

GLACIER PARK INTERNATIONAL AIRPORT
AUTOMOBILE RENTAL CONCESSION AGREEMENT

This Automobile Rental Concession Agreement (Agreement) is made and entered into the _____ day of _____, 20____ by and between the Flathead Municipal Airport Authority, hereinafter referred to as “Authority”, and _____, hereinafter referred to as “Concessionaire”. The parties agree as follows:

PURPOSE, for and in consideration of the payment of rents, fees and the performance of the covenants and conditions by the Concessionaire in the manner and at the time as hereinafter specified, the Authority does hereby grant to the Concessionaire the non-exclusive right to conduct and operate an automobile rental concession at the Glacier Park International Airport (“Airport”) upon the terms and conditions hereinafter set forth for the sole purpose of conducting said concession.

WHEREAS, the Concessionaire desires to operate an automobile rental concession on a non-exclusive basis at Glacier Park International Airport, and

WHEREAS, the Authority is willing to extend certain privileges for operation of such concession,

NOW THEREFORE, in consideration of the mutual and dependent covenants contained herein, the parties hereto agree to the following terms and conditions:

Article 1 - Premises

A. Concessionaire is hereby granted access to the Airport for the purpose of conducting

its automobile rental business and is granted the use of the following described areas during the term of this Agreement subject to the conditions hereinafter set forth:

(1) Use of the commercial curb area for customer pick up or drop off. The curb area shall be used solely for customer loading and unloading. No long-term parking of any car or rental car is permitted in the commercial curb area. The allocation of the curb area shall be made by the Authority in the Authority's sole discretion.

(2) Concessionaire customers are permitted to pick up or return rental cars in the public parking lot of the Airport only. Any such rental vehicle picked up or returned in the public parking lot shall be subject to the normal parking fees upon their exit from the Airport parking lot.

B. No storage (except for short-term parking of customer-returned vehicles in the public parking lot), maintenance, washing or servicing of vehicles shall be performed at the Airport, or anywhere on Airport property. Concessionaire will not conduct its rental car business at any other place on the Airport, other than those places specifically identified herein, without express written approval of the Authority.

Article 2 - Term

The term of this Agreement shall commence on the _____ day of _____, 20____. and end on the 31st day of December 2020, unless terminated earlier as herein provided. This agreement may be extended upon the mutual agreement of both parties.

Article 3 - Rents and Charges

A. Concession Fee: For each month during this concession agreement, as consideration for the right and privilege to do business at the Airport and in addition to any other fees, rents or charges due hereunder, the Concessionaire shall pay to the Authority, as a concession fee, 10% of Concessionaire's gross receipts as hereinafter defined.

The concession fee shall be paid as follows. Concessionaire shall pay to the Authority 10% of Concessionaire's monthly gross receipts, as hereinafter defined, within twenty (20)

calendar days following the close of the previous calendar month during the term hereof.

Concessionaire's monthly payments of the concession fee to the Authority based upon Concessionaire's gross receipts shall be calculated by adding the total amounts of gross receipts on each car rental contract or agreement for the applicable calendar month and then multiplying that amount by 10%.

As used herein, the term "gross receipts" shall mean the total sum of money paid or payable by cash, credit or any other means by any Airport customer of Concessionaire to Concessionaire. Airport customers shall include all customers met or picked up at the Airport, customers who contacted Concessionaire at or from the Airport and customers who came to be customers via Airport advertising, Airport telephone contact or any other Airport reservation system. Gross receipts includes but is not limited to all sums paid or payable to Concessionaire for the vehicle rental, rental of any other items, and any other fees or charges paid or payable by the customer including airport fees, customer facility charges, insurance, insurance supplements, refueling charges, registration, licensing and title fees and additional driver fees.

The term "gross receipts" shall not include (1) the amount of any federal, state or municipal sales taxes now or hereafter levied or imposed, which are separately stated and collected from customers of Concessionaire; (2) any sums received from damage to automobiles or Concessionaire property, or for loss, conversion or abandonment of such automobiles; (3) any sums received by reason of Concessionaire's disposal of capital assets and/or trade fixtures; (4) any proceeds from the sale of vehicles solely from its fleet in order to maintain a modern up-to-date fleet; and (5) that portion of any inter-city fee collected from a customer that does not accrue to the Concessionaire.

Article 4 - Statements, Books and Records

A. Within twenty (20) calendar days after the close of each calendar month during the term of this Agreement, Concessionaire shall submit to Authority, in a clear, legible, documented, auditable form and with detail satisfactory to the Authority, a statement of its gross receipts during the preceding month from its operations at or related to the Airport from which the percentage concession fee to the Authority may be computed. Said statements will be certified to their

accuracy by the signatures of both a responsible accounting officer of the Concessionaire and the owner of the Concessionaire. Concessionaire shall keep full and accurate books and records showing all of its gross receipts resulting from operations at or through the Airport, and Authority shall have the right, through its representatives, and at all reasonable times, to inspect such books, computer files, tapes, disks, registers and records, electronic or otherwise. Concessionaire hereby agrees that all such records and instruments will be made available to Authority at the premises for the most recent three (3) year period.

