimum Annual Guarantee.

Additionally, it is requested that the City Attorney's Office review and the City Manager be authorized to execute any related contract documents and agreements necessary during the contract. The contract to be signed is substantially in the form attached.

The Department of Aviation and the Financial Services Department-Purchasing Division recommend award as indicated to the responder offering the best value to the City and meeting all requirements of the solicitation. This is a revenue-generating contract.

BIDS SOLICITED- 12 (6 local)
BIDS RECEIVED- 01
"NO BID" RECEIVED- 00

ESTIMATED AWARD AMOUNT: $185,546.00

****

COUNCIL APPROVED ☐ REJECTED ☐ MUNICIPAL CLERK _____

****

APPROVED:

COUNCIL:
MEETING DATE-December 1, 2009

Terry Freiburg
Purchasing Manager

El Paso International Airport

TO: Pete Dunavant
Financial Services Department-Purchasing Division

FROM: Monica Lombraña, A.A.E.
Director of Aviation

DATE: November 19, 2009

SUBJECT: SOLICITATION 2010-082R – VECHICLE RENTAL CONCESSION

RECOMMENDATION:

Recommendation is to award Solicitation 2010-082R to Simply Wheelz LLC dba Advantage Rent A Car. This was the only offer submitted and it meets all of the requirements of the solicitation.

This is a revenue generating agreement with the Minimum Annual Guarantee offered in the amount of $342,545.00.

CITY OF EL PASO REQUEST FOR PROPOSALS (RFP)

TITLE: VEHICLE RENTAL CONCESSIONAIRE	RFP: 2010-082R
DATE: NOVEMBER 18, 2009	DEPARTMENT: AVIATION
SIMPLY WHEELZ LLC DBA ADVANTAGE RENT A CAR	PARK RIDGE, NJ

RFPs SOLICITED: 12	RFPs RECEIVED: 1	RFPs LOCAL: 6	NO RFPs: 0

APPROVED: RLOf

DATE: 11/18/09

Avis Rent A Car System, LLC
Brandon Moore
6520 Convair Road
El Paso, Texas 79925

Budget Rent A Car of El Paso, Inc.
Neal Remz
6500 Convair Road, Suite 1B
El Paso, TX 79925

Dollar Rent A Car - Thrifty Car Rental
Cathy Hollins
6511 Allegheny Drive
El Paso, Texas 79925

Enterprise Leasing Company - West
Tannia Lopez
6400 Convair Road
El Paso, Texas 79925

Hertz Corporation
John Starkey
6510 Convair Road
El Paso, Texas 79925

Midwest Car Corporation
Ms. Irene Bearden
6500 Convair Road
El Paso, Texas 79925

AVIS Rent-A-Car Systems, Inc.
6 Sylvan Way
Parsippany, NJ 07054

Mr. John Harris
Budget Rent-A-Car of El Paso, Inc.
430 Sandau Road
San Antonio TX 78216

DTG Operations
5330 East 31st Street
Tulsa, OK 74135

Enterprise Rent-A-Car
4740 Pan American Fwy, NE
Albuquerque, NM 87109

Ms. Jackie Agan
Director of Properties
The Hertz Corporation
24890 East 78th Ave.
Denver, CO 80249-3919

Ms. Tammy Rausch
Midwest Car Corporation
dba National Car Rental
P.O. Box 560
Kaukauna, WI 54130-0560

SECTION C

VEHICLE RENTAL CONCESSION AGREEMENT

El Paso International Airport
El Paso, Texas

_____
CONCESSIONAIRE

_____
EFFECTIVE DATE

VEHICLE RENTAL CONCESSION AGREEMENT
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EXHIBIT A Counter/Office Space
EXHIBIT B Ready/Return Lot Assignments
EXHIBIT C Monthly Reporting Form

VEHICLE RENTAL CONCESSION AGREEMENT

THIS VEHICLE RENTAL CONCESSION AGREEMENT is made this ____ day of _____ 2009 between the City of El Paso, (hereinafter referred to as "City") and _____, a corporation under the laws of the State of _____, with its principal office at _____ (hereinafter referred to as "Concessionaire").

WITNESSETH:

WHEREAS, the City owns and operates the El Paso International Airport located in El Paso County, Texas, hereinafter referred to as the "Airport";

WHEREAS, Concessionaire is engaged in the operation of a vehicle rental business and is prepared, equipped, and qualified to supply an adequate number of late-model vehicles in good mechanical condition and appearance for the operation of a vehicle rental business at the Airport;

WHEREAS, ground transportation of passengers arriving at or departing from the Airport is an essential service to said passengers and to other patrons of the Airport;

WHEREAS, it is the intent and desire of City that airport customers shall have available to them, their choice of varied types of ground transportation services, any one of which, at their option, they shall have the right to select and use; and,

WHEREAS, it is the desire of City to make available to airport customers, as a portion of said ground transportation at the Airport, a vehicle rental business operated and conducted by Concessionaire;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

ARTICLE I
TERM OF AGREEMENT

Section 1.01 Commencement and Expiration. The term of the Agreement will commence on _____and shall continue until the last day of June 2010 unless sooner terminated as hereinafter provided. Each annual period from July 1st through June 30th will be known as a "Contract Year."

Section 1.02 Extension of Term. City shall have the option, exercisable in its sole and absolute discretion, to extend the term of this Agreement for a one (1) year period from July 1, 2010 through June 30, 2011 under the same terms and conditions as stated herein. To exercise the option, the Director of Aviation shall give written notice to Concessionaire of City's intent no less than three (3) months prior to the expiration of the term of this Agreement. If Concessionaire is not willing to renew for the extension period, Concessionaire will be released from its obligation to extend the Agreement term, provided it gives the Director of Aviation

written notice of its intent within thirty (30) days from the notification of the City's intent to exercise the option. During any extension period, the Concessionaire shall pay the greater of ten percent (10%) of Gross Revenue or one hundred percent (100%) of the Minimum Annual Guarantee, as defined herein, for the term of the of the Agreement as the Concession Fee. During any extension period, Concessionaire shall also pay all applicable fees and rentals as established by the most recent, complete Contract Year of this Agreement.

Section 1.03 Holdover. In the event that Concessionaire shall hold over and remain in possession of the Premises, as defined herein, after the expiration of this Agreement without any renewal or extension thereof, such holding over shall not be deemed to operate as a renewal or extension thereof, but shall create a tenancy from month to month only. During any hold-over period, the Concessionaire shall pay the greater of ten percent (10%) of Gross Revenue or one hundred percent (100%) of the Minimum Annual Guarantee, as defined herein, for the most recent, complete Contract Year, as the Concession Fee. During any hold-over period, Concessionaire shall also pay all applicable fees and rentals as established by the most recent, complete Contract Year of this Agreement. This hold-over tenancy may be terminated at any time for any reason by City.

ARTICLE II
PREMISES AND PRIVILEGES

For and in consideration of the terms, conditions, and covenants of this Agreement, City hereby leases to Concessionaire, and Concessionaire hereby hires and takes from City certain real premises, together with improvements thereon (hereinafter called "Premises"), and certain attendant privileges, uses, and rights as hereinafter specifically set out.

