

AIRPORT PARKING FACILITIES MANAGEMENT  
AGREEMENT FOR THE WILLISTON BASIN  
INTERNATIONAL AIRPORT

This Airport Parking Facilities Management Agreement (hereinafter referred to as "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_ 2019, by and between the City of Williston ("City"), and \_\_\_\_\_ (hereinafter referred to as "Operator").

WITNESSETH:

WHEREAS, City operates the Williston Basin International Airport, Williston, North Dakota, having public parking facilities serving the airport terminal; and

WHEREAS, Operator is an experienced operator and manager of parking facilities for motor vehicles; and

WHEREAS, City and Operator desire to enter into an Agreement whereby Operator will operate and manage parking of motor vehicles at certain parking facilities serving the Williston Basin International Airport pursuant to the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, it is mutually agreed between the parties hereto as follows:

**Article 1**     **DEFINITIONS:** The following terms, as used in this Agreement, shall have the meanings ascribed to them hereunder:

- A.     Agreement shall mean this Airport Parking Facilities Management Agreement.
- B.     Airport shall mean the Williston Basin International Airport located in and adjacent to the City of Williston, County of Williams, State of North Dakota.
- C.     Airport Director shall mean the Airport Director of the City or his/her designee.
- D.     Airport Terminal shall mean the main terminal building at the new Williston Basin International Airport currently being constructed as of the date of execution of this Agreement.
- E.     City shall mean the City of Williston, North Dakota.
- F.     Consent of Approval of City shall mean the consent or approval in the form of a resolution approved by City as provided for by law and its bylaws.
- G.     Consent of Airport Director shall mean a written document signed by the Airport Director.
- H.     Exit Plaza shall mean an area near exit booth(s) used as a means of egress from the parking lot. The Exit Plaza includes but is not limited to the canopy, automated parking equipment, pay-stations, gate arms, and booth.

- I. Full-time Equivalent or FTE shall mean employment positions at the Premises providing \_\_\_ hours of employment per year.
- J. Gross Revenue (herein after referred to as “Gross Revenues”) shall mean all funds collected by the Operator for the parking and storage of motor vehicles whether on an hourly, daily, or weekly basis, less all authorized validations, refunds, discounts, and allowances and less any sales tax, use tax, excise tax, gross receipts tax, parking tax, or any other tax or charge collected by the Operator on behalf of or payable to the tax collector (collectively “Sales Tax”). Operator shall be responsible for payment directly to the taxing entity of any Sales Tax based on Gross Revenue collected by the Operator. Gross revenues do not include annual parking contracts issued directly by the City.
- K. Improvements shall mean all items located on or within the Premises or affixed thereto, provided, purchased or used by Operator or the City, including, but not limited to, revenue control equipment and structures, wiring, and signs.
- L. Parking Control Islands shall mean any cement curbing used for vehicle control, ticket dispensing, gate arm mechanisms, and/or pay-station locations.
- M. Premises shall mean the surface parking lots and employee parking lots at the Airport more particularly shown on Exhibit A attached hereto and incorporated herein to include:  
  
Surface Lot- General Parking: Approximately three hundred fifty five (355) spaces.

**Article 2** OPERATION OF THE PREMISES: The Premises together with any equipment and Improvements thereon shall be used by Operator solely as a public and employee parking facilities for motor vehicles and any other purpose or purposes incidental thereto, including but not limited to the right to place any personal property or trade fixtures necessary for such purposes on the Premises. In addition to the Premises, Operator shall have the right of ingress onto and egress from the Premises by motor vehicles from the Airport Terminal access road during the term of and under the covenants and conditions contained in this Agreement.

Operator shall institute revenue control procedures for the public parking facilities including where necessary (i) procedures to control ingress and egress to the Premises, (ii) procedures for collection of proper fees in accordance with the approved parking rate schedule in effect, and (iii) staffing uniformed attendants, trained and disciplined to perform their duties in an efficient and courteous manner.

Provided that Operator abides by all the terms and conditions hereof, City shall not during the term of this Agreement permit the operation of a public parking facility at the Airport Terminal by any other party other the Operator and/or the City itself.

**Article 3**

A. BASE TERM: Base Term- Operator will enter into a six (6) year Agreement commencing on approximately October \_\_, 2019 and terminating on \_\_\_\_\_, 20\_\_.