B. All rental contract forms used by Concessionaire in its operations at or through the Airport under this Agreement shall be computer generated, serially numbered and recorded such as to ensure a clear audit trail. Concessionaire shall maintain adequate records and internal audit controls pertaining to all customer rental agreements related to the Airport concession. These rental agreements and records shall be open to and available for inspection and examination at all reasonable times by the Authority or its duly authorized representative.

C. Concessionaire shall maintain a log or record showing all rental agreements relating to the Concessionaire's Airport concession. All rental agreements must be accounted for, including voided, lost or destroyed copies.

D. Authority reserves the right, at Authority's expense, to audit the Concessionaire's books and records of receipts at any time for the purpose of verifying the gross receipts hereunder. If, as a result of such audit, it is established that Concessionaire has understated the gross receipts as defined herein, by three percent (3%) or more, the entire expense of said audit shall be borne by the Concessionaire and shall be immediately due and payable from Concessionaire to Authority. Any additional gross receipts fees shown to be due by the audit shall forthwith be paid by the Concessionaire to the Authority with interest thereon at ten percent (10%) per annum accruing from the date such additional gross receipts fees should have been paid pursuant to the terms of this Agreement.

Article 5 - Schedule and Place of Payments

A. The monthly concession fee shall be due and payable in arrears on the first calendar day of each month. The concession fee and any and all other rentals, charges and fees set forth

herein shall be considered late, and a default hereunder, if not received by the Authority by the 20th calendar day of each month. All payments shall be made to the Flathead Municipal Airport Authority at 4170 Highway 2 East, Kalispell, Montana and shall be accompanied by the monthly certificate and documentation of gross receipts.

B. Should any installment of the concession fee or any other rentals, fees or other charges owed by Concessionaire to the Authority not be paid and received by the 20th calendar day of the month, a late charge of twenty-five dollars (\$25.00) per day shall accrue until the full amount due is received by the Authority. Further, if the Concessionaire is at any time delinquent by more than ten days the Authority may require a security deposit before business can continue, guaranteeing the full and faithful performance of all covenants and conditions in this agreement by the Concessionaire. Such security deposit shall be a non-interest-bearing deposit paid to the Authority in the amount of One Thousand and 00/100 (\$1,000.00). In the event of any Concessionaire default under this Agreement, the Authority may use, apply, or retain any or all of the security deposit and apply it to the amounts due and owing. Any such security deposit amount remaining at the termination of this Agreement shall be refunded by Authority within 10 days.

Article 6 - Default

A. In the event Concessionaire fails to make timely payment of any amounts due from Concessionaire hereunder or fails to comply with any other material term or condition of this Agreement, the Authority may give a written Notice of Default to the Concessionaire specifying such default. The Concessionaire shall have thirty (30) days from the date the Authority mails the written Notice of Default to the Concessionaire to cure the default and bring all payments current through the date of payment, including payment of any late fees assessed by the Authority and the delivery to the Authority of the security deposit, if requested by the Authority, as set forth in Article 5,B., above. If the default is not cured and payments are not brought current within the thirty (30) day cure period, this lease shall terminate at the option of the Authority. If the Authority elects to terminate this Agreement because of Concessionaire's default, Concessionaire shall have three (3) days from the date it is notified this Agreement is terminated to cease doing business at or on the Airport.

B. In the event of a default in payment by Concessionaire, the Authority shall have the right to require an audit of Concessionaire's books as provided in Article 4, by an auditor selected by the Authority, provided however, the expense of said audit shall be borne solely by Concessionaire.

Article 7 - Obligations of Concessionaire

A. It is understood and made a specific condition of this agreement that if Concessionaire is the holder of a license, franchise, agency agreement or other form of consent from a company or corporation, it shall do business at the Airport under the trade name and style of that company or corporation.

B. Concessionaire shall use the Airport solely to provide an automobile rental service to Airport patrons. Concessionaire shall conduct its operations in a professional manner continuously during the entire term of this Agreement, with the exception of temporary closures for such periods as may reasonably be necessary or for reasons beyond Concessionaire's reasonable control.

C. Concessionaire shall not solicit the public at the airport but shall meet customers who have reserved automobiles from Concessionaire via internet, telephone, facsimile or by any other method or means of reservation offered by Concessionaire.

D. Concessionaire covenants and agrees:

(1) To furnish prompt and efficient rental car service at the Airport. Rental automobiles will be maintained in good operating order, free from known mechanical defects, and in a clean, neat and attractive condition, inside and out.