Section 2.01 Description of Premises. The Premises are described as follows:

A. Counter area #2 on the ground floor of the Airport terminal building, consisting of approximately 335 square feet, as shown on the Airport terminal building floor plan, attached hereto as Exhibit "A", and by this reference made a part hereof, hereinafter referred to as "counter/office space".

B. Ready/Return vehicle parking positions in the designated parking area as shown on the Airport Terminal Area Plan, attached hereto as Exhibit "B", and by this reference made a part hereof, hereinafter referred to as "Ready/Return Lot".

Section 2.02 Description of Privileges, Uses, and Rights. City hereby grants to Concessionaire the following non-exclusive privileges, uses, and rights, all of which shall be subject to the terms, conditions, and covenants hereinafter set forth.

A. The right, license, and privilege to operate a vehicle rental service at the Airport for the purpose of renting vehicles to Airport Customers, as defined herein, and such other persons who may request such service at the Airport.

B. The right of ingress to and egress from the Premises over and across public roadways serving the Airport terminal building by Concessionaire, its agents and servants, patrons and invitees, suppliers of service, and furnishers of material. Such right shall be subject to any ordinances, rules, and regulations as now or may hereafter have application at the Airport.

C. The right to install, maintain, and operate appropriate signs in the Premises provided the design, installation, and operation shall be in keeping with the general décor and graphic standards of the Airport terminal building and shall have the written approval of the Director of Aviation prior to installation. All signs installed by the Concessionaire shall comply with all applicable federal, state, and municipal laws, codes, and regulations which are in effect or as amended. All signage in the counter/office space location shall be limited to locations on the wall behind the counter. The area in front of the counter/office space shall be used for customer queuing only.

Section 2.03 Concessionaire Covenants. By execution of this Agreement, Concessionaire agrees and covenants as follows:

A. Concessionaire agrees and understands that the Airport is managed by the Director of Aviation and for all purposes of this Agreement the term "Director of Aviation" shall include the Director of Aviation or such person or persons as may from time to time be authorized in writing by the City or the Director of Aviation to act on behalf of the City with respect to matters pertaining to this Agreement.

B. No alteration of the Premises shall be made by Concessionaire without the prior written consent of the Director of Aviation.

C. Concessionaire agrees and understands the right to use the public Airport facilities is to be shared in common with others and shall be used subject to all applicable laws, rules, ordinances, statutes, and regulations of the United States, the State of Texas, and the City of El Paso.

D. Concessionaire agrees and understands that the concession privilege granted by this Agreement is not exclusive. City shall have the right to enter into agreements with others engaging in like activity at the Airport, subject to similar conditions and terms binding Concessionaire herein.

E. Concessionaire agrees to use the Premises only for the purpose of advertising, billing, and otherwise contracting for the rental and return of non-chauffeured passenger vehicles (defined as any automobile of any size and category, sport utility, van, or truck with a gross vehicle weight of less than ten thousand [10,000] pounds or any other motorized means of conveyance).

F. Concessionaire warrants that it is able to provide and maintain first-class quality facilities, vehicles, and service equal to that presently offered at the Airport.

Concessionaire agrees it will provide and maintain such quality facilities, vehicles, and service during the term of this Agreement including any extensions.

G. Concessionaire acknowledges and agrees that, while providing parking facilities to Concessionaire's employees in common with the employees of other concessionaires and tenants of the Airport, the City retains the right to institute a reasonable charge for the privilege of utilizing these parking facilities.

H. Concessionaire agrees that it will not divert, cause, or allow to be diverted any vehicle rentals from its place of business at the Airport to any off-Airport location.

I. Concessionaire agrees not to conduct its vehicle rental operation under this Agreement using any brand name(s) other than the brand name(s) that Concessionaire identified in its response to the Request for Proposal (RFP) issued by the Airport for awarding a concession governed by this Agreement. Under no circumstances will Concessionaire be permitted to use more than two (2) brand names in its operation.

In the event that Concessionaire uses a brand name under a license or franchise agreement, Concessionaire hereby represents and warrants to City that Concessionaire has been given the right to use such brand name for the term of this Agreement pursuant to a franchise or license agreement with the trade name owner. At any time throughout the term of this Agreement, and upon City's request, Concessionaire agrees to provide City with written evidence that such franchise or license agreement remains in full force and effect.

Concessionaire acknowledges that in the event that Concessionaire's rights to use any brand name are terminated by the owner of said rights, thereby preventing Concessionaire from conducting operations under this Agreement under said brand name, or in the event Concessionaire elects to discontinue the use of one of its brands, Concessionaire remains bound to all the terms and conditions of this Agreement, including its Minimum Annual Guarantee. Further, in the event that any brand properly used by Concessionaire is terminated or discontinued, whether or not by the election of Concessionaire, Concessionaire must provide advance written notice to the Director of Aviation of said termination or discontinuance and the inoperative brand may not operate as an off-Airport vehicle rental service for the rest of the term of this Agreement including any extensions thereto.

Any and all brands operated by Concessionaire at the Airport pursuant to this Agreement are prohibited from being operated as an "Off Airport Rental Car Business" under Chapter 14.16 of the El Paso City Code during the term of this Agreement and any renewals or extensions thereto. Concessionaire acknowledges and agrees that any Off Airport Rental Car Business Permit(s) held by Concessionaire for a brand operated by Concessionaire at the Airport pursuant to this Agreement is automatically revoked as of the effective date of this

Agreement. By executing this Agreement, Concessionaire waives any and all notice, hearing, and appeal rights and requirements under Article IV. of Chapter 14.16 of the El Paso City Code.

J. Concessionaire acknowledges that City may undertake improvements to the Airport during the term of this Agreement. The City will attempt to perform such improvements in a manner so as not to unreasonably interfere with the operations of Concessionaire authorized herein, however, Concessionaire hereby expressly waives any and all claims for any loss or damages, whether occasioned by the loss of profits or otherwise, if any, as a result of the interruption of business of Concessionaire that may arise as a result of any activity related to the improvements undertaken by City.

K. Concessionaire agrees not to conduct its business in any manner which may conflict with other concession agreements at the Airport.

L. Concessionaire agrees that, by the use of the words "Airport Premises", it is understood these words refer to any area under the control or ownership of the City of El Paso, as depicted on the El Paso International Airport Layout Plan, or any updates thereto, filed at the Airport Administrative Offices. The term Airport Premises expressly includes the Premises as described in Section Article II above.

ARTICLE III
INSTALLATIONS BY CITY AND CONCESSIONAIRE

Section 3.01 Terminal Building Space.

A. Installations by City. City will provide terminal building lighting, air conditioning, electrical services, and counter/office shell.

B. Installations by Concessionaire. Concessionaire shall provide:

1. All improvements to the counter/office space including, but not limited to, counter inserts, display cabinets, interior partitions, additional lighting fixtures, decorations, and all other fixtures, equipment, and supplies.

2. All other equipment, furniture, furnishings, and fixtures necessary for the proper conduct of Concessionaire's business.