B. OPTION TERM- In addition to the Base Term identified above, one (1) additional

two (2) year Option Term commencing on \_\_\_\_ will be offered and exercisable upon mutual agreement. The Parties must agree and exercise the Option Term a minimum of one hundred eighty (180) calendar days prior to expiration of the Base Term of this Agreement. If the Option Term is not exercised in the timeframe identified, this Agreement will terminate on the Base Term expiration date identified with no further obligation on the part of either party beyond the Base Term.

C. HOLDOVER- The Operator, at the sole discretion of the City, may be required to Holdover in the event that the succeeding Agreement is not in place at the expiration of the Base Term or the executed Option Term. The Operator shall continue on a month to month basis for a total period not to exceed six (6) calendar months and such continuation shall be under the terms and conditions contained in the Agreement. The City has the right to terminate the Holdover upon thirty (30) calendar days written notice without cause. Notwithstanding the definition of the term "Fee" found in Section 5 in this Agreement, during the holdover period, the term "Fee" shall mean the Percentage Fee.

**Article 4** HOURS OF OPERATION: The parking management program shall be staffed from \_\_\_\_ until \_\_\_\_ am, or until after the last evening arrival, three hundred sixty-five (365) days per year as needed to accommodate all customers utilizing the parking facilities. The exit booth will be staffed from one (1) hour prior to the first scheduled departure until one (1) hour following the last arrival or the hours stated above, whatever is required to meet the customer needs. Notwithstanding the above, the Operator must have staff available at all times with a response time of no more than one (1) hour upon call. The call procedure will be coordinated between the Operator and the City.

**Article 5** PAYMENT OF FEES: Operator hereby agrees to pay City the greater of the following Minimum Annual Guarantee fee (the "MAG") or percentage concession fee (the "Percentage Fee") which may be due hereunder (the greater of the MAG and the Percentage Fee hereinafter referred to as the "Fee"), computed for each year of the Term and the Option Term, if exercised, of this Agreement:

A. CONCESSION FEES AND MINIMUM ANNUAL GUARANTEE ("MAG") FEE: The MAG for the first year shall be \_\_\_\_ dollars (\$\_\_\_\_). For each subsequent year of the Agreement, the MAG will be calculated at ninety percent (90%) of the previous year's actual net payment to the City. In no event shall the MAG due to the City during the Term and the exercised Option Term be less than the first year's MAG except for the conditions outlined below.

If for any reason, the annual revenue falls below \$\_\_\_\_ the MAG shall be lowered to \$\_\_\_\_ until such time as annual revenue is greater than \$\_\_\_\_. During the period in which annual revenue is below \$\_\_\_\_, Operator will continue to pay the City the specified percentage concession fees as described in paragraph B outlined below.

B. PERCENTAGE FEE: The Percentage Fee shall be computed as a percentage of annual Gross Revenues:

- a) 60% of annual Gross Revenues between \$0.00 and \$200,000
- b) 70% of annual Gross Revenues between \$200,001 and \$400,000
- c) 80% of annual Gross Revenues between \$400,001 and \$600,000
- d) 90% of annual Gross Revenues between \$600,000 and \$1,000,000
- e) 92% of annual Gross Revenues above \$1,000,001

C. Operator shall pay to the City monthly the Percentage Fee based on the monthly Gross Revenues at the appropriate rate schedule. The first monthly installment shall be due on \_\_\_\_,

2019 and shall be due on the 15<sup>th</sup> of the month every month thereafter through the Term and the Option Term, if exercised. Within forty-five (45) calendar days after the end of each contract year, there shall be a reconciliation report prepared by and signed by an Officer of the Operator. The parties will compare the total Percentage Fee paid compared to the MAG and if the amount due is greater than the MAG, Operator will pay the balance due within fifteen (15) calendar days.

**Article 6**      REPORTS AND RECORDS: Concurrently with each monthly installment, Operator shall provide a detailed monthly statement of Gross Revenues derived for the preceding month for operation and management of the Premises, said report to be in a form acceptable to the City. Operator agrees that during the Term of this Agreement it will maintain, under and in accordance with accepted accounting practices, a complete and accurate set of books, records, dates of its parking receipts including daily revenue and shift reports, bank deposit slips, tickets, license plate inventory, accounts and cash register tapes showing all Gross Revenues collected by Operator under this Agreement and all taxes and other deductions affecting said Gross Revenue which will be subject to review by the City upon request. The Operator shall submit to City monthly activity reports which shall include the number of parking tickets collected by type; the dollar value of all revenue collected and the number and value of non-paying exits. All such books, records, accounts and tapes shall be kept in conformity with a revenue control system approved by the Airport Director and shall be subject to inspection and audit by the City upon three (3) days notice. In the event any audit discloses that the amount of Gross Revenues on any statement was understated by two percent (2%) or more of Gross Revenues for any month, the Operator shall pay to the City the cost of its audit and investigation, plus any Fees due to the City under this Agreement. Such records shall be maintained at a location agreed upon by the parties or electronically. Operator shall retain all such books, records, accounts and tapes for a period of six (6) years after the termination of this Agreement. Operator has the option of turning all records over to the City at the end of the term.