(2) Concessionaire shall require its personnel who deal with the public to be neat, clean and courteous. Concessionaire shall not permit its agents or employees to conduct business in an offensive or objectionable manner, nor to solicit business except as described herein or in accordance with directions of the Authority.

(3) That the Concessionaire, in conducting its business on the Airport, will observe and obey all valid laws, ordinances, verbal directives, regulations and reasonable airport rules and regulations now in force or hereinafter adopted governing the conduct of Concessionaire

and its employees and agents and the operation of Concessionaire's business.

(4) That the Concessionaire will pay all expenses in connection with its use of the Airport and the privileges hereby granted, including, without limitation, taxes, permit fees, license fees, and it will secure all required permits and licenses.

(5) That the Authority will be the sole and final judge of the quality and adequacy of service provided by the Concessionaire as herein specified. In the event the Authority shall determine that the Concessionaire has failed to comply with the requirements for quality and adequacy of service, it shall give the Concessionaire written notice of such determination and Concessionaire shall within 15 days submit a course of action to address compliance.

(6) Concessionaire shall pay for all repairs and damages to Airport property or to property of any other person or entity whose property is damaged while on Airport property caused by any act, carelessness, abuse or omission by its employees, officers, directors, owners, members, partners, shareholders or by agents acting on Concessionaire's behalf.

Article 8 - Relocation

It is agreed that the Authority may relocate any areas designated for Concessionaire's use under this Agreement to another area of the Airport at the Authority's sole discretion.

In the event the Authority determines that such relocation is necessary, the Authority will relocate Concessionaire's designated use areas to as comparable a location as possible.

Article 9 - Indemnity and Insurance

A. It is specifically understood and agreed that Concessionaire is engaged in an independent business enterprise with the right to access and use the Airport for the purposes set forth herein, and Concessionaire is responsible for its own acts and omissions which occur in the operation of its independent business enterprise. As further consideration for the use of the Airport, Concessionaire agrees to indemnify, defend and hold harmless the Authority and its board members, commissioners, officers and employees, from any and all claims, demands, damages, losses, fines, penalties and expenses including attorney's fees and costs, arising out of any act or omission by Concessionaire incident to the exercise of any rights, duties or privileges under this

Agreement. The provisions of this section shall survive termination or expiration of this Agreement.

B. Concessionaire hereby specifically warrants, covenants and agrees that the Authority shall not be liable for injury to Concessionaire's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Airport under authority hereof, whether belonging to Concessionaire, or any owner, director, officer, employee, agent, contractor, sub-contractor, tenant, sub-lessee of Concessionaire, or any other person whomsoever; nor shall Authority be liable for any injury to the person of Concessionaire or Concessionaire's owners, directors, officers, employees, agents, contractors, subcontractors, tenants, sub-lessees, customers, or invitees unless such injury is proven to be the result of the gross negligence or an intentional act on the part of the Authority. Concessionaire also covenants and agrees that Authority shall not be liable for any damages arising from any act or neglect on the part of any third parties.

C. Upon execution of this Agreement Concessionaire shall, at Concessionaire's sole expense, obtain and, throughout the term of this Agreement, maintain in full force and effect, with an insurance company(s) admitted by the Montana Insurance Commissioner to do business in the State of Montana the following policies of insurance:

(1) COMMERCIAL GENERAL LIABILITY insurance which shall include contractual, products and completed operations, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence.

(2) COMMERCIAL AUTOMOBILE LIABILITY insurance endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 per occurrence.

(3) WORKER'S COMPENSATION insurance as required by Montana law.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 day written notice to the Authority of policy cancellation, change or reduction of coverage. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Concessionaire shall file with Authority a certified copy of the new or renewal policy and certificates for such policy.

The Commercial General Liability and Commercial Automobile Liability insurance

policies identified above shall be written on an occurrence form and shall name the Authority as an additional insured. Concessionaire shall furnish Authority with certificate(s) of insurance and applicable endorsements showing that the required insurance is in full force and effect prior to beginning any operations under this Agreement at the Airport.

D. Authority shall not be liable for damage caused by any utility or infrastructure service or plumbing, or electrical causes, or the negligence of contractors, or licensees of the Authority, unless the damage is proven to be the proximate result of negligence on the part of the Authority, its agents or employees.

E. It is agreed that if the property of either party should be damaged or destroyed by an insured peril, then, and to the extent allowed without invalidating such insurance, neither party shall have any liability to the other, nor to any insurer of the other for, or in respect of such damage or destruction, unless such damage or destruction is proximately caused by the negligence of one of the parties.

F. Flathead Municipal Airport Authority shall be named as an additional insured.

Article 10 - Sign

Concessionaire shall not paint upon, attach, exhibit or display in or about the Premises any sign without the written consent of the Authority.