C. General Décor of the Airport. Any improvements, facilities, signs, decorations, fixtures, equipment, supplies, and cabinets furnished by Concessionaire shall be in keeping with the general décor of the Airport terminal building and must have the written approval of the Director of Aviation prior to installation. Failure by Concessionaire to receive such approval may result in the removal of such item(s) subject to the sole discretion of the Director of Aviation.

Section 3.02 **Initial Allocation of Ready/Return Lot Parking Spaces**. In the first Contract Year, City shall make available **24** parking spaces for exclusive use by Concessionaire in the designated Ready/Return Lot for vehicles awaiting rental and for vehicles to be checked in after rental by customers. Concessionaire is specifically prohibited from parking any rental vehicles in areas other than its designated spaces.

City, in providing the Ready/Return Lot for rental vehicles to be checked in and out, assumes no liability or responsibility for the security of such rental vehicles. Concessionaire shall remain solely responsible at all times for the security of or damage to rental vehicles.

Section 3.03 **Reallocation Of Ready/Return Lot Parking Spaces.** Concessionaire's number and location of Ready/Return Parking spaces will be reallocated on the last day of each Contract Year during the term of this Agreement. Ready/Return Parking space reallocations will be computed by City based on the percentage of Gross Revenues paid to the Airport by Concessionaire of the total Gross Revenues paid by all vehicle rental concessionaires at the Airport during the previous Contract Year.

All costs incurred as a result of the reallocation of Ready/Return Parking Spaces shall be borne by Concessionaire. Neither City, nor the Airport shall be responsible for any costs incurred as may relate to any reallocation of Ready/Return Parking Spaces. In addition to the annual reallocation of spaces the Director of Aviation, after consultation with the vehicle rental concessionaires, can mandate a reallocation of the Premises upon his or her determination that operational issues have arisen that warrant such a reallocation. Any such reallocations will be limited to changes in the location and number of parking spaces and will not include any structural modifications to the Airport Premises.

Section 3.04 **Approval of Plans and Construction**. Prior to commencing any construction or installing any signage on the Premises, Concessionaire shall submit plans, specifications, and layout and architectural renderings to the Director of Aviation for approval. Construction shall not be commenced until such time as the Director of Aviation has provided Concessionaire with prior written approval. The approval by the Director of Aviation shall refer only to the conformity of said plans and specifications to the general architectural, aesthetic, and graphic standards for the Airport and shall not end the need for Concessionaire to obtain any required building, construction, or any other permits or authorizations required from the City of El Paso or other applicable agencies. Any such improvements shall comply with all applicable federal, state, and municipal laws, codes, and regulations which are in effect or which may hereafter be in effect. All improvements shall become part of the Premises and, at the expiration of this Agreement, shall become the property of City.

Section 3.05 **Alterations, Additions, or Replacements.** Concessionaire shall make no alterations, additions, or replacements to the Premises without the prior written approval of the Director of Aviation.

Concessionaire shall also obtain prior written approval from the Director of Aviation before installing, at Concessionaire's own expense, any equipment which requires new electrical or

plumbing connections or changes in those installed on the Premises as of the date of occupancy thereof.

Section 3.06 Temporary Relocation of Concessionaire. As a result of potential construction involved in the expansion, renovation, or repair of the Airport, it may become necessary to relocate Concessionaire to an area designated by the Director of Aviation. In such event, the expenses incurred by said relocation, as requested and approved by the Director of Aviation, shall be borne by City. In the event of relocation, the Director of Aviation will attempt to recreate allocations of space and locations of Concessionaires as similar as possible to those that existed prior to the relocation.

ARTICLE IV
SERVICES TO BE PERFORMED BY CONCESSIONAIRE

Section 4.01 Hours of Operation. Concessionaire shall, in the operation of the vehicle rental concession herein granted, maintain and make available an adequate number of vehicles for public service at least sixteen (16) hours a day, seven (7) days a week, between the hours of 6 a.m. and 10 p.m. However, it is expressly agreed and understood by Concessionaire that the hours of operation required by City may be up to twenty-four (24) hours a day. Any notice of a change in the hours of service required by City shall be delivered to Concessionaire in writing at least ten (10) business days prior to the effective date thereof.

Section 4.02 Type of Operation. Concessionaire shall furnish its vehicle rental service on a fair, reasonable, and non-discriminatory basis. Service shall be prompt, courteous, and efficient and shall be adequate to meet the demands for said service on the Airport. The Concessionaire is prohibited from engaging in sales of vehicles on Airport Premises.

Concessionaire shall maintain and operate the concession in a first-class manner and shall keep the Premises in a safe, clean, and orderly condition at all times, satisfactory to City. All services shall conform in all respects to federal, state, and municipal laws, ordinances, and regulations as may be amended. Concessionaire shall continuously maintain all necessary licenses as required by federal, state, and municipal laws, ordinances, and regulations, as may be amended.

Section 4.03 Personnel. Concessionaire shall at all times retain an active, qualified, competent, and experienced manager to supervise the concession operations and be authorized to represent and act on behalf of Concessionaire.

Concessionaire shall be required to properly uniform or dress its attendants and employees; they shall be clean, courteous, efficient, and neat in appearance at all times. Concessionaire shall not employ any person or persons in or about the Airport Premises who shall use improper language or act in a loud, boisterous, or otherwise improper manner.

Concessionaire shall closely supervise attendants and employees to insure the maintenance of a high standard of service to the public, the performance of such obligation to be determined at the sole discretion of City. Concessionaire shall immediately remove any employee from the

Premises whose conduct the Director of Aviation feels is detrimental to the best interests of the Airport.

Section 4.04 Laws, Ordinances, Regulations, and Rules. Concessionaire, its attendants, and employees shall observe and obey all laws, ordinances, regulations, and rules of federal, state, and municipal governments which are now in force or which may hereafter be in force, and which may be applicable to its operations at the Airport and its operation of motor vehicles.

Section 4.05 Quality of Rental Vehicles. Concessionaire shall maintain, at all times and at its own cost and expense, all its rental vehicles in good operating order and free from known mechanical defect. Said rental vehicles shall be kept in a clean, neat, and attractive condition, inside and out.

Concessionaire shall, at all times, only rent vehicles that are not more than two (2) model years old. City reserves the right to disapprove of any vehicle supplied by Concessionaire for rental which does not comply with this Section. Notice of such disapproval shall be submitted to Concessionaire by the Director of Aviation in writing. Upon receipt of such notice, Concessionaire shall immediately withdraw such unsatisfactory vehicle from service at the Airport.

Section 4.06 Solicitation and Conduct. Concessionaire may engage in solicitation, at the Airport, of its vehicle rental service only at its counter/office space. Concessionaire shall prohibit its agents, servants, and employees from engaging in solicitation in a loud, boisterous, offensive, or objectionable manner. In the event of questionable conduct in such solicitation, City shall be the sole judge in determining whether said conduct is a violation of this Section. Upon notice from the Director of Aviation, Concessionaire shall immediately take all steps necessary to eliminate the undesirable condition.