**Article 7**      OPERATOR'S EMPLOYEES: Operator shall provide competent staff to operate the Premises. In order to accomplish the level of service required by City, and in the provision of continuous service of the Premises, Operator shall employ, train, assign, motivate and manage an adequate number of personnel to operate the Premises. The parties agree that the automated parking operation level of staffing shall be \_\_\_ Full-time Equivalents (FTE's). Airport Director and Operator may negotiate different levels of staffing. If at any time Operator reduces the number of Full-time Equivalents below the number of \_\_\_, then Operator shall increase the monthly Fee installment by an amount equal to the Operator's direct cost savings resulting from the staffing reduction. The actual calculation of any cost savings will be determined and memorialized by a signed amendment to this Agreement.

It is recognized by both parties hereto that there may be future increases in the local, state, and federal minimum wages or other mandated governmental payroll taxes or employee benefits required by Operator to offer its employees. If, an increase mandated by local, state, or federal law occurs in the existing minimum wage; or Operator is mandated by governmental action to provide other employee associated taxes, benefits, or compensation, Operator and City shall work together to develop an equitable agreement to compensate Operator for the cost of said mandated wage, tax, or benefit increase. Such equitable agreement will be developed considering the nature of the proposed mandate.

Operator understands and agrees that its operation at the Airport necessitates contact with the public, both in the course of normal business operations and in rendering public services such as giving directions and providing general assistance to the public. Employees in positions that involve contact with the public must be capable of speaking and understanding the English language at a level

consistent with the effective and efficient performance of the duties of the position. Employees shall be clean and neatly dressed in uniforms provided by Operator at all times when on duty in order to reflect the professional levels of service expected by City. Employees shall be polite and courteous at all times when on duty and shall respond to complaints or problems of customers within forty-eight (48) hours upon receipt. Operator shall be obligated to control the actions of its employees, to dispense with the services of any employee whose conduct City determines to be detrimental to the best interests of City.

**Article 8**      **OBLIGATIONS OF OPERATOR:**

In the performance of its service at the Airport, the Operator will maintain a high degree and standard of professionalism. In particular, the Operator will comply strictly with the following conditions and requirements:

- A. Operate and manage the Parking Facilities in accordance with the highest standards and practices of the commercial parking industry;
- B. Train all employees under the Williston Basin International Airport contract in the proper customer service techniques and the financial management policies and procedures to comply with the contract terms;
- C. Conduct its operations in an orderly, and courteous manner, so as not to annoy, disturb, or offend customers, patrons, employees or tenants of the Airport. Employees shall wear clean uniforms as approved by the City at all times when on duty;
- D. Provide and maintain sufficient materials, supplies, merchandise, and equipment to ensure a high standard of parking service and to avoid all disruptions to customers within the reasonable control of the Operator;
- E. Provide custodial services and disposal of waste/trash within the Premises, as established in the Agreement to a location determined by the Airport.
- F. Employ trained personnel, who shall be clean, courteous, efficient, and neat in appearance.
- G. Pay all taxes assessed against Operator owned furnishings, equipment, earnings, personal property, or stock of merchandise and supplies.
- H. Pay for all permits, licenses, or other authorizations required by the City or other governmental entities having jurisdiction over the Airport in connection with the operation of its business at the Airport
- I. Comply with applicable federal, state, and local laws, regulations, and ordinances, etc., including the Rules and Standards governing the use and operation of the Williston Basin International Airport, as may be amended from time to time.
- J. Keep accurate records and books of account on site, or available within twenty-four (24) hours' upon notice, in accordance with Generally Accepted Accounting Principles (GAAP Basis) in order to submit monthly reports as established by the Agreement.
- K. Provide insurance as required in Section 22.

- L. Comply with all appropriate codes, regulations, and ordinances of the City of Williston and the State of North Dakota.
- M. Provide bonding for all employees used in the performance of the contract against theft and fraud
- N. Provide a daily license plate inventory report to the Airport Director.
- O. Provide monitoring of the employee lot.
- P. Other maintenance responsibilities as agreed to by the parties.