Article 11 - Environmental Responsibility

Concessionaire shall comply with all environmental laws, regulations, rules, permits and orders now existing or in the future enacted or amended by any governmental authority with jurisdiction over environmental matters. Concessionaire shall not permit anything to be done in or around the Airport or on Airport property which may subject Authority to any liability for cleanup costs or any other costs, expenses, claims, demands, liabilities, damages, fines, assessments or penalties under any environmental laws, including but not limited to the generation, transportation, management, handling, treatment, storage, manufacture, emission, disposal or deposit of any hazardous wastes, hazardous substances, or fill or other material containing hazardous wastes or hazardous substances on or around the Airport, and Concessionaire agrees to

indemnify, defend and hold Authority and Authority's commissioners, officers, directors, employees, agents and related parties harmless from any such costs, expenses, claims, demands, liabilities, damages, fines, assessments or penalties which are caused by Concessionaire or arise from Concessionaire's activities. The provisions of this section shall survive termination or expiration of this Agreement.

Article 12 - Assignment

Concessionaire shall not assign, transfer or sublease the whole or any part of this Agreement or the rights and privileges granted herein, without first having obtained the written consent of the Authority. Such consent shall not be unreasonably withheld by the Authority. Any assignment, transfer or sublease in violation of this provision shall be void and shall be a material default of this Agreement. For purposes of this Article 13, if Concessionaire is an entity, the transfer of more than 25% of the equity ownership interest in Concessionaire shall be considered an assignment or transfer.

Article 13 - Termination

Notwithstanding anything to the contrary in this Agreement, either Party may at any time terminate this Agreement without penalty by giving the other Party 30 days' written notice of such termination.

Article 14 - Successors and Assigns

Subject to the limitations on Concessionaire's rights to assign or transfer its rights under this Agreement, this Agreement, all the covenants, stipulations and agreements herein shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

Article 15 - Nondiscrimination/Handicapped/and Other Federal Requirements

The Concessionaire for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

A. No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use or provision of Concessionaire's services or facilities.

B. In the consideration of any improvements on, over, or under such land, that 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.

C. The Concessionaire shall use the Airport 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, Parts 21 and 23, non-discrimination in Federally assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

Concessionaire shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Concessionaire may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

Concessionaire shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, color, religion, sex or national origin.

Noncompliance with provisions A., B., and C., above, after written findings of noncompliance by the Authority or the United States or any of its agencies or departments with authority for enforcement of such laws and regulations, shall constitute a material breach of this Agreement and in the event of such non-compliance the Authority shall have the right to immediately terminate this Agreement and the estate created hereby without liability therefore or, at the election of the Authority or the United States, either or both such parties shall have the right to judicially enforce Subsections A., B., and C.

Article 16 - Notice

Service of all notices required under the terms hereof shall be deemed complete and

effective upon being deposited in the United States Mail, certified mail, with postage prepaid, directed to the Authority at Glacier Park International Airport, 4170 Highway 2 East, Kalispell, MT 59901, and to Concessionaire at: _____, until either party shall give notice in writing, in accordance with this Article 18, to the other of a change of address.

Article 17 Concessionaires Representations and Warranties

Concessionaire represents, warrants and covenants to the Authority that: (i) Concessionaire is authorized to do business in Montana; (ii) Concessionaire has the right and lawful authority to enter into this Agreement and perform Concessionaire's obligations hereunder; (iii) Concessionaire has not entered into any agreement with any third party which would require such party's consent hereto or preclude or limit Concessionaire's performance of its obligations under this Agreement; and (iv) the person signing this Agreement has the authority to sign this Agreement.

Article 18 - Miscellaneous

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties other than as are herein set forth. This Agreement may not be modified except by an instrument in writing signed by the parties. In the event any covenant, term, condition or provision set forth herein is held invalid by any court of competent jurisdiction, the invalidity of such covenant, term or provision shall in no way effect the remainder of this Agreement. It is further understood and agreed that the paragraph headings set forth herein are for convenience only and shall in no way effect the interpretation or construction of this Agreement. This Agreement is being executed and delivered in the State of Montana and shall be construed and enforced in accordance with the laws of the State of Montana. In the event of a dispute under this Agreement, the parties agree to the jurisdiction of the courts of the State of Montana and agree that venue shall be in Flathead County, Montana. In the event of a dispute under this Agreement, the substantially prevailing party shall be entitled to recover its

reasonable attorneys' fees and costs incurred, whether or not a lawsuit is filed. No waiver shall occur under this Agreement unless such waiver is in writing and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal this of ____ day of _____, 20__.

FLATHEAD MUNICIPAL AIRPORT AUTHORITY

By: _____
Airport Director

CONCESSIONAIRE

By: _____
Title: _____