Concessionaire, its agents, servants, and employees shall conduct its vehicle rental business on the Airport in such a manner to maintain a friendly and cooperative, though competitive, relationship with other companies engaged in like business on the Airport.

Concessionaire shall not engage in open public disputes, disagreements, or conflicts which would tend to deteriorate the quality of the vehicle rental service of Concessionaire or its competitors or which would be incompatible to the best interest of the public at the Airport. City shall have the right to resolve all such disputes, disagreements, or conflicts; and City's determination thereof, and/or the manner in which Concessionaire shall thereafter operate, shall be binding upon Concessionaire.

Section 4.07 Trash, Garbage, and Other Refuse. Concessionaire shall, at its own expense, provide and use commercial-type, covered receptacles for all garbage, trash, and other refuse. Piling of boxes, cartons, barrels, or other similar items, in an unsightly or unsafe manner, on or about the Airport Premises, is forbidden.

Section 4.08 Cost of Vehicle Rental Operations. Concessionaire shall bear, at its own expense, all costs of operating the concession and shall pay, in addition to rental, all other costs connected with the use of the Premises, including, but not limited to, maintenance, insurance, any and all taxes, and all permits and licenses required by law. Concessionaire shall have the right, however, at Concessionaire's sole cost and expense, to contest the legality of any tax, levy, or assessment; provided that Concessionaire may not permit such tax, levy, or assessment to remain unpaid during the period of such contest.

Section 4.09 Maintenance and Repair of Damage. Concessionaire shall, at its sole cost and expense, clean and maintain all its equipment and the Premises, including every part thereof, in good order and repair and in good safe condition. Concessionaire shall repaint the Premises as necessary, after obtaining the prior written approval of the Director of Aviation, except that the striping of the Ready/Return Parking Lot shall be performed only by and at the sole discretion of City.

In the event that the Premises shall be damaged, and such damage is caused by the intentional or negligent act(s) or omission(s) of Concessionaire, its officers, agents, employees, contractors, subcontractors, licensees, invitees, or customers, Concessionaire shall be responsible for complete restitution to City for the value of the Premises prior to such damage, as well as any additional damages incurred by City, financial or otherwise.

Concessionaire further understands and agrees that City shall be the sole judge of the quality of maintenance or repairs required herein, and that, upon written notice by City to Concessionaire, Concessionaire shall be required to perform whatever maintenance or repairs City deems necessary. If said maintenance or repairs are not undertaken by Concessionaire within ten (10) calendar days after receipt of written notice, City shall have the right to enter on the Premises and perform the necessary maintenance or repairs, the entire cost of which shall be assessed against and borne by Concessionaire.

Section 4.10 Gasoline and Repair Services. Concessionaire shall not sell gasoline, repair services, or related services to anyone other than its vehicle rental customers on Airport Premises.

Section 4.11 Vending Machines. Concessionaire shall neither install nor operate vending machines or coin-operated amusement machines and devices on the Premises. City specifically reserves the right to install vending machines, pay telephones, and other coin-operated machines on Airport Premises, and to secure the income therefrom.

Section 4.12 Trip Insurance. Insofar as permitted by law, Concessionaire may offer trip insurance covering accidental loss of life, accidental injury, medical expenses, or property damage, limited only to customers renting Concessionaire's vehicles and excluding air travel insurance protection.

ARTICLE V
SERVICES TO BE PERFORMED BY CITY

City shall maintain the structure of the terminal building, which is defined as the foundation, roof, and exterior walls. The City shall not, however, be required to make any repairs or improvements of any kind to the Airport Premises if said repairs or improvements are needed as a result of any act of Concessionaire, its employees, agents, or those under control of the Concessionaire. City shall maintain, from time to time and at its own discretion, the Ready/Return Lot.

City shall not furnish janitorial service, window cleaning, guard or custodial services, or any janitorial material or supplies for the Premises; however City shall provide janitorial service for the public areas of the terminal building.

City, by its officers, employees, agents, and representatives shall have the right, at all reasonable times, to enter upon the Premises for the purposes of inspecting same, for observing the performance by Concessionaire of its obligations hereunder, and for the doing of any act which City may be obligated to perform, or have the right to do under this Agreement.

ARTICLE VI
FEES AND RENTALS

Section 6.01 Counter/Office Space. Concessionaire shall pay to City the amount of EIGHT HUNDRED NINETY-THREE AND 33/100 DOLLARS ($893.33) per month, calculated at the rate of THIRTY TWO AND 00/100 DOLLARS ($32.00) per square foot per annum as rental for the counter/office space assigned to Concessionaire as described in Article II.

Section 6.02 Ready/Return Lot Spaces. Concessionaire shall pay to City, as rental for Ready/Return Parking described in Exhibit B, the sum of thirty-five dollars ($35.00) per month, for each parking space allotted to Concessionaire during the term of this Agreement. Such Ready/Return Parking shall be used only in connection with the concession granted hereunder. The use or rental of the Ready/Return Parking by Concessionaire's employees or the general public for any use other than the parking of rental vehicles is strictly prohibited.

Section 6.03 Concession Fee and Minimum Annual Guarantee. In addition to the consideration specified in Sections 6.01 and 6.02 of this Article, Concessionaire shall pay, for the rights and privileges granted to it under the terms of this Agreement, a Concession Fee equal to the greater of ten percent (10%) of its Gross Revenues, as hereinafter defined, or the Minimum Annual Guarantee, hereinafter referred to as the "MAG". For purposes of this Agreement, the MAG shall be the amount of _____AND __/100 DOLLARS ($_____.__), and the MAG will be prorated for six months (January 1, 2010 – June 30, 2010). In any option period pursuant to Section 1.02 above, the MAG shall be 85% of the prior Contract Year's Concession Fee or the identified MAG, whichever is greater.

Section 6.04 Gross Revenues.

A. "Gross Revenues" as used in this Agreement means the total amounts billed or received by Concessionaire, without deduction or offset, whether by cash, credit, or otherwise, including any separately stated fees and charges and all incidental

sales and services related to Concessionaire's vehicle rental concession as authorized by this Agreement. Gross Revenues applies to all vehicles supplied by Concessionaire to any customer deplaning from a flight at the Airport who rents a vehicle within forty eight (48) hours of his/her deplanement (hereinafter referred to as "Airport Customer"). All revenue is included in the definition of Gross Revenues unless specifically excluded as hereinafter provided.

Vehicles shall be deemed to be rented at the Airport if:

1. The vehicle is delivered to the Airport Customer at the Airport or on Airport property; and/or

2. The rental contract is negotiated and/or signed at the Airport but the vehicle is delivered elsewhere; and/or

3. The rental contract is negotiated and/or signed at an off-Airport location and the vehicle is delivered to the Airport Customer at an off-Airport location.

B. Exclusions. "Gross Revenues" shall not include:

1. Mandatory Governmental Charges. Any tax, fee or other charge levied by federal, state, county, or municipal government that is explicitly identified by the governmental authority as a non-discretionary levy on the customer and required by law to be separately stated.