**Article 9**      OBLIGATIONS OF THE CITY

City shall, at its expense, be responsible for repair, maintenance and replacement of all blacktop and concrete surfaces, light standards and re-lamping on the Premises, electrical repairs, landscaping, and sewer and drainage, as same pertain to the Premises, unless any of the aforesaid shall be damaged by Operator or its employees, in which event Operator shall be responsible.

City shall furnish at no charge in the Toll Booth and parking facilities:

- A. Ordinary heat, electricity, and air conditioning.
- B. Ordinary convenience outlets as presently installed and electric current that is not substantially greater than an amount of electric current than might be normally used. Operator accepts the facilities “as is where is”.
- C. Telephones and radios as required by the City.
- D. Internet service to the toll booth.
- E. City shall provide and pay for all necessary electricity for the lighting of the remainder of the Premises and roadway system at the Airport.
- F. All revenue control software and equipment
- G. City shall be responsible for snow removal from the Premises except that Operator will assist City with removing snow from the Parking Control Islands.

**Article 10**      VEHICLE INVENTORY: An inventory off all vehicles parked at the Premises shall be taken nightly. This procedure consists of entering all license numbers by state, lot, and row location of all vehicles remaining at the Premises. This information permits a determination of length of stay in the facility to enable a customer to be charged the correct amount of fees in the event of a “lost” ticket. Any vehicle remaining at the Premises more than thirty (30) days will be brought to the attention of the Airport Director to determine the appropriate action to be taken. Any vehicle remaining in the employee lot more than two (2) days shall be brought to the attention of the Airport Director.

**Article 11**      OPERATOR CAPITAL INVESTMENT: Operator will provide to the City, prior to the commencement date of this Agreement, a payment of three hundred thousand dollar (\$300,000) for investment contribution for improvements required to support the operation of the parking facilities to be used at the sole discretion of the City. Any remaining balance in that fund at the termination of the Agreement as called for herein, will remain with the City.

**Article 12**      CONSUMABLES AND CREDIT CARD FEES:

A. Operator shall, at its own expense, furnish all forms, tickets, decals, envelopes, tools, office equipment, furniture, drop safes, materials, and supplies needed for the efficient operation of its business at the Premises.

B. Operator shall invoice the City on a monthly basis through the Base term only a flat fee of \_\_\_ dollars (\$\_\_\_) per month for credit card processing fees. City will pay the invoice within thirty (30) calendar days of receipt.

**Article 13** TAXES: Operator shall be liable for the payment of personal property taxes, if any, and license fees that may be levied or assessed during the term of this Agreement on account of the transacting of business on the Premises by Operator. If Operator shall fail or neglect to pay any of said taxes or license fees when the same become due, City may pay the same, together with any penalty thereon, provided, however, that such payment by City shall not prevent or limit Operator from appealing such tax or fee. If City pays all or any portion of said taxes or license fees together with any penalty thereon, City shall be entitled to collect the entire amount so paid from Operator, and Operator hereby agrees to pay such entire amount to City upon demand therefor, provided however, such payment does not prevent or limit Operator from appealing such tax or license fee.

**Article 14** ABANDONED VEHICLES: Operator will comply with any and all governmental laws, regulations and statutes regarding abandoned vehicles, including reporting of any vehicle which is on the Premises more than thirty (30) calendar days, upon direction from the Airport Director, to proper authorities in compliance with such laws, regulations and statutes. Permanently abandoned vehicles, if any, will be disposed of in accordance with existing laws. The City shall be entitled to all proceeds from the sale of any abandoned vehicle. No abandoned vehicle will be disposed of without the prior approval of the Airport Director.

**Article 15** CUSTOMER RELATIONS:

A. Customer Feedback Survey. Operator shall conduct an annual customer parking survey at the Airport. Operator will consult with the Airport Director to develop and conduct the survey in a form approved by the Airport Director. Operator shall pay for, prepare and tabulate the survey and provide the results of each survey to the Airport Director in written form within thirty (30) calendar days following completion.

B. Mystery Shopper. City requires Operator to conduct monthly mystery shopper surveys at least two (2) times per contract year and provide a report detailing the findings to the Airport Director within thirty (30) calendar days following the survey.

C. Visiting Corporate Personnel. Operator shall have visiting corporate, regional and field personnel observe, monitor and document performance and standards relating to customer service periodically each contract year and provide the findings to the Airport Director.

D. Customer Relations Policy. Operator shall respond to customer inquiries and/or complaints within forty-eight (48) hours of receipt and provide the Airport Director with a copy of said complaint and response. A monthly summary of all responses will be given to the Airport Director.

**Article 16** OPERATOR EMPLOYEE PARKING AND CITY PARKING TICKET VALIDATION: Operator's employees may park for free during the course of their normal duty shift in the area adjacent to the booth in the Exit Plaza. Operator and the Airport Director shall arrive at a mutually

agreeable method for parking ticket validations for use by City. Operator will administer the agreed to program. No free parking may be provided employees when no on duty.

**Article 17** SIGNS: Operator shall not erect, install, operate, cause or permit to be erected, installed or operated in or upon the Premises or upon the Airport, any sign or similar advertising device without having first obtained the approval of the Airport Director. All costs of installation shall be borne solely by Operator.

**Article 18** RATES: The City shall be solely responsible for establishing all rates, fees, and charges for all revenue associated with the operation of the parking program. The City will establish a rates, fees, and charges schedule annually and provide it to the Operator in writing a minimum of thirty (30) calendar days prior to the implementation of any modified rates. During the base Term and Option term, if exercised, rates, fees, and charges will be no less than in existence at the commencement of the Agreement. The Operator shall be responsible for coordinating and installing all signage changes required and any such change will be a reimbursable expense. Operator will be responsible for publicly posting all rates at locations designated by the City. The City shall be responsible for updating the Airport website reflecting the current parking rates.

**Article 19** CAPITAL IMPROVEMENTS: The City may desire to have capital improvements made to the Premises. Upon mutual agreement, the City may authorize the Operator to make such improvements on behalf of the City. The Operator shall prepare plans and specifications which meet the City's requirements for the improvements and solicit proposals in conformance with applicable City procurement guidelines. Written contracts will be executed with selected vendors and all work shall be done by competent contractors in the time and manner approved by the Airport Director. Contractors shall comply with the City's applicable bonding, insurance and indemnification requirements. When improvements are to be funded by the capital fund deposit, the City will issue payment directly to the contractor following certification by the Operator that the payment request is in compliance with the contract terms.

**Article 20** INDEMNIFICATION CLAUSE: Operator shall indemnify, save, hold harmless, and defend the City, its officials, agents and employees, successors and assigns, individually or collectively, from and against any claim including a claim for contribution or indemnity, action, loss, damage, injury, liability, and the cost and expense of whatsoever kind or nature (including, but not limited to, reasonable attorneys' fees, disbursements, court costs, and expert fees) based upon injury to persons, including death, or damage to property or any other cause of action arising out of, resulting from, in conjunction with or incident to Operator's operation of its business and/or performance of its obligations under this Agreement or use and/or occupancy of the Premises or of the Airport, and on ten (10) calendar days written notice from the City, Operator shall appear and defend all claims and lawsuits against the City growing out of any such injury or damage.

Operator shall indemnify, save, hold harmless, and defend City, its officials, agents and employees, successors and assigns, individually or collectively, from and against any claim including a claim for contribution or indemnity, action, loss, damage, injury, liability, and the cost and expense of whatsoever kind or nature (including, but not limited to, reasonable attorneys' fees, disbursements, court costs, and expert fees) and any fines in any way arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, or regulations, including rules or regulations of the City now in effect or hereafter promulgated, by Operator, its agents, employees, or successors and assigns in conjunction with or incident to Operator's operation of its business and/or performance of its obligations under this Agreement or use and/or occupancy of the Premises or of the Airport, and on ten



(10) calendar days written notice from the City, Operator shall appear and defend all claims and lawsuits against the City growing out of any such injury or damage.

The provisions of this Section shall survive the expiration, termination or early cancellation of this Agreement.

**ARTICLE 21 ENVIRONMENTAL LIABILITY AND INDEMNIFICATION:** In addition to the general indemnity stated in Section 20, and as part of it, it is specifically agreed between the parties that Operator shall be responsible in all respects for Operator's use of, or Operator's generation of, or release or threatened release of any petroleum based substance or product, or any volatile organic compound, or any substance classified as a pollutant, contaminant, toxic or dangerous substance, solid waste or a "hazardous waste" by either the United States Environmental Protection Agency or the State of North Dakota. Operator shall specifically be responsible for the disposition of all such waste or substances and for the environmental response activities and response costs, monitoring, or cleanup of any environmental condition deemed by those agencies, or either of them, to require environmental response, monitoring or cleanup activities of any kind whatsoever which arise out of Operator's use of, or generation of, such substances in its operations at the Airport, and, Operator specifically agrees that the obligations of Section 20 above shall apply specifically to any cost or obligations of the City arising out of such response, disposition and/or clean up. The provisions of this Section shall survive the expiration, termination or early cancellation of this Agreement.