2. Customer Facility Charges (CFC). If a CFC is implemented during the term of this Agreement, such CFC income shall not be included in the calculation of "Gross Revenues".

3. Sums collected for damage, loss, conversion, or abandonment of Concessionaire's vehicles or for disposal of Concessionaire's damaged vehicles, provided that Concessionaire retains, in accordance with Section 6.11 herein, documentation from a third-party that establishes that the damage, loss, conversion, abandonment, or disposal occurred and identifies the sums collected.

4. Concession Recovery Fee.

Section 6.05 Abatement of Minimum Annual Guarantee. As long as Concessionaire is not in default in any of the terms and conditions contained in this Agreement, the MAG set forth in Section 6.03 above may be abated upon petition by the Concessionaire to the Director of Aviation if, during the term hereof, through no fault of Concessionaire, the following situations should occur:

A. The number of monthly passengers deplaning on scheduled airline flights at the Airport shall be less than eighty-five percent (85%) of the number of deplaning passengers in the same month of 2005.

B. The business of the Concessionaire is affected by shortages or other disruptions in the supply of gasoline which result in monthly Gross Revenues being less than sixty-five (65%) percent of the Gross Revenues for the same month of the immediately preceding Contract Year.

During any period of abatement, Concessionaire shall pay to City the required ten percent (10%) of its Gross Revenues, as outlined in Section 6.04, as well as all other applicable sums set forth in this Agreement. Before any such abatement shall be authorized, Concessionaire shall submit proof and substantiation of such reduction in deplaning passengers to the Director of Aviation. Determination of whether the abatement is necessary and appropriate shall be made by the City Council of the City of El Paso.

Section 6.06 Pass-Through of Concession Fee. Concessionaire acknowledges that the payments by Concessionaire to City under this Agreement are for use of Airport Facilities and access to the Airport market, and that none of those payments reflects a fee that is imposed by City upon customers renting vehicles from Concessionaire. City does not require, but will not prohibit, the separate statement of the Concession Fee on customer invoices or rental contracts ('invoices'), provided that Concessionaire meets all the following conditions:

A. Such fee is titled "Concession Recovery Fee";

B. Such fee shall be immediately below all concessionable items and not immediately adjacent to taxes on customer invoices;

C. Concessionaire must comply with all applicable laws regarding the collection of any such Concession Recovery Fee including, but not limited to, Federal Trade Commission requirements;

D. The amount of the Concession Recovery Fee stated on the invoice and charged to the customer does not exceed the amount of ten percent (10%) of the Gross Revenues; and

E. Concessionaire shall not identify, treat, or refer to the Concession Recovery Fee as a tax.

Concessionaire shall not pass through, unbundle, or list any fees (other than a Concession Recovery Fee, CFC (if applicable), and other government mandated charges or pass-through fees) payable to City as a separate item on its customer invoices, except with City's prior written approval.

Section 6.07 Customer Facility Charge (CFC). In the event that City implements a CFC at any time during the term of this Agreement, Concessionaire agrees to promptly collect and remit to City's designated depository the CFCs required to be collected at the times required by City (regardless of whether such amounts are actually collected). Concessionaire covenants and agrees that it will not be entitled to any rights to offset or other reduction in the requirements herein and to remit to the designated depository all CFCs imposed regardless of any amounts that may be owed or due to Concessionaire by City. All CFCs collected by Concessionaire shall be trust funds held by Concessionaire for the benefit of City. Concessionaire shall have only a possessory interest and not an equitable interest in CFC collections. At any time throughout the term of this Agreement, upon written request by the Director of Aviation, Concessionaire agrees to provide itemization of the number of transactions and transaction days compiled at the Airport to the Airport's designated contractor in order that the data may be used for planning purposes.

Section 6.08 Schedule of Payments. Concessionaire shall pay to City one-twelfth ($1/12^{th}$) of the scheduled MAG, as outlined in Section 6.03 above, and the rentals set out in Sections 6.01 and 6.02 above, in advance, on or before the first day of each month throughout the term of this Agreement. Any deficiency between the prepaid MAG and the percentage of Gross Revenues payable as the Concession Fee shall be paid to City on or before the twentieth (20^{th}) day of the month following the month for which the Gross Revenues were reported. If a CFC is implemented at any time during the term of this Agreement, Concessionaire shall remit the CFC proceeds collected for the prior month to City on or before the twentieth (20^{th}) day of the month following the month for which the CFC proceeds were reported.

Section 6.09 Unpaid Rent and Fees. Any installment rent, fees, or other monies accruing under the provisions of this Agreement that are not paid and received by City by the twentieth (20^{th}) day of the month in which payment is due, shall bear interest at the maximum rate allowed by law from the date when same was due by the terms hereof, until the same has been paid by Concessionaire.

Section 6.10 Records of Concessionaire. With respect to business done by it hereunder, Concessionaire shall keep true and accurate amounts, records, books, and data which shall show all sales made, including vehicle sales, and service performed for cash, credit, or otherwise (without regard to whether paid or not) and shall set forth the number of rental transactions and transaction days and all the Gross Revenues of Concessionaire, as defined hereinabove.

Concessionaire agrees to operate its business upon the Airport in a manner such that a duplicate rental agreement invoice and cash receipt can be delivered to the Airport within five (5) business days after a request for them has been made by the Director of Aviation. Concessionaire further agrees to keep books and records, in accordance with generally accepted accounting practices, and such other records as City may request. Subject to the aforestated request by the Director of Aviation, the duplicate rental agreement, invoices, cash receipts, if applicable, and all other books and records of Concessionaire, as referenced in this Agreement, shall be available for inspection or audit by authorized representatives of City at all reasonable times during business hours for a minimum period of one (1) year after the end of each Contract Year and after any hold over period, if any. If an audit is required, appropriate records will be maintained legally for a period of sixty (60) days after completion of the audit.

With the payment of monthly fees and rentals, as provided in Article VI of this Agreement, Concessionaire shall submit to City a report showing the Gross Revenues from the operation of the vehicle rental concession for the preceding calendar month. These reports shall be submitted exclusively on the form provided herein as Exhibit C. Failure to comply with the reporting requirements as stated above will be cause for Concessionaire's default under this Agreement which may then be terminated in accordance with Article IX herein.

Within ninety (90) days following the end of each Contract Year of operation of the concession, a statement showing Gross Revenues for the preceding Contact Year is to be submitted and verified from the records by a certified public accountant. Such statement shall be signed and sworn by a certified public accountant as an accurate report of Concessionaire's Gross Revenue for the preceding Contract Year. If, after the submission of Concessionaire's annual statement, City reasonably questions the accuracy of such statement, City may, at its sole option, require Concessionaire to submit at Concessionaire's own cost, a certified statement prepared by an independent certified public accountant. Any failure or omission by City to request a certified statement in any given year shall not operate to bar or destroy the right of City to request such a certified statement in any subsequent year. Such statement showing Gross Revenue for the preceding Contract Year is to be accompanied by Concessionaire's payment covering any deficiency between payment made during the year of previous operation and payment due for such year of operation. If the annual statement and other records show that the amount due to City is less than the total payments already made by Concessionaire, then City shall credit to Concessionaire the excess amount against the next year's monthly Concession Fee in excess of the Minimum Annual Guarantee. Upon termination of this Agreement, any amounts paid to City in excess of the required amounts shall be refunded to Concessionaire provided Concessionaire is not in default of any terms or conditions of this Agreement. Concessionaire, at its own expense, shall supply all records in a type, style, and form satisfactory to City. The submission of such statement by Concessionaire shall not be construed to limit City's right to request audits in accordance with Article VI of this Agreement.