**Article 22 INSURANCE:**

A. Insurance Requirements.

Operator shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below.

1. Comprehensive General Liability with limits no less than \$1,500,000 combined single limit per occurrence, including but not limited to, bodily injury and property damage, airport premises and products/completed operations liability, contractual liability, and independent contractors liability.

2. Business Automobile Liability with limits no less than \$1,500,000 each occurrence including owned and/or leased automobile liability and non-owned and hired automobile liability.

3. Workers' Compensation Coverage in statutory amounts with "all states" endorsement including Employees Liability Insurance in limits of \$100,000 per employee.

B. Requirements for All Insurance. All insurance required in this Section shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of North Dakota and with companies or underwriters satisfactory to the City.

C. Additional Insureds. The City shall be named as additional insureds on each of the policies above except the Workers' Compensation policy.

D. Insurance Primary. All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by the City.

E. Insurance Certificate. Certificates showing that Operator is carrying the above-described insurance in the specified amounts shall be furnished to City prior to the execution of this Agreement, and a certificate showing continued maintenance of such insurance shall be filed with City during the term of this Agreement. Failure of Operator to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve Operator from any responsibility to carry the required types and amounts of insurance.

F. Notice of Change or Cancellation. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least thirty (30) calendar days advanced notice being given to City. Failure to give such notice to City shall render any such change or changes in said policy or coverages ineffective as against the City.

G. ACORD Form. The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent, as approved by the City.

H. Disclaimer. City does not represent or guarantee that these types or limits of coverage are adequate to protect the Operator's interests and liabilities. It shall be the obligation and responsibility of Operator to insure, as it deems prudent, its own personal property, against damage. City does not have insurance coverage for Operator's property and City expressly disclaims any and all liability for any and all losses, damage and/or claims to personal possessions of Operator.

I. City's Fire Insurance. Operator covenants that it will not do or permit to be done any act which:

1. Will invalidate or be in conflict with any fire insurance policies covering the Airport or any part thereof, or upon the contents of any building thereof; or
2. Will increase the rate of any fire insurance at the Airport or any part thereof, or upon the contents of any building thereof; or
3. In the opinion of City, will constitute a hazardous condition so as to increase the risks normally intended upon the operations contemplated by this Agreement.

If, by reason of Operator's failing to comply with the provisions of this Section, any fire insurance rate on the Airport or any part thereof, or upon the contents of any building thereof, at any time, shall be higher than it otherwise would be, then Operator shall, upon fifteen (15) calendar days prior notice, either modify its operations so as to comply with the provisions of this subsection or reimburse City for that part of all fire insurance premiums paid or payable by City which shall be charged because of such violation by Operator.

**Article 23** NON-DISCRIMINATION: Operator for itself, its 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, religious creed, ancestry, age, sex, national origin, handicap or disability shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Premises, (b) 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, color, religious creed, ancestry, age, sex, national origin, handicap or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (c) that Operator shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21

Nondiscrimination in Federally assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 CFR Part 23. The Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by Title 49 CFR Part 23. The Operator agrees to include the above statements in any subsequent concession agreement or contract covered by Title 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

Non-compliance with this provision, shall constitute a material breach thereof and in the event of such non-compliance the City shall have the right to terminate this Agreement without liability therefor or at the election of City or the United States either or both said Governments shall have the right to judicially enforce said provision.

**Article 24** TEMPORARY SUSPENSION OF OPERATIONS: In the event Operator is prevented from operating the Premises, City shall have the option to assume operation of the Premises during Operator's period of disability. City may continue such operation for so long as Operator's disability shall last and shall receive all revenues therefrom.

**Article 25** DEFAULT:

A. Rights Upon Default. If at any time Operator shall be in default, as defined in this Section, with regard to the requirements of this Agreement, it shall be lawful for the City, and the City may at any time thereafter:

1. Immediately, or at any time thereafter without further notice to Operator, re-enter into or upon the Premises under this Agreement or any part thereof and take possession of the same fully and absolutely with or without cancellation of this Agreement and without such re-entry representing a forfeiture of the fees and charges to be paid and of the covenants, terms and conditions to be performed by Operator for the Term of this Agreement, and in the event of such re-entry, the City may collect and retain all parking revenues or City may contract with another operator for an equivalent or greater or lesser concession fee and City to recover properly measured damages.