Concessionaire shall maintain monthly statements, as required hereunder, for a minimum of one (1) year and they shall be produced within five (5) business days after a request for the statements has been made by the Director of Aviation. Concessionaire shall also maintain annual statements, as required hereunder, for a minimum of five (5) years and they shall be produced within five (5) business days after a request for the statements has been made by the Director of Aviation.

Section 6.11 Audit. For the purpose of determining accuracy of reporting Gross Revenues, City may make a spot test audit and base its findings for the entire period upon such spot test; provided however, that such a spot test shall include at least twenty-five percent (25%) of the total time of the period being audited.

In addition, City shall have the right, during any one Contract Year of this Agreement, to authorize up to two (2) audits of Concessionaire's records pertaining to the concession, and any related business, either located on or off Airport premises. Such audits shall be undertaken by a reputable firm of certified public accountants with offices in El Paso. The cost of such audits

shall be borne by City, unless the results of such audits reveal a discrepancy of more than two percent (2%) between the Gross Revenues reported by Concessionaire and the Gross Revenues as determined by audit for any twelve (12) month period. In case of such discrepancy, the full cost of the audit shall be borne by Concessionaire.

Failure of City to exercise its right to audit Concessionaire, as set forth herein, shall in no way be construed as a waiver of any right to payment by City of any rental or other payments due City under the terms of this Agreement, and City hereby expressly reserves its rights under common or statutory law, or otherwise, to enforce all terms of this Agreement, including any right to payment hereunder.

ARTICLE VII
INDEMNIFICATION AND INSURANCE

Section 7.01 INDEMNIFICATION. CONCESSIONAIRE AGREES TO INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS, OR EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT, OR MANAGEMENT OF CONCESSIONAIRE'S BUSINESS ON AIRPORT PREMISES, ITS USE OF THE AIRPORT PREMISES, OR FROM ANY BREACH ON THE PART OF CONCESSIONAIRE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF CONCESSIONAIRE, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUB-TENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE AIRPORT PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART FROM THE NEGLIGENCE OF CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST CITY BY REASON OF ANY SUCH CLAIM, CONCESSIONAIRE, UPON NOTICE FROM CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO CITY.

Section 7.02 Insurance. Concessionaire shall, immediately upon execution of this Agreement, provide satisfactory evidence of financial responsibility to the Director of Aviation. Concessionaire shall provide or secure public liability insurance for personal injuries or death, arising out of any one accident or other cause, in a minimum sum of TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($250,000.00) for one (1) person and FIVE HUNDRED THOUSAND AND 00/100 DOLLARS ($500,000.00) for two (2) or more persons; and, in addition, shall provide property damage liability insurance in a minimum sum of ONE HUNDRED THOUSAND AND 00/100 DOLLARS ($100,000.00) for property damages arising out of any one accident or other cause, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

Concessionaire shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas, satisfactory to City. All policies shall name City, its officials,

servants, agents, and employees as additional insureds. Concessionaire shall furnish City with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this Agreement, or shall deposit with City copies of said policies, if requested by City. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to City thirty (30) days in advance of the effective date thereof.

Section 7.03 Payment Security. Concessionaire, at its own cost and expense, shall cause to be made, executed and delivered to City a financial guarantee in the form of an irrevocable letter of credit, payment or performance bond, or other form of third party security issued by a company acceptable to the Director of Aviation in an amount equal to fifty percent (50%) of the combined total of the MAG and rentals in effect for the first Contract Year of this Agreement. Said security shall provide that, in the event of Concessionaire's failure to pay all rents, fees, or other charges and obligations of Concessionaire under this Agreement, City may immediately pursue all legal remedies pursuant to said security. Upon execution of this Agreement, Concessionaire shall provide City with the security document setting forth the City's remedies in the event of Concessionaire's default, the amount of the guarantee and the effective dates of such guarantee. Said security shall: (i) guarantee the payment of all rents, fees, or other charges and obligations of Concessionaire under this Agreement; (ii) remain in effect throughout the term of this Agreement including the option and hold over periods, if any; and (iii) be in a form approved by the Director of Aviation. This remedy shall be cumulative and may be exercised by the City in addition to any other rights or remedies allowed by law or set forth in this Agreement. Failure to pursue such legal remedies pursuant to said security or any delay in City's pursuit of said remedies shall not be deemed a waiver of such rights.

ARTICLE VIII
DAMAGE OR DESTRUCTION OF THE PREMISES

If the Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, but not rendered untenable, the same will be repaired, with due diligence, by City at its own cost and expense, except to the extent such damages were due to the acts or omissions of Concessionaire.

If the damage shall be so extensive as to render the Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City at its own cost and expense, except to the extent such damage was due to the acts or omissions of the Concessionaire. The rental payable for the Premises so damaged shall be paid proportionately to the time of such damage and thereafter cease until such time as the Premises are fully restored. In addition, during said time when the Premises are untenable and are being repaired by City, the MAG payable monthly in advance by Concessionaire, shall be paid by Concessionaire proportionately to the time of such damage and thereafter cease until such time as the Premises are fully restored as determined in the City's sole opinion. It is understood, however, that during the time such repairs are being made, Concessionaire shall continue to pay to City, as a Concession Fee, the required percentage fee of Concessionaire's Gross Revenues, as noted herein.

In the event the Premises are completely destroyed by fire, explosion, the elements, the public enemy or other casualty, or so damaged that they will remain untenable for more than thirty (30) days, City shall be under no obligation to repair and reconstruct the Premises, and rent payable hereunder shall be paid proportionately to the time of such damage or destruction and shall thenceforth cease until such time as the Premises may be fully restored. In addition, during the time when the Premises are untenable, the MAG, payable monthly in advance by Concessionaire, shall by paid proportionately to the time of such damage or destruction and thereafter cease until such time as the Premises are fully restored, or until this Agreement is terminated by Concessionaire as herein provided. It is understood, however, that, during the time the Premises are untenable and prior to such restoration or cancellation, Concessionaire shall continue to pay to City, as a Concession Fee, the required percentage fee of Concessionaire's Gross Revenues, as noted herein. If, within twelve (12) months after the time of such damage or destruction, the Premises shall not have been repaired or reconstructed, Concessionaire may give City written notice of its intention to cancel the Agreement in its entirety as of the date of such damage or destruction in accordance with Article IX.

ARTICLE IX
TERMINATION, ASSIGNMENT AND TRANSFER

Section 9.01 Termination. This Agreement shall terminate at the end of the full term hereof, unless canceled or held over as provided in Article I. After termination, Concessionaire shall have no further right or interest in the Premises or improvements.