2. City may at its election terminate this Agreement upon written notice in the manner hereinafter provided and re-enter upon the Premises, and the Operator covenants in case of such termination to indemnify the City against all loss of fees, and charges which the City has suffered or paid by reason of such termination, during the remainder of the term of this Agreement.

3. The City shall further have all other rights and remedies at law or in equity including injunctive relief, or summary proceedings for unlawful detainer, and any or all legal remedies, actions and proceedings shall be deemed cumulative.

B. Default Defined. "Default" shall be defined when any of the following circumstances exist:

1. If the Operator has failed to pay fees, charges, or taxes when due hereunder and such failure to pay shall continue for ten (10) calendar days after written notice to Operator in the manner hereinafter provided.

2. Failure to provide and/or maintain the insurance coverages required herein.

3. If the Operator fails in the observance or performance of any of the other terms, covenants and conditions of this Agreement and such failure shall continue for thirty (30) calendar days after City has given Operator written notice, or the Operator shall have failed to commence the corrective action of such failure within thirty (30) calendar days after such notice and to diligently prosecute the same where the same cannot be completed within thirty (30) calendar days.

4. If a petition to reorganize the Operator or for its arrangement of its unsecured debts shall be filed.

5. If the Operator shall be adjudicated bankrupt.

6. If a receiver or trustee of the Operator's property shall be appointed by any court.

7. If the Operator shall make a general assignment for the benefit of creditors.

8. If all of the interest of the Operator in its property shall be taken by garnishment, attachment, execution or other process of law.

9. If controlling interest of the Operator under this Agreement shall, without the approval required in Section 29 be transferred or assigned.

10. If any lien shall be filed against the Premises because of an action or omission of Operator and shall not be discharged or contested by Operator in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof by Operator.

**Article 26** CANCELLATION OF AGREEMENT BY OPERATOR: This Agreement shall be subject to cancellation by Operator if one or more of the following events should occur:

1. The permanent abandonment of the Airport for scheduled air service.

2. If, by reason of any action of any governmental City, Operator is unable to conduct its business for a period of in excess of ninety (90) consecutive days in substantially the same manner or substantially to the same extent as prior to such action.

3. Issuance by any court of competent jurisdiction of an injunction, order or decree in any way preventing or restraining the use of the Premises which injunction, order or decree remains in force of such injunction for a period of at least ninety (90) calendar days.

**Article 27** SURRENDER OF PREMISES: Upon the termination of this Agreement, Operator's use of the Premises, rights, facilities, equipment and Improvements herein granted shall cease and Operator shall, upon expiration or termination, promptly and in good condition, normal wear and tear excepted, surrender the same to the City. In the event that Operator has in any way changed,

altered or modified the Premises without the written approval by the City, Operator covenants to return the same to the condition they were in at the time of the occupancy under this Agreement, normal wear and tear excepted, or, in the alternative, to pay the City for the cost of returning them to said condition. Upon termination, any improvements which have become part of the Premises shall become the property of the City, and the same shall be immediately returned to the ownership and control of the City. Any improvements not part of the Premises shall be removed therefrom within one (1) calendar day after the termination of this Agreement or the same shall be deemed to have been abandoned to the City and the right of the Operator to possession thereof shall cease.

**Article 28** NOTICES: Any notices or communications required to be given to or by or served upon the respective parties hereto may be so given or served by mailing the same, properly addressed and stamped, to such party or parties by United States registered mail, certified mail or by reputable overnight courier service. Until new addresses shall be given, the addresses of the respective parties for the purpose of such notices or communications or for any other purposes shall be:

As to City:

Airport Director  
Williston Basin International Airport  
421 Airport Rd.  
Williston, ND 58801

As to Operator:

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

Addresses are subject to change upon written notice by either party.

**Article 29** ASSIGNMENT: Except for the subcontracting of work as set forth in Section 19, Operator shall not assign or transfer this Agreement, in whole or in part, in any manner, nor any interest therein, nor permit the foregoing Agreement to become transferred by operation of law or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part, unless the written consent of City shall first be obtained in each and every case of subletting, assignment or transfer. It is expressly agreed by the parties that a change in ownership of the controlling share of stock in Operator if any, shall be deemed to be an assignment hereunder. It is expressly agreed by the Operator that in the event permission be granted by the City as herein provided, the sub-lessee or assignee shall be required to assume and agree to perform the covenants of this Agreement and that notwithstanding any such subletting or assignment, the Operator shall be and remain liable for the payments of all rents and other payments due hereunder and the performance of all covenants and conditions for the full term of this Agreement.