Section 9.02 Termination by Concessionaire. This Agreement may be terminated by Concessionaire if one or more of the following events occurs:

A. The permanent abandonment of the Airport as an air terminal;

B. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in such manner as substantially to restrict Concessionaire's ability to conduct business in accordance with the terms of this Agreement for a period of at least ninety (90) consecutive days;

C. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport in such a manner as to substantially interfere with Concessionaire's ability to conduct business under the terms of this Agreement, and the remaining in force of such injunction for a period of at least ninety (90) consecutive days;

D. The default by City in the performance of any covenant or agreement herein required to be performed by City, and the failure of City to begin to remedy such default for a period of sixty (60) days after receipt of written notice from Concessionaire to remedy the same, except as provided for in Article VIII; or

E. The complete destruction of the Premises, as outlined in Article VIII.

Section 9.03 Termination by City. This Agreement shall be subject to termination by City in the event Concessionaire shall:

A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after receipt of notice from City that such payment(s) are due;

B. Except as provided in A above, default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Concessionaire, and such default continues for a period of thirty (30) days after receipt of written notice from City of said default;

C. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Concessionaire's property;

D. Make an assignment for the benefit of creditors;

E. Be adjudged bankrupt in involuntary bankruptcy proceedings;

F. Be made a party to a receivership proceeding in which a receiver is appointed for the property of affairs of the Concessionaire, where such receivership is not vacated within sixty (60) days after the appointment of such receiver;

G. Abandon the Premises;

H. Deliberately take any action that has the effect of reducing Gross Revenues or otherwise reducing the Concession Fee properly due to City; or

I. Be adjudged by City of intent to deprive the City of rental payments due and payable under this Agreement. Any change in the controlling interest of corporate stock ownership by Concessionaire, or any diminution of full and active control of the company by the individuals executing this Agreement for and in behalf of the Concessionaire.

In any of the aforesaid events, City may take immediate possession of the Premises and remove Concessionaire's effects, forcibly if necessary, without being deemed guilty of trespassing. Upon said entry, this Agreement shall terminate.

It is agreed that failure of City to declare this Agreement terminated upon the default of Concessionaire for any of the reasons set out shall not operate to bar or destroy the right of City to declare this Agreement null and void by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by City from Concessionaire after the termination of this Agreement or after service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Agreement, or affect any such notice, demand or suit, or imply consent for any action for which City's consent is required or operate as a waiving of any right of the City to retake and resume possession of the Premises.

Section 9.04 Assignment and Transfer. Concessionaire shall not assign, transfer, or sublease its rights, obligations, or the Premises hereunder without the prior written approval of City. Any attempts to assign, transfer, or sublease shall be void unless previously acknowledged and approved in writing by City.

ARTICLE X
REDELIVERY

Concessionaire shall make no unlawful or offensive use of the Premises and will, at the expiration of the term hereof or upon any sooner termination, without notice, quit and deliver up the Premises to City peaceably, quietly and in as good order and condition, reasonable use and wear thereof excepted, as the same now are or may hereafter be improved by Concessionaire or City.

ARTICLE XI
GENERAL PROVISIONS

Section 11.01 Conflicts Between Concessions. In the event of a conflict between Concessionaire and any other lessee or concessionaire on Airport Premises as to the services to be offered or sold by respective concessionaires or lessees, City shall decide which services may be offered or sold by each concessionaire and Concessionaire agrees to be bound by such decision.

Section 11.02 Right of Flight. The City of El Paso reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the El Paso International Airport.

The City of El Paso reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at El Paso International Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

The City of El Paso reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the El Paso

International Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

Section 11.03 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

Section 11.04 Notices. All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

CITY:	City Clerk City of El Paso 2 Civic Center Plaza El Paso, Texas 79901	Director of Aviation El Paso International Airport 6701 Convair Rd. El Paso, Texas 79925-1091
CONCESSIONAIRE:	_____ _____ _____ _____	

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

Section 11.05 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

Section 11.06 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

Section 11.07 Nondiscrimination Covenant. Concessionaire, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

A. That in the event facilities are constructed, maintained, or otherwise operated on the Premises for the purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said Regulations may be amended.

B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.

C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

D. That Concessionaire shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended. Concessionaire shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

E. Economic Discrimination. To the extent that, under this Agreement, Concessionaire furnishes goods or services to the public at the Airport, Concessionaire agrees that it shall:

1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport, and

2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Concessionaire may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.

F. That, in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Agreement had never been made or issued.

Section 11.08 Affirmative Action. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Concessionaire assures that it will require that its covered sub-organizations (sublessees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

Section 11.09 Cumulative Rights and Remedies. All rights and remedies of City here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by City of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 11.10 Interpretation. Each party has had the opportunity to be represented by counsel of its choice in reviewing this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Section 11.11 Agreement Made in Writing. This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 11.12 Paragraph Headings. The Table of Contents of this Agreement and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

Section 11.13 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 11.14 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon City and Concessionaire and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 11.15 Taxes and Other Charges. The Concessionaire shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Concessionaire or the City, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Concessionaire's use and/or occupancy of the Premises, during the term of this Agreement including any extensions or option periods granted thereto.

The Concessionaire in good faith may contest any tax or governmental charge; provided that the Concessionaire may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

Section 11.16 **Waiver of Warranty of Suitability**. CITY DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY OTHERWISE HAVE ARISEN BY OPERATION OF LAW. CITY DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS IN THE FACILITIES THAT ARE VITAL TO CONCESSIONAIRE'S USING THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE AND THAT THESE ESSENTIAL FACILITIES WILL REMAIN IN SUITABLE CONDITIONS. CONCESSIONAIRE LEASES THE PREMISES "AS IS", WHETHER SUITABLE OR NOT, AND WAIVES THE IMPLIED WARRANTY OF SUITABILITY.

Section 11.17 **Survival of Certain Provisions**. All provisions of this Agreement which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Agreement hereunder shall survive such cessation, expiration or termination of this Agreement, including without limitation, Paragraphs 3.03 and 6.09.

Section 11.18 **Restrictions and Reservations**. This Agreement is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. City reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Concessionaire consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Concessionaire's use of the Premises.

City reserves for itself and any authorized agent to, at any reasonable time and without notice, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of observation of Concessionaire's performance of its obligations hereunder and for the purpose of showing the Premises. City shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 11.19 **Subordination of Agreement.** All rights granted in this Agreement shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Agreement shall further be subordinate to the provisions of any existing or future agreements between City and the United States relative to the operation and 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. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Concessionaire may cancel this Agreement in its entirety.

Section 11.20 **Authorization To Enter Agreement.** All persons that are signatories to this Contract represent that they have authority to enter into this Contract and bind their respective organizations thereto. Further, all persons entering into this Agreement represent that their respective entity is a duly authorized and existing entity qualified to do business in Texas. Upon City's request, Concessionaire will provide evidence satisfactory to City confirming these representations.

Section 11.21 Quiet Enjoyment. City agrees that Concessionaire, upon payment of rent and all other charges and upon observation of the terms of this Agreement, shall lawfully and quietly hold, occupy, and enjoy the Premises during the full term of this Agreement without hindrance or interference from City or anyone claiming by, through, or under City. City's agreement is subject, however, to Concessionaire holding and enjoying the Premises under conditions which may reasonably be anticipated in connection with the operation of aircraft or an airport or construction activities associated with the renovation, repair or expansion of any Airport Premises.

Section 11.22 Independence of Agreement. It is understood and agreed that nothing herein contained is intended or should be construed as in any way creating or establishing a partnership relationship between the parties hereto, or as constituting the Concessionaire as the agent, representative or employee of the City for any purpose or in any manner whatsoever. Concessionaire is to be, and shall remain, an independent contractor with respect to all services performed hereunder.

Section 11.23 Effective Date: Regardless of the date signed, this Agreement shall be effective as of _____.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this _____ day of _____ 20__.

CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

_____
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

_____
Monica Lombraña, A.A.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2009, by **Joyce A. Wilson**, as **City Manager**, on behalf of the **City of El Paso, Texas**.

_____
Notary Public, State of Texas

My Commission Expires:

_____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CONCESSIONAIRE: _____

_____

_____
Printed Name: _____
Title: _____

ATTEST:

_____
Printed Name: _____
Title: _____

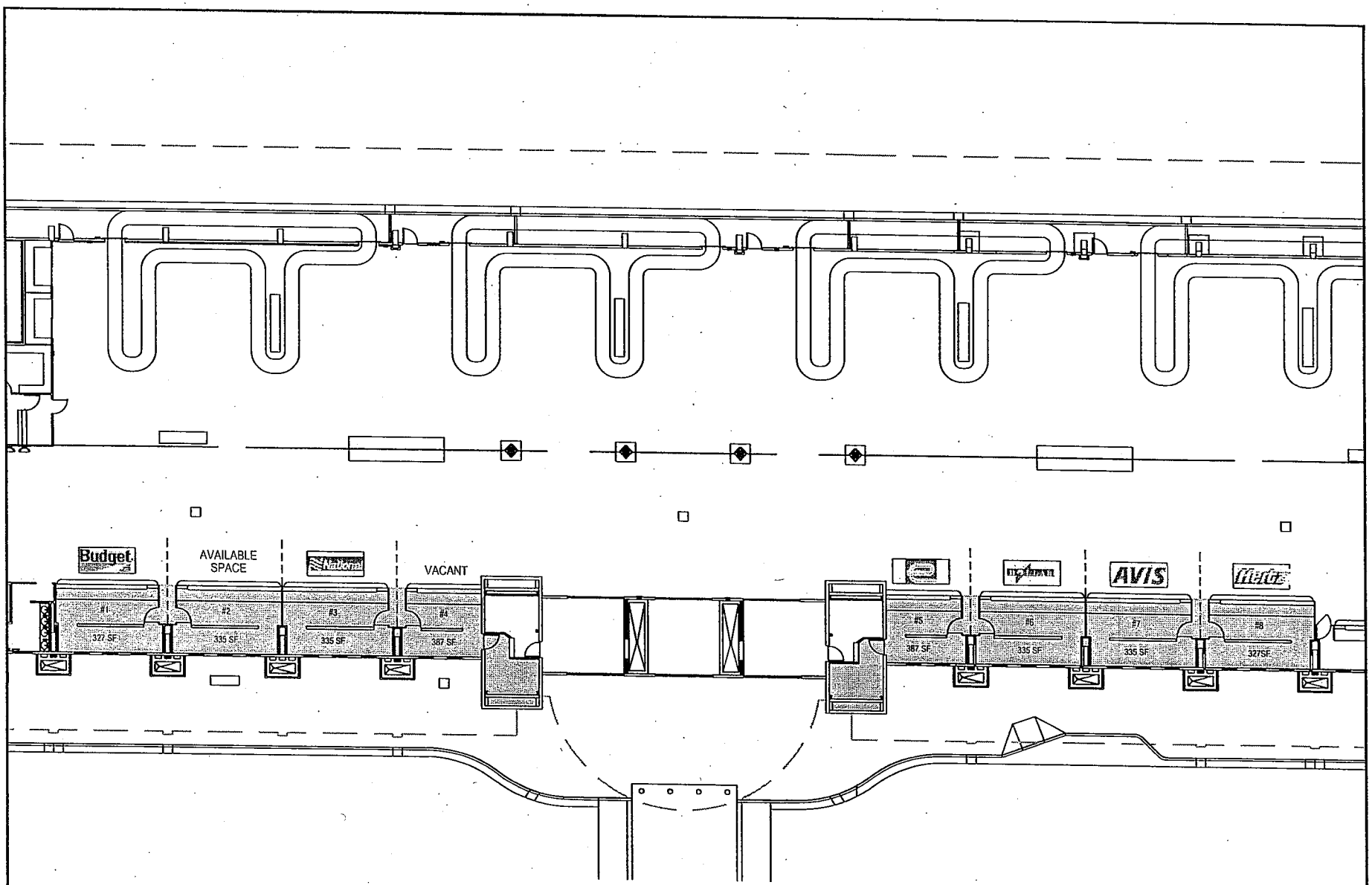
THE STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 20__, by _____ as _____ on behalf of_____ _____. (Concessionaire)

_____
Notary Public, State of Texas

My Commission Expires:

_____



El Paso International Airport

RENTAL CAR CONCESSIONS MINIMUM ANNUAL GUARANTEE Counter/Office Space	EXHIBIT A

November 2009

RENTAL CAR		MAG PCT	SPACES
Hertz	Hertz	29%	74
AVIS	Avis	19%	50
dollar	Dollar	13%	32
e	Enterprise	12%	31
National	National	11%	28
Budget	Budget	7%	19
	Available Space	9%	24
		Total =	258

El Paso International Airport

RENTAL CAR CONCESSIONS
MINIMUM ANNUAL GUARANTEE
Ready/Return Lot Assignments

EXHIBIT
B

November 2009

Exhibit C

El Paso International Airport
Rental Car Reporting Form

Company Name:_____ **Month/Year**_____

Total Reported Gross Revenue $_____

Exclusions from Gross Revenue as defined in Section 6.04 *

1. Mandatory Governmental Charges $_____
2. Sums for loss, conversion, disposal or abandonment of vehicles $_____
3. Concession Recovery Fee $_____

Total Exempt Gross Revenue: $_____

TOTAL MONTHLY GROSS REVENUE $_____

*

(1) Mandatory Governmental Charges – Any tax, fee or other charge levied by federal, state, county, or municipal government that is explicitly identified by the governmental authority as a non-discretionary levy on the customer and required by law to be separately stated.

(2) Sums collected for damage, loss, conversion, or abandonment of Concessionaire's vehicles or for disposal of Concessionaire's damaged vehicles, provided that Concessionaire retains, in accordance with Section 6.10 herein, documentation from a third-party that establishes that the damage, loss, conversion, abandonment, or disposal occurred and identifies the sums collected.