**Article 30** SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

**Article 31** SUBORDINATION: This Agreement shall be subordinate to the provisions of any existing or future Agreement between the Operator and the United States of America or the State of North Dakota relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal or State funds for the

development of the Airport, or to any security requirements of State or Federal Government, including temporary security procedures or instructions.

**Article 32** RULES AND STANDARDS: The City has adopted Minimum Standards, as may be amended from time to time, with respect to the use of the Airport, terminal building and related facilities, which Operator agrees to observe and obey.

**Article 33** NONWAIVER: Any waiver of any breach of covenants herein contained to be kept and performed by Operator shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent City from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

**Article 34** NONWAIVER OF LIABILITY: Nothing in this Agreement constitutes a waiver by the City of any statutory or common law defenses, immunities, or limits on liability. The liability of the City shall be governed by the provisions of the North Dakota law.

**Article 35** AMENDMENT: Any of the terms of this Agreement may be changed upon the mutual consent of the City and the Operator, but to be valid any such changes must be in writing, dated, and must be executed with the same formalities as this Agreement. In the event that any provision of this Agreement is determined to violate any local, state, or federal rule or regulation or is deemed to cause a violation of any FAA covenants, the Agreement shall be modified upon consultation with Operator to cause such violation to be compliant with such provision and an amendment will be executed on a timely basis to incorporate the required changes.

**Article 36** HEADINGS: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Lease Agreement.

**Article 37** GOVERNING LAW: This Agreement shall be governed by and in accordance with the laws of the State of North Dakota, and all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement shall be venued in state or federal courts located in North Dakota.

**Article 38** FORCE MAJEURE: Neither City nor Operator shall be deemed in violation of this Agreement by reason of failure to perform any of its obligations hereunder, if such failure is due to airline strikes, boycotts, embargoes, airport construction, acts of God, acts of governmental City, weather conditions, riots, rebellion, terrorism, sabotage, or any other material circumstances not within its control. In such event, Operator may, with the written consent of the Airport Director, diminish the scope of its operations commensurate with the existing demand for parking services.

**Article 39** PERFORMANCE GUARANTEE: Operator shall post with the City prior to the commencement date of this Agreement a performance guarantee to be maintained for the duration of the Base Term of the Agreement and the Option Term, if exercised, as called for in this Agreement in the amount of six (6) months of the Minimum Annual Guarantee. The performance guarantee may be in the form of a bond, letter of credit from Operator's banking institution, or a cashier's check payable without recourse to the City. If the Operator submits a bond, then that bond shall be issued by a surety company acceptable to the City. During the Term of the Agreement, if there are any claims on the performance guarantee, the Operator must replenish the amount to the full value within five (5) calendar days upon receipt of written notice by the City.

**Article 40** AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (“ACDBE”) COMPLIANCE

- A. The City has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Operator is required to participate in the City’s ACDBE program.
- B. This agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, Title 49 CFR Part 23. The Operator agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by Title 49 CFR Part 23.
- C. The Operator agrees to include the statement set forth in paragraph B in any subsequent concession agreement or contract covered by Title 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
- D. The City has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:
  - 1. Breach of contract action, pursuant to the terms of this contract;
  - 2. Breach of contract action, pursuant to applicable State Statutes
- E. The federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:
  - 1. Suspension or debarment proceedings pursuant to 49 CFR part 23;
  - 2. Enforcement action pursuant to 49 CFR part 31; and
  - 3. Prosecution pursuant to 18 USC 1001.
- F. The City will comply with all regulations set forth in 49 CFR Part 23 and will monitor operations at the Airport for compliance with the ACDBE program.
- G. The City will submit to the Federal Aviation Administration’s, Regional Civil Rights Office, an annual ACDBE participation report showing the commitments and attainments. The City will take measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities.

**Article 41** ENTIRE AGREEMENT: This written Agreement, including Exhibit A, is the entire agreement between the Parties. Any and all prior or contemporaneous statements and understandings not contained herein shall be of no further force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized officers or representatives on the day and year first above written.

CITY

OPERATOR

By: \_\_\_\_\_  
Its: President

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

By: \_\_\_\_\_  
Its Secretary

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

SAMPLE



**EXHIBIT A**  
**(Description of Premises)**

SAMPLE

**EXHIBIT B**  
**AMORTIZATION SCHEDULE FOR INVESTMENT DEPOSIT**

SAMPLE